



April 16, 2024

Rep. Patrick McHenry, Chairman
Rep. Maxine Waters, Ranking Member
House Financial Services Committee
US House of Representatives
Washington, DC 20515

Dear Chairman McHenry and Ranking Member Waters,

My name is Chuck Bell and I serve as Programs Director, Advocacy for Consumer Reports¹, based in Yonkers, NY. I am writing in strong support of the CFPB's proposed rule relating to Credit Card Penalty Fees (amending Regulation Z), and in strong opposition to House Joint Resolution 122, a motion of disapproval to invalidate the rule. We urge you to protect consumers against unfair, predatory and excessive credit card late fees by supporting the proposed rule, and opposing any legislative efforts to weaken the rule and/or delay its implementation. We understand that this issue may be considered at the Wednesday April 17 House Financial Services Committee markup.

As a national organization that works side by side with consumers for a fair, just and safe marketplace, Consumer Reports has spoken out strongly in favor of the long-overdue CFPB rule to reset credit card late fees to a fair and reasonable level. In November, we sent a letter to the White House and the CFPB from 47 consumer, civil rights, and economic justice organizations urging the finalization of the rule, accompanied by a petition organized by Consumer Reports and Americans for Financial Reform with nearly 40,000 signatures in support.²

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 rule will 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, and prevent credit card companies from adjusting the safe harbor dollar amount every year for inflation.

The Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) passed by Congress 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

¹ Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

² Consumer Reports, *Coalition Letter Urging the CFPB to Finalize Its Credit Card Late Fee Protections for Consumers*, November 28, 2023, available at: <https://advocacy.consumerreports.org/research/coalition-letter-urging-the-cfpb-to-finalize-its-proposed-credit-card-late-fee-protections-for-consumers/>

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 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.³

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.⁴ 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.⁵
- **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.⁶

³ 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

⁴ 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

⁵ 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-latefees_report_2022-03.pdf

⁶ Ibid.

- **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.⁷
- **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.⁸

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.⁹ (For additional stories relating to the stress and economic hardship caused by credit card late fees, please see Appendix A, Credit Card Late Fee Stories.)

The CFPB’s March 2024 rule sets reasonable limits on credit card late fees, ensuring that consumers are not unfairly penalized for minor delays in payment. By capping late fees at no more than \$8, and eliminating automatic further fee increases tied to inflation, the rule addresses the predatory practices that have allowed credit card companies to take billions of dollars from hard-working Americans through back-end fees.

A Consumer Reports poll has found that the rule’s provisions are broadly popular with consumers. In CR’s nationally representative survey, 82% of U.S. adults supported lowering the maximum late fee. Eight-four percent supported requiring credit card companies to send a reminder before the credit card payment is due.¹⁰

For all these reasons, we strongly urge members of Congress to support the strong and comprehensive finalized Credit Card Penalty Fees Rule to protect consumers against grossly excessive costs and unfair practices in the assessment of credit card late fees. The Credit Card Penalty Fees rule restores vital

⁷ Ibid.

⁸ 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>

⁹ 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/>

¹⁰ 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

guardrails against excessive charges that were intended by Congress when the CARD Act was enacted and signed in 2009 by the President. The rule will greatly benefit consumers -- especially people living paycheck to paycheck, including low- and moderate-income people and people of color -- and make it easier for all consumers to make required credit card payments and stay on track with paying other household expenses.

Sincerely,

A handwritten signature in black ink that reads "Charles W. Bell". The signature is written in a cursive style with a light blue circular stamp or watermark behind the name.

Chuck Bell, Programs Director
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