Thursday, July 7, 2022

In 2009, Congress enacted the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act). Among other things, the CARD Act curtailed a range of junk fees, coercive contract clauses, and other suspicious practices. In 2010, the Federal Reserve Board of Governors’ (Fed) voted to implement provisions of the CARD Act that required penalties to be “reasonable and proportional to the omission or violation.” While the Fed prohibited collecting excessive late fee penalties, the Fed also included a provision that allowed credit card issuers to escape enforcement scrutiny if they set fees at or below a particular level, which may be adjusted annually for inflation (immunity provision). Currently, Regulation Z, which implements the CARD Act, sets forth a safe harbor of $30 for fees generally, with exceptions and alternatives for specific scenarios.

On June 22, 2022, the CFPB initiated a Notice of Proposed Rulemaking (NPRM) seeking information regarding the Fed’s 2010 immunity provision for excessive late fees that allows credit card companies to escape enforcement scrutiny. In this NPRM, the CFPB is assessing whether these late fees are “reasonable and
proportional” as they have costed consumers $12 billion each year, making up 10 percent of the total cost of credit cards to customers.

The NPRM asks the public:

• How do credit card issuers set late fee amounts? How is the fee determined to be considered reasonable or proportionate or at least related to the actual costs to the card issuer? How is the fee related to the statement balance?

• Are revenue goals a factor in determining late fees? How do they figure into profitability for the card issuers?

• What are card issuers’ costs and losses associated with late payments?

• Do late fees have a deterrent effect? Does the amount have a deterrent effect? Do card issuers impose other consequences other than late fees when payments are late?

• What methods are card issuers using to encourage timely payments, including autopay and notifications?

• How many calendar days after the due date do consumers make the late payment? For example, what percentage of accounts is less than 24 hours late versus 30 days late?

• For card issuers, what annual income is coming from interest and fees? What are annual expenses?

Comments are due July 22, 2022.

Putting It Into Practice: In practice, the CFPB contends that revenue collected from these late fees comes disproportionately from people living in low-income neighborhoods. Additionally, 18 of the top 20 credit card issuers set late fees at or near the established maximum level. The revenue generated from late fees make up a noteworthy portion of the total profit for these credit card companies. CFPB Director Rohit Chopra commented, “[t]his [NPRM] is particularly timely since current rules might give companies the incentive to impose big hikes based on inflation.”

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