Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2022–0039]

Credit Card Late Fees and Late Payments

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In order to support its rulemaking and other functions, the Consumer Financial Protection Bureau (Bureau or CFPB) is charged with 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. As part of this mandate, the Bureau is seeking information from credit card issuers, consumer groups, and the public regarding credit card late fees and late payments, and card issuers' revenue and expenses. For example, the Bureau is seeking information relevant to certain provisions related to credit card late fees in the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act or the Act) and Regulation Z. Areas of inquiry include: factors used by card issuers to set late fee amounts; card issuers' costs and losses associated with late payments; the deterrent effects of late fees; cardholders' late payment behavior; methods that card issuers use to facilitate or encourage timely payments, including autopay and notifications; card issuers' use of the late fee safe harbor provisions in Regulation Z; and card issuers' revenue and expenses related to their domestic consumer credit card operations.

DATES: Comments must be received by July 22, 2022.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB–2022–0039 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email: 2022-CreditCard LateFeeANPR@cfpb.gov.* Include Docket No. CFPB–2022–0039 in the subject line of the message.
3. *Mail/Hand Delivery/Courier:* Comment Intake—Credit Card Late Fees, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by hand delivery, mail, or courier.

Instructions: The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *https://www.regulations.gov.* In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern time. At that time, you can make an appointment to inspect the documents by telephoning 202–435–7275.

All submissions in response to this notice, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

If you wish to submit trade secret or confidential commercial information, please contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section below. Information that the submitter customarily and actually keeps private will be treated as confidential in accordance with the Bureau's Rule on the Disclosure of Records and Information, 12 CFR part 1070.

FOR FURTHER INFORMATION CONTACT: Adrien Fernandez, Counsel, Krista Ayoub and Steve Wrone, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In order to support its rulemaking and other functions, the Bureau is charged with 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. As part of this mandate, the Bureau is seeking information from credit card issuers, consumer groups, and the public regarding credit card late fees and late payments and card issuers' revenue and expenses. For example, the Bureau is seeking information relevant to certain provisions related to late fees in the CARD Act [1] and Regulation Z.[2]

Specifically, section 149(a) of the CARD Act provides that the amount of any penalty fee or charge that a card issuer may impose with respect to a credit card account under an open-end consumer credit plan in connection with any omission with respect to, or violation of, the cardholder agreement, including any late payment fee, over-the-limit fee, or any other penalty fee or charge, must be reasonable and proportional to such omission or violation.[3] Section 149(b) of the Act directs the Bureau [4] to issue rules that establish standards for assessing whether the amount of any penalty fee or charge is reasonable and proportional to the omission or violation to which the fee or charge relates.[5] In issuing such rules, the Act requires the Bureau 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 Bureau may deem necessary or appropriate. The Act

[1] Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), Public Law 111–24, 123 Stat. 1734 (2009).

[2] 12 CFR part 1026.

[3] 15 U.S.C. 1665d(a).

[4] The Dodd-Frank Act, which became law on July 21, 2010, established the Bureau and, one year later, transferred authority and responsibility for implementing and enforcing the CARD Act from the Board to the Bureau.

[5] 15 U.S.C. 1665d(b).

authorizes the Bureau to establish different standards for different types of fees and charges, as appropriate.[6] Finally, the Act authorizes the Bureau in consultation with other agencies 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.[7]

Section 149(a) and (b) of the CARD Act is implemented in part in Regulation Z, § 1026.52(b)(1). In particular, under § 1026.52(b)(1), a card issuer must not impose a fee for violating the terms or other requirements of a credit card account, including a late payment, unless the issuer has determined that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the issuer for that type of violation consistent with § 1026.52(b)(1)(i) or complies with the safe harbor amounts consistent with § 1026.52(b)(1)(ii).[8] Currently, § 1026.52(b)(1)(ii) sets forth a safe harbor of $30 generally for a late payment, except that it sets forth a safe harbor of $41 for each subsequent late payment within the next six billing cycles. The safe harbor dollar amounts in § 1026.52(b)(1)(ii) are subject to an annual inflation adjustment.[9] A card issuer is not required to use the cost analysis in § 1026.52(b)(1)(i) to determine the amount of late fees if it complies with the safe harbor amounts in § 1026.52(b)(1)(ii).[10]

The questions in this notice cover several areas relating to the forgoing statutory and regulatory provisions, as well as areas relating more generally to the domestic consumer credit card market. Areas of inquiry include: factors used by card issuers to set late fee amounts, including but not limited to the statutory factors described above; card issuers' costs and losses associated with late payments; the deterrent effects of late fees; cardholders' late payment behavior; methods that card issuers use to facilitate or encourage timely payments, including autopay and notifications; card issuers' use of the late fee safe harbor provisions in Regulation Z, § 1026.52(b)(1)(ii); and card issuers' revenue and expenses related to their domestic consumer credit card operations. In answering the questions below, card issuer commenters should base their answers on information relevant to their domestic consumer credit card portfolios. Other commenters should base their answers on information they have about the domestic consumer credit card market.

II. Questions

A. Factors Used by Card Issuers To Set Existing Levels of Late Fees

1. For late fees assessed to cardholders who were not previously assessed a late fee in at least one of the previous six billing cycles, what factors do card issuers use to determine the amount of the late fee to charge per incident? For card issuer commenters, please list and describe factors that you consider in determining the late fee amount to charge per incident including:

a. Whether, and if so how, you determine that the late fee amount is proportionate or otherwise related to the cost you incur from a late payment;

b. Whether, and if so how, you determine that the late fee amount is proportionate or otherwise related to the statement balance or amount of the required minimum payment (beyond the restrictions in § 1026.52(b)(2));

c. Whether, and if so how, you take into account the number of late fees you estimate you would be unable to collect;

d. Whether, and if so how, you determine the late fee amount based on annual revenue goals;

e. Whether, and if so how, you take into account information related to whether and to what degree the amount of a late fee deters future late payments or other violations; and

f. Whether, and if so how, you take into account any other factors.

2. For late fees assessed to cardholders who were previously assessed a late fee in at least one of the previous six billing cycles, what factors do card issuers use to determine the amount of the late fee to charge per incident? For card issuer commenters, please list and describe factors you consider in determining the late fee amount to charge per incident including:

a. Whether, and if so how, you determine that the late fee amount is proportionate or otherwise related to the cost you incur from a late payment;

b. Whether, and if so how, you determine that the late fee amount is proportionate or otherwise related to the statement balance or the amount of the required minimum payment (beyond the restrictions in § 1026.52(b)(2));

c. Whether, and if so how, you take into account the number of late fees you estimate you would be unable to collect;

d. Whether, and if so how, you determine the late fee amount based on annual revenue goals;

e. Whether, and if so how, you take into account information related to whether and to what degree the amount of a late fee deters future late payments or other violations; and

f. Whether, and if so how, you take into account any other factors.

B. Costs and Losses

3. What types of costs are associated with credit card late payments? For card issuer commenters, please provide an itemization of the annual amounts in 2019, 2020, and 2021 aggregated for your domestic consumer credit card portfolios for the following categories:

a. Costs associated with notifying (other than through periodic statements) cardholders of delinquencies and resolving delinquencies (including the establishment of workout and temporary hardship arrangements) prior to charge-off, including payments to third-party debt collectors;

b. Costs associated with notifying (other than through periodic statements) cardholders of delinquencies and resolving delinquencies (including the establishment of workout and temporary hardship arrangements) post-charge-off, including payments to third-party debt collectors;

c. Charges to the card issuer by other third parties as a result of late payment;

d. Losses due to non-payment;

e. Costs associated with holding reserves against potential losses; and

f. Costs of funding delinquent accounts.

4. What is the amount of costs associated with a single additional late payment? For card issuer commenters, please list, describe, and report the amount of marginal costs associated with a single additional late payment incurred by you. For card issuer commenters, please also list, describe, and report the amount of average costs associated with collecting late payments. Please distinguish between pre-charge-off and post-charge-off costs when appropriate, and exclude losses due to non-payment, costs associated with holding reserves, and costs of funding delinquent accounts.

5. Please list and describe actions and methods through which a card issuer typically contacts cardholders about late payments (other than through periodic statements). For card issuer

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[6] 15 U.S.C. 1665d(d).

[7] 15 U.S.C. 1665d(e).

[8] The provisions in § 1026.52(b)(1) apply to penalty fees generally, including late fees. See comment 52(b)–1. Other restrictions on the amount of penalty fees, including late fees, are set forth in § 1026.52(b)(2). For example, § 1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a late fee that exceeds the amount of the required minimum periodic payment due immediately prior to assessment of the late payment fee. Comment 52(b)(2)(i)–1.

[9] 12 CFR 1026.52(b)(1)(ii)(D).

[10] See comment 52(b)(1)–1.i.A.

commenters, please report the general number of calendar days after the due date after which you typically undertake the following actions if the minimum payment is not received:

a. Contact cardholder about late payment (other than through periodic statements) prior to charging a late fee;

b. Contact cardholder about late payment (other than through periodic statements) after charging a late fee;

c. Report late payment to credit bureaus;

d. Initiate collection actions via first-party debt collection;

e. Initiate collection actions via third-party debt collection; and

f. Any other actions taken specifically with respect to collecting late payments.

6. How many late payments does a card issuer typically experience in a year, as a total and relative to the number of accounts? For card issuer commenters, please report the annual number of late payments experienced by you in 2019, 2020, and 2021, as a total per year, and also as a fraction of the number of accounts per year.

7. How many late fees does a card issuer typically assess in a year, as a total and as relative to the number of accounts? For card issuer commenters, please report the annual number of late fees assessed by you in 2019, 2020, and 2021, as a total per year, and also as a fraction of the number of accounts per year.

8. For card issuer commenters, for each of the following categories separately, please report the annual number in 2019, 2020, and 2021, as a total per year and relative to the number of accounts per year, of:

a. Late fees that you were not able to collect and whether these uncollectible amounts are more common for the first versus subsequent late fee charges; [11]

b. Late fees that were discharged in bankruptcy; and

c. Late fees that you were required to waive in order to comply with a legal requirement (such as a requirement imposed by Regulation Z or 50 U.S.C. app. 527).

C. Deterrence

9. Do card issuers, consumer groups, or the general public have any research or information related to whether and to what degree the amount of a late fee, including the higher safe harbor amount set forth in § 1026.52(b)(1)(ii)(B), does or does not deter future late payments and whether the deterrent effect differs for the first versus subsequent late payments? If so, please provide that research or information.

10. Do card issuers typically impose consequences other than late fees on cardholders for paying late? If so, what other consequences are generally imposed on cardholders for paying late? Do card issuers, consumer groups, or the general public have any research or information on how effective these other consequences are at deterring late payments? If so, please provide that research or information. When are these other consequences generally imposed? For card issuer commenters, please report the general number of calendar days after the due date after which the following actions typically will occur if the minimum payment is not received:

a. Lose grace period [12] on new transactions;

b. Revise upward purchase APRs on new transactions because of late payments that were not more than 60 days late;

c. Revise upward purchase APRs on new transactions and existing balance because of late payments that were more than 60 days late;

d. Lose benefits such as rewards; and

e. Any other consequences.

11. Are there other methods that card issuers typically use to deter late payments that are less costly to cardholders than late fees or the consequences listed above? If so, what are those methods? (See also questions below related to auto pay and notifications of an upcoming payment.)

D. Cardholder Behavior

12. What categories do card issuers use to classify cardholders based on their late payment behavior (*e.g.,* cardholders who (1) inadvertently forgot to pay; versus (2) cardholders who did not have the funds to pay by the due date)? For card issuer commenters, please provide data on what share of cardholders that pay late fall within each of these categories, or other typical classifications.

13. For card issuer commenters, please provide data on how many calendar days after the due date cardholders make at least the minimum payment that is late. Please indicate to what percent of accounts is at least the minimum payment received and credited within:

a. Less than 24 hours;

b. 2–5 days;

c. 6–10 days;

d. 11–15 days;

e. 16–30 days; and

f. 31 days or more.

14. Is there other cardholder conduct the Bureau should consider in evaluating potential changes to the safe harbor provisions in § 1026.52(b)(1)(ii)? If so, what is the other conduct and how should the Bureau consider it?

E. Autopay

15. Do most card issuers currently offer autopay? For card issuers that currently offer autopay, please describe the process that a cardholder must go through in order to enroll in autopay and any restrictions that you may place on the autopay feature (*i.e.,* the feature is only available to certain cardholders).

16. For card issuers that currently offer autopay, what is the current rate of cardholder enrollment?

17. For card issuers that currently offer autopay, are any benefits offered to cardholders to incentivize autopay enrollment?

18. What, if any, are the consumer-related concerns associated with cardholders' use of autopay? Do card issuers consider these concerns when determining whether to provide autopay or incentivize its use, and if so, how?

19. What are the benefits to card issuers of making autopay available to cardholders?

F. Notifications of Upcoming Due Date

20. Please list and describe actions and methods through which card issuers contact cardholders about an upcoming due date (other than through periodic statements). For card issuers that provide notifications about upcoming due dates (other than through periodic statements), do you require cardholders to opt in to these notifications or are all notifications of this type automatic for every cardholder?

21. For card issuers that provide notifications about upcoming due dates (other than through periodic statements), in the months after a cardholder is charged a late fee, do you change the frequency or method by which you communicate with cardholders that a payment due date is upcoming? If so, how long are these changes in effect?

G. Courtesy Periods and Fee Waivers [13]

22. Do any card issuers currently offer courtesy periods before late fees are

[11] Please do not include fees that you chose not to impose or chose not to collect (such as fees you chose to waive at the request of the cardholder or under a workout or temporary hardship arrangement).

[12] The grace period is the date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate.

[13] For the purposes of this section, a ''courtesy period'' refers to a policy or practice of a time period after the due date in which a late fee will not be assessed if at least the minimum payment is received and credited to the account during that

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assessed? For card issuers that offer courtesy periods, how many days is the courtesy period? Are there any restrictions associated with the courtesy period (*i.e.,* courtesy periods are only available to certain cardholders)?

23. Do any card issuers waive late fees if a cardholder contacts the issuer? If so, for card issuers that waive late fees, under what circumstances are late fees waived?

H. Staggered Late Fee

24. Do any card issuers currently offer staggered late fees (*i.e.,* a small dollar amount fee, such as $2–3, that is imposed no more often than every certain number of days, such as every 5 or 10 days)? For card issuers that offer staggered late fees, describe the structure and how the fee amounts and number of days between fee escalations were decided.

I. Safe Harbor Provisions

25. Other than the statutory factors listed in the CARD Act, are there other factors the Bureau should consider in evaluating potential changes to the safe harbor provisions in § 1026.52(b)(1)(ii)? If so, what are these other factors and how should the Bureau consider them?

26. For card issuer commenters, if you assess a late fee that is lower or greater than the current safe harbor amounts set forth in § 1026.52(b)(1)(ii), please describe why the safe harbor amount is not being charged and how you arrived at the amount charged.

27. What late fee safe harbor amount would be sufficient for purposes of allowing card issuers to recover, through late fees, their costs in collecting late payments?

28. Do card issuers incur higher costs when collecting late payments where a prior late payment occurred in the past six billing cycles (repeat late payments) relative to the costs of collecting late payments where there has not been a late payment in the prior six billing cycles? Please include any research or information relating to whether and to what degree the costs associated with repeat late payments differ from the costs associated with late payments where there has not been a late payment in the prior six billing cycles.

29. What potential changes to the safe harbor provisions, if any, would cause card issuers to no longer use the safe harbor provisions in determining the amount of late fees? In lieu of using the safe harbor provisions, would card issuers use the cost analysis in § 1026.52(b)(1)(i) to determine the amount of late fees?

30. Should the Bureau consider any alternative approaches to the cost analysis in § 1026.52(b)(1)(i) to determine the amount of late fees if the card issuer decides not to use the safe harbor provisions for determining late fees amounts?

J. Cost Analysis Provisions

31. Are any card issuers currently using the cost analysis provisions in § 1026.52(b)(1)(i) to set the amount of the late fees they charge? For card issuers that are using the cost analysis provisions, what is the amount of the late fees you charged in 2019, 2020, and 2021 based on this analysis?

32. For card issuer commenters, if you were to undertake the cost analysis described in § 1026.52(b)(1)(i) in determining the amount of the late fees you could charge, what would the late fee amount be? Please provide detailed information about the information you used to determine this late fee amount.

33. Would card issuers need additional detail on how to comply with the cost analysis provisions in § 1026.52(b)(1)(i) beyond what is currently provided in the commentary? [14] If so, what additional details are needed?

34. If the Bureau were to require card issuers to comply with the cost analysis provisions in § 1026.52(b)(1)(i) in determining the amount of the late fees they could charge, what additional process and procedures should the Bureau adopt, if any, to ensure that card issuers comply with these provisions?

K. Revenue and Expenses

35. For card issuer commenters, please itemize the types of revenue associated with your domestic consumer credit card operations and report overall annual revenue in 2019, 2020, and 2021 associated with your domestic consumer credit card operations, including the itemized annual income from the following categories:

a. Interest;

b. Fees;

c. Interchange revenue; and

d. Other income.

36. For card issuer commenters, please report revenue from late fees collected on your domestic consumer credit card accounts in 2019, 2020, and 2021. Please do not include any fee waived or reversed as uncollectible or any amount added to a contra-asset account for uncollectible fees that the bank maintains and reports separately from the allowance for loan and lease losses.

37. For card issuer commenters, please itemize the types of expenses associated with your domestic consumer credit card operations and report the overall annual expenses accrued in 2019, 2020, and 2021 associated with domestic consumer credit card operations, including the itemized annual expenses for the following categories:

a. The total interest expenses accrued to fund credit card receivables;

b. The interchange expense fees paid to the card associations;

c. Expenses to collect problem credit (including the total collection cost for delinquent, recovery, and bankrupt accounts);

d. Marketing expenses (including payments to retail partners); and

e. All other operating and other expenses associated with card operations such as servicing, cardholder billing, processing, interchange, processing payments, card issuing, authorizations, card administration, and outside services/outsourcing expenses, etc.

38. For card issuer commenters, please report the dollar amount of losses in 2019, 2020, and 2021 for your domestic consumer credit card portfolios.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

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time period, even if the terms of the account agreement provide that the card issuer may assess a late payment fee by a certain date.

[14] See commentary to § 1026.52(b)(1)(i) for existing details on the cost-analysis provisions under § 1026.52(b)(1)(i).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0674; Project Identifier AD–2021–00373–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2020–24–04, which applies to all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. AD 2020–24–04 requires revising the existing airplane flight manual (AFM) to incorporate