

Alert | Financial Regulatory & Compliance



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CFPB Unveils Final Rule Banning ‘Excessive’ Credit Card Late Fees

Go-To Guide:

- On March 5, 2024, the Consumer Financial Protection Bureau (CFPB) finalized a rule intended to limit late payment fees on credit cards issued by the largest credit card issuers.
- The final rule amends Regulation Z, reducing safe harbor late fee amounts for large card issuers from \$30 to \$8 and eliminating automatic annual inflation adjustments. Larger credit card issuers will be required to justify late fees exceeding \$8.
- The final rule is expected to go into effect in May 2024, 60 days from its publication in the Federal Register.

The CFPB announced a **final rule** that will cap credit card late fees at \$8 for the largest credit card issuers, according to a **March 5, 2024 release**. The CFPB stated the following regarding its new regulatory framework:

The [CFPB] finalized a rule today to cut excessive credit card late fees by closing a loophole exploited by large card issuers. The rule will curb fees that cost American families more than \$14 billion a year. The CFPB estimates that American families will save more than \$10 billion in late fees annually once the final rule goes into effect by reducing the typical fee from \$32 to \$8. This

will be an average savings of \$220 per year for the more than 45 million people who are charged late fees.

Background

The final rule applies to larger credit card issuers, namely, those that, together with their affiliates, have 1 million or more open credit card accounts. The CFPB estimates that such issuers hold more than 95% of total outstanding credit card balances of American consumers and charge close to the maximum allowable late fee amount under the Credit Card Accountability Responsibility and Disclosure Act of 2009. The final rule:

- **Lowens the immunity provision dollar amount for late fees to \$8:** After its review of data analytics on larger card issuers, the CFPB believes an \$8 late fee cap is sufficient for larger card issuers to cover collection costs incurred as a result of late payments. Accordingly, the final rule amends Regulation Z's safe harbor late fee amount for larger card issuers to \$8, regardless of how many times a payment has been made late.
- **Ends alleged improper use of the annual inflation adjustment:** The final rule eliminates Regulation Z's automatic annual inflation adjustment for the \$8 late fee threshold. The CFPB will monitor market conditions and adjust the \$8 late fee immunity threshold as necessary.
- **Places a burden of proof on large credit card issuers before charging higher fees:** Larger credit card issuers will be permitted to charge fees above the \$8 threshold if they are able to prove that the higher fees are necessary to cover actual collection costs.

Notably, the CFPB has delineated that the final rule's late fee cuts do not apply to smaller card issuers. The final rule defines a "smaller card issuer" as a card issuer that, together with its affiliates, had fewer than one million open credit card accounts for the preceding calendar year, and the CFPB notes that none of (1) the repeal of current safe harbor thresholds in 12 CFR § 1026.52(b)(1)(ii)(A) and (B), (2) the adoption of the \$8 late fee safe harbor threshold amount, (3) the elimination of a higher late fee safe harbor amount for subsequent violations, nor (4) the elimination of the annual adjustments to the safe harbor threshold dollar amounts apply to smaller card issuers. To the contrary, the final rule revises the late fee safe harbor for smaller card issuers, raising it from \$30 to \$32, and from \$41 to \$43 for subsequent violations of the same type.

The final rule does not alter a credit card issuer's ability to raise interest rates, reduce credit lines, or take other actions to deter consumers from paying late.

What comes next?

The final rule may impact the bottom line for large credit card issuers, which may be the CFPB's aim as part of its ongoing effort to promote competition and empower smaller financial institutions.

The industry already **has challenged** the final rule on both its merits and also on the timeline for implementation. Additionally, the fate of the final rule may be impacted by **an expected Supreme Court ruling on the constitutionality of the CFPB's funding structure**.

Credit card issuers of all sizes should review the final rule and consult with counsel on how it affects (positively or negatively) their late fee practices and, relatedly, their bottom lines.

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