May 3, 2023

Honorable Rohit Chopra, Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

RE: Credit Card Penalty Fees Docket No. CFPB-2023-0010

Proposed Rule, 12 CFR 1026

Dear Director Chopra:

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), whose combined strength makes up one of the largest state trade associations for credit unions in the United States, representing the interests of approximately 230 credit unions and their more than 11.6 million members.

In March 2023, the Consumer Financial Protection Bureau (CFPB) proposed to amend Regulation Z, which implements the Truth in Lending Act (TILA), concerning late fees charged on credit card accounts. The proposal would: (i) 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; (ii) 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 (iii) provide that late fee amounts must not exceed 25 percent of the required payment.

The Leagues welcome the opportunity to comment to CFPB on the proposed rule regarding credit card penalty fees. However, we have significant concerns regarding the proposal and respectfully offer the following comments.

- **Proposed Change to Late Fee Safe Harbor Amount**

The proposal would amend §1026.52(b)(1)(ii) to lower the safe harbor dollar amount for late fees from $30 to $8, and to eliminate the higher safe harbor dollar amount of $41 for subsequent violations of the same type that occur during the same billing cycle or in one of the next six billing cycles.

We have serious concerns about the above proposed amendments, and therefore we do not support any action that would require changes to the current regulation. The following outlines our specific concerns:

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a. Fees Are Often Driven by Consumer Behavior

Certain fees related to consumer financial services, such as late fees, are directly driven by consumer behavior, as opposed to a mandatory or quasi-mandatory cost of opening or utilizing the account. These fees serve several important purposes.

First, they are designed to impose the cost burden of the behavior on the specific consumers who generate the expense, rather than forcing all consumers to collectively subsidize their behavior.

In addition, these fees serve as a deterrent against poor financial account management practices, such as late payments. Late payments create a recognizable financial risk to a credit union that must be managed like any other risk. Limiting the potential consequences for risk behavior reduces the deterrent effect, which can lead to increased risk. The CFPB acknowledges this fact in the proposal by stating "…[l]ate fees are a cost to consumers of paying late, and a lower late fee amount for the first or subsequent late payments might cause more consumers to pay late."

b. Proposed Late Fee Safe Harbor Can Potentially Harm Consumers

The proposal could prompt more consumers to pay late, or to make payments more often, which could have unintended adverse consequences for consumers. As noted above, a late fee is a deterrent to late payments. However, if the safe harbor is reduced to $8, the immediate deterrent effect is significantly reduced, which may encourage consumers to make late payments more frequently. Over time, this can end up costing consumers even more in fees due to their reinforced behavioral patterns. Moreover, repeated late payments could negatively impact the consumer's credit score and lead to account closure, resulting in reduced access to credit in the future.

A strong deterrent to late payments serves as a strong incentive to making timely payments and exercising sound financial management, which can ultimately improve a consumer's credit score and increase their access to credit at competitive rates.

We encourage the CFPB to carefully consider the potential for unintended consequences.

c. Fees Based on Costs

Credit unions that offer credit card programs do so not only to provide a much needed service to their members, but also to ensure that the credit card programs offered are safe and affordable for their members. However, financial services, such as credit cards, have associated costs, and collections are among them. It is reasonable for credit unions to assess the appropriate fees and recoup these costs should the need for collections arise.

The proposed $8 safe harbor limit would have a significant impact on a credit union's ability to recoup collection costs and support an effective collections program. Actual collection costs may

vary among institutions, depending on the size and scope of the institution, their lending program, and the number of services that are outsourced. Examples include the cost of infrastructure (e.g., software technology, telephone operations), employees who support collections, and attorney fees.

We believe a reduction of the safe harbor amount would drain credit union resources needed to support this function and, as a result, would have a significant impact on other areas of member service from which the necessary funds must be diverted.

d. Adverse Impact on Credit Union Credit Card Products

The CFPB acknowledges in the proposal that, "[b]ecause the proposal would significantly reduce the aggregate value of late fees paid by consumers, the proposal would significantly reduce late fee revenue for issuers," but then goes on to suggest that, "[i]ssuers can mitigate these costs of proposal to some extent by taking other measures (e.g., increasing interest rates…)." This is certainly not in the best interest of consumers, especially those who effectively manage their credit card accounts so as not to incur late fees.

The CFPB ultimately suggests that, "the reduction in late fees could affect consumer choices or market competition in ways that may create benefits or costs to issuers." The Leagues do not agree with the CFPB's outlook and point out that this approach is not as easy for credit unions as it would be for other credit card issuers. For example, increasing interest rates would be challenging for federally chartered credit unions, as they are subject to a statutory interest rate cap. The Federal Credit Union Act (FCU Act)[1] generally limits federal credit union interest rates at 15 percent, but provides the National Credit Union Administration (NCUA) board limited ability to increase the interest rate ceiling in certain instances. The NCUA board recently voted to continue the temporary 18 percent interest rate ceiling for loans made by federal credit unions through September 10, 2024.[2] Therefore, federal credit unions are unable to increase credit card interest rates higher than this 18 percent threshold as a means to recover lost fee revenue.

- **Other Considerations**

a. There is Competition in the Financial Marketplace

The Leagues would like to remind the CFPB that the proposal provides very little evidence to indicate that consumers lack the benefit of strong competition within the financial marketplace or that this change would do anything to enhance competition. Credit unions, in fact, must already compete not only with banks, but also with non-banking entities such as financial technology services (fintechs).

[1] 12 U.S.C. §1757(5)(A)(vi)(I).
[2] *See* NCUA Letters to Federal Credit Unions (**23-FCU-02/March 2023**)

This lack of evidence is also reflected in the CFPB's own reporting. The CFPB's January 2021 Taskforce on Federal Consumer Financial Law Report states that, in relation to consumer credit markets, there were "[n]ew entrants, innovative products, aggregate growth, reinvention of incumbents, and decline or departure of companies that could not keep pace with the others. These are the hallmarks of competitive markets."

As the only consumer-owned cooperatives in the financial services marketplace, credit unions have a stated mission that includes providing credit to members at competitive rates and a long tradition of protecting consumer interests. And the Leagues have consistently been a strong proponent of appropriate and sufficient safeguards designed to balance the need to ensure the safety and soundness of credit unions while providing financial opportunity for credit union members.

b. *Credit Union Fees are Subject to Rigorous Disclosure Requirements*

Consistent with the requirements of the Truth in Lending Act (TILA) and similar disclosure rules, credit unions are already subject to a number of rigorous disclosure requirements in order to ensure that consumers are adequately informed of the cost of obtaining credit, as well as the potential for fees triggered by certain consumer behaviors or choices. Consumers are generally made aware of their rights and of applicable consumer finance fees at account opening or prior to the service being accepted by the consumer. With credit cards accounts, for example, in addition to initial disclosures, credit unions must provide a change in terms notice in compliance with TILA prior to changing or adding new fees in order to allow the consumer an opportunity to either accept the fees and continue using the product or service, or to select another appropriate product or service.

In addition, certain regulations, including many of the CFPB's own regulations, already provide safe harbor disclosures and language, such as those discussed in this proposal. These safe harbor forms are created to ensure that credit unions are transparent with consumers about upfront costs and related terms and conditions.

c. The Credit Union Difference

Because credit unions are nonprofit financial cooperatives owned by their members, they have traditionally worked hard to minimize fees on products and services, particularly for consumers of modest means, and to offer opportunities for financial education and empowerment. Credit unions exist for the financial benefit of their member-owners, but they are ultimately driven by the philosophy of people-helping-people.

As such, credit unions want their members to be successful and pay on time. Credit unions often work with their members by offering free services such as online banking and mobile banking, allowing members to easily check their account balances daily and receive account alerts for payment reminders. Technology provides convenience and ease for members to better manage their finances with the goal of avoiding the practices that trigger the risk and the resulting fees.

Conclusion

The Leagues remind the CFPB that credit unions are the original consumer financial protection advocates. While the Leagues support the CFPB's intention to protect consumers and ensure that fees charged are reasonable, we have significant concerns with the practicality and implementation of the proposal, and its potential for unintended adverse consequences. We believe that the CFPB's proposed $8 safe harbor amount would ultimately harm the very consumers it desires to protect, and that the excessive requirements would have the potential to divert credit unions' resources and attention away from their primary mission – to meet their members' financial needs.

We thank you for the opportunity to comment on the proposal and for considering our views. If you have any questions regarding our comments, please do not hesitate to contact me.

Sincerely,

Diana R. Dykstra
President/CEO
California and Nevada Credit Union Leagues