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CFPB bans excessive credit card late fees

Initial perspectives related to the Consumer Financial Protection Bureau's final rule to lower typical credit card late fees for large card issuers

Center *for* **Regulatory Strategy US**

On March 5, 2024, the Consumer Financial Protection Bureau (CFPB) released a final rule to amend Regulation Z, which implements the Truth in Lending Act (TILA), banning excessive credit card late fees and closing a 2010 loophole.[1] The final rule reduces the typical credit card late fee from $32 to $8 for large card issuers (i.e., those with one million or more open credit card accounts) and follows a recent proposal by the CFPB to limit excessive fees on overdraft loans. The final rule effective date will be May 14, 2024.

5 insights you should know

Lower safe harbor: The final rule repeals the current safe harbor threshold amounts of $30 generally for penalty fees to $8 for "Larger Card Issuers." This amount was determined through CFPB data analysis for four sources (Y-14, Y-14+ [2], credit card debt collection data; and the Credit Card Agreement Database) to determine an amount that would cover average collection costs on late payments and would be "reasonable and proportional" to a consumer's late payment.

Card issuer applicability: The final rule applies only to "Larger Card Issuers," which include those that, together with their affiliates, have one million or more open credit card accounts. For "Smaller Card Issuers," the $8 late fee safe harbor and elimination of annual adjustments changes are not applicable at this time. The CFPB noted that defining larger participants by number of open credit card accounts rather than asset size is a better metric to capture those entities with large credit card portfolios

Eliminated higher fees for subsequent violations: In addition to lowering the first late fee safe harbor amount, the final rule also applies the revised safe harbor of $8 to subsequent violations. Previously, "Larger Card Issuers" may have charged up to $41 for subsequent violations of the same type that occur during the same billing cycle or in one of the next six billing cycles.

Ends annual adjustments: The final rule eliminates the automatic annual inflation adjustments for safe harbor amount for late fees for "Larger Card Issuers." Previously, safe harbor thresholds had increased $5–$6 due to annual adjustments and changes in the Consumer Price Index (CPI). CFPB data analysis determined that the prior annual adjustments were not in lockstep with inflation.

Cost analysis provisions: The final rule provides a cost analysis provision for card issuers to charge fees greater than the $8 safe harbor amount. For card issuers who elect to use the cost analysis provision, they will be required to substantiate their actual collection costs are greater than the $8 per late payment safe harbor amount.

5 considerations to evaluate

1. **Determine potential impacts:** Many card issuers performed a preliminary initial analysis based on the proposed rule. However, a detailed impact assessment should be performed utilizing the final requirements to identify potential gaps and impacts including controls, documentation, training, technology, data infrastructure and quality controls, as well as compliance oversight routines.

2. **Evaluate overall credit card programs:** Many card issuers will need to explore alternative strategies and product features to replace revenue losses from the fee limitations. A detailed assessment of credit card program offerings, including rewards and loyalty programs, annual percentage rates (APRs), credit underwriting criteria, customer segmentation, and marketing efforts should be evaluated to identify potential levers to sustain profitability.

3. **Consider timeline for implementation:** Many card issuers will need to react quickly to ensure compliance with implementation required by May 14th (just 60 days after publication). Organizations should quickly mobilize a dedicated and multi-disciplinary program team to develop and execute a project plan within the expected timeframe that includes updating systems and platforms, refining contact center processes, as well as updating required disclosures, controls, and process documents.

4. **Weigh the implications for other consumer fees:** Organizations must remain diligent in reacting to the evolving regulatory environment as the CFPB continues to increase scrutiny on what it describes as "junk fees." The recent proposals to close the bank overdraft loophole,[3] as well as prohibit non-sufficient funds (NSFs) fees on instantaneously declined transactions illustrate regulators' increasing scrutiny of consumer fees and necessity for organizations to holistically examine their existing and potential fee structure.[4]

5. **Assess the cost analysis provision:** Card issuers electing to utilize this provision to charge fees greater than $8 will be required to substantiate going above the threshold based on actual collection costs. Additionally, sufficient evidence will need to be compiled to demonstrate adherence with Regulation Z and TILA. Organizations may need to leverage outside specialists with cost analysis expertise to determine feasibility and potential risks.

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[1] CFPB, "Credit Card Penalty Fees (Regulation Z)," March 5, 2024. [2] Loan data collected by the Federal Reserve. [3] Deloitte, "CFPB proposes closing bank overdraft loophole," February 2024 [4] CFPB, "Nonsufficient Funds (NSF) Fees for Instantaneously Declined Transactions," press release January 24, 2024