May 3, 2023

Comment Intake—2023 NPRM Credit Card Late Fees
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Docket No. CFPB-2023-0010 – Credit Card Penalty Fees (Regulation Z)

To Whom It May Concern:

The Virginia Credit Union League advocates for the 105 credit unions in the Commonwealth of Virginia and their over 18 million members. We appreciate the opportunity to comment on the CFPB's proposed rule (the "Rule") regarding credit card penalty fees.

Credit unions are not-for-profit, member-owned cooperatives that promote thrift, provide provident credit, and help their members improve their financial health. Credit unions have no shareholders, and operating profit is either retained as capital to maintain safety and soundness or returned to the members in the form of higher dividends on deposits, lower rates on loans, or lower fees.

We have serious concerns about the Rule's proposed changes and the impact they would have on credit unions and their members. The proposal targets profit-motivated fee practices of big banks and applies one set of rules to all credit card issuers, regardless of size or model. It will also cause negative, unintended consequences which will harm more consumers than it will benefit.

Credit unions do not set fees to maximize profits

The distinction between not-for-profit credit unions and for-profit banks is critical in the context of fees and how they are set. When a credit union sets a fee amount, they consider a number of factors, including costs, fraud losses and prevention, time spent by staff, and other similar factors. An ideal fee amount strikes the right balance between these factors, deterrence of negative member behavior, and the amount of similar fees charged by competitors.

By contrast, the Rule makes clear the assumption that all credit card issuers set late fee amounts to maximize profits:

> "Issuers may have less ability to charge consumers higher late fees to <u>maximize profits</u>…In general, issuers will set the terms of credit cards to <u>maximize profits</u>…Even if lower late fees would decrease losses from delinquencies, issuers may still prefer higher late fees to <u>maximize profits</u>." (emphasis added)

If the CFPB's intent is to craft a rule to curtail using fees to maximize profits, that rule should be tailored to for-profit card issuers, not to not-for-profit credit unions.

Credit unions offer tools and work with members to avoid fees

The CFPB writes that the Rule will benefit consumers because when late fees are less profitable, issuers have no incentive to take steps to reduce late payments, such as more effective reminders or convenient payment options.

This is not the case for credit unions. Credit unions are owned by their members, and serving members and improving their financial well-being is their purpose and mission. For this reason, credit unions already offer solutions to help their members avoid penalty fees. Many credit unions have a 10-day grace period after the due date when a fee will not be charged. They offer automatic payment options, where members can choose to pay the statement balance or the minimum payment amount automatically every month. They are investing in technology solutions that send members text message reminders of an upcoming due date, with the ability to make a payment on their phone. Many credit unions reach out to members proactively as grace periods are ending and will regularly refund late fees to members to help get them back on track with regular payments.

Credit unions take these actions because their incentives are aligned with their members' financial health. This is the difference afforded by the member-owned, not-for-profit structure of credit unions.

The negative consequences outweigh potential benefits for consumers

In prescribing a rule, the CFPB must consider "the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule."[1] In the Rule, the CFPB lays out many of the possible negative consequences of these proposed changes, including higher interest rates on credit cards and negative changes to other terms and fee amounts.

The CFPB rightly identifies that many consumers will be harmed by these changes without experiencing any of the benefits. Higher interest rates affect all credit card users that carry a balance, not just those who make late payments. Similarly, higher annual fees affect all credit card users, regardless of whether they carry a balance or make late payments. Higher minimum payments – a likely consequence of lowering the credit card penalty cap from 100% of the minimum payment to 25% of the minimum payment – will hit the hardest on low-income consumers who are living paycheck-to-paycheck and already stretched thin due to rising costs. This could lead to higher delinquency and default rates, lower credit scores, and increased future borrowing costs for many consumers.

Finally, another consequence of the Rule would be the further tightening of credit standards by issuers. Restrictions like those in the Rule limit the ability of issuers to appropriately price risk into their products. When this happens, products are often not made available to the riskiest users – in this case, subprime consumers. This will drive these consumers to alternative credit channels, such as payday lenders or buy-now-pay-later offerings and will hurt their financial health.

We urge the CFPB to re-examine the cost/benefit balance of this Rule and recognize that it will ultimately cause more harm to more consumers than the benefits to those it will favor.

A flat late fee is the most functional and transparent penalty option

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[1] 12 U.S.C. § 5512(b)(2)(A)(i).

In the Rule, the CFPB seeks comment on whether late fees should be staggered, such that card issuers could impose a fee of a small dollar amount every certain number of days until a cap is hit. Mandating such a structure would not only be more difficult to disclose to consumers but would require significant and costly changes to core processing and payment systems. As noted above, many credit unions and other card issuers offer a grace period after the payment due date. We believe this more appropriately resolves the concern of a borrower who barely misses their payment, and the complications of a staggered fee schedule are not necessary.

While we agree that credit card penalties should represent a reasonable proportion of the costs incurred by the issuer, we feel this Rule is overly restrictive and should be more narrowly tailored to for-profit issuers using late fees to maximize profits. We thank the CFPB for this opportunity for comment.

Sincerely,

JT Blau

JT Blau
Chief Advocacy Officer
Virginia Credit Union League