Are "Excessive" Credit Card Late Fees Here To Stay?

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I. Introduction

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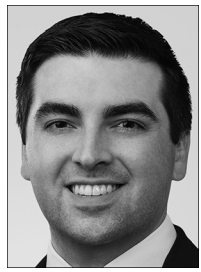

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This Article discusses safe harbor amounts for credit card late fees and the now-vacated rule entitled Credit Card Penalty Fees (Regulation Z), 89 Fed. Reg. 19128 (Mar. 15, 2024) (hereinafter referred to as the "Final Rule") and the litigation that arose out of its implementation. First, this Article provides a brief history of the Truth in Lending Act ("TILA") and the Credit Card Accountability Responsibility and Disclosure Act (the "CARD Act"). Next, it discusses the Final Rule and the policy reasons behind its creation. Then it examines the lawsuit initiated in the United States District Court for the Northern District of Texas, Fort Worth Division, captioned *Chamber of Commerce of United States v. Consumer Financial Protection Bureau*, which resulted in the vacatur of the Final Rule. Lastly, this Article concludes by discussing the future of safe harbor amounts for credit card late fees in light of the consent judgment in *Chamber of Commerce of the United States v. Consumer Financial Protection Bureau*.

II. Background

A. TILA and the Card Act.

In the 1960s, Congress was concerned with two problems consumers faced when shopping for credit.[1] First, Congress was concerned about the

1. Elizabeth Renuart and Diane E. Thompson, *The Truth and Nothing but the*

non-standardized methods of computing interest.[2] Second, Congress was concerned that rates alone "did not reflect the full cost of credit, given the additional fees charged in connection with credit."[3] Congress found that "economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by [consumers' awareness of the cost of credit]."[4] Accordingly, Congress enacted TILA in 1968.[5] The purpose of TILA is to ensure meaningful disclosure of credit terms to (a) allow consumers to "compare more readily the various credit terms available to [them] and avoid the uninformed use of credit," and (b) protect consumers "against inaccurate and unfair credit billing and credit card practices."[6]

Congress amended TILA in 2009 by enacting the CARD Act.[7] The purpose of the CARD Act is, among other things, "to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan."[8] The CARD Act provides, in relevant part, the following:

> 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 in violation of, the cardholder agreement, including any late payment fee, over-the-limit fee, or any other penalty fee or charge, shall be reasonable and proportional to such omission or violation.[9]

The CARD Act requires the Consumer Financial Protection Bureau ("CFPB")[10] to "establish standards for assessing whether the amount of any

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Truth: Confronting the Challenge in the truth in Lending Act and Regulation Z, 25 Yale J. on Reg. 181, 186 (2008).

2. *Id*.

3. *Id*.

4. 15 U.S.C. § 1601(a).

5. *Id*.

6. *Id*.

7. 15 U.S.C. § 1665d.

8. Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act of 2009), Pub. L. No. 111-24, 123 Stat. 1734 (2009). An "open end credit plan" or an "open end consumer credit plan" is defined in the statute as "a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance. A credit plan or open end consumer credit plan which is an open end credit plan or open end consumer credit plan within the meaning of the preceding sentence is an open end credit plan or open end consumer credit plan even if credit information is verified from time to time." 15 U.S.C. § 1602(j).

9. 15 U.S.C. § 1665d(a).

10. Originally, the Federal Reserve Board of Governors was assigned the re-

penalty fee or charge . . . is reasonable and proportional to the omission or violation to which the fee or charge relates."[11] When establishing standards, the CARD Act directs the CFPB to consider the following four factors:

(1) the cost incurred by the creditor from such omission or violation;

(2) the deterrence of such omission or violation by the cardholder;

(3) the conduct of the cardholder; and

(4) such other factors as the [CFPB] may deem necessary or appropriate.[12]

In addition to the above, the CARD Act sets forth that the CFPB "may issue rules 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."[13] In accordance with the CARD Act, credit card late fees that were presumed to be reasonable and proportional were established (hereinafter the "Safe Harbor Fees").[14] The Safe Harbor Fees were adjusted eight times for inflation from 2010 to 2023.[15] At the time the Final Rule was issued, the Safe Harbor Fees were set at $30 for the first violation and "$41 for each subsequent violation of the same type that occurs during the same billing cycle or in one of the next six billing cycles."[16]

B. The Final Rule.

During their time in office, the Biden-Harris administration aimed to lower costs for Americans.[17] The administration's goal was to "lower the costs of using credit cards, bank services, and other financial costs."[18] To reduce the costs of using credit cards, the administration sought to end

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sponsibility to regulate the fees described in 15 U.S.C. § 1665d(a). *See* Credit Card Act of 2009, Pub. L. No. 111-24, 123 Stat. at 1735. Soon after, Congress reassigned the responsibilities to the then newly-created CFPB. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §§ 1061(b)(1)(B), 1100A(2), 124 Stat. 1376, 2036, 2107 (2010). The CFPB adopted the regulations that the Federal Reserve Board of Governors implemented. *See* Truth in Lending (Regulation Z), 76 Fed. Reg. 79768 (Dec. 22, 2011) (codified in 12 C.F.R. pt. 1026).

11. 15 U.S.C. § 1665d(b).
12. *Id.* § 1665d(c).
13. *Id.* § 1665d(e).
14. Chamber of Commerce of United States v. Consumer Fin. Prot. Bureau, 767 F. Supp. 3d 357, 360–61 (N.D. Tex. 2024).
15. *Id.* at 361.
16. Credit Card Penalty Fees (Regulation Z), 12 C.F.R. pt. 1026 (2025).
17. *The Biden-Harris Lowering Costs Agenda*, White House (last visited Aug. 14, 2025), https://bidenwhitehouse.archives.gov/lowering-costs/.
18. *Id.*

"excessive credit card late fees"[19] by reducing credit card late fees from $32 to $8.[20] The administration estimated that by reducing credit card late fees from $32 to $8, 45 million Americans would save an average of $220 per year.[21]

Following the Biden-Harris administration's direction, the CFPB in March 2024 finalized a rule that, among other things, reduced Safe Harbor Fees for certain credit card issuers.[22] Specifically, for Larger Card Issuers,[23] the Final Rule reduced the Safe Harbor Fees to $8 for both first and subsequent violations.[24] Unlike past Safe Harbor Fees, annual adjustments to reflect changes in the consumer price index would not apply to the $8 Safe Harbor Fee.[25] The Final Rule did, however, preserve the existing Safe Harbor Fees, adjusted annually to reflect the changes in the consumer price index, for Smaller Card Issuers.[26] The Final Rule set the Safe Harbor Amount for Smaller Card Issuers at $32 for the first violation and "$43 for each subsequent violation of the same type that occurs during the same billing cycle or in one of the next six billing cycles."[27] The Final Rule also clarified that, when determining cost-based penalty fees, card issuers could not include any costs associated with collection efforts that occurred after an account had been charged off.[28] The Final Rule was initially slated to take effect on May 14, 2024.[29] However, two days after the Final Rule was

19. *Fact Sheet: President Biden Announces New Actions to Lower Costs for Americans by Fighting Corporate Rip-Offs*, White House (Mar. 5, 2024), https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2024/03/05/fact-sheet-president-biden-announces-new-actions-to-lower-costs-for-americans-by-fighting-corporate-rip-offs/.
20. *The Biden-Harris Lowering Costs Agenda*, White House (last visited Aug. 14, 2025), https://bidenwhitehouse.archives.gov/lowering-costs/.
21. *Id*.
22. *Fact Sheet: President Biden Announces New Actions to Lower Costs for Americans by Fighting Corporate Rip-Offs*, White House (Mar. 5, 2024) https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2024/03/05/fact-sheet-president-biden-announces-new-actions-to-lower-costs-for-americans-by-fighting-corporate-rip-offs/; Credit Card Penalty Fees (Regulation Z), 12 C.F.R. pt. 1026 (2025).
23. The Final Rule defined "Larger Card Issuers" as any card issuer that, together with its affiliates, has one million or more open credit card accounts for the entire preceding calendar year, and "Smaller Card Issuers" as any card issuer that, together with its affiliates, has less than one million open credit card accounts for the entire preceding calendar year. Appendix to Credit Card Penalty Fees (Regulation Z), 12 C.F.R. § 1026.52 (2025).
24. 89 Fed. Reg. 19128.
25. *Id*.
26. *Id*.
27. *Id*. at 19129.
28. *Id*.
29. Chamber of Commerce of United States v. Consumer Fin. Prot. Bureau, 767 F. Supp. 3d 357, 361 (N.D. Tex. 2024).

issued, several parties collectively brought suit against the CFPB and Rohit Chopra, in his official capacity as Director of the CFPB.[30]

III. The Lawsuit

On March 7, 2024, the Chamber of Commerce of the United States of America, Fort Worth Chamber of Commerce, Longview Chamber of Commerce, the American Bankers Association, the Consumer Bankers Association, and Texas Association of Business (hereinafter collectively referred to as the "Plaintiffs") filed suit against the CFPB and Rohit Chopra, in his official capacity as Director of the CFPB, (collectively, the "Defendants") in the United States District Court for the Northern District of Texas (hereinafter referred to as the "Court").[31] The Plaintiffs alleged five counts against the Defendants.[32] Specifically, the Plaintiffs alleged that the Defendants violated the United States Constitution and the Administrative Procedure Act.[33] The Plaintiffs sought as relief, among other things, an order that vacated and set aside the Final Rule.[34]

The same day the Plaintiffs filed suit against the Defendants, they moved for a preliminary injunction to stay the Final Rule from going into effect.[35] It is important to note here that the Plaintiffs did not move the Court to issue a temporary restraining order until the motion for a preliminary injunction could be fully briefed and argued.[36] Instead, the Plaintiffs asked for an expedited briefing schedule with a ten-day turnaround on their motion for a preliminary injunction, which led to, as the Court described, a "hard to follow" procedural history.[37]

First, before addressing the merits of Plaintiffs' motion for a preliminary injunction, the Court ordered the parties to file supplemental briefs to determine if the Northern District of Texas was the appropriate venue.[38] In response to the Court's request, the Plaintiffs requested that the Court consider their motion for a preliminary injunction before the Court assessed the issue of venue.[39] In the Plaintiffs' request, the Plaintiffs informed the Court that they would seek appellate review if the Court did not rule on their motion for a preliminary injunction by the date the Plaintiffs set (Fri-

30. *Id.*
31. Complaint, Chamber of Commerce of United States v. Consumer Fin. Prot. Bureau, 779 F. Supp. 3d 894 (N.D. Tex. 2025) (No. 4:24-cv-00213).
32. *Id.* at 35–40.
33. *Id.*
34. *Id.* at 40.
35. Chamber of Commerce of United States v. Consumer Fin. Prot. Bureau, 767 F. Supp. 3d 357, 361 (N.D. Tex. 2024).
36. Chamber of Commerce of United States v. Consumer Fin. Prot. Bureau, 733 F. Supp. 3d 558, 560 (N.D. Tex. 2024).
37. *Id.* at 561 (providing a chart of the procedural history for clarity).
38. *Id.* at 560.
39. *Id.*

day, March 22, 2024).[40] The Plaintiffs argued that if the Court did not rule on its preliminary injunction on or before Friday, March 22, 2024, then their preliminary injunction would effectively be denied because they would be forced to "provide printed notice to millions of customers by March 26" to comply with the Final Rule.[41] The following day the Court denied the Plaintiffs' request explaining that the Court "must first determine whether venue is proper before ruling on" the injunction.[42] As pledged, four days later, the Plaintiffs filed an interlocutory appeal arguing that the Court effectively denied their preliminary injunction by failing to rule on it by Friday, March 22, 2024.[43]

The day after the Court ruled on Plaintiffs' request and before the Plaintiffs filed for an interlocutory appeal, the Defendants filed a motion to transfer the case to the United States District Court for the District of Columbia.[44] On March 28, 2024, the Court found that it was not the proper venue for the matter and ordered that the case be transferred to the United States District Court for the District of Columbia; however, the Fifth Circuit stayed the order after the Plaintiffs filed a mandamus motion.[45] The Fifth Circuit granted Plaintiffs' mandamus motion and ordered that the case remain in the Northern District of Texas.[46] Thereafter, the Fifth Circuit issued an opinion on Plaintiffs' interlocutory appeal, which held that the Court effectively denied Plaintiffs' preliminary injunction when it did not rule on the preliminary injunction by the date the Plaintiffs requested.[47] In its opinion, the Fifth Circuit ordered the Court to rule on Plaintiffs' motion for a preliminary injunction within ten days.[48]

On May 10, 2024, in accordance with the Fifth Circuit's order, the Court issued an opinion and order on Plaintiffs' motion for a preliminary injunction.[49] The Plaintiffs argued that they were entitled to a preliminary injunction because (1) "the Final Rule was promulgated with funds drawn in violation of the Appropriations Clause" and (2) "the Final Rule violated the CARD Act, TILA, and [the Administrative Procedure Act]."[50] The Court did not address the Plaintiffs' second argument and instead only focused on the first.[51] In *Community Financial Services Association of America, Ltd. v. Consumer Financial Protection Bureau*, the Fifth Circuit held that the CFPB's

40. *Id.*
41. *Id.*
42. *Id.*
43. *Id.* at 560–61.
44. *Id.* at 560.
45. *Id.* at 561.
46. *Id.*
47. *Id.* at 561, 563–66.
48. *Id.*
49. *Id.* at 559.
50. *Id.* at 561.
51. *Id.*

funding structure was unconstitutional.[52] The Fifth Circuit's holding that the CFPB's funding structure was unconstitutional was the precedent when the Court issued its opinion and order on Plaintiff's preliminary injunction.[53] Following the Fifth Circuit's precedent, the Court found that the Plaintiffs would most likely succeed on the merits because the Final Rule was most likely unconstitutional since the CFPB promulgated the Final Rule through the use of unconstitutional funds.[54] The Court further found that there was a substantial threat of irreparable harm because constitutional violations are irreparable and "damages could not be computed that compensate for Plaintiffs' subjugation to an unconstitutional rule."[55] In addition, the Court found that if it denied the preliminary injunction, then the Plaintiffs faced an "enormous undertaking based upon a potentially unconstitutional rule," while, on the other hand, if it granted the preliminary injunction, then the CFPB would be "relatively unaffected."[56] Lastly, the Court determined that because the Final Rule had yet to go into effect, the status quo would be preserved by granting the preliminary injunction.[57] As a result, the Court granted Plaintiffs' motion for a preliminary injunction and stayed the Final Rule from going into effect.[58]

After granting Plaintiffs' motion for a preliminary injunction, the Court revisited the venue issue.[59] The Court again granted Defendants' Motion to Transfer the matter to the District of Columbia.[60] The Plaintiffs again sought mandamus relief from the Fifth Circuit, which again vacated the Court's transfer order, keeping the case in the Northern District of Texas.[61]

Moreover, after the Court granted Plaintiffs' motion for a preliminary injunction, the United States Supreme Court reversed *Community Financial Services Association of America, Ltd. v. Consumer Financial Protection Bureau*,[62] the Fifth Circuit case that the Court relied on when ruling on Plaintiffs' motion for a preliminary injunction.[63] Based on the Supreme Court's re-

52. Cmty. Fin. Servs. Ass'n of Am., Ltd. v. Consumer Fin. Prot. Bureau, 51 F.4th 616, 623 (5th Cir. 2022), rev'd and remanded, 601 U.S. 416 (2024), reinstated in part by 104 F.4th 930 (5th Cir. 2024).
53. Chamber of Commerce of United States v. Consumer Fin. Prot. Bureau, 733 F. Supp. 3d 558, 562 (N.D. Tex. 2024).
54. *Id.*
55. *Id.*
56. *Id.*
57. *Id.* at 563.
58. *Id.*
59. Chamber of Commerce of United States v. Consumer Fin. Prot. Bureau, 767 F. Supp. 3d 357, 361 (N.D. Tex. 2024).
60. *Id.*
61. *Id.*
62. Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass'n of Am., Ltd., 601 U.S. 416, 441 (2024).
63. Chamber of Commerce of United States v. Consumer Fin. Prot. Bureau, 733 F. Supp. 3d 558, 562 (N.D. Tex. 2024).

versal of the Fifth Circuit case the Court relied upon when ruling on Plaintiffs' motion for a preliminary injunction, the Defendants moved the Court to dissolve the preliminary injunction.[64] Given the recent Supreme Court opinion, the Court needed to determine whether a preliminary injunction was still justifiable.[65]

The Court first addressed whether the Plaintiffs would still likely succeed on the merits.[66] The Plaintiffs argued that they would likely succeed on the merits because the Final Rule violated TILA and the CARD Act.[67] The Court agreed with the Plaintiffs and concluded that the Plaintiffs would likely succeed on the merits because the Final Rule most likely violated the CARD Act.[68] First, the Court noted that the Final Rule lowered the Safe Harbor Fees to $8 for Large Card Issuers because "it would 'cover pre-charge-off collection costs for Large Card Issuers on average[,]'" even though the CARD Act explicitly allows Large Card Issuers to impose penalty fees.[69] The Court emphasized that, "under the CARD Act, card issuers have the *opportunity* to charge penalty fees reasonable and proportional to violations, and narrowing the safe harbor to cost-based fees eliminates that opportunity."[70] Second, the Court noted that fees that constitute "penalties" are not the same as fees that cover "costs,"[71] and the "two are incompatible."[72] The Court explained that a "penalty fee" implies a purpose of deterrence[73] and the CARD Act "expressly refers to the deterrent effect of the penalty fees as one of the four factors that the CFBP 'shall consider' in establishing standards to ensure the penalty fees are reasonable and proportional."[74] Third, the Court compared the Durbin Amendment to the CARD Act to further highlight the distinction between a penalty fee and a cost-based fee.[75] When comparing the CARD Act to the Durbin Amendment, the Court explained:

> The Durbin Amendment was enacted by the same Congress and, like the CARD Act, was aimed at consumer credit protection. The Durbin Amendment tasks the Federal Reserve with promulgating regulations regarding interchange transaction fees by card issuers. But unlike the CARD Act, the Durbin Amendment tasks the Federal Reserve with es-

64. Chamber of Commerce of United States v. Consumer Fin. Prot. Bureau, 767 F. Supp. 3d 357, 361 (N.D. Tex. 2024).
65. *Id.* at 365.
66. *Id.*
67. *Id.*
68. *Id.* at 366.
69. *Id.* at 366 (quoting Credit Card Penalty Fees (Regulation Z), 89 Fed. Reg. 19, 128, 19, 162 (Mar. 15, 2024)).
70. *Id.* at 367.
71. *Id.*
72. *Id.*
73. *Id.*
74. *Id.* at 366 (quoting 15 U.S.C. § 1665d(c)(2)).
75. *Id.*

> tablishing standards to ensure the interchange transaction fees are reasonable and proportional *to the cost incurred* by the issuer.[76]

Accordingly, based on the reasoning described above, the Court concluded that the Final Rule violated the CARD Act's plain language.[77]

The Court provided very little analysis when addressing the other elements one must show to be entitled to a preliminary injunction. The Court declined to reconsider its previous findings regarding the balance of equities element and the public interest element.[78] The CFPB did not contest the fact that the Plaintiffs would face irreparable injuries from the Final Rule.[79] As a result, the Court concluded that a preliminary injunction was still justifiable and denied Defendants' motion to dissolve the preliminary injunction.[80]

On April 14, 2025, a few months into the second Trump administration, the parties jointly moved "for (i) the entry of a consent judgment as to one claim contained in Count II of the Complaint (ECF 1) and (ii) dismissal of all other claims in the complaint with prejudice, including those contained in Counts I, III, IV, and V."[81] The parties agreed that the CFPB "violated the CARD Act by failing to allow card issuers to 'charge penalty fees reasonable and proportional to violations,'" as set forth in the Court's December 6, 2024 opinion on Defendants' motion to dissolve the preliminary injunction.[82] Accordingly, the parties jointly requested the Court to enter a final judgment vacating the Final Rule for "prevent[ing] card issuers from actually imposing penalty fees."[83] The Court thereafter granted the joint motion.[84] Specifically, the Court vacated the Final Rule "for failure to allow card issuers to 'charge penalty fees reasonable and proportional to violations,' in violation of the [CARD] Act . . . ."[85]

IV. The Future of Safe Harbor Fees

Despite the final judgment in the above-described matter, future attempts can be made to regulate credit card late fees. In the Court's December 6, 2024 opinion, it focused on and emphasized that the CARD Act provides credit card issuers "the *opportunity* to charge penalty fees reason-

76. *Id.* (internal citations and quotations omitted).
77. *Id.* at 367.
78. *Id.* at 367.
79. *Id.*
80. *Id.*
81. Joint Mot. for the Entry of Consent J. at 1, Chamber of Commerce of United States v. Consumer Fin. Prot. Bureau, No. 4:24-cv-00213-P (N.D. Tex. Apr. 14, 2025).
82. *Id.* at 2.
83. *Id.* at 3.
84. Chamber of Commerce of United States v. Consumer Fin. Prot. Bureau, 779 F. Supp 3d 894, 895 (Apr. 15, 2025).
85. *Id.* at 895.

able and proportional to violations," and that the Final Rule eliminated that opportunity.[86] As illustrated by the Court:

> [T]he CARD Act does two things: (1) enables card issuers to impose penalty fees; and (2) tasks the CFPB with establishing standards for those fees. Congress assigned the CFPB as an umpire to call balls and strikes on the reasonableness and proportionality of penalty fees. However, by issuing the Final Rule—which prevents card issuers from actually imposing penalty fees—the CFPB has impermissibly assumed the role of commissioner and established a strike-zone only large enough for pitches right down the middle.[87]

It appears that if a regulatory agency wants to regulate credit card late fees by reducing the safe harbor fees, they may; however, in doing so, the regulators need to be mindful to provide credit card issuers with the *opportunity* to charge penalty fees in accordance with the CARD Act. The amount the safe harbor fees can be reduced to will have to be determined by input from all shareholders involved.

V. Conclusion

While the Trump administration aims to roll back the regulations implemented during the Biden-Harris administration,[88] other federal or state regulators could potentially attempt to regulate credit card late fees.[89] Thus, credit card issuers, regardless of size, should continue to closely monitor the credit card late fees regulatory landscape for any potential regulatory changes.

86. Chamber of Commerce of United States v. Consumer Fin. Prot. Bureau, 767 F. Supp. 3d 357, 367 (N.D. Tex. 2024).
87. *Id*.
88. Evan Weinberger, *Biden Banking Rules Hit With Lawsuits Even as GOP Eyes Rollbacks*, Bloomberg L. (Jan. 14, 2025, 4:00 am CST), https://news.bloomberglaw.com/banking-law/biden-banking-rules-hit-with-lawsuits-even-as-gop-eyes-rollbacks.
89. Ross M. Speier, *CFPB Credit Card Late Fee Rule Vacated by Banking Trade Group Lawsuit*, Kilpatrick (May 5, 2025), https://ktslaw.com/en/Blog/Consumer-Financial-Services/2025/5/CFPB-Credit-Card-Late-Fee-Rule-Vacated-by-Banking-Trade-Group-Lawsuit#:~:text=Previously%2C%20credit%20card%20issuers%20could,the%20final%20rule%20was%20issued.