

Regulatory Alert

Regulatory Insights for Financial Services



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Credit Card Late Fees: CFPB Final Rule

KPMG Insights:

- **Business Costs to Consumer Fees:** *Decreases the safe harbor threshold for credit card late fees to \$8 for Larger Card Issuers— with regulators noting operational cost reductions because of technology/digital enhancements.*
- **Fairness:** *Focus on consumer fees and “consumer fairness” a continued cross-agency focal area for supervision/enforcement/investigations, including earnings from fees and fee complaint/claim/dispute practices.*
- **Legal Challenge:** *Expect continued (and rapid) legal challenge and industry response to this final rule.*

The Consumer Financial Protection Bureau (CFPB) [issues](#) final amendments to provisions in Regulation Z (and the accompanying commentary) addressing late fees charged by “Larger Card Issuers”, defined as “card issuers that together with their affiliates have one million or more open credit card accounts.”

Final Rule on Credit Card Late Fees.

Currently, under Regulation Z, a card issuer is prohibited from imposing 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. Issuers may also comply with the safe harbor provisions, which set such penalty fees at \$30 (generally) for an initial violation and \$41 for each subsequent violation of the same type occurring in the same or next six billing cycles.

Under the final rule, the safe harbor thresholds increase to \$32 for the initial violation and \$43 for subsequent violations for all card issuers, except for late fees charged by Larger Card Issuers, which will be limited to \$8.

Further, with regard to late fees charged by Larger Card Issuers, the final rule:

- Lowers the safe harbor dollar amount to \$8.
- Eliminates the higher safe harbor amount for subsequent violations of the same type.
- Eliminates the annual inflation adjustment for the safe harbor amount. *Note: the CFPB states that it will “monitor market conditions” and adjust the safe harbor amount on an “ad hoc basis.”*
- Allows Larger Card Issuers to charge more than the \$8 threshold fee “as long as they can prove the higher fee is necessary to cover their actual collection costs”.
- Clarifies that costs for purposes of the cost analysis provisions do not include collection costs incurred after an account is charged-off pursuant to loan loss provisions.
- Replaces references to late fees in illustrative examples to be consistent with the \$8 late fee safe harbor amount.

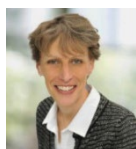
Varying from the proposal, the final amendments addressing late fees do not apply to Smaller Card Issuers (defined as card issuers that together with their affiliates have less than one million open credit card accounts), including the \$8 safe harbor, the elimination of the higher safe harbor amount for subsequent violations, and the elimination of the annual adjustment. Therefore, Smaller Card Issuers will be permitted to use

the current \$32 and \$43 safe harbor threshold amounts for initial and subsequent violations, respectively.

Effective date. The final rule will take effect sixty days after publication in the Federal Register.

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