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May 3, 2023

Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Attention: Response to Proposed Amendments to Credit Card Penalty Fees (Regulation Z) Docket No. CFPB-2023- 0010 or RIN 3170-AB15

Via Email: 2023-NPRM-CreditCardLateFees@cfpb.gov

Dear Director Chopra,

The National Association of Industrial Bankers (NAIB) appreciates the opportunity to submit comments on proposed amendments to § 1026.52(b) and its accompanying commentary as they relate to credit card late fees.

NAIB is the national association for industrial banks (IBs). First chartered in 1910, industrial banks operate under several titles: industrial loan banks, industrial loan corporations, or thrift and loan companies. These banks engage in consumer and commercial lending on both a secured and unsecured basis. They do not offer demand checking accounts but accept time deposits, savings deposit money market accounts, and NOW accounts. Industrial banks provide a broad array of products and services to customers and small businesses nationwide, including in some of the most underserved segments of the U.S. economy. These same institutions are also commonly referred to as industrial loan companies (ILCs).

FDIC call reports and numerous academic studies verify that industrial banks are the strongest and most sound financial institutions of the country – and have been so for decades. The FDIC and state regulators provide firm but fair supervision to ensure that industrial banks deliver safe, innovative financial services to millions of Americans.

NAIB understands the Consumer Financial Protection Bureau (Bureau) proposes to amend Regulation Z, which implements the Truth in Lending Act (TILA), to better ensure that the late fees charged on credit card accounts are “reasonable and proportional” to the late payment as required under TILA.

We offer the following responses to these proposals:

I. Reasons for the proposed change

In response to the proposed rule, many NAIB members are inquiring why the Bureau is considering changing the safe harbor late payment fees. Fees in the current safe harbor amounts have been used for many years and were found reasonable and proportional in 2010 by the Board of Governors of the Federal Reserve (FRB) when it was responsible for administering Regulation Z. Our members are not aware of any significant problems these fees have caused or any controversy about their fairness, or compliance with disclosure laws, or justification based on costs and incentive factors. Because these fees have been an industry standard even before the FRB adopted the safe harbor rates, they have become an integral part of the pricing structure in most card programs. The 125-page narrative provided by the Bureau in the notice of the proposed changes acknowledges that changing those pricing structures will likely result in other charges and fees paid by all cardholders increasing, the effect of which is to require all cardholders to subsidize the risky behavior of a few. Our members believe this proposal cannot be justified as a benefit to cardholders generally.

The narrative did not say the changes are needed to address identified or documented problems with the late payment fees at the safe harbor rates specified in the current rule. Nor did the narrative say these fees are not properly disclosed in accordance with Regulation Z or are hard to find by people who want to know how much they will be charged if they pay late.

The narrative says the proposed changes are not data driven. “Reasonable and proportional” is not a precise standard. It has two components and the narrative says the data does not provide a clear or simple standard for either of those. One component is the actual costs an issuer incurs in dealing with late payments. The Bureau’s review of the data covering hundreds of millions of accounts over many years found that those costs vary too much from issuer to issuer to develop a single standard that can serve as a baseline for industry-wide regulation. The other component is discouraging late payments. The narrative found there are no credible studies or other ways to measure the effect of different late payment fees on cardholders spanning a broad range of credit profiles and payment behaviors.

Reducing the late payment fee safe harbor so aggressively does not seem reasonable to our members when costs vary so much that a single standard cannot be developed. The proposed changes might be reasonable if the Bureau found that late payments would not increase if fees were lowered. Instead, the narrative acknowledges that late payments and risky behavior are likely to increase if the safe harbor fees are reduced.

The narrative speculates in a few places that the current fees "might" prevent a cardholder from bringing delinquent payments current but does not provide even anecdotal examples of cardholders forced into deeper or insurmountable default because they could not pay a $31 late fee but could have paid the proposed $8 fee. Indeed, it is unlikely that ever happened, let alone occurred frequently enough to be a systemic problem.

Ultimately, the narrative reveals that the proposed changes were the result of the Bureau's own decision to examine whether the safe harbor rates could be reduced, ostensibly to benefit late paying cardholders. The Bureau's study found the data did not prevent a reduction in rates, but it also did not provide a reason to adjust those rates. For the reasons described below, our members believe there are good reasons not to change the current rates. Further, as acknowledged by the Bureau itself, issuers are likely to increase APRs or annual fees to compensate for this change to late fees, resulting in the proposed change benefitting only a handful of customers - those who persistently pay in a delinquent manner. The proposed change will harm the majority of cardholders who pay on time.

We respectfully request that the CFPB also consider that most issuers of credit cards allow one or two late fees per year to be waived, with no questions asked. Further, this change will disrupt markets and force significant structural changes in card programs by changing such long-standing and workable rates without evidence that the current rates are causing problems or are widely considered unfair.

II. The consequences of the change

A large portion of the narrative attempts to describe mitigation strategies and how changes in the rates will not significantly impact card issuers in any event. On page 109, the narrative notes that reducing the safe harbor amount to $8 from $31 and eliminating a higher safe harbor amount for multiple delinquent payments would reduce fee income for card issuers by 72.3%. It then acknowledges that ". . . lower late fees could make consumers more likely to make late payments." Then it speculates without evidence that the ultimate impact on issuers will be mitigated in various ways.

Late fees are expressly allowed by 15 USC 1665(d) - the statute permitting regulators to regulate fees. The CFPB, by acknowledging that lowering fees will increase late payments in the narrative, tacitly acknowledges that late payment fees have a deterrent effect on late payments. Diminishing that deterrent effect is not consistent with the intent of the law. The narrative nevertheless justifies the impact on issuers by asserting that increased late payments will generate more late payment fees offsetting the lost income. Our members believe that *increasing* late payments is not a proper justification for the change as a matter of simple public policy. The narrative does not mention the impact of delinquent payments on credit ratings and triggering penalty interest rates for a larger number of cardholders.

The narrative on page 109 presents other arguments why reducing safe harbor late payment fees will not unduly affect issuers. One argument is that consumers will benefit because issuers will be incented to launch additional programs to reduce the incidence of late payments.

> . . . For example, issuers could increase investment in payment reminders or automatic payments or provide lower-friction methods of payment or rewards for paying on time. Issuers could also increase minimum payment amounts or adjust credit limits to reduce credit risk associated with consumers who make late payments.

This purely conclusory statement is not based on any evidence that issuers are not already sending reminders and offering automatic or convenient payment options. Our members report that such measures are common practices now and are not likely to be more effective if cardholders are contacted more frequently. Increasing the frequency of these notices is more likely to be seen as a nuisance by cardholders that pay timely.

Other mitigation measures suggested in page 96 of the narrative include changing how issuers ". . . reprice any of their services, remunerate their staff, suppliers, or sources of capital differently, or enter or exit any or all segments of the credit card market." Another point made by the narrative is that issuers can compensate for lost late fee income ". . . by taking other measures (e.g. increasing interest rates or changing rewards) . . ."

Directing card issuers to adjust for lost late payment fee income by increasing APRs, annual fees, reducing rewards, cutting wages, squeezing suppliers, and lowering dividends points to the basic flaw in the proposed change in safe harbor late fees. The proposed change is designed to shift the costs of delinquent payments to all cardholders, which is clearly and fundamentally in conflict with the federal law allowing creditors to charge late fees to compensate for the added expense of late payments and to discourage late payments. Page 106 of the narrative acknowledges that ". . . the late fee changes most directly benefit those who make late payments . . ." It does that by shifting costs related to late payments to all cardholders regardless of how diligently they pay their accounts. All these actions would clearly not benefit the majority of cardholders.

III. Conclusion

Simply stated, increasing costs for all cardholders regardless of their payment behavior is not a fair or legally sufficient reason to reduce costs for people who pay late. Changing standards found reasonable and proportional by regulators in the past - when those standards have worked successfully and have not been controversial - and disrupting pricing and programs affecting all cardholders without citing problems that will be solved, is not fair or a legally sufficient reason for making these changes.

Again, we appreciate the opportunity to submit this statement. Please let us know if you have any questions or need additional information.

Sincerely,

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