OHIO CREDIT UNION LEAGUE

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: Comment Letter – Credit Card Penalty Fees (Regulation Z)
Docket No. CFPB-2023-0010; RIN 3170-AB15

To Whom it May Concern,

The Ohio Credit Union League (OCUL) represents the collective interests of Ohio's 227 credit unions and their more than three million members. Of those 227 credit unions, 123 are federally chartered; 59 state-chartered, federally insured; and 45 state-chartered, privately insured, with an average asset size of $195 million. OCUL appreciates the opportunity to comment on Consumer Financial Protection Bureau's (CFPB's) proposed rule that would (1) adjust the safe harbor dollar amount for late fees to $8 and eliminate a higher safe harbor dollar amount for late fees for subsequent violations of the same type; (2) provide that the current provision that provides for annual inflation adjustments for the safe harbor dollar amounts would not apply to the late fee safe harbor amount; and (3) provide that late fee amounts must not exceed 25 percent of the required payment.

As prudentially regulated, member-owned, not-for-profit financial cooperatives, Ohio credit unions serve as a shining example of consumer empowerment in competitive financial services. From democratically controlling board activity to influencing a suite of customized, consumer-specific financial services and products, Ohio credit union members choose membership with their credit union and often endorse their credit union's service model and fee structure by simply choosing to remain a member.

OCUL appreciates the opportunity to provide expert feedback and guidance to the CFPB and policymakers on the oversight of consumer financial markets to attain fairness and transparency while preserving competition. OCUL believes optimal regulation occurs when the regulators and the regulated collaborate on safety, soundness, and consumer protection priorities without negatively impacting operational viability and mission achievement. As such, OCUL remains steadfast in its opposition of the CFPB's continued commitment to impose arbitrary and capricious regulations, restrictions, and limitations of otherwise highly regulated, competitively driven, and transparent financial service fees.

I. Setting an $8 cap on credit card late fees is arbitrary, stifles competition, and sacrifices not just member security, but financial service optionality.

Cards, compliance, and cyber security all have a cost, and cutting protections for credit card providers is more likely to price smaller, community-based financial institutions, like credit unions, out of the market, than it is to provide a material benefit to the consumer. Credit card fees are the only deterrent credit unions have at their disposal to influence consumer behavior in the event credit card account misuse, and in appropriate circumstances, often provide credit unions the opportunity to engage with the member by waiving or not charging late fees. Further, a recent CFPB study cited that "18 of the top 20 issuers set late fees at or near the established maximum level;"[1] however, upon further review, the

[1] CFPB Initiates Review of Credit Card Company Penalty Policies Costing Consumers $12 Billion Each Year, June 22,

report also noted that "Most smaller banks and credit unions charge a maximum late fee of $25 or less. . ."[2] OCUL believes the CFPB's data and analysis highlights the responsible and fair service credit unions provide consumers and encourages the agency to focus fee regulation on predatory market players rather than not-for-profit, member-owned financial cooperatives. One-size-fits-all regulatory price-fixing such as this will inhibit the ability for smaller, community-based credit unions from offering services their members need to take care of their finances and families. This unintended effect could potentially reward unregulated entities with greater scale and reach to provide services credit unions can no longer afford to offer as a safe lending alternative.

The ongoing "junk fee" narrative, and its inference that all financial institutions over profit from abusive fee tactics, is damaging to financial cooperatives that operate for the sole benefit of members. Operational income derived from service fees, such as late fees, is a vital prong of credit union success, supporting member service delivery. Unlike "junk" fees, credit union service fees are tied to a service being rendered; moreover, the service being rendered is often at the discretion and control of the member. The CFPB's latest focus on credit card fees is another misguided attempt to dictate a price on already heavily regulated and transparent fee structures and disclosures. CFPB Director Chopra consistently prioritizes competitively driven, reasonable, explainable fees, yet the consideration of establishing an $8 credit card late fee limit appears to be arbitrary and limiting. Financial services and products come with a calculable cost, and the fees associated with them help offset service delivery costs of other member needs and demands.

Additionally, with this rulemaking, the CFPB is missing an opportunity to further protect small institutions from unintended consequences by conducting a Small Business Regulatory Enforcement Act (SBREFA) panel to analyze the rule's potential impact. The exact, defined purpose of a SBREFA panel is to ensure that one-size-fits-all rulemaking does not have an overwhelmingly negative impact on small businesses. This proposed rule may result in less access to credit for the consumers credit unions serve, many in low-income and underserved populations. If fees are reduced as a result of this rulemaking, the likely outcome is that institutions will be forced to raise the price of checking and savings accounts or other loan products and reduce the benefits of other financial programs. This proposed rule, if finalized in its current form, will do little to help people, families, businesses, and communities navigate a challenging economic environment.

Therefore, OCUL encourages the CFPB to exercise its statutory obligations under the SBREFA to further analyze the potential risks and unintended consequences within this proposal to community-focused financial institutions and their member-owners.

II. Restricting the safe harbor fee adjustments without regard to inflation is dangerous, stifles competition, and only serves to hurt financial institutions rather than protect consumers.

This proposed rule's intended effect is to save consumers money, but there is a very real likelihood that this proposed rule creates financial uncertainty, which in turn, sacrifices consumer access to safe, affordable credit for millions of Americans who rely on it to afford daily life. The CFPB argues that not allowing inflation to be used to increase fees will limit the arbitrary increases of fees across the board. However, that argument, facially, omits the reality that inflation, the cost of doing business, and the

2022. https://www.consumerfinance.gov/about-us/newsroom/cfpb-initiates-review-of-credit-card-company-penalty-policies-costingconsumers-12-billion-each-year/

[2] Credit Card Late Fees. Consumer Financial Protection Bureau. March 2022. https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf

impact it has on financial institutions is real. This proposed rule, *ipso facto*, implies that the CFPB has the authority to determine what is, and is not, and an appropriate fee amount. Government interference with free-market based principles, such a price setting, leads to a regulatory slippery slope in which competition is policy-dictated rather than market-driven.

Additionally, the CFPB barring a fee adjustment commensurate with inflation, or the cost of living is regulatorily challenging. Just recently, in January 2023, the CFPB granted itself the ability to raise its own civil penalty authority to match inflationary, or cost of living, increases.[3] In that rule, the CFPB argues the increases are necessary to keep pace with inflation so that civil penalties retain their deterrent effect and promote compliance with the law.[4] The CFPB's current rulemaking seemingly argues an opposing stance that categorizes inflation-driven, consumer fees aimed at deterring unfavorable behavior as predatory, uncompetitive, and harmful.

Therefore, OCUL strongly opposes this proposal and the capping of the safe harbor late fee amount. Any reduction in late fee safe harbors will most likely have an unintended, negative impact, especially on many small, community-based credit unions.

III. Setting a credit card late fee cap of no more than 25% of the required payment will produce more unintended, negative consequences than it will provide protection to consumers.

The CFPB argues that setting a cap on late fees to 25 percent of the required payment will prevent predatory institutions from overcharging consumers on late payments on relatively low balances. However, the more likely outcome is that lenders will increase the minimum payment requirements so they can charge a higher fee. This cap will force consumers to either pay a larger late fee or be forced to pay a higher required installment payment. The CFPB states the 25 percent cap will put an end to delinquent consumers paying more for a one-time late fee than what is required for a fixed and recurring payment. However, this notion fails to consider the reasons behind a late fee or minimum payment level as well as the total amount of outstanding debt across all accounts.

OCUL opposes the CFPB proposed rule to set a cap of no more than 25 percent of the required payment as it will arbitrarily inflate costs for both institutions and the consumers. OCUL strongly believes the best solutions and agreements are the ones created between the member-owners and their not-for-profit financial cooperatives, and this rule diminishes the opportunity for one-on-one financial counseling.

OCUL appreciates the opportunity to engage with the CFPB on credit card late fees and the effect they have not only on consumers, but also the financial institutions that rely on them. However, OCUL opposes the CFPB's proposal to restrict, limit, or impose government set price controls on well-regulated credit unions and their safe and soundly designed financial products.

Respectfully,

Paul L. Mercer
President

Sean M. Brown, Esq.
Director, Regulatory Affairs

[3] Civil Penalty Inflation Adjustments, January 3, 2023. Document Number: 2022-28442; CFR:12 CFR 1083. https://www.federalregister.gov/documents/2023/01/03/2022-28442/civil-penalty-inflation-adjustments.
[4] Id.