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CFPB Proposes Limiting Credit Card Late Fees to $8 Per Late Payment

By: Michael Flynn

On February 1, the CFPB issued a proposed rule to cut the “safe harbor” amount that banks and credit card companies can charge for late fees. If finalized, the proposed rule would reduce the maximum safe harbor limit for credit card late fees to $8. The current safe harbor limits are $30 for a first missed payment and $41 dollars for each additional missed payment, indexed to inflation. The $8 limit would not be indexed to inflation.

The proposal noted that credit card issuer banks could still charge higher fees by providing a supporting cost analysis of their reasonableness; however, the $8 late fee safe harbor amount "would cover most issuers' costs from late payments while providing card issuers with compliance certainty and administrative simplicity," the proposal said.

The 2009 Credit CARD Act required that cardholders could be charged late fees only if they were “reasonable and proportional” to the card issuer’s costs in dealing with a late payment. Following enactment of the CARD Act, the Federal Reserve had issued regulations set out how companies could determine what would be reasonable and proportional fees. It also allowed companies to instead choose to apply safe harbor fee limit maximums, which with subsequent inflation adjustments now are $30 and $41, as described above.

The proposed rule would also restrict any late fee to no more than 25% of the minimum payment due from the customer on the missed payment. That limit is currently 100%.

The CFPB asserts that the proposed rule could save consumers up to $9 billion annually, and CFPB Director Chopra stated that the $9 billion has "no purpose beyond padding the credit card companies' profits." He added that the current higher late fees are “a reflection of the asymmetry of power that punishes and penalizes consumers when they make mistakes, while credit card companies are often allowed to fine-print themselves out of trouble. This isn't a sign of fair competition.”

Despite the CFPB’s analysis and comments, the proposed rule has already provoked serious outcries and opposition. The Associate General Counsel of the Bank Policy Institute issued a statement criticizing the proposal, stating that "[b]y effectively removing those incentives, the proposal would harm the very consumers the CFPB seeks to protect by increasing the overall cost, and reducing the availability, of credit." The American Bankers Association (ABA) called the proposal “extreme”, and vowed to fight it. Even prior to publication of the proposed rule, the ABA, Credit Union National Association, Independent Community Bankers of America, National Bankers Association, and National Association of Federally-Insured Credit Unions (NAFCU) sent a letter to the CFPB, asserting that the CFPB was improperly failing to put the proposal through a Small Business Regulatory Enforcement Fairness Act Small Business Advocacy Review panel process.

A copy of the proposed rule may be found **HERE**.

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