April 9, 2024

The Honorable Andy Barr
U.S. House of Representatives
2430 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Barr:

The undersigned trade associations write to express our support for H.J.Res. 122, a Congressional Review Act resolution to reject the Consumer Financial Protection Bureau's (CFPB or Bureau) final rule on credit card late fees. By its own admission, the Bureau's late fee rule will harm the 74 percent of consumers who pay their credit cards on time by forcing issuers to increase costs to offset delinquencies for those credit card users who pay late or not at all due to the significantly reduced late fee penalty. Even worse, the CFPB's rule will create long-term harm for the minority of consumers it purports to help. By reducing the short-term cost of paying late for late payers, the CFPB may see a short-term political win– but it is introducing long-term financial risk to those same consumers in the form of higher principal and interest payments and damage to those consumers' credit histories.

Congress should support H.J.Res. 112 and reject this flawed policy.

On March 5, 2024, the CFPB finalized its proposed rule that would cut the Federal Reserve Board's safe harbor for credit card late fees from $30 ($41 for subsequent late payments) to $8 for card issuers with 1 million open accounts or more, without an inflation adjustment.[1] The CFPB's rule is part of the Biden Administration's re-election messaging regarding "junk fees," which purports to reduce fees charged to consumers by several industries, including but not limited to transportation, groceries, and entertainment.[2]

Credit card late fees are not "junk fees." U.S. banking fees are some of the most highly regulated and transparent in the world. Credit card late fees are prescribed under Regulation Z, which implements the Truth in Lending Act ("TILA"). As has been required by law for many years, these fees are clearly disclosed to the consumer up front. In addition to having clear and required disclosures, **credit card penalty late fees serve an important, pro-consumer purpose recognized by TILA**: to deter consumers from paying late on their credit card bills which has long-term impacts on consumers' financial health.

Nevertheless, President Biden chose to highlight the rule in his two most recent State of the Union Addresses, underscoring the political nature of the rule. Remarkably, notwithstanding that the proposed rule would not even be published in the Federal Register for another eight weeks, the President announced where the CFPB's proposed rule would land just six days after it was released, before any comments had been filed or considered: "We're cutting credit card late fees by 75 percent, from $30 to $8."[3] This degree of political coordination between the CFPB and the White House suggests the CFPB prejudged this rulemaking and calls the rulemaking's integrity into question. Further, the CFPB appears to have rushed to judgment throughout various important steps in the rulemaking process, raising additional concerns about improper prejudgment. Based on public statements by the administration and the CFPB, it appears that the CFPB was unwilling to alter course based on industry feedback to help protect consumers.

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1 https://www.consumerfinance.gov/rules-policy/final-rules/credit-card-penalty-fees-final-rule/

2 https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/11/biden-harris-administration-announces-broad-new-actions-to-protect-consumers-from-billions-in-junk-fees

3 https://www.whitehouse.gov/state-of-the-union-2023/

In its narrative about the rule, the CFPB has even gone so far as to suggest that the credit card marketplace is not competitive and piles late fees onto unsuspecting consumers.[4] However, as CBA has demonstrated using data from the CFPB's 2023 CARD Act Report, the credit card market is clearly competitive with nearly 4,000 issuers. CFPB data shows that late fees appear to have maintained a consistent proportion to credit card balances, which is particularly notable given that issuers have made dramatic progress in providing greater access to credit cards for consumers with lower credit scores or little to no credit history.[5]

The proposed rule conceded that the rule would result in credit cards becoming more expensive and less available for the vast majority of consumers who pay their bills on time. By the Bureau's own admission, "[c]ardholders who never pay late will not benefit from the reduction in late fees and could pay more for their account if maintenance fees in their market segment rise in response."[6] **But this means that the proposed rule essentially redistributes benefits from the 74 percent of consumers who pay their bills on time to the 26 percent of consumers who, in the CFPB's words, are "consumers most likely to violate [the] terms of their card agreement."**

Commentators may attempt to frame this transfer as a redistribution from wealthy to lower income consumers or describe the redistribution as transferring funds from prime consumers to subprime consumers. But the transfer is specifically from consumers who pay their bills on time to consumers who frequently do not. Indeed, nearly 50 percent of subprime cardholders pay their bills on time, yet they could face higher APRs and hence, more difficulty paying on time, now that CFPB has finalized this rulemaking.[7] [8]

While it may seem that late-paying customers could experience some short-term relief from this proposal, it may result in far more long-term financial harm. The CFPB's final rule would, by definition, make it easier for consumers to miss their credit card payments.[9] As more consumers pay late, there is a higher chance they will become delinquent. Ultimately, consumers experiencing delinquency will have this information reported to credit bureaus, leading to higher credit card balances carried month-to-month and lower credit scores, which can lead to far worse outcomes for consumers such as difficulty obtaining credit, or higher financing costs for housing, cars, and other necessary purchases.

For all of these reasons, the CFPB's credit card late fees final rule is fatally flawed and must be rejected. We urge Congress to enact H.J.Res. 122 to prevent these irreparable consumer harms.

Sincerely,

Consumer Bankers Association
America's Credit Unions
Bank Policy Institute
American Bankers Association
Independent Community Bankers of America

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[4] https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-credit-card-companies-charged-consumers-record-high-130-billion-in-interest-and-fees-in-2022/
[5] https://www.consumerbankers.com/cba-media-center/media-releases/facts-matter-cba-uses-cfpb-data-set-record-straight-card-act-report
[6] https://files.consumerfinance.gov/f/documents/cfpb_credit-card-penalty-fees_final-rule_2024-01.pdf#page=227
[7] https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf#page=8
[8] https://files.consumerfinance.gov/f/documents/cfpb_credit-card-penalty-fees-nprm_2023-02.pdf#page=113
[9] https://files.consumerfinance.gov/f/documents/cfpb_credit-card-penalty-fees_final-rule_2024-01.pdf#page=248