



August 1, 2022

Comment Intake—Credit Card Late Fees
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Submitted electronically
to regulations.gov

RE: CFPB-2022- 0039; Credit Card Late Fees and Late Payments

Dear Sir or Madam,

The Dakota Credit Union Association (DakCU), which represents state and federally chartered credit unions in the states of North Dakota and South Dakota, appreciates the opportunity to provide comment to the Consumer Financial Protection Bureau (CFPB) regarding its Advanced Notice of Proposed Rulemaking (ANPR) concerning credit card late fees and late payments.

DakCU would oppose any regulatory change that could have the potential of reducing or eliminating the safe harbor under 12 CFR 1026.52(b)(1)(ii) as it would impact credit card products that credit unions offer their members, especially a small credit union's offerings. Reducing or eliminating the safe harbor for late fees could reduce credit access and/or increase the cost of credit, negatively impacting the consumer.

On May 22, 2009, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) was signed into law. The CARD Act amended the Truth in Lending Act (TILA), which is implemented by Regulation Z, to establish disclosure requirements to establish fair and transparent practices pertaining to open-end consumer credit plans. *75 FR 37526, June 29, 2010.*

Relevant to this ANPR, the CARD Act also addressed reasonableness and proportionality of penalty fees and charges (new TILA Section 149) which were effective August 22, 2010. The Federal Reserve Board (FRB) issued a final rule to implement this provision on June 29, 2010. With regard penalty fees, in developing these rules, the FRB was guided by the direction of the CARD Act, which required the FRB to consider: "(1) The cost incurred by the creditor from an omission or violation; (2) the deterrence of omissions or violations by the cardholder; (3) the conduct of the cardholder; and (4) such other factors as the Board may deem necessary or appropriate. The Credit Card Act authorizes the Board to establish "different standards for different types of fees and charges, as appropriate." Finally, the Act authorizes the Board to "provide an amount for any penalty fee or charge * * * that is presumed to be reasonable



and proportional to the omission or violation to which the fee or charge relates.” 75 FR 37526, June 29, 2010.

The FRB’s final rule implemented the CARD Act’s penalty fees under 12 CFR 226.52(b), limitation on fees (currently 12 CFR 1026.52(b)). The FRB included the safe harbor in its final rule, as provided for under the CARD Act, which states, “A card issuer may impose a fee for violating the terms or other requirements of an account if the dollar amount of the fee does not exceed: (A) For the first violation of a particular type, \$25.00, adjusted annually by the Board to reflect changes in the Consumer Price Index; (B) For an additional violation of the same type during the next six billing cycles, \$35.00, adjusted annually by the Board to reflect changes in the Consumer Price Index; or (C) When a card issuer has not received the required payment for two or more consecutive billing cycles for a charge card account that requires payment of outstanding balances in full at the end of each billing cycle, three percent of the delinquent balance.” 75 FR 37572, June 29, 2010. The CFPB annually adjusts these safe harbor thresholds to reflect changes in the Consumer Price Index. The current safe harbor, reflected at 12 CFR 1026.52(b)(1)(ii) caps the amounts at \$30 for the first violation and \$41 for subsequent violations.

As explained in the 2010 final rule, “the Board believes that, as a general matter, the safe harbor amounts in § 226.52(b)(1)(ii)(A) and (B) are reasonable and proportional to violations of the terms and other requirements of an account....these amounts are based on the statutory factors listed in new TILA Section 149(c) and on the Board’s analysis of the data and other information discussed in the proposal and submitted by commenters. Specifically, the safe harbor amount in § 226.52(b)(1)(ii)(A) is generally intended to represent a reasonable proportion of the costs incurred by most card issuers as a result of a single violation of the terms or other requirements of an account. In contrast, the higher safe harbor amount in § 226.52(b)(1)(ii)(B) is intended to represent the increased costs incurred as a result of additional violations of the same type during the next six billing cycles as well as to address the consumer conduct that leads to such violations and to deter subsequent violations.” 75 FR 37540, June 29, 2010.

The CFPB has issued this ANPR in its role of “monitoring for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.” 87 FR 38679, June 29, 2022. DakCU believes this probe is unnecessary and just an extension of the posturing the CFPB took in its request for information concerning fees, or as the CFPB labeled it “junk fees” earlier this year. As the CFPB is well aware, credit card late fees, among other fees, are subject to regulatorily mandated clear and concise agreements and disclosures.

Credit unions are not-for-profit financial cooperatives. Unlike for-profit financial institutions, credit unions do not exist to provide revenue for outside stockholders or a handful of owners. The consumers (members) who obtain financial products and services from a credit union are owners of the credit union. Credit unions are run by a board of directors that are elected from the credit union’s membership. Fees



are agreed upon and set by these representatives of the membership. Beyond not incurring a particular fee in the first place, if the membership did not want to pay a particular fee or the amount of the fee, change can be made through the democratic process that exists at every credit union. Credit unions and their elected board of directors are in the best position to determine what is best for their membership.

Thank you for this opportunity to share our comments and concerns.

Respectfully,

A handwritten signature in black ink that reads "Amy Kleinschmit". The signature is written in a cursive, flowing style.

Amy Kleinschmit
Chief Compliance Officer