

## CFPB Issues Final Rule to Reduce Credit Card Late Fees to \$8 for Large Credit Card Issuers

March 6, 2024

On March 5, 2024, the Consumer Financial Protection Bureau (CFPB) [issued a final rule](#) amending provisions in Regulation Z that govern credit card late fee charges. The final rule follows the March 2023 release of the [proposed rule related to credit card late fees](#) and will take effect 60 days after publication in the Federal Register.

For credit card issuers with one million or more open accounts, together with their affiliates, the final rule:

1. Adjusts the safe harbor dollar amount for late fees from up to \$41 to \$8 and eliminates a higher safe harbor dollar amount for late fees for subsequent violations of the same type.
2. Requires larger card issuers that want to charge late fees above the \$8 threshold to prove that the higher fee is necessary to cover actual costs (but clarifies post-charge off costs cannot be included in the costs analysis).
3. Limits a larger card issuer's ability to implement annual inflation adjustments for the safe harbor dollar amounts in connection with the late fee safe harbor amount. The CFPB instead will "monitor the market" and make adjustments to the safe harbor amount as necessary.

The CFPB expects that the new \$8 safe harbor amount will apply to the largest 30 to 35 credit card issuers, covering more than 95% of the total outstanding balances in the credit card market as of the end of 2022.

### Who does the rule cover?

The final rule establishes different requirements for credit card issuers based on the number of accounts held by issuers and their affiliates. In supplementary information accompanying the final rule, the CFPB indicates that applying the rule to smaller card issuers would result in a "heightened compliance burden." According to a statement issued by CFPB Director Rohit Chopra, the CFPB "did not find evidence [that] these smaller companies are employing the fee churning business model, and in fact they generally charge much lower fees overall."

As a result, smaller card issuers may continue to charge a higher safe harbor threshold for credit card late fees and automatically increase the safe harbor dollar amount based on the Consumer Price Index. Note that under the final rule, if a smaller card issuer had fewer than one million open credit card accounts for the entire preceding calendar year but meets or exceeds that number of open credit card accounts in the current calendar year, the entity will no longer be a smaller card issuer as of 60 days after meeting or exceeding that number of open credit card accounts.

### Highlights of the final rule

**Lowering safe harbor dollar amount for late fees to \$8**

Currently under Regulation Z, a card issuer may not impose a penalty fee (e.g., late fees, over-the-limit fees and insufficient funds fees) for violating the terms of a credit card account unless the issuer has determined that the amount of the fee is a reasonable proportion of the total costs incurred by the issuer for that type of violation or complies with a safe harbor provision. The current safe harbor for credit card issuers is \$30 for the first violation and \$41 thereafter for a violation of the same type within the next six billing cycles.

The final rule lowers this safe harbor threshold to \$8 for larger card issuers in connection with late payment fees only. The \$8 amount also would apply to all other subsequent late payment violations that occur within six months of the initial violation. The final rule permits larger card issuers to charge a fee greater than \$8 if they can prove that the higher fee is necessary to cover their incurred collection costs.

### **Effective date**

The final rule will take effect 60 days after publication in the Federal Register. The CFPB indicates that larger card issuers “likely have the capacity and resources to comply with the revisions” to Regulation Z within 60 days of the final rule being published.

### **Other penalty fees**

Pursuant to annual adjustments for safe harbor dollar amounts, the final rule increases the amount that smaller card issuers are permitted to charge for credit card late fees, as well as the amount that all card issuers may charge for all other penalty fees. For the initial violation, the safe harbor amount increased to \$32 and to \$43 for subsequent violations of the same type that occur during the same billing cycle or in one of the next six billing cycles.

Again, these higher amounts do not apply to late fees charged by larger institutions. This means that larger card issuers may continue to charge up to \$43 for penalty fees (other than late fees), such as returned payment fees. Still, the CFPB reiterated that it will monitor the market for any notable increases in the prevalence of other types of penalty fees, including over-the-limit fees.

### **Cost analysis**

The final rule also clarifies that with respect to all penalty fees (including late fees), for both smaller and larger card issuers, the cost analysis for determining whether a fee is reasonable may not include any collection costs that are incurred after an account is charged off pursuant to loan loss provisions. In the supplementary information accompanying the final rule, the CFPB stated its belief that permitting issuers to recover losses – like post-charge off costs – through late fees is not consistent with the intent of credit card-related laws and regulations. Rather, according to the CFPB, issuers have other means to recover these costs, including through upfront rates.

### **Rate and fee increases**

The CFPB indicates [in its press release](#) and in the supplementary information accompanying the final rule that card issuers have several tools at their disposal for deterring and managing higher risks posed by late payments – including increasing interest rates, raising annual and monthly fees, and reducing credit lines. However, larger card issuers that consider increasing annual percentage rates in response to adjusting their late payment structure will be required to perform a rate reevaluation under Section 1026.59 of Regulation Z.

### **Card issuers may charge late fees up to the amount of the required minimum payment**

The CFPB initially proposed a restriction on any late fee charge higher than 25% of the required minimum payment. As currently permitted under Regulation Z, card issuers may continue to charge a late fee that is 100% of the required minimum payment owed by the cardholder, pursuant to any cost-analysis requirements under Regulation Z.

The CFPB received several comments from trade associations, banks and credit unions in opposition to the proposed 25% cap. Among other things, these commenters expressed concerns that the 25% limitation would:

- Be an impediment to card issuers' ability to cover current or future increased costs associated with late payments.
- Increase the upfront costs that card issuers would incur due to a change in terms on all accounts.
- Cause issuers to raise their minimum payment requirements to charge a higher late fee.

As a result, the CFPB declined to include this provision in the final rule.

### **No courtesy period requirement**

Under the proposed rule, the CFPB considered requiring card issuers to provide a 15-day courtesy period before assessing a late fee to consumers. The final rule does not implement a courtesy period for late fees or any other penalty fees. The CFPB indicates that the potential benefits of imposing a courtesy period were outweighed by the burden it could cause, such as the potential to cause consumer confusion regarding when a minimum payment would be due.

## **What does this mean for you?**

Larger card issuers will need to assess their late fee policies, including whether to implement the \$8 safe harbor or to employ a cost analysis to support imposing late fees that exceed \$8.

Larger card issuers also may need to identify any disclosures impacted by the rule – including advertising disclosures, account-opening disclosures, periodic statements and renewal notices – and make changes accordingly. The appendices included in the final rule provide revisions to model disclosures in Regulation Z. Larger card issuers also may want to consider how they will notify consumers and credit card holders of any changes to late fees, if applicable. Regulation Z does not require issuers to provide a change in terms notice when reducing the late fee amount.

All card issuers may want to continue to monitor penalty fee policies, particularly as the CFPB and other regulators have demonstrated a focus on regulating so-called junk fees, as well as unfair, deceptive, and abusive acts and practices. This means understanding what fees can be charged, how different types of fees interact with each other and the requirements for disclosing those fees.

We will be monitoring the implementation of the rule, particularly in light of the fact that certain lobbying groups and other stakeholders, including the US Chamber of Commerce, have indicated intentions to challenge the final rule. A representative from the Chamber of Commerce [issued a public statement](#), noting that the “Chamber will be filing a lawsuit against the [CFPB] imminently to prevent this misguided and harmful [late fees] rule from going into effect.”

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