The Honorable Elizabeth Warren
The Honorable Tammy Baldwin
The Honorable Peter Welch
The Honorable Jack Reed
The Honorable Richard Blumenthal
The Honorable Bernard Sanders
The Honorable Sherrod Brown

May 23, 2023

Dear Senators:

On behalf of American Express, I write in response to your recent letter concerning the Consumer Financial Protection Bureau's proposal related to Credit Card Late Fees ("Late Fees") that was released in February of this year.

American Express strives for on-time payments from our card members and believes that paying on time is critical to the financial health of our customers and the safety and soundness of American Express National Bank. Late fees are not a significant source of revenues for American Express. In 2022, late fees collected from U.S. consumer card members comprised less than 1% of the total revenue of American Express.

American Express promotes on-time payments throughout the customer account lifecycle, by offering and encouraging AutoPay enrollment, sending frequent payment reminders, and providing customers the ability to pay via various channels. American Express has a dedicated webpage called "Your Guide to Making American Express® Payments" that explains the payment options available to customers. We waive late fees in appropriate circumstances and also suspend late fees for customers who may be experiencing financial hardship and who are enrolled in American Express's Financial Relief Program. The Financial Relief Program allows eligible card members to enroll in a short- or long-term payment plan that can reduce their accounts' APRs and monthly payment amounts. While enrolled in the program, customers are not charged late fees.

While American Express encourages on-time payments from our card members and does not rely on late fees as a meaningful source of revenue (as indicated above), late payments do result in operational costs associated with nonpayment (including, for example, recovery expenses to collect late payments) and increase the costs associated with managing credit risk. The CFPB can achieve its objective of significantly reducing penalty fees for consumers while doing so in a way that more accurately reflects the variables that drive costs for issuers associated with late payments than the proposed rule does today. To accurately reflect the costs associated with late payments, we have suggested that collection costs should include pre-and post-charge-off collection costs, whereas the Bureau's proposed rule would only allow for pre-charge-off collection costs to be included. These views have been shared directly with the Bureau, both in writing and through conversation.

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200 Vesey Street
44th floor, mailcode 01-44-05
New York, NY 10285

Thank you for your letter on this important issue and for allowing us to share our perspective. Should you have any further questions, please feel free to reach out to Amy Best Weiss at 202-434-0156.

Sincerely,

Howard Grosfield
President
U.S. Consumer Services

May 23, 2023

The Honorable Elizabeth Warren
309 Hart Senate Office Building
Washington, DC 20510

The Honorable Richard Blumenthal
706 Hart Senate Office Building
Washington, DC 20510

The Honorable Tammy Baldwin
141 Hart Senate Office Building
Washington, DC 20510

The Honorable Bernard Sanders
332 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Peter Welch
124 Russell Senate Office Building
Washington, DC 20510

The Honorable Sherrod Brown
503 Hart Senate Office Building
Washington, DC 20510

The Honorable Jack Reed
728 Hart Senate Office Building
Washington, DC 20510

Dear Senators:

We welcome the opportunity to provide information about JPMorgan Chase's credit card practices. We have a shared goal with our customers and policymakers in helping our customers pay on time, and on providing them the transparency, tools and education to help them manage their finances.

We are dedicated to providing consumer-centric tools and information that support our customers in making on-time payments. Most of our customers like to interact with us most frequently online, and we make it clear in our digital experiences when payments are coming due. Customers can and do enroll in digital alerts that notify them when their payment due dates are approaching or if a payment has not been received. We also encourage our credit card customers to enroll in AutoPay to help with on-time payments, and we make it easy for them to do so. In addition, we offer customers access to "Credit Journey" and other educational tools to better inform them about their credit report and manage their finances, such as articles discussing credit card fees and how to avoid them. We believe that these features are effective tools that assist our customers in managing credit responsibly.

We make a concerted effort to help our customers understand and avoid late fees. In addition to our educational tools, late fee amounts are disclosed clearly and repeatedly on the front end at origination and throughout the customer relationship. Specifically, we disclose them in product advertisements and other pre-application information. If a consumer does decide to open a credit card account with us, they are again provided fee disclosures at the time of account opening in their Cardmember Agreements, which contain the model disclosures provided in accordance with law. Monthly statements also contain the required late payment warning which discloses the potential late fee and, if a customer is assessed a fee, it is disclosed on their statement. Finally, any updates or changes to late fees are clearly communicated through change-in-term notices.

We understand that circumstances arise where customers may fall behind on a payment. For example, some customers may unfortunately experience unexpected hardships resulting from events like hurricanes, floods, and wildfires. In these cases, we suppress late fees and other types of fees associated with banking or loan accounts for impacted customers, and we also offer payment assistance programs for customers with life circumstances that create hardships. Additionally, we currently offer fee refunds for customers who are occasionally late.

Across all industries and levels of government, late fees are common and expected by consumers when they do not pay on time. For instance, the Internal Revenue Service charges the "Failure to File Penalty" at 5% of the unpaid taxes for each month (or part of a month) that a tax return is late, which may reach up to 25% of unpaid taxes.[1] Additionally, many of us are acutely aware that the penalty doubles for a parking or traffic violation if it is not paid on time. Due to the clarity and the immediacy of their impact, late fees are a more effective deterrent to consumers paying late than other potential future consequences, such as lower credit scores and higher cost of credit. In fact, 65% to 70% of our credit card customers who miss a payment do not miss their subsequent payment.

Late fees help financial institutions manage the risk of extending credit to consumers who have a shorter credit history or who have lower credit scores. Limiting these fees could reduce the availability of credit across the market for these consumers. We are also concerned that reducing late fees may have the unintended, adverse impact of raising interest rates for cardholders across the industry – increasing costs for all customers, including for those who pay on time, but carry a balance.

In addition to helping manage credit risk, late fees assist in offsetting the very real costs of missed payments to financial institutions, including both variable and fixed, to service accounts before and after charge off. These costs include, but are not limited to, operations, technology, customer communications, controls, suppliers, management, support staff (*e.g.,* legal and compliance), infrastructure, and funding (*e.g.,* cost of capital and risk management).

The credit card industry is highly regulated, and we remain dedicated to complying with all such regulations, including the fees and disclosure requirements set forth in the Truth in Lending Act that was amended by the bipartisan CARD Act and its implementing regulation, Regulation Z. In addition to our commitment to compliance, we believe customer transparency is good business, and we work hard to achieve it. That's why we offer a variety of features and tools to help customers make on-time payments, and promote educational tools to support their unique financial goals.

Respectfully,

Kathleen L. Mellody
Head of Federal Government Relations

[1] https://www.irs.gov/payments/failure-to-pay-penalty

May 23, 2023

The Honorable Elizabeth Warren
United States Senate
Washington, DC 20510

The Honorable Richard Blumenthal
United States Senate
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The Honorable Tammy Baldwin
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The Honorable Peter Welch
United States Senate
Washington, DC 20510

The Honorable Sherrod Brown
Chairman
Senate Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Jack Reed
United States Senate
Washington, DC 20510

Dear Senators:

This letter responds to your May 9, 2023 letter regarding credit card late fees.

At Bank of America, we have a common purpose: to make financial lives better. We do that through a common focus on Responsible Growth that is shared by all of our teammates across all of our lines of business. One tenet of Responsible Growth is to grow with a customer focus.

A recent example of this focus has been the evolution of our overdraft policies, which you referenced in your letter. We have made significant changes over the past decade to our overdraft services and solutions, reducing clients' reliance on overdraft and providing resources to help clients manage their deposit accounts and finances responsibly. We first eliminated overdraft fees for clients when using debit cards at the point of sale, and then created additional ways to help clients avoid fees – including additional alerts, "no overdraft fee" accounts, and eliminating charges for extended overdrawn balances. Last year, we eliminated fees for non-sufficient funds on our consumer deposit accounts, reduced overdraft fees from $35 to $10, and removed the ability for clients to overdraft at the ATM.

We have developed our credit card products and policies with the same focus on the customer. For example, we do not charge a credit card late fee if the account balance on the payment due date is $100 or less. Our goal is for customers to pay on time. We mail or deliver statements to customers at least 25 days before the payment due date, which is a longer period than required by law. We encourage customers to enroll in Payment Due alerts. And we proactively communicate "Tips" to late-paying clients encouraging them to use digital payment channels, auto-pay, payment alerts and/or change their payment due date to avoid late fees.

In your letter, you requested data regarding credit card late fee collections and estimated costs of collecting late payments. We have provided this data to the Consumer Financial Protection Bureau with respect to late fee revenues and associated collection costs in connection with their "2023 Credit Card Practices – Debt Collection" request. This information is confidential and proprietary, and we hope that it will aid the Bureau in its work on its proposed rulemaking on late fees.

You also asked about the distribution of late fees by income. We do not have precise information on customer income as that information is provided by the customer only at the time of account opening or when there is a request for a credit line increase. A customer's income will then change over time, without any update to us. However, we can say that most households with lower incomes meet their payment obligations every month and do not incur a late fee.

With respect to the CFPB's rulemaking, we believe changes to the late fee safe harbor should be carefully considered and reflective of input from industry. Changes may have unintended consequences for all customers, including those who have lower incomes or who may be marginally creditworthy. It is important that late fees be set at a rate that encourages on-time payments. Paying on-time ultimately helps consumers, both in improving their risk profile in credit reports and internal bank risk assessments. The proposed rule would benefit greatly from continued discussion and debate.

If you have any questions, please call me at (202) 661-7127.

Sincerely,

/s/ James Carlisle
Senior Vice President
Public Policy Federal Government Relations

citi

May 23, 2023

The Honorable Elizabeth Warren
309 Hart Senate Office Building
Washington, DC 20510

Dear Senator Warren:

Thank you for your letter of May 9, 2023, requesting our views on the proposed rule on credit card late fees issued by the Consumer Financial Protection Bureau ("CFPB"). Citi takes both the mission and authority of the CFPB seriously and regularly engages with the CFPB on supervision and policy.

Citi is one of the leading credit card issuers in the U.S. We strive to provide customers with an array of affordable credit products in a fair and transparent manner, along with the tools to help our customers make responsible credit decisions.

The CFPB's proposed reduction in the current late fee safe harbor amounts is a significant change from the safe harbor amounts that were carefully considered and determined to be appropriate by the Federal Reserve Board. The CFPB is proposing changing the safe harbor amounts from up to $30 for a first-time late payment and $41 for any subsequent late payment within the following six billing cycles to $8 (or, if lower, 25% of the minimum payment due) for any and all late payments. Late fees encourage customers to make timely payments and enable issuers to prudently manage credit risk and recover a portion of their costs associated with customer delinquencies. These fees are clearly disclosed and well understood by customers. The reductions to the safe harbor amount will undermine the key role that late fees play in the credit card relationship. Consequently, we do not support the changes reflected in the proposed rule and disagree with attempts to characterize credit card late fees as "junk fees."

We believe that the current late fee safe harbor is appropriate, and we question the use of the non-public Y-14 data in deriving the new safe harbor amount. As noted by industry comments, such data was not collected for the purpose for which it was used and does not adequately reflect all of the costs incurred by issuers in collecting late payments. Further, we do not believe sufficient consideration was given to the important deterrent effect that late fees have on customer payment behavior.

The drastic reduction in the late fee safe harbor amount may harm customers in the long term. The reduced late fee would provide less of an incentive for customers to pay on time, resulting in an increase in late payments that may negatively affect customer credit scores and access to credit. The late fee change could also limit the ability of issuers to prudently manage risk. We agree with the industry perspective that the ultimate consequences to customers are likely to be higher costs of credit, reduced credit availability and reduced card benefits. It is our view that the proposed rule may harm those customers it is intended to help and runs counter to the policy goal of encouraging the responsible use of credit.

Last summer, Citi eliminated all overdraft fees for our retail banking customers, making us the first large bank to do so. We were proud to have taken this step, as this was the right choice for us to better serve our customers.

However, eliminating overdraft fees for retail banking customers is entirely different than drastically reducing late fees for credit card customers. Credit cards allow customers to obtain unsecured credit, that if unpaid, must be charged to loss by the issuer in accordance with regulatory requirements. The existing late fee safe harbor structure is an important and effective tool to deter customers from paying late, and it supports card issuers in managing risk and reducing delinquencies and credit losses.

We share your concerns about making sure consumers have fair and affordable access to credit. We believe however that this proposal may have the opposite effect of what it is trying to achieve.

Sincerely,

Pamela Habner
Head of Citi Branded Cards & Lending

Kartik Mani
Head of Citi Retail Services

Cc: The Honorable Richard Blumenthal
The Honorable Tammy Baldwin
The Honorable Bernard Sanders
The Honorable Peter Welch
The Honorable Sherrod Brown
The Honorable Jack Reed

DISCOVER

May 23, 2023

The Honorable Elizabeth Warren
The Honorable Tammy Baldwin
The Honorable Richard Blumenthal
The Honorable Sherrod Brown
The Honorable Jack Reed
The Honorable Bernard Sanders
The Honorable Peter Welch

Dear Senators:

Thank you for your recent letter regarding the proposed rulemaking to alter Regulation Z's late fee standards. We appreciate this opportunity to respond to your inquiry. Discover shares your goals of protecting consumers and helping them achieve brighter financial futures.

Discover continually evaluates and enhances the experience of our customers so their credit card is a helpful and cost-effective tool to manage and pay for household expenses with many benefits, such as interest-free payment periods, no annual fees, faster payments, rewards, free access to credit scores, and the ability to build credit, which is particularly important to consumers who have not previously had credit.

Discover also offers easily accessed account management tools, such as due date alerts and the capability to authorize automatic payments that enable cardholders to avoid incurring a late fee. By authorizing a bank debit in at least the amount of the minimum payment, cardholders can avoid the negative impacts of late payments.

Another benefit Discover provides to cardholders is automatically forgiving the first late fee payment for every credit card product currently offered. Also, the amount of a subsequent late fee is reduced if there were no late payments during any of the prior six billing periods. Additionally, Discover offers our cardholders the ability to work with us (Discover's 100% U.S.-based customer service professionals are available 24 hours a day, seven days a week.) to avoid the occurrence of a late payment or fee.

In order to protect borrowers, robust processes and criteria are utilized to calibrate the extension of credit in amounts that consumers can afford. Mandates that impair the ability of lenders to appropriately manage risks are problematic due to the barriers they create for consumers to obtain access to highly regulated, safe, fair, and transparent credit products. An inability to access credit from the traditional banking system could force consumers outside the banking system exposing them to greater risk, higher prices, and fewer protections.

Regarding the collection of credit card late fees each year, the overall amount of late fees assessed and collected fluctuates from year-to-year due to various factors, such as economic conditions, and because many late fees are waived and/or adjusted for Discover cardholders, which amounts to significant consumer savings. Discover makes it easy for all cardholders to avoid late fees by offering due date alerts and automatic payments, which prevent harm to consumers from defaults and delinquencies, and promotes financial wellness.

Regarding the proportion of fees collected from low-income earners, card issuers are required by law to ascertain a customer's ability to pay, and obtain unverified income information provided by consumers for that purpose. Multiple factors are needed to calculate whether an individual is below 200% of the federal poverty threshold and that would require additional data, such as the number of individuals in a household, which we do not obtain.

Regarding the estimated annual cost of collecting late credit card payments, there are a variety of costs associated with late credit card payments. These costs represent real and reasonable expenses associated with extending credit, funding, and late and delinquent accounts. Card issuers maintain many systems and functions to prevent, and if necessary, resolve late payments. These functions and the associated costs help to maintain the orderly management of the entire credit card program for all consumers. According to an analysis by Argus on the estimated average costs of late and delinquent payments, each account that becomes delinquent costs issuers $46.30[1]. Additionally, combining all late fees that are waived, adjusted, or charged-off represents a significant portion of all potential late fees that are not collected.

Regarding arguments that this rule will hurt those it tries to help, on-time payments help both consumers and card issuers manage their respective finances. That is one reason we offer free convenient options that promote on-time payments and financial well-being. However, tools such as due date alerts and voluntary automatic payments alone are insufficient to fully encourage on-time payments. Meaningful late fees create an incentive and urgency to pay on time thereby avoiding more detrimental impacts and costs such as interest accrual, higher debt, delinquency, or default.

Discover, like other lenders, reports information to credit bureaus in accordance with the Fair Credit Reporting Act. Mandating dramatic reductions in the amount of late fees to a nominal level can lead to an increase in the number of late payments and delinquencies that will harm individual consumers from lower credit scores and increased borrowing costs, and consequently raise costs on the entire system, which will impact the accessibility and affordability of credit cards for all consumers. Maintaining late fees at an appropriate level that encourages on-time payments will prevent these costs and harms to consumers. Just as nominal late fees for parking tickets, speeding fines and late income tax penalties would not incentivize timely payment of fines assessed by government entities, nominal late fees are insufficient to motivate on-time credit card payments.

Additionally, credit card terms and conditions are transparent, well known, and understood by consumers. Over the length of their relationship with Discover, consumers receive disclosures about our key terms, including any late payment fee. These disclosures are provided in easy-to-read, consumer-tested formats before a customer opens an account and again after account approval, but before they are obligated on the account. Periodic statements also highlight late payment fees and indicate fees incurred for the period and year-to-date.

Regarding overdraft fees and consumers paying the price for limited late fees, the current late fee safe harbor structure originally established by the Federal Reserve and presently administered by the CFPB promotes market and lending dynamics that reduce harmful consumer outcomes and avoids unfair impacts to all consumers, such as those who pay on time.

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[1] "Analysis by Argus Advisory, White Plains, NY. May 2023"

Additionally, there are unique distinctions between the practical uses and implications of overdraft and associated fees, and late payments and fees. Failure to pay a credit card debt on time may result in a deterioration of credit score, higher borrowing costs and interest, and hinder future access to credit, unlike an overdraft.

Furthermore, banks have the option to not offer overdraft services and completely avert the associated costs and risks. Conversely, late payments and their negative impacts cannot be averted through changes to bank offerings. Without the ability to encourage keeping accounts current, the probability of greater delinquencies and losses increases, which in turn leads to higher prices and/or constraining credit.

We appreciate this opportunity to respond to your inquiry and clarify your concerns. We welcome the opportunity to work with you on this and other matters.

Sincerely,

Richard Santoro

Richard Santoro
Vice President
Head of Government Relations

Shailesh Kotwal
Vice Chair, Payment Services

U.S. Bancorp Center
800 Nicollet Mall, 23rd Floor
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612-303-0813

usbank.com

May 23, 2023

The Honorable Elizabeth Warren
United State Senate
Washington, DC 20510

Dear Senator Warren:

This letter responds to your May 9, 2023 inquiry regarding the current Consumer Financial Protection Bureau rulemaking that would amend Regulation Z to reduce the current credit card late fee safe harbor from $30 to $8. The current safe harbor was established in 2010 by the Federal Reserve through rulemaking to implement the Credit Card Accountability Responsibility and Disclosure Act of 2009.[1] It is adjusted annually for inflation.

U.S. Bank serves the financial needs of its customers and strives to provide these services in a fair and responsible manner as a trusted financial partner. We are proud of the quality of our credit card offerings, the customer experience, and the benefits they provide. These include conveniences such as allowing consumers to make purchases and obtain credit when they need it, safety and security when making purchases, fraud protection, merchant dispute rights, and opportunities to build a strong credit profile. U.S. Bank has many competitors in this market and, therefore, competes aggressively on terms, fees, pricing, and services to develop products that benefit a wide variety of our customers.

Below are the responses to the specific questions outlined in your May 9, 2023 letter:

1. <u>How much money do you collect in credit card late fees each year?</u>

   U.S. Bank fully discloses all credit card fees to customers in alignment with Regulation Z and in full compliance with the CARD Act safe harbor. While our late fees collected are not public information, both collected fees and our credit card fee schedule are available to our regulators as part of their supervisory oversight.

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[1] Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), 123 Stat. 1734.

a. What proportion of these fees are collected from low-income earners (families with incomes below 200% of the federal poverty threshold)?

U.S. Bank collects individual applicant income at application for all credit cards in accordance with an ability to pay analysis that is a core part of our credit approval process. We do not collect family income nor family status, which would be required to properly calculate the portion of fees collected from those below 200% of the federal poverty threshold.

U.S. Bank takes several steps to help our customers avoid late fees. These include text message reminders, auto-pay options, and waivers. Additionally, we offer various assistance programs to support customers experiencing hardship.

2. What is the estimated annual cost of collecting late credit card payments?

The comment letter jointly submitted by the American Bankers Association, the Consumer Bankers Association, and the National Association of Federally-insured Credit Unions cites research indicating that the average delinquent incident costs credit card issuers approximately $46. U.S. Bank believes this is a reasonable representation of the cost of collections.

3. Do you agree with bank lobbyists who argue that this rule will hurt those it tries to help?

We generally agree with the positions outlined in the comment letters submitted by the banking trade associations.

a. Many banks have reduced or eliminated overdraft fees without raising costs for consumers. How do you reconcile this with the lobby's argument that consumers will pay the price for limited late fees?

U.S. Bank believes many of our current cardholders will be harmed if the safe harbor is reduced to $8. Our inability to cover the costs of collecting delinquent accounts will require us to allocate the expense to all cardholders which could impact the price and availability of credit for those customers.

Imposing a significantly reduced safe harbor fee reduces incentives for cardholders to pay on time, reducing the benefits of using credit cards to build a better credit history which may result in lower credit scores, increased cost of credit and limited credit availability in the future. These impacts may be more acute for lower income cardholders, a fact acknowledged by the CFPB specifically in their proposal.

The benefit of the current safe harbor is that it is well understood and used throughout the industry. The Fed in its 2010 rule developed the safe harbor amount based on a thorough analysis of the CARD Act requirement that late fees be "reasonable and proportional to the omission or violation." There is nothing to indicate that this analysis is no longer valid.

The safe harbor, and the compliance benefits that it provides, is not applicable to overdraft or other types of fees. For those fees, U.S. Bank needs to independently assess them considering market conditions, the competitive environment, and other factors.

Sincerely,

Shailesh Kotwal
Vice Chair, Payment Services

U.S. Bank

cc: The Honorable Richard Blumenthal
The Honorable Tammy Baldwin
The Honorable Bernard Sanders
The Honorable Peter Welch
The Honorable Sherrod Brown
The Honorable Jack Reed

William S. Demchak
Chairman, President and Chief Executive Officer
T: 412-768-2927 bill.demchak@pnc.com

May 23, 2023

The Honorable Elizabeth Warren
United States Senate
309 Hart Senate Office Building
Washington, DC 20510

Dear Senator Warren:

On behalf of The PNC Financial Services Group, Inc. and PNC Bank, National Association (collectively, "PNC"), I am pleased to respond to your May 9, 2023, letter concerning credit card late fees. PNC is a Main Street banking organization focused on traditional banking activities, including retail banking, consumer and residential mortgage lending, corporate and institutional banking, and asset management.

Our business model is focused on serving our customers and communities, and PNC believes strongly in offering products and services in a transparent way that gives our customers control and choice over their financial decisions. As noted in your letter, PNC was a first mover in the industry on overdraft solutions to help consumers. In January 2021, we launched Low Cash Mode®, which is designed to help improve the financial health of our customers by empowering them to have control over their payments.[1] Low Cash Mode is available on all of our popular Virtual Wallet® products and offers customers three key features to avoid overdraft fees:

- Real-Time, Intelligent Alerts, where customers may set a "low cash" threshold that will trigger an email or smartphone notification when their checking account balance falls below that threshold, allowing the customer to take action to avoid overdrawing their checking account, such as by making a mobile or branch deposit, transferring in funds from another source, or delaying discretionary payments;

- Extra-Time, which provides customers with at least 24 hours (and often much more) to cure a negative balance before any overdraft fee is assessed; and

- Payment Control, which offers customers the choice of whether to pay or return

[1] Rather than adopting a "return all" approach, which simply eliminates overdraft availability, Low Cash Mode offers our customers the ability to have important payments – such as rent or auto loan bills – paid, even if the customer does not have sufficient funds in their account to cover the item at the time presented. Returning the payment in such circumstances may well have adverse and costly consequences for the consumer, such as adverse credit reporting impacts. Likewise, eliminating overdraft services completely may well cause consumers who experience a short-term shortage of funds to turn to more costly, and often predatory, alternatives, such as payday or title lenders.

certain ACH and check payments when their balance is negative.

The benefits to customers from Low Cash Mode and similar efforts go far beyond "modestly curtailing" fees, as suggested in your letter. Since the launch of Low Cash Mode in early 2021, we have reduced customer overdraft fees for Virtual Wallet customers by approximately 65 percent. Indeed, PNC projects that in 2023 the availability of Low Cash Mode as well as other meaningful investments to enhance our overdraft programs, such as the elimination of non-sufficient fund fees ("NSF") across all consumer deposit accounts, will collectively reduce fees for PNC consumer deposit customers by $454 million.

PNC's commitment to providing our customers with transparency and choice extends to our consumer credit card products as well. PNC offers our credit card customers several tools to make it easy to pay on time. For example, PNC credit card customers can make a credit card payment through several methods, including through our Online Banking platform, the PNC Mobile App, by phone, by mail, or in person at one of PNC's more than 2,400 branches. PNC also makes it easy for customers to sign up for our automated payment program to help customers make timely payments every month. Customers can also set up payment alerts in Online Banking or in the PNC Mobile App to remind them of upcoming credit card payment due dates. Moreover, PNC has made significant investments in technology to continually improve the customer experience and provide customers with the tools necessary to take control of their finances. In addition, we frequently refund late fees where appropriate, such as for customers who notify us they are experiencing hardship or for customers in areas affected by natural disasters.

In addition to the tools we offer to help customers make timely credit card payments, our credit card late fees are clearly disclosed and easy to understand. Late fees are not complex or unique to banks. Consumers expect that they may be charged for late payment on their credit card accounts, just like they would for most other consumer products or services. Fees for late payments are commonplace in payments for rent, utilities, repair services, and government services and taxes. PNC clearly and prominently discloses its credit card late fee at application, and at account opening – in a large font and table format established by regulation – and subsequently at least 21 days prior to the due date on each periodic statement. The specific due date itself is not a surprise to customers because PNC consumer credit card payments are due on the same day of every month, and customers can customize their monthly due date to a specific day based on their preference. PNC also prominently discloses the payment due date, balance, and minimum payment due in Online Banking, and makes this information available through its automated phone service and customer service representatives.

Credit card late fees encourage timely payment and help PNC meet supervisory expectations to lend in a safe and sound manner. PNC incurs substantial costs in collecting late, delinquent, or charged off credit card balances, and late payments are a leading indicator of later stages of delinquency. Delinquencies influence the amount of reserves that banks must maintain for their credit card loans, as applicable accounting standards require banks to maintain reserves sufficient to cover the full expected credit losses on their credit card and other loan balances. As of March 31, 2023, PNC maintained an allowance for credit losses of more than $780 million to cover expected losses on our consumer credit card balances. If credit card late fees do not incentivize timely payments, PNC and other credit card issuers may be required to increase reserves, reducing funds available to extend credit to consumers.

In sum, our credit card late fees are consistent with applicable law, are intended to encourage responsible payment, and help PNC cover the credit and other costs associated with late and delinquent accounts. Moreover, credit card late fees are *not* a significant driver of PNC's revenue. In 2020, 2021, and 2022, PNC received approximately $49.3 million, $45.5 million, and $56.6 million,[2] respectively, in late fees from its consumer credit card portfolio.[3] This represents approximately 0.6% or less of the annual revenue of our Retail line of business, and 0.3% or less of PNC's annual total revenue over those time periods.

We appreciate the opportunity to describe the many ways we help our customers manage their finances. I hope this information is helpful.

Sincerely,

William S. Demchak
Chairman, President and Chief Executive Officer

[2] On October 8, 2021, BBVA USA was merged with and into PNC Bank, N.A. PNC acquired approximately 480,000 consumer credit card accounts through the BBVA merger, which contributed to the higher late fee revenue in 2022 compared to prior years. As a courtesy, PNC proactively waived late fees for BBVA consumer credit card customers for approximately two months following the merger.

[3] PNC does not collect tax statements or otherwise verify income information for its consumer credit card customers. The limited income information we do receive is typically provided by the consumer when applying for a credit card, and therefore may not reflect their current income. Moreover, consumers may provide personal rather than household income, and PNC does not collect a credit card customer's household size, so we are unable to classify our credit card customers according to the federal poverty threshold, which differs by size of household.

9800 Fredericksburg Road
San Antonio, Texas 78288

May 23, 2023

The Honorable Elizabeth Warren
U.S. Senate
309 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Richard Blumenthal
U.S. Senate
706 Hart Senate Office Building
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The Honorable Tammy Baldwin
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The Honorable Sherrod Brown
Chairman, U.S. Senate Committee on Banking, Housing and Urban Affairs
U.S. Senate
503 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Jack Reed
Chairman, U.S. Senate Armed Services Committee
U.S. Senate
728 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators:

Thank you for your letter of May 9, 2023. We appreciate the opportunity to provide information about USAA credit cards and how we empower our members to achieve financial security.

USAA is a diversified financial services group of companies and membership association that serves members of the military community, including active duty, guard, reserve, retired and honorably separated, and their families. Since our founding in 1922 by 25 U.S. Army officers, USAA has pursued a mission of empowering financial security through competitive products, exceptional service, and trusted advice. As we begin our second century of service, we remain focused on meeting our members' needs through every stage of life – from joining the military to buying a home to retiring.

Our Bank products, including credit cards issued by USAA Savings Bank and serviced by USAA Federal Savings Bank, are created with the military community and their families in mind. We offer competitive products that meet our members' core needs. For example, our Cashback Rewards Plus American Express Credit Card allows members to earn more cash back on qualifying purchases made on military bases. Our USAA Visa Platinum Card for Pre-Commissioned Officers is a low-annual percentage rate (APR) rewards card designed for students at military academies and in Reserve Officers' Training Corps (ROTC) programs, as well as those in officer candidate or training schools who commission as officers in the military after graduation. Last year, we launched a Secured Credit Card without an annual fee designed to help servicemembers build or rebuild their credit. We know our members have many choices in today's payments ecosystem and we offer some of the lowest APRs in the industry.

Beyond our credit card portfolio, we also offer several other loans specifically tailored to the military community, including low-interest rate academy loans available to members attending one of the five service academies or newly commissioned officers from the service academies; low-interest rate pre-commission loans available to eligible members participating in an undergraduate ROTC program or Platoon Leaders Course or pursuing an advanced degree; VA home loans; and auto starter loans.

Our focus on our members' financial security includes a commitment to helping them develop and maintain a healthy relationship with credit. We work closely with our members to help them stay current with their credit card payments, including through personalized digital tools that make it easy to customize alerts delivered through multiple channels, see available payment options, set up auto-pay, and find proactive advice to get back on track. We do not impose penalty APRs, nor do we charge over-the-credit limit fees. As a courtesy to our members, we will also waive one late payment fee per year. Special credit card payment assistance programs may also be available to members during times of financial stress, including natural disasters.

USAA's credit card agreements are published on our website and on the searchable database maintained by the Consumer Financial Protection Bureau, as required under Section 204 of the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009 and its implementing Regulation Z. Fees, including late payment fees, are prominently disclosed in prescribed formats at the point of application, during account opening, and on periodic statements.

As disclosed in the credit card agreement, if a cardholder does not pay at least the minimum payment due by the payment date disclosed on the billing statement, the cardholder may incur a fee of $25 for the first late payment; subsequent late payments within the next six billing cycles may incur a fee of $35. The fee will never exceed the minimum payment due immediately prior to the date on which the fee was assessed.

In 2022, our cost per delinquent account was approximately $45, taking only direct costs into consideration, almost double the $25 late payment fee. This estimate does not include attributable expenses such as overhead and funding costs related to consumer credit card accounts.

USAA is invested in our members' financial readiness. We offer several financial literacy and planning tools on USAA.com, such as the Financial Readiness Assessment, which generates personalized action plans, and Money Manager, a free online budgeting tool. USAA founded and sponsors The USAA Educational Foundation, an organization that provides free financial education resources from experts in personal finance and military life, including learning guides on managing credit and debt. The USAA Educational Foundation also supports Financial Readiness Programs delivered to the U.S. Department of Defense for use at military installations worldwide.

Thank you again for the opportunity to provide information about USAA's credit card offerings and our commitment to our members' financial security.

Sincerely,

Paul Vincent
President
USAA Federal Savings Bank

WELLS FARGO

Brian Smith
Head of Government Relations & Public Policy

Public Affairs
MAC R0151-082
1700 K ST NW
8th Floor
Washington, DC 20006

May 23, 2023

The Honorable Elizabeth Warren
309 Hart Senate Office Building
Washington, DC 20510

Dear Senator Warren,

I am writing in response to your May 9, 2023 letter to Wells Fargo & Company ("Wells Fargo") regarding the CFPB's proposed rule on credit card late fees. Wells Fargo strongly shares the CFPB's stated goal of having a fair and competitive credit card market. We clearly disclose late fees and take proactive steps to encourage on-time payments. Late fees not only act as an offset of our costs related to collections from customers who have missed payments, but also are an effective way to incentivize customers to make their payments on time.

Wells Fargo's credit card late fees are $29 for the first incident and $40, generally, for subsequent late payments. Wells Fargo takes steps to help customers clearly understand the fee they are paying and why they are paying that fee. The amount of the late fee is prominently displayed on credit applications we make available to consumers. Our customers' monthly periodic statement includes a reminder to pay the minimum payment due to avoid late fees, noting the amount of the late fee and the date by which the customer must pay to avoid it. Wells Fargo also proactively offers our customers the ability to set up automatic payments. Customers who use automatic payments are less likely to incur late fees. Additionally, Wells Fargo offers customers the flexibility to select their payment due date. We also send regular email reminders (and offer SMS payment reminders) of their upcoming payment due date. Wells Fargo wants customers to pay on time.

The approximate annual amounts Wells Fargo collected for late fees and costs related to credit card collections over the past two years were, respectively, $315/$266 million (2022) and $265/$253 million (2021). Costs of collections include expenses such as debt collection, legal costs, and costs of support functions (e.g., information technology, office space, and human resources). These costs do not include the cost of funding and the expenses Wells Fargo incurs with regard to principal losses on charged-off accounts. Wells Fargo does not track in the normal course the proportion of late fees collected from families with incomes below 200% of the federal poverty threshold.

Wells Fargo believes that the CFPB proposal would lower late fees below an effective deterrent level. If this were to occur, we believe recouping this lost revenue would require changes to banks' pricing models, effectively spreading this lost revenue across all products. This has the practical effect of increasing prices on all customers, including those who are not paying late. Secondly, a lower fee could mean that more customers will pay late.

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As described in financial industry comment letters, if late fees are not set at a level to promote financial responsibility, the frequency of missed payments is likely to increase. A December 2022 study[1] shows that late fees set at a level similar to those of Wells Fargo deter customers from making late payments. Avoiding late payments helps customers avoid reduced credit scores, which negatively impact their ability to access new credit. This includes not only credit cards but also potentially mortgages and auto loans.

We hope that this additional information on Wells Fargo's perspective is helpful.

Sincerely,

Brian Smith
Head of Government Relations & Public Policy
Wells Fargo & Company

cc:

Senator Richard Blumenthal
Senator Tammy Baldwin
Senator Bernie Sanders
Senator Peter Welch
Senator Sherrod Brown
Senator Jack Reed

[1] https://bpi.com/wp-content/uploads/2023/05/CFPB-CC-Late-Fees-NPR-BPI-Comment-Letter-2023.05.03.pdf

Capital One Financial Corporation
1600 Capital One Drive
McLean, Virginia 22102

May 23, 2023

The Honorable Elizabeth Warren
309 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Warren,

Thank you for your May 9, 2023, letter regarding the Consumer Financial Protection Bureau's (CFPB) Notice of Proposed Rulemaking seeking to Amend Regulation Z, 12 C.F.R. § 1026.52 ("Proposed Rulemaking").[1] We appreciate the opportunity to respond to your letter.

Capital One has for years provided customers with fair, transparent, and straightforward products across the entire credit spectrum. We have proactively and voluntarily reduced, and in many cases, eliminated fees associated with our products and services. By way of example, in 2021, after significant analysis and testing, we were proud to become the first major financial institution to completely eliminate Overdraft and Non-Sufficient Funds fees.[2]

With respect to credit cards in particular, we are committed to helping customers across the credit spectrum access safe and affordable credit that they understand and can use responsibly. Capital One's clear and simple products have some of the fewest fees in the industry. We believe that reasonable late fees, however, play a critical role in providing appropriate incentives for customers to use credit cards in a responsible manner. Capital One supported the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009 because of the improvements it made to many credit card practices, and believe it has worked well for over a decade to ensure that credit card products are fair, transparent, and include mechanisms to ensure that banks and consumers can be mutually successful with those products.

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[1] 88 Fed. Reg. 18906 (Mar. 29, 2023).
[2] Joseph Choi, "Warren Calls on Big Banks to Follow Capital One in Ditching Overdraft Fees," The Hill (December 1, 2021), available at https://thehill.com/homenews/senate/583922-warren-calls-on-big-banks-to-follow-capital-one-in-ditching-overdraft-fees/.

We Succeed When Our Customers Succeed

Capital One is committed to providing clear and transparent products, policies, and experiences that provide consumers across the credit spectrum with the ability to access and use credit wisely. Capital One was an outspoken critic of unfair practices like universal default that led to the passage of the CARD Act. Even before passage of the CARD Act, Capital One's policies and procedures were already aligned with what would eventually become the law. Moreover, we welcomed the legislation because it created a level-playing field where all banks were held to the same standards, most notably in the consistency and transparency in product terms and disclosures.

Successfully using and managing a credit card, especially for consumers who are new to credit or rebuilding their credit, requires that the account structure, terms, and servicing help the customer engage in behaviors that will set them up for success. Protections provided by law and as standard credit card practice include, but are not limited to: 1) an ability to pay assessment that considers income and financial obligations prior to opening or increasing the credit line on a credit card account; 2) statements provided at least 21 days prior to the due date; 3) a predictable payment due date that is scheduled on same day of the month (and that customers can customize based upon the date that is most convenient for them); 4) a clear late payment warning on the statement that reminds customers of payment obligations and the risk of accruing a late fee (and the amount of the late fee); and 5) multiple options for making payments in the way that suits them best — including online payments, by mobile application, or by telephone at no cost.

Millions of people have started, or re-started, their credit journey with Capital One. We have helped consumers who are new to credit, and new to the country, establish a credit score, improve their score over time, understand and manage credit lines and payments, and unleash the many benefits that accompany an established credit history and a strong credit score. That success starts with underwriting lending in a responsible way with credit lines that are consistent with what customers can afford to pay. We have also voluntarily implemented a number of tools to enable customers' financial success, including 5-day and 1-day payment alerts (and one-click to pay for customers who have enrolled a payment account), automatic payment options, and due date flexibility — all of which have saved our customers hundreds of millions in potential late fees.

Where a customer falls behind on their obligations, we offer additional programs and support to help them get back on track. In addition, we provide Capital One customers — and enrolled non-customers — free access to our CreditWise program, which enables customers to understand, monitor, and track their credit history and credit score.

Those mechanisms and practices exist to help customers succeed because the failure to effectively manage credit can impact their ability to access credit at lower cost, or even result in loss of access to credit when they need it, altogether. That is why late fees exist. Late fees play a critical and unique role in deterring customers from paying late. They are: (i) well-understood by consumers; (ii) of limited duration in their impact; (iii) avoidable by making payment or other arrangement with the lender; and (iv) a common tool used across industries and the public/private sector to encourage consumers to meet their respective obligations. By definition they are not a "junk fee," but rather are a tool to both offset the costs associated with late payments *and* to provide appropriate incentives to ensure on-time payments.

Late Fees Play a Critical and Unique Role

As discussed above, late fees are common and exist for nearly every payment obligation (including obligations owed to federal, state, and local governments). It is common knowledge that the failure to pay an obligation on time will result in a consequence. As it relates to credit cards in particular, Regulation Z's disclosure requirements ensure that late fees are clearly disclosed at account opening and, at a minimum, on each statement the customer receives.[3] Research shows unequivocally that consumers understand both the late fee and its implications in a way that is more effective than other mechanisms that might exist.[4]

Congress fortunately understood the importance of deterrence when writing the CARD Act. Although nearly the entirety of the CFPB's public statements and focus in the Proposed Rulemaking relates to costs to collect late payments (and only a portion thereof), costs are only one of the factors that must be used to determine whether a late fee is reasonable and proportional to a violation of the credit card agreement caused by a failure to make the required

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[3] CFPB, 2013 CARD Act Report, at 22, available at https://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf (citing 15 U.S.C. §§ 1637(o)(1), 1666b (a), 1637(b)(12) (2012)) (noting that "the Act added requirements that the payment due date be the same day each month, that billing statements be mailed at least 21 days before that due date, and that statements include a warning of the amount of the late fee and any penalty rate that will be assessed if a payment is late.").

[4] See, e.g., Letter from American Bankers Association, Consumer Bankers Association, and National Associated of Federally-Insured Credit Unions to CFPB Director Rohit Chopra, at 7–14 (May 3, 2023), available at https://www.aba.com/advocacy/policy-analysis/joint-letter-consumer-credit-card-penalty-fees.

payment by the due date.[5] Importantly, deterrence and the conduct of the cardholder must also be considered.

Consider something as commonplace as driving safety, where the risks are literally life and death. Our roads have speed limits based upon the design of the road and risks associated with certain locations. Even with the consequences of unsafe driving being well-known and readily apparent, they still remain too attenuated and abstract in the moment to be effective as compared to the more concrete risk of getting a ticket.[6] That is why speeding tickets exist, and why they are viewed as necessary — they serve as an important mechanism to incentivize drivers to obey speed limits in order to avoid far greater consequences. Given the principal focus of speeding tickets is to incentivize customers to obey speed limits, imagine how ineffective they would be if the dollar amount of speeding tickets was reduced by over 70%. Put simply, if the risks associated with speeding are not sufficient to incentivize drivers to drive within speed limits, without tickets set at an adequate level, then the significant — but far less severe — risks of paying late will prove still less effective without an adequate late fee to incentivize on time payments.

The framework put in place by the CARD Act ensures that banks provide clear, transparent, and predictable terms when lending money to consumers, while also ensuring that mechanisms exist to appropriately incentivize consumers to honor those terms — including the imposition of a late fee, in order to protect consumers from the more serious harms that occur from regularly paying late or becoming severely late. Moreover, the current structure was designed to further simplify credit card products and narrow the scope of factors customers had to take into consideration in

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[5] The CARD Act provides that the "amount of any penalty fee or charge that a card issuer may impose with respect to a credit card account under an open end consumer credit plan in connection with any omission with respect to, or violation of, the cardholder agreement, including any late payment fee, over-the-limit fee, or any other penalty fee or charge, shall be reasonable and proportional to such omission or violation." 15 U.S.C. § 1665d(a). In promulgating rules under the CARD Act, the CFPB is required to "consider—(1) the cost incurred by the creditor from such omission or violation; (2) the deterrence of such omission or violation by the cardholder; (3) the conduct of the cardholder; and (4) such other factors as the Bureau may deem necessary or appropriate." Id. § 1665d(c).

[6] See National Transportation Safety Board, Reducing Speeding-Related Crashes Involving Passenger Vehicles, 17-18 (July 25, 2017), available at https://www.ntsb.gov/safety/safety-studies/documents/ss1701.pdf ("[T]the perceived risks and acceptance of speeding were not reflected in the drivers' own behaviors. For example, 89% of respondents considered it unacceptable to drive 10 mph over the speed limit on a residential street, yet 45% reported having done so in the past 30 days. Similarly, 74% of respondents considered it unacceptable to drive 15 mph over the speed limit on freeways, yet 48% admitted to having done so in the past 30 days. Therefore, the NTSB concludes that drivers report understanding that speeding is a threat to safety but acknowledge it is a common driving behavior in the United States.").

comparing different products, by creating more parity in late fee amounts.[7] The framework also helps ensure the safety and soundness of credit card lending, in that customers are encouraged to pay on time and properly incentivized with adequate late fees as with other financial products and legal obligations. Like speeding tickets, late fees may not be popular, but they are necessary, avoidable, and effective at protecting customers from the more significant risks of paying late.

Costs Require Consistent Definitions and Further Analysis

As discussed above, costs are one of the factors that must be considered when determining the appropriateness of a late fee. Credit card issuers incur significant costs due to customers paying late. Some of those costs are obvious, such as the costs associated with running a collections call center, third-party collections firms, and the salaries for employees working on past due accounts. But the costs associated with late payments is more nuanced and much broader than just those high-level categories, including but not limited to: real estate costs to house collections and recoveries personnel; technology platform development and maintenance costs; maintenance of equipment, internet, telephones, and other utilities necessary to perform those functions; human resources costs associated with running those organizations; legal, risk, compliance, and audit support to ensure compliance with federal, state, and local collection laws; credit management and risk avoidance work associated with delinquent accounts; funding costs associated with delinquent accounts; losses and capital allocations associated with late payments — all of which are but a small example of the total costs.

Moreover, each bank likely accounts for these costs differently — and sharing of such competitively sensitive and proprietary data regarding the nature and amount of costs would not be appropriate. A common understanding of what costs even means for purposes of the CARD Act remains largely undefined almost a decade after the initial rulemaking.[8] In order to get

[7] 2013 CARD Act Report, at 5 ("The CARD Act has impacted the way that consumers pay for credit in the credit card marketplace and has significantly enhanced transparency for consumers. Overlimit fees and repricing actions have been largely eliminated; those effects can be directly traced to the Act. The dollar amount of late fees is down as well, and the CARD Act directly caused this reduction. "). The Bureau itself noted the current structure's effectiveness in this regard in its very first CARD Act Report in 2013, concluding that "[t]he end result is a market in which shopping for a credit card and comparing costs is far more straightforward than it was prior to enactment of the Act . . . [and l]imitations on "back-end" fees, along with restrictions on an issuer's ability to raise interest rates, have simplified a consumer's cost calculations." Id.

[8] Currently, there are at least three different definitions: 1) the guidance that exists in the current rule, which is extremely limited; 2) the Proposal which indicates that it is not making any substantive change to the cost analysis provisions, but then significantly narrows the existing limited guidance around "costs" to pre-charge off costs only; and 3) the FR Y-14M definition, which simply says "costs incurred to collect

a full understanding of costs associated with late payments, it is important to start with a common set of categories, standards, and definitions in an environment where that competitively sensitive data can be shared, tested, and effectively challenged to ensure that the final answer is grounded and accurate. In the absence of such clarity, any beneficial or insightful cost comparison is impossible.

The Current Safe Harbor

Much of the rationale behind the current Proposed Rulemaking lies in the fact that the nominal dollar amount for late fees has increased since the prior rulemaking.[9] While the amounts stated in the safe harbor have been adjusted periodically by the CFPB based upon changes in the Consumer Price Index ("CPI"), the narrative around those fees growing more burdensome for consumers is not supported by the data. In fact, if the current safe harbor levels were adjusted back to 2010 levels, the real dollar impact to consumers is *less than* it was in 2010. Current late fee levels adjusted to 2010 dollars would be $21.13/$28.87 — well below the $25/$35 amounts established in 2010.[10]

Further, the rationale for adjusting with the CPI is to ensure that reasoned policy making judgments do not erode with the passage of time. Allowing adjustments for CPI in the CARD Act was not a framework loophole, but rather an intentional feature, one that Congress has embraced as it similarly requires all executive agencies to make annual adjustments to reflect

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problem credits," but then also includes "All Other Expenses'' which are defined as "all other operating and other expenses associated with card operations . . . [which] includes servicing, cardholder billing, processing interchange, processing payments, card issuing, authorizations, card administration and outside services/outsourcing expenses, etc." See 88 Fed. Reg. at 18916; Federal Reserve, Instructions for the Capital Assessments and Stress Testing Information Collection (Reporting Form FR Y-14M), OMB NO, 7100-0341 (Modified Sept. 2022), available at https://www.federalreserve.gov/apps/reportingforms/Report/Index/FR_Y-14M#:~:text=Description%3A,one%20detailed%20address%20matching%20collection.

[9] See Director Chopra's Remarks on Press Call for Credit Card Late Fees NPRM (Feb. 1, 2023), available at https://www.consumerfinance.gov/about-us/newsroom/director-chopras-remarks-on-press-call-for-credit-card-late-fees-nprm/ (stating that "[t]he Fed Board voted to insert an immunity provision in its rules that allowed credit card companies to escape enforcement scrutiny even if it charged unjustifiably high fees . . . [and] even allowed credit card companies to hike the fees annually for inflation.").

[10] Inflation Calculator,Federal Reserve Bank of Minneapolis, available at https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator (last accessed May 22, 2023); see also 2013 CARD Act Report, at 22-23 (noting that the average late fee was $26.84 in the fourth quarter of 2012).

changes in the CPI.[11]

The Proposed Rule Lacks Adequate Study and Acknowledges Consumers May Be Harmed

The CARD Act and its implementing regulations were developed after rigorous discussion, collection of evidence, studies, and robust notice and comment periods for the rules that have been in place for over a decade. Given the importance and convenience of credit cards to the majority of Americans, any material changes to the delicate and effective balance struck by the CARD Act and its implementing regulations over the past decade must be carefully studied, considered, and evaluated to ensure that they do not create more harm to consumers than the benefits they attempt to provide.

The Proposed Rulemaking, however, acknowledges that "the Bureau is not aware of relevant, reliable, and quantified evidence that could be used to predict how changes to late fees would affect late payments and delinquencies or the expected substitution effects across credit cards and between credit cards and other forms of credit."[12]

Furthermore the Proposed Rulemaking acknowledges that "[c]ardholders who never pay late will not benefit from the reduction in late fees and could pay more for their account if maintenance fees in their market segment rise in response — or if interest rates increase in response and these on-time cardholders also carry a balance."[13] It goes on to recognize that even cardholders "who do not regularly carry a balance but occasionally miss a payment would benefit from the proposed changes so long as any increase in the cost of finance charges (including the result of late payments that eliminate their grace period) is smaller than the drop in fees."[14] In fact, the Proposed Rulemaking notes that only "frequent late payers" are likely to benefit from the proposal.[15] In all likelihood, however, even frequent late payers are likely to be harmed if the small size of the $8 late fee (or 25% of the Minimum Payment, if lower) reduces the incentive to pay on time — thereby increasing the number of consumers becoming more than 30 days late. Finally, the Bureau acknowledges that there could be credit access impacts, and that it has not

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[11] See Civil Penalties Inflation Adjustment Improvements Act of 2016, Pub. L. 114-74, 129 Stat. 584, 599, § 701 (2015) (codified at 28 U.S.C. § 2461 note).
[12] 88 Fed. Reg. at 18931.
[13] Id. at 18934.
[14] Id.
[15] Id.

yet studied the full impacts of the proposal and how the rule may negatively impact some consumers' access to credit.[16]

Engaging in any rulemaking that could have such significant impacts on all consumers and the entirety of the credit card industry should not be taken lightly. Its consequences and impacts should be studied, shared, and openly discussed and debated to ensure that the consequences to consumers and access to credit are fully understood and the financial stability of the industry is not impacted. As the CFPB has itself noted, "[c]redit cards are central to the financial lives of over 175 million American consumers . . . [by] facilitat[ing] transactions, smooth[ing] consumption, and earn[ing] rewards."[17] It is prudent to ensure that the full impacts of the rule are evaluated, studied, and understood, before making a change that could unintentionally upend the positive changes achieved in the credit card market since the CARD Act and that may be more costly for consumers in the end.

Overdraft Is Markedly Different From Paying Late

As you know, Capital One was the first large banking institution in the United States to completely eliminate overdraft fees on deposit accounts. While Capital One eliminated overdraft fees as part of our efforts to improve our checking products for our customers, overdraft fees are inherently different from late fees. As an initial matter, a bank can decide whether to approve or decline a transaction that exceeds the checking account's balance. If a transaction is approved, a bank understands the nature and extent of its risk for that particular transaction and the consumer has a certain period of time to cover the payment. In other words, a bank owns the decision on whether to approve the transaction and can accept or decline that financial risk.

The equivalent of a deposit account overdraft fee in the credit card context is not a late payment, but rather an overlimit fee for transactions that exceed the credit line/limit. Capital One does not charge a fee for overlimit transactions on credit card accounts. Conversely, late credit card payments do not involve a decision of the bank, or an activity that it can control. Thus, the late fee represents the most appropriate and least disruptive tool, among a very limited set of tools,[18] available to banks to mitigate the risk of late payment.

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[16] Id. (stating that "some consumers' access to credit could fall if issuers at access to credit could be an issue and that it has not yet studied how the proposal might impact "offsetting price changes and any related changes in credit access.").
[17] CFPB, 2021 Consumer Credit Card Market Report, at 5 (Sept. 2021), available at https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf.
[18] Tools Include, e.g., penalty repricing, credit limit decreases, and account suspension.

As described above, laws, regulations and standard credit card issuer practices provide many protections to ensure customers can pay their obligations on time. In addition, we provide automatic payment and payment alert options to consumers. Banks have less flexibility on the late fee because they cannot control the risk in advance, and thus the late fee serves a different purpose — to incentivize the customer to pay on time so as to minimize the risk of delayed payments that can change the risk profile of an account or portfolio, or cause additional and longer-term consequences for the customer. Where customers cannot afford the payment, avoidance of the late fee serves as a catalyst for the customer to call in and work with the bank through a hardship or other program that can help avoid longer-term consequences for customers.

With respect to the additional and longer-term consequences for customers, it is important to understand that should the proposed $8 late payment fee not serve as a meaningful deterrent to late payments, consumers could choose to delay payment beyond a single cycle, erroneously believing that the "cost" of doing so is low. Accounts that are more than 30 days delinquent, however, are reported to the credit bureaus, with substantial, long-term negative impact to an individual's credit score. The risk of surprise to consumers regarding the consequences of their choices is high, and should be considered as part of the CFPB's required statutory analysis to consider the conduct of the customer.[19]

<u>Conclusion</u>

Capital One has built its business on creating transparent and fair products that are straightforward, easy to use, and that help consumers build credit and manage it responsibly across all market segments. Like many lenders, we have programs available to consumers who fall behind on their payments that are designed to help them get back on track. We also proactively opt-in our customers to payment alerts and offer various automatic payments options, which has the desired effect of reducing the incidence of late payment fees. We view the late fee as a fee we hope our customers never have to pay, but as a necessary component of a responsible credit card program that is designed to appropriately encourage customers to pay on time and use credit responsibly.

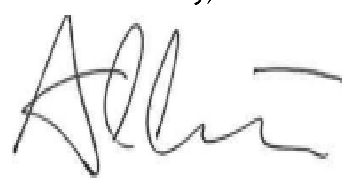
We actively disclose the late fee in account disclosures, on each monthly statement, in the online and mobile banking app, and we openly disclose the amount of late fees we collect in our

[19] 15 U.S.C. § 1665d(c)(3).

publicly-filed financial statements each quarter and annually.[20] There is no evidence to suggest that consumers lack understanding of the existence and purpose of late fees, which as discussed above, are commonplace across the full spectrum of private and public sector institutions.

The CARD Act and its implementing regulations have resulted in both considerable benefits to consumers, and an actively competing credit card market that provides access to credit to consumers across the entire credit spectrum. The Proposed Rulemaking openly acknowledges that the impacts of the proposal have not been studied, are not known, and may harm more consumers than will be benefited under the proposal. Capital One believes all parties, especially consumers, are entitled to a thoughtful and grounded assessment and understanding of the impacts of the Proposed Rulemaking before it proceeds further.

Sincerely,



Andres L. Navarrete
Executive Vice President
Head of External Affairs

CC: The Honorable Sherrod Brown, Senate Banking Committee Chairman
The Honorable Jack Reed
The Honorable Bernie Sanders
The Honorable Richard Blumenthal
The Honorable Tammy Baldwin
The Honorable Peter Welch

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[20] See, e.g., Capital One:Q1 2023 10Q, available at https://www.sec.gov/ix?doc=/Archives/edgar/data/927628/000092762823000168/cof-20230331.htm#i32425df2a3a5416495d00d19ed72f2e0_127.