MICHIGAN CREDIT UNION LEAGUE & AFFILIATES

May 3, 2023

Comment Intake-2023 NPRM Credit Card Late Fees
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street, NW
Washington DC 20552

Re: Docket No CFPB-2023-0010 RIN 3170-AB15; Credit Card Penalty Fees (Regulation Z)

Dear Director Chopra,

The Michigan Credit Union League (MCUL), on behalf of our member credit unions, appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau's (CFPB) request for information on credit card penalty fees imposed by financial institutions. The MCUL is a statewide trade association representing 100% of the 198 credit unions located in Michigan and their over 5.9 million members.

General Comment

Credit unions operate as cooperatively owned not-for-profits, in an industry that has long held to the philosophy of "people helping people." Credit unions do not share the same incentive structure as for-profit institutions, who generate fee income to maximize profits for their shareholders. Instead, credit union profits are returned to the cooperative ownership – the members – in the form of dividends, of reduced loan rates, of increased deposit rates, on acquiring tools that increase member service, and more. A credit union's incentive structure is a direct reflection of the will of the membership through their democratic involvement in the cooperative. Likewise, the business operations of a given credit union is a direct reflection of the needs of the communities in which they are located: credit unions exist to serve their membership and, by extension, the community.

MCUL has commented in a previous letter that the CFPB's messaging on "junk fees" does not match the reality of the credit union system. A similar assessment can be made here. Since their inception, the credit union mission has been to encourage thrift, savings and the wise use of credit and to increase the knowledge and ability of credit union members to manage and control their financial well-being. This mission (and the underlying philosophy that drives it) has not changed. More, the credit union industry has long been held as the standard of positive consumer protection models in the industry. In the context of credit cards, credit unions offer a variety of tools to assist members in paying on time, such as automatic payments from a linked deposit account. Credit unions also tend to underwrite more conservatively than the large banks, often extending credit to borrowers in amounts that align more with the reality of the borrower's financial situation that have better chances of being managed adequately should the credit line be depleted. Regarding fee structures, credit unions often have below-market fees when compared to larger institutions and many do not take advantage of the regulatory allowance to increase fee amounts for subsequent late payments.

Further, credit unions continue to offer enhanced member support, a wealth of financial education, and strive for the success of each and every one of their members. The Michigan Credit Union League, in recognition of this fact, collects stories of credit unions who make positive impacts on their communities on a daily basis.[1] During the beginning stages of the coronavirus pandemic, for instance, the states' credit unions rallied together to assist their members' financial well-being by offering hardship loans, terminating skip pay fees, waiving late, overdraft and NSF fees, lowering credit card interest rates to 0%, offering mortgage forbearance, and more.[2]

Given the above, we hold that our state credit unions are outside of the scope of issues that the CFPB wishes to address.

Credit Unions are Highly Regulated

Per CFPB and NCUA, the credit union industry is heavily regulated and subject to robust consumer disclosure requirements. Regulation Z is robust: it is not the case that consumers are unaware of any particular fees' existence prior to receiving one. Not only are consumers informed of the fee regime at the time of account opening, for credit card fees specifically, they are included in the Schumer box along with other fees and the interest rate. Regulation Z provides several examples[3] of model Schumer boxes in Appendix G, following a requirement listed in 1026.6(b)(2). This comprehensive disclosure provides information in a clear and concise manner so that the consumer can make meaningful comparisons among the financial service providers in their market, after which, many consumers choose a credit union. Our Michigan credit unions, for instance, prove time and again that consumers value their services and, as we will show later, our products are positioned well below the products that the CFPB is targeting.

The CFPB's Data Does Not Include Meaningful Information Regarding Credit Unions or Other Small Financial Institutions

There is a saying, "if all you have is a hammer, everything becomes a nail." The CFPB is worried about large actors in the credit card market taking advantage of consumers – this seems to be a fair assessment. However, while the data[4] under review accounts for, "…70 percent of outstanding balances on consumer credit cards…" that remaining 30% of the market is held by small issuers who are not engaging in the same sorts of business practices that the CFPB hopes to address.

Here, we wish to reiterate points made in a Joint Trade Letter sent to you on January 20, 2023.[5] In this letter, the American Bankers Association (ABA), Credit Union National Association (CUNA), National Bankers Association (NBA), and the National Association of Federally-Insured Credit Unions (NAFCU) noted the obligation to seek input from community banks and credit unions under the Small Business Regulatory

[1] https://www.mcul.org/stories
[2] https://www.mcul.org/cu-difference/covid-19-support
[3] https://www.consumerfinance.gov/rules-policy/regulations/1026/g/#G17-A
[4] https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf
[5] https://www.nafcu.org/system/files/files/CFPB%20Late%20Fee%20Rulemaking%20-%20SBREFA%20comment%20letter%20011923.pdf

Enforcement Fairness Act of 1996 (SBREFA), which requires the engagement with Small Entity Representatives (SERs) that will be subject to and effected by regulation proposed by the CFPB.

The CFPB has estimated that the income generated by the largest issuers from late fees is approximately five times greater than the collection costs that the companies incur for late payment violations.[6] However, the data that the CFPB used to make this estimation was limited to large banks,[7] where small financial institutions made no appearance. There are many things that separate small institutions from larger ones, but one of those things is that smaller institutions are not afforded the benefits of economies of scale. As such, there are some credit unions whose collection departments consist of one or two people making phone calls and doing their best to work with the member in their given situation. These collection efforts are not five times less than the fee charged for late payment. In fact, it's more likely that estimates could trend in the other direction for these institutions in that collection efforts often cost more than what fee income would cover.

Moreover, small institutions do not have the ability to perform all necessary components required to provide credit card services to their members. While many can take loan applications, underwrite and collect in-house, those same entities are also contracting with credit card payment processors and other service providers to ensure the full availability of their credit card programs. These third-party servicers often have more control over a credit union's fee structure than the credit union itself; and yet, these service providers are not included in the CFPB's calculus. Importantly, the CFPB has not assessed the impact this proposed rule could have on small institutions and, until it does so, this rule should not be implemented as it is currently written.

Credit Unions Are Not Taking Advantage of Consumers

In April, Director Chopra published a blog[8] noting that average interest rates were going over 20% and referenced the Federal Reserve's current g19[9] data summary. This dataset shows that average credit card interest rates across reporting banks was 20.09%, which marks an increase of over 5% since Q1 of 2022. The National Credit Union Administration publishes similar data on a quarterly basis. For Q1 of 2023,[10] the national average rate for credit cards offered by credit unions was 12.27%, a nearly 8% difference from the FRB's reported national average. Looking back to Q1 of 2022,[11] the average rate was 11.21%. Shown in tabular format:

[6] https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees/
[7] https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees-revenue-collection-costs-large-bank_2023-01.pdf
[8] https://www.consumerfinance.gov/about-us/blog/credit-card-debt-hits-new-high-cfpb-is-focusing-on-ways-to-increase-competition-and-reduce-costs/
[9] https://www.federalreserve.gov/releases/g19/current/, current as of February 2023.
[10] https://ncua.gov/analysis/cuso-economic-data/credit-union-bank-rates/credit-union-and-bank-rates-2023-q1
[11] https://ncua.gov/analysis/cuso-economic-data/credit-union-bank-rates/credit-union-and-bank-rates-2022-q1

	Federal Reserve Data	NCUA Data	Difference
Q1 2023	20.09%	12.27%	7.82%
Q1 2022	14.56%	11.21%	3.35%
Difference	5.53%	1.06%	

Seen above is evidence of the claim that credit unions return profits to the membership; in this instance, in the form of lower interest rates. Moreover, according to the CFPB's own data, almost all of the largest credit card issuers charge late fees at or near the maximum regulatory amount, whereas credit unions charge a maximum late fee of $25 or less.[12] Moreover, as highlighted in a comment submitted by NAFCU[13] in response to the CFPB's ANPR on this topic last year, NAFCU noted that, in response to a survey sent to their membership, their membership noted that their credit card late fees were fixed: most credit union charged $25 or less, some charged $20, while others charged 5% of the minimum payment due up to $25. NAFCU also noted that respondents indicated that they do not increase their late payment fee in the event a subsequent late payment fee was necessary, as doing so increases the chances of default and collectability, but more so because credit unions are dedicated to helping their membership achieve financial health and arbitrarily and unnecessarily increasing late fee amounts – even though the rules allow for it – is anathema to that mission.

Proposed Regulatory Action is Misguided

For all of the reasons addressed in this comment, the regulatory revisions proposed by the CFPB are misguided in that they are derived from incomplete information and, because of this, would cause undue harm to the credit unions who *do* have the best interest of their members in mind. This is a similar conclusion to what we had reached in our response to the CFPB's RFI on overdraft fees last year. Due to changing market forces resultant from the coronavirus pandemic and the subsequent economic fallout have led to an industry-wide eye-opening of the realities of the economy and its adverse effects on low-income and marginalized communities. It is also clear that these same economic forces have resulted in some larger institutions increasing their fees over and above what would be warranted, citing inflationary pressures as the cause. Surely, this activity would be exploitative. It is equally clear that missing a payment, what was once assumed to be a consumer behavioral choice is now better understood to be a consumer financial condition brought about by economic externalities far outside of any individuals' control. Depressed incomes and elevated inflationary pressures create a need for credit access, which can trap consumers in debt cycles that take years to escape. Our credit unions are aware of this propensity and, as noted at the start, underwrite more conservatively as both a portfolio risk mitigant and as a duty to serve their members' financial well-being – trapping their own membership in a debt spiral is not conducive to financial well-being, nor is charging excessive and increasing fees for late and subsequently late payments. Our messaging has always been strong on this matter.

With that in mind, it appears evident that the CFPB is aware of the underlying causes behind the issues they wish to correct: they are aware that these issues exist primarily among the largest players, but not among the smallest. Yet, the proposed rule creates a scenario where both large and small institutions would need

[12] https://www.consumerfinance.gov/data-research/research-reports/credit-card-late-fees/

[13] https://www.nafcu.org/system/files/files/8.01.2022%20NAFCU%20Comment%20Letter%20to%20CFPB%20re%20ANPR%20on%20Credit%20Card%20Late%20Fees.pdf

to comply, effectively correcting the one and harming the other. We are not the nail the CFPB wishes to hammer, and yet we will ultimately be affected by blow. Because of this, we urge the CFPB to seek alternative solutions. As highlighted in the previous section, credit unions are at the head of the pack as it relates to charging reasonable fees. Likewise, we are at the head of the pack with regard to our annual percentage rates, as well. The CFPB would do well to engage with smaller institutions directly to understand what they are doing, why they are doing it, and use that information to better inform their regulatory decisions. The CFPB should be seeking to champion these institutions and use them as examples rather than include them in the same, inflammatory, "junk fees" language applied to the target issues.

Conclusion

On behalf of Michigan's credit unions, thank you for your consideration. If you have questions or require additional information related to our comments, you may contact me at Bradley.Willett@mcul.org or (734)793-3410.

In cooperation,

Bradley Willett

Bradley Willett
Director of Compliance and Regulatory Affairs