

Regulatory Alert

Regulatory Insights for Financial Services

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CFPB Focus on Credit Card Penalty Fees

KPMG Insights. Much like the CFPB's recent request for information on overdraft protection practices ([see KPMG Regulatory Alert](#)), the CFPB acknowledges that credit card penalty fees "disproportionately burden consumers in low income neighborhoods" and, based on its own report findings, looks to assess companies' reliance on those fees as a significant source of income. These reviews/inquiries are part of the CFPB's initiative to reduce "junk fees" charged by banks and financial companies (announced in January 2022). They are similarly part of a larger supervisory focus on consumer protection and fairness, that also includes practices related to account holds/freezes, fraud controls, credit decisions, and complaints management. All CFPB-supervised credit card issuers must anticipate heightened regulatory scrutiny of their credit card penalty policies and should consider re-evaluating their policies and practices, including the use of the regulatory safe harbor, in light of the CFPB's areas of interest, as outlined in the ANPR. Notably, CFPB concedes that a small but increasing percentage of companies charge no late fees or offer products with increased flexibility for late payments.

ANPR. The Consumer Financial Protection Bureau (CFPB or Bureau) [issued](#) an advanced notice of proposed rulemaking (ANPR) seeking comment on credit card penalty fees, including late payment, over-the-limit, and other penalty fees or charges imposed on open-end credit card accounts, to assess whether those fees are "reasonable and proportional" to the omission or violation to which the fees or charges relate. The ANPR also seeks comment on credit card issuers' revenues and expenses and the role that late fees play in issuers' profitability. The CFPB is particularly interested in a safe harbor provision that permits credit card issuers to charge a set amount, as specified in Regulation Z (the implementing regulations for the CARD Act (i.e., the Credit Card Accountability Responsibility and Disclosure Act)) and adjusted annually by the Bureau to reflect inflation.

The questions in the ANPR relate to the domestic consumer credit card market and include:

- **Factors used by card issuers to set late fee amounts** (e.g., relationship to statement balance; consideration of

uncollectible accounts, annual revenue goals, and/or deterrent impact of late fees)

- **Card issuers' costs and losses associated with late payments** (e.g., notifications; workout arrangements; losses)
- **Deterrent effects of late fees** (e.g., whether a higher late fee, including the safe harbor amount, deters future late payments; whether consequences other than late fees ever imposed for late payments)
- **Cardholders' late payment behavior** (e.g., classification of cardholders based on reasons for late payment; percent of late payments made after the due date)
- **Methods that card issuers use to facilitate or encourage timely payments**, including autopay and notifications (e.g., incentives provided to cardholders to enroll in autopay; required opt-in or automatic notifications)
- **Card issuers' use of the late fee safe harbor provisions in Regulation Z** (e.g., amount that would be sufficient to recover costs of collecting late fees)

- **Card issuers' revenue and expenses** related to their domestic consumer credit card operations (including sources of revenue such as interest and fees, and expenses such as collections, marketing, servicing)

The CFPB states that the public input received will inform potential revisions to Regulation Z; comments are requested no later than July 22, 2022.

CFPB Report on Credit Card Late Fees. In March 2022, the CFPB released a [report](#) on Credit Card Late Fees. Key findings suggest:

- Late fees represent over one-tenth of the consumer cost of credit paid to issuers in interest and fees.
- Late fees represent a larger share of revenue for issuers primarily serving consumers with lower credit scores than for issuers that extend little to no credit to such consumers.
- For both general purpose and private label credit card accounts issued by major banks, repeat late fees (any

late fee within 6 billing cycles of an earlier late fee) are higher than first-time late fees.

- A small share of accounts in low credit score tiers incur a high proportion of late fees. Subprime and deep subprime accounts incurred 42 percent of all late fees in 2019 (latest available data) though only 12 percent of accounts fell into those categories.
- Late fees can represent a surcharge of 24 percent annualized on top of assessed interest on unpaid balances.
- Eighteen of the top twenty credit card issuers set late fees at or near the established (regulatory) maximum level.
- A small but increasing percentage of companies charge no late fees or offer products with increased flexibility for late payments.

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