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Lawsuit Seeks To Prevent CFPB Cap On Credit Card Fees

A group of US associations have jointly filed a lawsuit challenging a rule introduced by the Consumer Financial Protection Bureau (CFPB) limiting credit card late fees.

The lawsuit was filed in the US District Court for the Northern District of Texas and accompanied by a motion for a preliminary injunction barring the CFPB from implementing the new rule until the court makes a final decision.

The groups that filed the lawsuit include the US Chamber of Commerce, American Bankers Association (ABA), Fort Worth Chamber of Commerce, Longview Chamber of Commerce, Consumer Bankers Association (CBA) and Texas Association of Business.

The filing challenges the CFPB's decision to reduce from $32 to $8 the immunity provision in the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009.

The act states that card issuers can only charge fees that recover the costs associated with late payments, but includes an immunity provision if issuers charge no more than $25 for the first late payment and $35 for subsequent payments. Both amounts can be adjusted for inflation each year.

The CFPB adopted the rule on the basis that credit card issuers are profiting from charging cardholders fees for making late payments that do not reflect the actual costs they incur. Under the new rule, companies that charge more than $8 will need to demonstrate that the lower amount is not sufficient to cover their costs in dealing with late payments.

The co-plaintiffs stated that they are suing the CFPB for:

- Violating the CARD Act by preventing issuers from charging cardholders "reasonable and proportional late fees".

- Violating the Administrative Procedure Act (APA) by introducing an "arbitrary and capricious" final rule that relies on "secret data collected from only the largest banks for a different purpose and by a different agency" to estimate card issuers' costs.

- Violating the Dodd-Frank Act (DFA) by failing to sufficiently consider the costs to consumers, including reduced access to credit.

- Violating the Truth in Lending Act (TILA) by failing to implement an effective date of October 1 as required under new consumer-credit disclosures.

- Issuing the rule with funds drawn in violation of the US Constitution's Appropriations Clause.

"The CFPB's action to cap credit card late fees below banks' actual costs exceeds its authority and would result in more late payments, increased debt, reduced credit access and higher APRs for all consumers — including the vast majority of card holders who pay on time each month," said Rob Nichols, president and CEO of the ABA.

"Once again, we have reluctantly been forced to sue a federal regulator because the CFPB has ignored industry and other stakeholder comments demonstrating that this rule exceeds the bureau's statutory authority and will hurt rather than help consumers. This rule is about politics not policy, and we look forward to the court's review."

The fee limit discourages responsible credit card use, imposes higher costs on consumers and limits consumer choice, stated Neil Bradley, executive vice president, chief policy officer and head of strategic advocacy at the US Chamber of Commerce.

"The agency's own analysis has found that by limiting late fees, associated costs will be passed onto all credit card users, even those who have never made a late payment. The CFPB is acting outside its authority and the chamber's lawsuit seeks to protect American cardholders who pay their bills on time and enjoy the numerous benefits of diverse credit card offerings from America's financial institutions," Bradley added.

The CBA stated that the rule will have a drastic impact on the credit card landscape and potentially harm consumers' long-term financial health.

“For the 74 percent of consumers that pay their bills on time, this is consumer redistribution, not consumer protection. The CFPB concedes that this rule could increase the cost of credit by as much as two percentage points,” CBA president and CEO Lindsey Johnson said.

“Further, an $8 penalty fee harms the minority of consumers that the CFPB purports to be helping. The CFPB’s rule makes it easier for consumers to pay late on their credit card bills. But late payments have deeper and longer-lasting impacts to consumers’ financial health than late fees — such as ballooning payments and damaged credit scores.”

Consumer groups support CFPB rule

Consumer advocacy groups, however, support the rule as they contend it will save consumers from having to pay excessive fees that they cannot afford.

“This rule will save consumers more than $10bn, letting people keep their hard-earned dollars in their pockets instead of forfeiting them to huge corporations,” said Chi Chi Wu, senior attorney at the National Consumer Law Center (NCLC). “The CFPB’s credit card late fee rule will help the balance sheets of millions of households stretched thin by record-high housing costs and other expenses.”

“The CFPB showed its math when it established an $8 safe harbour for credit card late fees,” added Lauren Saunders, NCLC’s associate director. “That’s how good, data-driven regulation is done.”

In an October 2023 report to Congress, the CFPB found that in 2022 late payment fees were the highest and most frequent type of fees charged to credit card holders. The bureau has also found that excessive late fees potentially affect a consumer’s ability to make future payments on the account on time.

“The $8 cap on allowed late fees not only relieves American families from burdensome charges, it also brings credit card practices back in line with the statutory requirements of longstanding federal laws,” said Ira Rheingold, executive director of the National Association of Consumer Advocates (NACA).

The CFPB expects the rule to prompt card issuers to find other ways to encourage borrowers to pay on time, as late fees will no longer be a source of income.

“This rule is a huge boost for consumers, ensuring that the largest credit card issuers can no longer indiscriminately hike late fees and charge their customers an amount that is unreasonably disproportionate to the cost of doing business,” said Christine Hines, NACA’s senior policy director.

“The Bureau has taken a huge step in tackling oppressive penalties in banking and credit card services.”

Jurisdictions

United States

Authorities

American Bankers Association

Consumer Financial Protection Bureau

Specialisms

Customer Protection

Products And Services

Bank Accounts