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CFPB report shows late fees are not a top complaint — for a reason

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The Consumer Financial Protection Bureau's report on consumer complaints made little mention of credit card late fees as a leading consumer concern, and some experts say that could be because banks often forgive first-time late fees if customers ask for it. That dynamic could change if the bureau's proposal to slash late fees to $8 goes into effect, experts warn.*Bloomberg News*

Consumers are not complaining much about credit card late fees, but that could change dramatically if a proposal by the Consumer Financial Protection Bureau goes into effect.

CFPB Director Rohit Chopra is staking his tenure at the agency on a radical plan to wipe out $9 billion a year in consumer costs by cutting credit card late fees to just $8, down from the current first-time maximum of $30. Late fees have become a focal point for Chopra, who has called out banks and credit card issuers for turning late fees into a profit center. He also has seized on the CFPB's authority to increase late fees in line with inflation as an opportunity to reexamine and change existing rules around assessing credit card penalties.

Yet the CFPB's proposal to slash credit card late fees does not appear to be driven by consumer complaints, according to the bureau's own data. Late fees were mentioned just once in a 76-page report that the CFPB released in March detailing the issues around the 1.3 million consumer complaints the agency received last year.

Consumers were far more likely to complain about credit reports, debt collection, the opening of checking accounts or fraud than they were about late fees, the CFPB report shows.

While the CFPB has long claimed that it uses consumer complaints to inform its work, experts say that one aspect of credit card late fees has not been taken into account in the bureau's proposal: Banks and credit card issuers often forgive at least one late fee a year for consumers who call and ask for leniency.

"We do know there is forgiveness, and in many cases banks are giving up the revenue from the first late fee, and therefore most of the complaints are not hitting the CFPB because the consumer calls their bank first," said Marcia Tal, CEO of Tal Solutions, a New York data analytics firm, and founder of PositivityTech, a platform that allows companies to analyze consumer complaints sent to the CFPB. "Most people have already learned that if they ask for forgiveness, [the card issuer] will get a late fee removed, and I don't think the CFPB is giving credit to banks for having that policy in place. It's a good thing that banks do that."

The CFPB does not have a sub-category for complaints about credit card late fees. Rather, complaints about all fees and interest rates charged on credit cards are lumped together. Last year, the CFPB received 3,100 complaints about "fees or interest," or roughly 6% of the 50,800 total complaints about credit cards, according to the CFPB's 2022 consumer response annual report.

"This is a topic that has been out there for a while for the consumer," said Tal, a former 25-year veteran of decision management at Citigroup. "It will vary by company, which could mean some credit card issuers are better at forgiveness than others."

In the past year, complaints about fees have risen slightly to 3,892 complaints, or 8.5% of the 45,835 complaints about credit cards, according to Tal's estimate based on data from the CFPB's complaint database.

A CFPB spokesperson said that 56,000 of the roughly 57,000 comment letters it received on its proposed rule on credit card late fees supported its plan to reduce fees. A spokeswoman also said that complaints about "fees and interest," rose 9% last year, putting it in the top five complaint category related to credit cards. Complaints about fees and interest have increased over time since the CFPB began publishing credit card complaints in 2011.

For banks and card issuers, the CFPB has launched a full-frontal assault on their ability not only to collect late fees, but also to encourage people to pay their bills on time. Banks and credit card issuers' main argument has long been that fees are a deterrent to late payers, and a way for issuers to better manage risks, including extending credit to borrowers with bad credit.

The CFPB's proposal would make two changes to Regulation Z that regulates credit card penalty fees. The first would cut the safe harbor under which late fees are considered "reasonable," to $8, down from $30 for the first violation and $41 for subsequent violations. The second would cap the amount of late fees at 25% of the minimum payment.

Banks, credit unions and card issuers may seize upon the CFPB's complaint data as proof that CFPB Director Rohit Chopra's plan to drastically cut late fees is more political than consumer-driven. Sen. Elizabeth Warren, D-Mass., has already weighed in on the issue, seeking to debunk banks' main argument that late fees are both a deterrent for late payers, and an incentive for consumers to pay their credit card bills on time. In May, Warren asked the 10 largest credit card issuers to provide data on the revenue collected on late fees.

"None of the issuers provided data we requested to substantiate their claims that the costs associated with collecting late payments exceeds the total late fees collected," Warren said in her letter to credit card issuers.

It is unclear whether banks track how much forgiveness they provide for late fees. But complaints about late fees — and forgiveness provided by banks and credit card issues — likely would change with the CFPB's proposal.

"If late fees moved to $8, the problem is issuers might not forgive," Tal said. "Once it goes down, they probably are not going to be able to forgive. The minute they get hit on one side, you can't expect that they're going to give it up on the other."

Tom Dent, senior vice president and director of executive education at the Consumer Bankers Association, said some issuers are already looking for ways to recoup lost revenue if the CFPB's late fee proposal goes into effect. Issuers are looking at increasing annual fees, or raising annual percentage rates that would increase borrowing costs for all consumers including those who pay on time.

"I don't think this is a peanut-butter-across-a-slice-of-bread situation where everybody's rate would go up," said Dent.

Synchrony Financial, which issues co-branded cards and shares late fees with its retail partners, said last month that it may add other fees, raise rates or find new ways to impose risk-based pricing on certain consumer segments, though doing so has its limits. Lenders also are required to give borrowers 45 days' notice before charging higher interest under Truth in Lending Act requirements.

"Reducing late fees to the point where they no longer serve as a suitable deterrent factor for missing payments will have a significant impact on consumers' access to credit, especially for those at the margins," Dent said. "It's fair to expect many institutions would be more granular in the risk-based pricing effort."

Banks, credit card issuers and credit unions typically set a specific level of return that they are looking for from their card portfolios. In some quarters, there is a view that credit card issuers should accept a lower level of return, cut expenses or raise fees elsewhere. Issuers say they are more likely to reduce extending credit to the riskiest customers and may do so by raising credit scores to 640, up from 600 when determining which borrowers to extend credit to, experts said.

It is unclear going forward whether consumer complaints about late fees will change with the CFPB's proposal.

"We don't know how troublesome late fees are," said Tal. "If late fees are going to be indicative of somebody that is going to have trouble paying you anyway, you're really not going to recoup that because they're not going to pay you. So you really have to think about this through multiple lenses."