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## CFPB Finalizes \$8 Credit Card Late Fee Cap; Lawsuit Filed in Opposition\*

Currently, Regulation Z provides a safe harbor for credit card issuers, permitting penalty fees such as late payment fees that do not exceed certain dollar limits. The CFPB annually adjusts these dollar limits based on inflation. Since 2022, these limits have stood at \$30 and, in cases where the card issuer has previously imposed a fee for the first violation of the same type within the same billing cycle and the subsequent six billing cycles, \$41. 12 CFR 1026.52(b)(1)(ii)(A) and (B).

In February 2023, the CFPB proposed reducing the credit card fee limit to \$8. 88 FR 18906. It also proposed ending the automatic annual inflation adjustments to these limits. Furthermore, the CFPB proposed capping any late fee charge to 25 percent of the minimum payment.

On March 15, 2024, the CFPB published its final rule amending Regulation Z's credit card penalty fee provisions, slated to take effect on May 14, 2024. 89 FR 19128. The final rule closely follows the proposal, except that the above-stated \$8 late fee cap under the final rule only applies to "Larger Card Issuers." Pursuant to the final rule, Large Credit Issuers' late fees will be subject to: (i) repeal of the current above-stated safe harbor threshold amounts in Regulation Z Section 1026.52(b)(1)(ii)(A) and (B), adoption of the \$8 late fee safe harbor threshold amount, and elimination of a higher late fee safe harbor dollar amount for subsequent violations; and (ii) the elimination of the annual adjustments for the safe harbor threshold dollar amounts. The final rule also amends the regulation's commentary and Appendix G sample forms to ensure consistency with the \$8 safe harbor late fee amount discussed above. In the final rule, the CFPB stated that it chose not to adopt the "25% of the minimum payment" late fee cap set forth in the proposal.

The above-stated provisions of the CFPB's final rule do not apply to "Smaller Card Issuers" as defined in new Regulation Z Section 1026.52(b)(3). Pursuant to Regulation Z Section 1026.52(b)(3), the term "Smaller Card Issuer" is defined as a card issuer that, together with its affiliates, had fewer than one million open credit card accounts for the entire preceding calendar year.

The rule does not define the term "Larger Card Issuer" in the regulatory or commentary text. However, the supplementary information provides that the final rule uses this term to aid in the "understanding of the changes in this final rule and readability of the document." The final rule uses the term "Larger Card Issuers" to refer to card issuers that are not "Smaller Card Issuers."

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Therefore, “Larger Card Issuers” are card issuers that, together with their affiliates, possess one million or more open credit card accounts.

Additionally, effective May 14, 2024, the final rule revises the safe harbor threshold amounts in Regulation Z Section 1026.52(b)(1)(ii)(A) and (B) to \$32 and \$43 for subsequent violations of the same type occurring within the same billing cycle or in any of the next six billing cycles. These revised safe harbor threshold amounts of \$32 and \$43 apply to penalty fees other than late fees for all card issuers (*i.e.*, Smaller Card Issuers and Larger Card Issuers), as well as late fees imposed by Smaller Card Issuers, as noted above.

In the past, California creditors have not cared too much about these Reg Z late fee caps because the maximum late fees on unsecured open-end credit allowed by California Financial Code Section 4001 are: \$7 (for a grace period that is five days after the payment is due); \$10 (for a grace period that is 10 days after the payment is due); or \$15 (for a grace period that is 15 days after the payment is due). With the CFPB’s adoption of the \$8 fee limit, California creditors who meet the definition of a “Larger Card Issuer” and impose the \$10/\$15 late fee permitted by California law must carefully assess the implications of Reg Z’s new caps.

The CFPB’s final rule has been met with some industry pushback. Following the rule’s publication, the American Bankers Association and a number of other trade organizations jointly filed suit in a Texas federal district court, seeking a preliminary injunction against the rule. Rather than decide on the motion for preliminary injunction, however, the district court granted the CFPB’s motion to transfer the case to the D.C. federal district court. On appeal, the Fifth Circuit Court vacated the district court’s transfer ruling. See *In re Fort Worth Chamber of Commerce et al.*, Case No. 24-10266 (5th Cir. Apr. 5, 2024). Litigation in this case remains ongoing. Stay tuned for further developments.

The CFPB has characterized this new rule as its latest action in combating “junk fees.” We will discuss this final rule as well as other recent fee-related regulatory developments during BCG’s April 2024 Monthly Telephone briefing for BCG Members. For questions regarding the new final rule, or junk fee-related UDAP/UDAAP risk, contact Tricia Engelhardt at **[TEngelhardt@ABLAWYERS.COM](mailto:TEngelhardt@ABLAWYERS.COM)**.