

# Forensic & Integrity Services

Staying ahead of regulatory changes:  
Credit card fees

March 2023



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In June 2022, the Consumer Financial Protection Bureau (CFPB) launched an initiative to scrutinize fees charged to consumers by banks and nonbank financial institutions that it considers excessive or exploitative, which it characterizes as “junk fees.”<sup>1</sup> As part of this initiative, the CFPB has a renewed focus on penalty policies and late fees.<sup>2</sup> Per the CFPB, credit card companies charged \$12 billion in late-fee penalties in 2020, equating to 10% of the total cost of credit cards to customers.<sup>3</sup>

A CFPB report on credit card late fees found the following<sup>4,5</sup>:

- ▶ 18 of the top 20 issuers set late fees at or near the established maximum level
- ▶ Subprime cards and private-label cards are particularly susceptible to late-fee charges
- ▶ Late-fee volume fell when COVID-19 stimulus checks arrived, especially in households with lower credit scores
- ▶ Low-income areas, areas with high shares of Black Americans and areas with lower economic mobility all bear more of the late-fee burden

The Credit Card Accountability Responsibility and Disclosure Act of 2009 (the CARD Act) is a law that requires penalties to be reasonable and proportional to the omission or violation and includes safe harbor fee amounts that card issuers may impose for violations of the terms or other requirements of an account, currently \$30 for the first late payment and \$41 for a subsequent late payment within six billing cycles.<sup>6</sup>

## Change on the horizon

The CFPB gave Advance Notice of Proposed Rulemaking (ANPR) to review the CARD Act’s immunity provision and determine if adjustments are needed to address late fees.<sup>7</sup> Based on public input and evaluation, the CFPB proposed the following changes in February 2023: lowering the immunity provision dollar amount for late fees to \$8, ending the automatic annual inflation adjustment, and capping late fees at 25% of the required minimum payment.<sup>8</sup>

The following are questions credit card issuers should be asking themselves or looking into to get ahead of future revisions to Regulation Z:

- Can you demonstrate how you determined late-fee amounts are proportionate to collection costs?
- Are you following the Fed’s safe harbor limit provisions?
- Are the fees adequately disclosed and charged consistently with disclosures?
- Do late fees charged disproportionately affect certain customer groups or geographies?
- What role do late fees play in company revenue planning and profitability?

<sup>1</sup> “Consumer Financial Protection Bureau Launches Initiative to Save Americans Billions in Junk Fees,” Consumer Financial Protection Bureau, January 26, 2022, <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-initiative-to-save-americans-billions-in-junk-fees>.

<sup>2</sup> “CFPB Initiates Review of Credit Card Company Penalty Policies Costing Consumers \$12 Billion Each Year,” Consumer Financial Protection Bureau, June 22, 2022, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-initiates-review-of-credit-card-company-penalty-policies-costing-consumers-12-billion-each-year>.

<sup>3</sup> Ibid.

<sup>4</sup> “CFPB Finds Credit Card Companies Charged \$12 Billion in Late Fee Penalties in 2020,” Consumer Financial Protection Bureau, March 29, 2022, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-credit-card-companies-charged-12-billion-in-late-fee-penalties-in-2020>.

<sup>5</sup> “Credit card late fees,” Consumer Financial Protection Bureau, March 2022, [https://files.consumerfinance.gov/f/documents/cfpb\\_credit-card-late-fees\\_report\\_2022-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf).

<sup>6</sup> Ibid.

<sup>7</sup> Consumer Financial Protection Bureau, [https://files.consumerfinance.gov/f/documents/cfpb\\_credit-card-late-fees\\_anpr\\_2022-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_anpr_2022-06.pdf).

<sup>8</sup> “CFPB Proposes Rule to Rein in Excessive Credit Card Late Fees,” Consumer Financial Protection Bureau, February 1, 2023, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees/>.



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US SCORE no. 18463-231US

2211-4129446  
ED None

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