April 5, 2022

## Overview

On March 29, 2022, the Consumer Financial Protection Bureau issued a report raising concerns about the **late fee practices of credit card issuers**. Although the report provides a general assessment of credit card late fee trends, it was accompanied by **a press release criticizing late fee penalties as a core part of the issuer profit model that obscures the true cost of credit**. The report follows the CFPB's January **initiative to gather information more generally regarding "back-end fees" and "junk fees" associated with a range of financial products and services**, including deposit accounts, remittance and payment products, prepaid accounts, and other types of loans.

Pursuant to the Credit Card Accountability Responsibility and Disclosure (CARD) Act and its accompanying implementation regulation, Regulation Z, the CFPB is responsible for oversight of late fee policies to ensure that they are "reasonable and proportional." In implementing this regulation, the CFPB sets a "safe harbor" for specific fee amounts, which are subject to adjustment for changes in inflation. As of 2022, the safe harbor fee limit is $30 for first-time late fees and $41 for subsequent violations resulting in recurring fees. The CFPB calls into question whether it is considering the removal of the penalty fee safe harbor, as the report frequently draws attention to the common practice of the largest issuers in the marketplace, who set their penalty fees at or near the limits set out by Regulation Z and adjust them upward in accordance with yearly limit changes.

## Continued CFPB focus on vulnerable and minority populations

The CFPB's report finds that late fee assessments disproportionately fall upon credit card users in low credit score tiers, as well as low-income consumers and consumers in majority-Black neighborhoods. For example, the CFPB found that in 2019 nearly 60% of credit card accounts were held by super-prime consumers, but those accounts incurred – perhaps unsurprisingly – 20% of the total late fee volume. In an attempt to understand links between consumer race and late fee burden, the CFPB found that the average late fees per account increased with the share of the census tract population identifying as Black.

The CFPB also found that credit card fee volumes dropped significantly during the pandemic, and corresponded to the increase in federal government assistance. The CFPB characterized this finding as evidence that late fees serve as a penalty on households living paycheck to paycheck, and not as an incentive for consumers to make on-time payments.

## Insight

There is a distinct disconnect between the CFPB's press release, which highlights concerns regarding the impact of market competition on late fee assessment practices, and the report itself, which focuses on the incidence of late fee assessment on low-income borrowers and in minority communities. While the CFPB criticizes issuer reliance on late fees, it notes that issuers are complying with the CARD Act – the law enacted to protect cardholders – and does not specifically identify anti-competitive practices or demonstrate that late fee levels are inappropriate considering the cost of offering and administering credit cards.

The CFPB's analysis of late fee assessment in minority areas is also noteworthy in light of its **March 16 announcement tying together theories of "unfairness" with discrimination**. In that announcement, the CFPB indicated it will seek information during examinations to assess whether institutions understand demographic usage of financial products, as well as the fees and revenues associated with those products.



## Key Contacts


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| Elyse Moyer<br>Washington, DC | emoyer@cooley.com<br>+1 202 776 2113 |
| Obrea Poindexter<br>Washington, DC | opoindexter@cooley.com<br>+1 202 776 2997 |
| Michelle L. Rogers<br>Washington, DC | mrogers@cooley.com<br>+1 202 776 2227 |