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B-336148

April 1, 2024

The Honorable Sherrod Brown
Chairman
The Honorable Tim Scott
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Patrick McHenry
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Consumer Financial Protection Bureau: Credit Card Penalty Fees (Regulation Z)*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Consumer Financial Protection Bureau (CFPB) titled “Credit Card Penalty Fees (Regulation Z)” (RIN: 3170-AB15). We received the rule on March 8, 2024. It was published in the *Federal Register* as a final rule and official interpretation on March 15, 2024. 89 Fed. Reg. 19128. The effective date is May 14, 2024.

According to CFPB, this final rule amends Regulation Z, which implements the Truth in Lending Act (TILA), to address late fees charged by card issuers that together with their affiliates have one million or more open credit card accounts. See *generally* TILA, Pub. L. No. 90-321, 82 Stat. 146 (May 29, 1968), 15 U.S.C. § 1601 *et seq.*; Regulation Z, 12 C.F.R. pt. 1026. CFPB stated that the final rule adopts a late fee safe harbor threshold of \$8 for those issuers and provides that the annual adjustments to reflect changes in the Consumer Price Index (CPI) do not apply to this \$8 amount.

Enclosed is our assessment of CFPB’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Edward J. Lovett
Senior Congressional Liaison
Consumer Financial Protection Bureau

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
CONSUMER FINANCIAL PROTECTION AGENCY
TITLED
“CREDIT CARD PENALTY FEES (REGULATION Z)”
(RIN: 3170-AB15)

(i) Cost-benefit analysis

The Consumer Financial Protection Bureau (CFPB) prepared an analysis of the costs and benefits of this final rule. This analysis includes 1) an overview; 2) a discussion about data limitations and quantification of benefits, costs, and impacts; 3) the establishment of a baseline for analysis; 4) a discussion about comments received; 5) a discussion about the potential benefits and costs to consumers and covered persons; (6) a discussion about the potential specific impacts of the final rule on depository institutions and credit unions with \$10 billion or less in total assets; and 6) a discussion about the potential specific impacts of this final rule on consumer access to credit and on consumers in rural areas.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

CFPB certified that this final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

As an independent regulatory agency, CFPB is not subject to the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory

Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

As an independent regulatory agency, CFPB is not subject to the Act.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On June 22, 2022, CFPB issued an advance notice of proposed rulemaking (ANPR). 87 Fed. Reg. 38679 (June 29, 2022). CFPB stated that it received 43 comments in response to the ANPR. On February 1, 2023, CFPB issued a notice of proposed rulemaking. CFPB stated that the notice of proposed rulemaking was published in the *Federal Register* on March 29, 2023 (2023 Proposal). 88 Fed. Reg. 18906. CFPB also stated that it received approximately 57,900 responses to the 2023 Proposal. CFPB stated further that it received comments from consumers, consumer groups, industry trade associations, a member of Congress, another government agency, academics, law firms, and financial regulatory advocacy groups. CFPB noted that it addressed comments in the preamble of the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

CFPB stated that the information collections contained within the Truth in Lending Act (TILA) and Regulation Z are approved under OMB Control Number 3170-0015. See *generally* TILA, Pub. L. No. 90-321, 82 Stat. 146 (May 29, 1968), 15 U.S.C. § 1601 *et seq.*; Regulation Z, 12 C.F.R. pt. 1026. CFPB has determined that this final rule would not impose any new information collections or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by OMB under the Act.

Statutory authorization for the rule

CFPB promulgated this final rule pursuant to sections 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, and 5581 of title 12, and sections 1601 *et seq.* of title 15, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, CFPB is not subject to the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, CFPB is not subject to the Order.