

June 29, 2023

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

Dear Director Chopra:

I write to share findings from my recent inquiry into the late fee practices of the ten largest credit card issuers so that they may inform the Consumer Financial Protection Bureau's (CFPB) efforts to rein in unreasonable credit card late fees.

Earlier this year, the CFPB proposed a rule to restrict credit card issuers' ability to levy exorbitant late fees, a much needed move that would save American families an estimated \$9 billion a year.<sup>1</sup> For too long, big banks and other card issuers have abused late fees to pad their bottom line, charging consumers as much as \$41 dollars for being even a few hours late to make payment.<sup>2</sup> In response to the banks' deceptive and abusive credit card late fee practices, Congress passed the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act),<sup>3</sup> which sought to end the use of penalty fees as profit centers by prohibiting a slew of card issuer tricks designed to saddle consumers with fees and giving the CFPB authority to issue rules limiting the size and number of fees.<sup>4</sup> Despite this effort, big banks continue to fight tooth and nail to protect their ability to charge exorbitant late fees on consumers, necessitating this rule.

In response to the proposed rule, the bank lobby unleashed a massive influence campaign falsely claiming that further restricting late fee practices would harm banks and their customers.<sup>5</sup> Big banks made these same claims about the passage of the CARD Act, which have since been refuted<sup>6</sup> – studies have shown that the CARD Act reduced credit card fees without any other

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<sup>1</sup> CFPB, "CFPB Proposes Rule to Rein in Excessive Credit Card Late Fees," press release, February 1, 2023, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees/>.

<sup>2</sup> *Id.*

<sup>3</sup> Public Law 111-24.

<sup>4</sup> New York Times, "Card Act Cleared Up Credit Cards' Hidden Costs," Floyd Norris, November 7, 2013, <https://www.nytimes.com/2013/11/08/business/economy/a-credit-card-rule-that-worked-for-consumers.html>.

<sup>5</sup> Yahoo News, "Bank lobbyists threaten higher credit card costs if late fee cap is enacted," Gabriella Cruz-Martinez, February 13, 2023, <https://news.yahoo.com/bank-lobbyists-threaten-higher-credit-card-costs-if-late-fee-cap-is-enacted-235502612.html>.

<sup>6</sup> Wall Street Journal, "Credit-Card Law Aids Transparency," Maya Jackson Randall, February, 17, 2011, <https://www.wsj.com/articles/SB10001424052748703373404576148190837940196>.

increased costs to consumers.<sup>7</sup> In order to further scrutinize these claims, I, along with six of my Senate colleagues, sent letters to the ten largest issuers, questioning them on their late fee revenue and the costs associated with collecting late payments.<sup>8</sup> Their responses, which have been included with this letter, revealed the weaknesses of their case against restricting late fees. The respondents repeatedly revealed their interest in maintaining exorbitant late fees as tools of punishment, arguing that late fees must be maintained at an “effective deterrent level”<sup>9</sup> and that “fees encourage timely payment”<sup>10</sup> while providing no evidence to suggest that excessive \$41 fees are necessary to deter late payments. None of the issuers provided data we requested to substantiate their claims that the costs associated with collecting late payments exceeds the total late fees collected. In fact, information provided by Wells Fargo indicates that late fees collected exceed the cost of collections by as much as tens of millions of dollars.<sup>11</sup> By contrast, these responses did confirm that some large issuers are hauling in hundreds of millions of dollars in late-fee revenue. American Express, for example, collected more than \$500 million last year in late fees.<sup>12</sup>

This proposed rule is necessary to protect American consumers from the predatory practices of greedy financial institutions and furthers the Biden Administration’s efforts to root out junk fees.<sup>13</sup> It would significantly lower the immunity provision dollar amount for late fees from \$41 to \$8, end the automatic annual inflation adjustment that has allowed the immunity cap to rise since the CARD Act was passed, and would restrict late fees to 25% of the minimum payment.<sup>14</sup> Notably, it would allow issuers to charge more than \$8 if they can show that the costs of collected those fees exceeds the \$8 cap<sup>15</sup> – a key fact the bank lobby has glossed over.<sup>16</sup>

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<sup>7</sup> The Journal of Legal Studies, “A Simple Framework for Estimating Consumer Benefits from Regulating Hidden Fees,” Sumit Agarwal, Souphala Chomsisengphet, Neale Mahoney, Johannes Stroebel, June 2014, p. S241, [https://pages.stern.nyu.edu/~jstroebe/PDF/JLS\\_ACMS.pdf](https://pages.stern.nyu.edu/~jstroebe/PDF/JLS_ACMS.pdf).

<sup>8</sup> Office of Senator Elizabeth Warren, “Senators Warren, Brown, Lawmakers Seek Answers from Credit Card Issuers on Exorbitant Late Fees,” press release, May 9, 2023, <https://www.warren.senate.gov/oversight/letters/senators-warren-brown-lawmakers-seek-answers-from-credit-card-issuers-on-exorbitant-late-fees>.

<sup>9</sup> Letter from Wells Fargo Head of Government Relations and Public Policy Brian Smith to Senator Elizabeth Warren et al., May 23, 2023 [On File with the Office of Senator Elizabeth Warren].

<sup>10</sup> Letter from PNC President, Chairman, and CEO William S. Demchak to Senator Elizabeth Warren et al., May 23, 2023 [On File with the Office of Senator Elizabeth Warren].

<sup>11</sup> Letter from Wells Fargo Head of Government Relations and Public Policy Brian Smith to Senator Elizabeth Warren et al., May 23, 2023 [On File with the Office of Senator Elizabeth Warren].

<sup>12</sup> In their letter, American Express indicated that credit card late fees represented “less than 1% of [their \$52.9 billion] revenue” in 2022. Letter from American Express President Howard Grosfield to Senator Elizabeth Warren et al., May 23, 2023 [On File with the Office of Senator Elizabeth Warren]; American Express, “American Express Delivers on 2022 Growth Plan With Full-Year Revenue Growth of 25% and Earnings Per Share of \$9.85,” January 27, 2023, <https://ir.americanexpress.com/news/investor-relations-news/investor-relations-news-details/2023/American-Express-Delivers-on-2022-Growth-Plan-With-Full-Year-Revenue-Growth-of-25-and-Earnings-Per-Share-of-9.85/default.aspx>.

<sup>13</sup> White House, “FACT SHEET: President Biden Highlights New Progress on His Competition Agenda,” press release, February 1, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/01/fact-sheet-president-biden-highlights-new-progress-on-his-competition-agenda/>.

<sup>14</sup> CFPB, “CFPB Proposes Rule to Rein in Excessive Credit Card Late Fees,” press release, February 1, 2023, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees/>.

<sup>15</sup> *Id.*

<sup>16</sup> Bank Policy Institute, “Credit Card Late Fees,” <https://bpi.com/credit-card-late-fees/>.

I strongly support the CFPB's actions to protect American families and return hard-earned money to their pockets, and urge you to finalize the proposed rule without making any changes that weaken it. I hope that these materials assist you in those efforts.

Sincerely,



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Elizabeth Warren  
United States Senator