

Advocacy Submits Comments on the Consumer Financial Protection Bureau's Proposed Rule on Credit Card Penalty Fees

On May 3, 2023, the Office of Advocacy (Advocacy) submitted comments on the Consumer Financial Protection Bureau's (CFPB) notice of proposed rulemaking on Credit Card Penalty Fees. The proposed rulemaking would 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. It also eliminates annual inflation adjustments for the safe harbor dollar amounts and provides that late fee amounts must not exceed 25 percent of the required payment.

- The CFPB prepared a certification in lieu of an initial regulatory flexibility analysis.
- Advocacy questioned the CFPB's lack of data to support its conclusion that the rule will not have a significant economic impact on a substantial number of small entities. In addition, Advocacy asserted that the CFPB should have used more granular analysis of impacts.
- Advocacy also questioned the CFPB's lack of data about small depository institutions.
- Advocacy further asserted that the reasonableness test, which allows small depository institutions to establish late fees so long as they are reasonable, is not a viable option for small depository institutions. It is less risky for such businesses to rely on a safe harbor.
- Advocacy also stated that the rulemaking may be harmful to consumers, including small businesses, who rely on small depositories, should small depositories decide to exit the credit card market,
- Advocacy recommended that the CFPB maintain the status quo until it has sufficient data to ascertain the economic impact of this action on small entities.

A complete copy of [Advocacy's letter to the CFPB](#) is available. For more information, please contact Jennifer Smith, Assistant Chief Counsel, at Jennifer.smith@sba.gov.

