

November 28, 2023

President Joe Biden
The White House
1600 Pennsylvania Avenue
Washington DC 20500

Mr. Rohit Chopra, Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

Ms. Lael Brainard, Director
Mr. Michael Negron, Special Assistant to the President for Economic Policy
National Economic Council
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Biden, Director Chopra, Director Brainard and Special Assistant Negron,

The undersigned organizations write to express our strong and enthusiastic support for the CFPB's proposed rule relating to Credit Card Penalty Fees (amending Regulation Z). We are also submitting 38,294 signatures collected by Consumer Reports, and stories from consumers about their frustrating experiences with credit card late fees collected by CR and Americans for Financial Reform, to demonstrate additional strong public support for the rule.

The critically important Credit Card Penalty Fees rule will help ensure that the late fees charged on credit card accounts are "reasonable and proportional" to the late payment as required under the Truth in Lending Act (TILA). The proposal would adjust the safe harbor dollar amount for late fees to \$8 and eliminate a higher safe harbor dollar amount for late fees for subsequent violations of the same type; prevent credit card companies from adjusting the safe harbor dollar amount every year for inflation; and provide that late fee amounts must not exceed 25 percent of the required payment.

As you know, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) states that credit card late fees should be "reasonable and proportional" to the costs incurred by issuers to handle late payments. But over time fees have been raised by the card issuers to increase fees with inflation, even if they face no additional costs for servicing the late payment. This practice has been protected by an expansive immunity provision created by the Federal Reserve, which unfairly keeps fees higher than were intended by the CARD Act. Currently, credit card issuers are permitted to charge people as much as \$30 for the first late payment, and \$41 for each subsequent late payment, in addition to interest charges.

CFPB's research has clearly shown that the amount of late fees charged to consumers grossly exceeds the amount necessary to cover bank expenses in processing the late payments. Specifically, The CFPB estimates that the income generated by the largest issuers from late fees is approximately five times

greater than the collection costs that the companies incur for late payment violations. The proposed Credit Card Penalty Fees rule will help ensure that excessive late fee amounts are illegal, and reset the fees at a level that is actually “reasonable and proportional” to the expenses incurred by credit card issuers. CFPB estimates this important new rule will help reduce excessive credit card late fees for consumers by approximately \$9 billion per year.

In October 2023, the CFPB reported that consumers collectively held more than \$1 trillion in credit card debt in 2022, an all-time high. Consumers paid more than \$130 billion in interest and fees on their credit cards, including \$14.5 billion for late payment fees. Total average credit card balances per cardholder are about \$5,300, about the same level as before the pandemic. The data also show that more cardholders are carrying balances month to month, and being charged late fees. This in turn is causing them to fall behind on payments, and face higher costs on growing debt.¹

Many Americans are assessed a credit card late fee over the course of a year. According to a September 2023 Consumer Reports nationally representative survey of 2,089 U.S. adults, 1 in 5 adult Americans – an estimated 52 million people -- paid a credit card late fee in the last 12 months.² As CFPB’s research has shown, the burden of late fees falls heavily on people living paycheck to paycheck, low- and moderate-income consumers, and people of color.

- **People with a low income pay proportionately bigger fees, because they** tend to have smaller credit card balances, the CFPB says. A flat \$30 or \$41 late fee due on a small amount of money owed means fees cost much more percentage-wise than they would on a larger debt.
- **Low-income earners pay almost twice as much in actual fees as high-income earners.** When charged a late fee, people who make \$150,000 a year paid an average of \$15, while those earning \$32,000 paid twice that amount, around \$32, according to a CFPB analysis.³
- **Financially vulnerable consumers pay more in late fees.** Cardholders with subprime and deep subprime scores are far more likely to incur repeat late fees in a given year than those in higher credit score tiers. Increased incidence coupled with a more expensive fee for repeat late payment resulted in the average deep subprime account being charged \$138 in late fees in 2019, compared with \$11 for the average superprime account.⁴
- **People in majority Black neighborhoods pay more in late fees.** The CFPB’s analysis also found that in ZIP codes where 90 percent of people are Black, the burden of late fees is felt hardest. Per account, Black people were charged on average more than \$25 in late fees, while in places where the Black population was nearly zero, people paid less than \$20 in late fees.⁵

¹ Consumer Financial Protection Bureau, *The Consumer Credit Card Market*, October 2023, available at: https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2023.pdf

² Consumer Reports, *American Experiences Survey, September 2023 Omnibus Results*, September 2023, available at: https://article.images.consumerreports.org/image/upload/v1696262259/prod/content/dam/surveys/Consumer_Reports_AES_Toplines_September_2023.pdf

³ Cohen, J., Nathe, L., Sándor, L., Seikel, M., and Zhang, W., *Credit Card Late Fees*, Consumer Financial Protection Bureau, March 2022, available at: https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf

⁴ Op.cit. note #1.

⁵ Ibid.

- **Consumers living in majority Black or Latino neighborhoods are at greater risk for late fees.** A recent Government Accounting Office report found that consumers living in majority Black and Latino Zip Codes are charged higher interest rates and tighter credit card limits, compared to customers in majority white zip codes with similar financial and credit characteristics. Even though their credit access is more constrained, the consumers living in Black and Latino zip codes were more likely to carry a balance, putting them at risk for more frequent late fees.⁶

Another key problem is that credit card companies are quick to assess late fees, even if the payment is only an hour or few days late. The CFPB says most banks accept payments for that day up until 5 p.m. But as Consumer Reports has reported, consumers may not know which time zone the 5 p.m. deadline refers to, and can be charged a substantial late fee for making their payment an hour or so late. For example, a woman in Eureka, Calif., another in Milo, Maine, and a man in Summerlin, Nev., told Consumer Reports that they were hit with late fees of \$41, \$32, and \$35, respectively, after paying their bill at 6 p.m. instead of 5 p.m. Another consumer in Montgomery, N.Y., told Consumer Reports he was hit with a late fee of \$29 because the bank's cutoff was 8 p.m. EST and not midnight, as is the case with his other accounts. Other consumers said they wound up paying late fees because their payments weren't credited over the weekend.⁷

The proposed CFPB Credit Card Penalty Fees rule can help consumers to avoid harsh penalties for late fees by 1) limiting the cost of late fees that are charged, 2) limiting the late fee amount to no more than 25% of the amount due, and 3) requiring credit card companies to send reminders to consumers of when the payment is due and provide a 15-day grace period before late fees are assessed. A Consumer Reports poll has found that all of these provisions are broadly popular with consumers. In CR's nationally representative survey, 82% of U.S. adults supported lowering the maximum late fee. Sixty-eight percent thought that requiring a 15-day grace period for late payments would be more fair than the current system where consumers can be charged a late fee if they are just one day late. And 84% supported requiring credit card companies to send a reminder before the credit card payment is due.⁸

For all these reasons, we urge the Biden administration and the CFPB to move forward with finalizing a strong and comprehensive Credit Card Penalty Fees Rule to protect consumers against grossly excessive costs and unfair practices in the assessment of credit card late fees. The proposed rule restores vital guardrails against excessive charges that were intended by Congress when the CARD Act was enacted and signed by the President. The proposed rule will greatly benefit consumers -- especially people living paycheck to paycheck, including low- and moderate-income people and people of color -- and make it

⁶ Government Accounting Office, *Credit Cards: Pandemic Assistance Likely Helped Reduce Balances, and Credit Terms Varied Among Different Demographic Groups*, GAO-23-105269, September 2023, available at: <https://www.gao.gov/assets/d23105269.pdf>

⁷ Gill, Lisa. *How to Avoid Credit Card Late Fees*, Consumer Reports, September 19, 2023, available at: <https://www.consumerreports.org/money/credit-cards/how-to-avoid-credit-card-late-fees-a8219928529/>

⁸ Consumer Reports, *American Experiences Survey, September 2023 Omnibus Results*, September 2023, available at: https://article.images.consumerreports.org/image/upload/v1696262259/prod/content/dam/surveys/Consumer_Reports_AES_Toplines_September_2023.pdf

easier for all consumers to make required credit card payments and stay on track with paying other household expenses.

Sincerely,

National Organizations

20/20 Vision
 Accountable.US
 American Economic Liberties Project
 Americans for Financial Reform
 Center for Responsible Lending
 Consumer Action
 Consumer Federation of America
 Consumer Reports
 JustUS Coordinating Council
 National Association of Consumer Advocates
 National Coalition for Asian Pacific American Community Development (National CAPACD)
 National Consumer Law Center (on behalf of its low-income clients)
 Progressive Change Institute
 Public Good Law Center
 Woodstock Institute

State and Local Organizations

CAMEO-California Association for MicroEnterprise Opportunity
 Columbia Consumer Education Council Inc
 Community Service Society of New York
 Consumer Federation of California
 Consumers for Auto Reliability and Safety
 Economic Action Maryland
 Empire Justice Center
 Florida Consumer Action Network
 For the Many
 Genesee Co-op Federal Credit Union
 Georgia Watch
 Housing and Family Services of Greater New York
 Kentucky Equal Justice Center
 Maine People's Alliance
 Maine Small Business Coalition
 Margert Community Corporation
 Microenterprise Collaborative of Inland Southern California
 Mobilization for Justice
 New Economy Project
 New Jersey Citizen Action
 New York StateWide Senior Action Council
 New Yorkers for Responsible Lending
 Revolving Door Project

Rural Law Center of New York
South Carolina Appleseed Legal Justice Center
Teamsters Local 237
Texas Appleseed
Tzedek DC
VOICE (Oklahoma City)
WESPAC Foundation, Inc.
Westchester Residential Opportunities, Inc.
Western New York Law Center

Individuals*

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