

# Regulatory Alert

Regulatory Insights for Financial Services

February 2023

## Consumer Fees: CFPB Proposal on Credit Card Late Fees

**KPMG Insight.** The CFPB's proposed changes to credit card late fees and its direct request for consumer and issuer feedback on experiences in the credit card market demonstrate continued focus on consumer fees and "fairness" (see KPMG Regulatory Alerts, [here](#), [here](#) and [here](#)). It is likely that this proposal and RFI will generate strong responses from the industry. Similar to the CFPB focus on overdraft and NSF practices, it is possible as well that the focus to fee practices in this space may result in individual provider product or other changes. Fee income practices, earnings from fees and complaint, claim or dispute practices related to fees will continue to be a regulatory focal area for examinations, supervision and/or investigations.

The Consumer Financial Protection Bureau (CFPB) has continued to focus on consumer fees with the following recent actions:

- A [proposed rule](#) that would amend Regulation Z, which implements the Truth-in-Lending Act (TILA), to "better ensure" that credit card late fees are "reasonable and proportional" to the late payment
- A [request for information](#) (RFI) on the consumer credit card market

Details of these recent releases are highlighted below.

### Proposed Rule on Credit Card Late Fees

Currently, under Regulation Z (Section 1026.52(b) and the accompanying commentary), a card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end consumer credit plan (such as a late payment, charges beyond the credit limit, or returned payments) unless the issuer has determined that the fee amount represents a reasonable proportion of the total costs incurred for that type of violation. An issuer can also comply with the safe harbor provisions, which currently sets such penalty fees at \$30 (generally) for the initial violation and \$41 for each subsequent violation of the same type occurring in the same or next six billing cycles.

The proposal would amend these provisions with regard to late fees by:

- Lowering the safe harbor amount for late fees to \$8 and eliminating a higher safe harbor amount for subsequent violations of the same type
- Providing that the current provision regarding annual inflation adjustments for the safe harbor amounts would not apply to the safe harbor amount for late fees
- Limiting late fee amounts to no more than 25 percent of the required minimum periodic payment, defined as the amount the consumer is required to pay to avoid the late payment fee, including as applicable any missed payments and fees assessed from prior billing cycles (the current limit is 100 percent of the required minimum payment)

In addition, the proposal would amend the accompanying commentary by:

- Revising current examples of late fee amounts to be consistent with the proposed \$8 safe harbor late fee amount
- Clarifying that costs, for purposes of the cost analysis provisions for determining penalty fee amounts, do not include any collection costs that are incurred after an account is charged off pursuant to loan loss provisions. NOTE: This clarification is applicable to penalty fees generally, not only late fees.

**Questions for comment.** The CFPB notes that their [research](#) indicates that late fees are the most prevalent penalty fees credit card consumers face, and as such the CFPB is limiting the proposed penalty fee changes to late fees at this time. The CFPB, however, is also seeking comment on potential other changes to the credit card-related regulations, including whether:

- Card issuers should be prohibited from imposing late fees on consumers that make the required payment within 15 calendar days following the due date?
- As a condition of using the safe harbor for late fees, card issuers should offer consumers automatic payment options, or provide notification of the payment due date within a certain number of days prior to the due date, or both?
- The same or similar safe harbor changes should be applied to other penalty fees?
- The safe harbor should be eliminated for all penalty fees?

The CFPB is seeking public comments on the proposed rule, with a deadline to submit by April 3, 2023, or within 30 days from publication in the Federal Register, whichever is later.

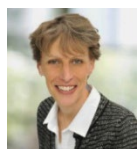
## RFI on Consumer Credit Card Market

CFPB recently issued a RFI on the consumer credit card market as part of its biennial review of the industry. Public and industry feedback (comments are requested on or before April 24, 2023), specifically on the following topics, will inform CFPB's report on the credit card market:

- Terms of credit card agreements and the practices of credit card issuers
- Effectiveness of disclosure of terms, fees, and other expenses of credit card plans
- Adequacy of protections against unfair, deceptive, or abusive acts or practices relating to credit card plans
- Cost and availability of consumer credit cards
- Safety and soundness of credit card issuers
- Use of risk-based pricing for consumer credit cards
- Consumer credit card product innovation and competition

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