

House Financial Services Chair Patrick McHenry (R-NC) Joins Industry Attacks Against The Consumer Financial Protection Bureau's Efforts To Limit Credit Card Late Fees After Receiving Over \$1.1 Million In Industry Cash

In February 2023, The Consumer Financial Protection Bureau (CFPB) Announced A New Proposed Rule Limiting Credit Card Late Fees.

In February 2023, The Consumer Financial Protection Bureau Proposed A New Rule Limiting Credit Card Late Fees After The Federal Reserve Created An Immunity Provision Allowing Late Fees Of As High As \$41 After The Passage Of The 2009 Credit Card Act Which Sought To Ban Excessive Late Fees.

February 1, 2023: The Consumer Financial Protection Bureau Proposed A New Rule “Curb[ing] Excessive Credit Card Late Fees That Cost American Families About \$12 Billion Each Year” Which The Bureau Estimated Would Save Consumers “As Much As \$9 Billion Per Year.” “Today, the Consumer Financial Protection Bureau (CFPB) proposed a rule to curb excessive credit card late fees that cost American families about \$12 billion each year. Major credit card issuers continue to profit off late fees that are protected by an expansive immunity provision. Credit card companies have also relied on this provision to hike fees with inflation, even if they face no additional collection costs. The proposed rule would help ensure that over the top late fee amounts are illegal. Based on the CFPB’s estimates, the proposal could reduce late fees by as much as \$9 billion per year.” [Consumer Financial Protection Bureau, [02/01/23](#)]

Although Exorbitant Credit Card Fees Were Banned Under The 2009 Credit CARD Act, Federal Reserve Created An Immunity Provision Allowing Credit Card Companies To Charge Late Fees As High As \$41. “The Federal Reserve Board, by regulation, created the immunity provisions to allow credit card companies to avoid scrutiny of whether their late fees met the reasonable and proportional standard. Over time, those provisions have risen with inflation to \$30 for an initial late payment and \$41 for subsequent late payments. The CFPB estimates that the income generated by the largest issuers from late fees is approximately five times greater than the collection costs that the companies incur for late payment violations. In 2020, for example, credit card companies charged approximately \$12 billion in late fees, which represented more than 10% of all credit card interest and fees charged to consumers.” [Consumer Financial Protection Bureau, [02/01/23](#)]

- **According To CFPB Director Rohit Chopra, The 2009 Credit CARD Act Nominally Banned Exorbitant Credit Card Fees.** “Congress banned exorbitant credit card fees under the Credit CARD Act in 2009, but an immunity provision instituted by the Federal Reserve Board of Governors enabled card companies to dodge enforcement standards, said Rohit Chopra, director of the Consumer Financial Protection Bureau.” [CNBC, [02/01/23](#)]

The CFPB's Proposed Rule Would Limit Credit Card Late Fees To \$8, Eliminate Automatic Inflation Adjustments For Late Fees, And Restrict Any Late Fee Charge To 25% Of The Credit Card's Minimum Payment.

The CFPB's Proposed Rule Would Lower The Immunity Provision's Fee Limit From \$41 To \$8. “Lower the immunity provision dollar amount for late fees to \$8: The CFPB has preliminarily found that late fee income exceeds associated collection costs by a factor of five. Because the immunity provision currently allows issuers to charge late fees of up to \$41, the CFPB believes that a late fee of \$8 would be sufficient for most issuers to

cover collection costs incurred as a result of late payments. The \$8 immunity provision would apply to any missed payment. Companies would be able to charge above the immunity provision so long as they could prove the higher fee is necessary to cover their incurred collection costs.” [Consumer Financial Protection Bureau, [02/01/23](#)]

The CFPB’s Proposed Rule Would Also “Eliminate The Automatic Annual Inflation Adjustment For The Immunity Provision Amount.” “End the automatic annual inflation adjustment: The CFPB’s proposal would eliminate the automatic annual inflation adjustment for the immunity provision amount. This adjustment is not required by law, nor is it necessarily reflective of how collection costs change over time. The CFPB would instead monitor market conditions and the immunity provision amount for potential adjustments as necessary.” [Consumer Financial Protection Bureau, [02/01/23](#)]

Lastly, The CFPB’s Proposed Rule Would “Restrict Any Late Fee Charge To 25% Of The Minimum Payment To Be More Consistent With Congress’s Intent To Authorize Only Reasonable And Proportional Late Fee Amounts.” “Cap late fees at 25% of the required minimum payment: The current rule allows a card issuer to potentially charge a late fee that is 100% of the minimum payment owed by the cardholder. The CFPB proposes to restrict any late fee charge to 25% of the minimum payment to be more consistent with Congress’s intent to authorize only reasonable and proportional late fee amounts.” [Consumer Financial Protection Bureau, [02/01/23](#)]

House Financial Services Committee Chair Patrick McHenry Followed Major Banking Trade Groups In Attacking The CFPB’s Proposed Credit Card Rule While Using Similar Rhetoric In Defense Of Credit Card Late Fees.

Major Banking Trade Groups—including The American Bankers Association (ABA), The Independent Community Bankers Of America (ICBA), And The Consumer Bankers Association (CBA)—Came Out Against The CFPB’s Proposed Credit Card Rule Just Hours After Its Announcement.

February 1, 2023: The American Bankers Association Came Out Against The CFPB Proposed Rule, With Its President And CEO, Rob Nichols, Saying The Rule Would “Harm Consumers By Reducing Competition And Access To Credit.” “Against strong objections from the American Bankers Association, the Consumer Financial Protection Bureau and the White House today proposed to eliminate a longstanding safe harbor that banks of all sizes rely upon when setting late fees on credit card payments. Citing “excessive credit card late fees,” the CFPB proposed slashing the safe harbor dollar amount for late fees from \$30 to \$8 and eliminating a higher safe harbor dollar amount for late fees for subsequent violations of the same type; eliminating the annual inflation adjustment for the safe harbor amount that was provided by the Federal Reserve Board in 2010; and capping late fee amounts at 25% of the required payment. [...] ABA President and CEO Rob Nichols blasted the agency’s decision, saying it would harm consumers by reducing competition and access to credit. ‘If the proposal is enacted, credit card issuers will be forced to adjust to the new risks by reducing credit lines, tightening standards for new accounts and raising APRs for all consumers, including the millions who pay on time,’ he said.” [ABA Banking Journal, [02/01/23](#)]

February 1, 2023: Independent Community Bankers Of America (ICBA) President And CEO Rebeca Romero Rainey Issued A Statement Voicing Opposition To The CFPB’s Proposed Rule, Stating The Association “‘Caution[s] Against Adversely Affecting Small Issuers, Needlessly Restricting Access To Credit In Local Communities, And Misrepresenting How Community Banks Meet The Credit Card Needs Of Their Customers.’ “Independent Community Bankers of America (ICBA) President and CEO Rebeca Romero Rainey issued the following statement on today’s Consumer Financial Protection Bureau proposed rule on credit card fees for late payments. ‘While ICBA and the nation’s community banks review today’s Consumer Financial Protection Bureau proposed rule on credit card late fees, we caution against adversely

affecting small issuers, needlessly restricting access to credit in local communities, and misrepresenting how community banks meet the credit card needs of their customers.” [ICBA, [02/01/23](#)]

- **Romero Rainey Went On To Defend Credit Card Late Fees As “‘Deter[ing] Late Payments And Help[ing] Offset The Significant Costs To Issuers.’”** “‘As relationship bankers, community banks offer credit cards as a service to their customers under contracts voluntarily entered into by these consumers. Credit card late fees — which are clearly disclosed and represent a small portion of the cost of credit cards to customers — deter late payments and help offset the significant costs to issuers. Considering these costs, current practices are appropriate and do not constitute ‘junk fees,’ despite the CFPB’s misrepresentation of the community bank business model.” [ICBA, [02/01/23](#)]

February 1, 2023: Consumer Bankers Association (CBA) President and CEO Lindsey Johnson Slammed The CFPB’s Proposed Rule As “‘The Latest Example Of The Bureau Seeking To Advance A Political Agenda That Will Harm, Rather Than Help, The Very People They Are Responsible For Serving,’” Adding That “‘It Is Deeply Unfortunate And Puzzling That Policymakers Would Take Action That Could Ultimately Limit Consumers’ Access To [Credit Cards] At A Time When They Are Needed Most.’” “Consumer Bankers Association (CBA) President and CEO Lindsey Johnson today released the following statement after the Consumer Financial Protection Bureau (CFPB) announced a Notice of Proposed Rulemaking (NPRM) that would limit the safe harbor amount credit card issuers can charge consumers for overdue payments: ‘This announcement is just the latest example of the Bureau seeking to advance a political agenda that will harm, rather than help, the very people they are responsible for serving. Millions of Americans rely on credit cards to make everyday purchases and cover emergency expenses. It is deeply unfortunate and puzzling that policymakers would take action that could ultimately limit consumers’ access to these valued financial products at a time when they are needed most.’” [Consumer Bankers Association, [02/01/23](#)]

The Day After Banking Industry Groups Came Out Against The CFPB’s Proposed Rule, House Financial Services Chair Patrick McHenry (R-NC) Released A Statement Slamming the Rule As “‘Limit[ing] Consumer Options, Benefits, And Punish[ing] Borrowers In Good Standing.’”

February 2, 2023: House Financials Services Committee Chair Patrick McHenry (R-NC) Released A Statement Attacking The CFPB’s Proposed Rule As “‘Limit[ing] Consumer Options, Benefits, And Punish[ing] Borrowers In Good Standing.’” “Today, the Chairman of the House Financial Services Committee, Patrick McHenry (NC-10), issued the following statement in response to the Consumer Financial Protection Bureau’s (CFPB) Notice of Proposed Rulemaking regarding credit card fees, which would limit consumer options, benefits, and punish borrowers in good standing.” [House Financial Services Committee, [02/02/23](#)]

McHenry’s Statement Went On To Criticize The Proposal As “‘Limit[ing] Loyalty Benefits For Consumers, While Forcing Borrowers In Good Standing To Foot The Bill For Those Who May Be Late On Their Payments.’” “‘At a time when more American families are carrying credit card debt due to Democrat-induced inflation, Director Chopra is pushing a proposed rule that would raise costs for all credit card users,’ said Chairman McHenry. ‘This proposal would also limit loyalty benefits for consumers, while forcing borrowers in good standing to foot the bill for those who may be late on their payments. In fact, Director Chopra is attacking the same tool—fees—that the IRS uses to deter late tax payments.’” [House Financial Services Committee, [02/02/23](#)]

McHenry’s Statement Ended With Him Vowing That The “‘House Financial Services Committee Will Not Allow Director Chopra To Punish Consumers Solely To Placate Progressive Activists.’” “‘Additionally, it’s troubling that this supposedly independent agency is coordinating this announcement with the White House for political purposes. Under my leadership, the House Financial Services Committee will not allow Director Chopra to punish consumers solely to placate progressive activists.’” [House Financial Services Committee, [02/02/23](#)]

Over His Congressional Career, Rep. Patrick McHenry Has Received Over \$1.1 Million In Campaign Contributions From The Three Banking Trade Groups Opposed To The CFPB's Credit Card Rule And The Eight Largest U.S. Credit Card Issuers.

Over His Congressional Career, Rep. McHenry Has Received \$334,000 From The Three Banking Trade Groups That Came Out Against The CFPB's Proposed Credit Card Rule.

Over His Congressional Career, Rep. McHenry Has Received \$334,000 From The Three Banking Trade Groups That Came Out Against The CFPB's Proposed Credit Card Rule:

Banking Trade Group	Amount
American Bankers Association	\$148,000
Independent Community Bankers Of America	\$118,500
Consumer Bankers Association	\$67,500
TOTAL:	\$334,000

Over His Congressional Career, Rep. McHenry Has Received \$783,000 From The Eight Largest U.S. Credit Card Issuers.

According To The Nilson Report, The Largest U.S. Credit Card Issuers By 2020 Transaction Volumes Were:

1. Chase: \$743.5 billion
2. American Express: \$673.9 billion
3. Citibank: \$399.8 billion
4. Capital One: \$353.1 billion
5. Bank of America: \$339.4 billion
6. Discover: \$142.8 billion
7. U.S. Bank: \$136.8 billion
8. Wells Fargo: \$101.4 billion

[U.S. News Money, [02/17/22](#)]

- **The Nilson Report Considers Itself The "Most Respected Source Of News And Analysis Of The Global Card And Mobile Payment Industry," Providing "Credit, Debit, And Prepaid Card Issuer, Acquirer, And Technology Vendor Statistics Not Found In Any Other Trade Journal."** "The Nilson Report, in its 52th year of publication, is the most respected source of news and analysis of the global card and mobile payment industry. The by-subscription-only newsletter provides credit, debit, and prepaid card issuer, acquirer, and technology vendor statistics not found in any other trade journal, as well as concise technology, personnel, and product news and updates." [Nilson Report, accessed [02/02/23](#)]

Over His Congressional Career, Rep. McHenry Has Received \$783,000 From The Eight Largest Credit Card Issuers:

Credit Card Issuer	Amount
Chase	<u>\$115,000</u>
American Express	<u>\$81,500</u>
Citibank	<u>\$115,000</u>
Capital One	<u>\$108,000</u>
Bank of America	<u>\$131,000</u>
Discover	<u>\$45,000</u>
U.S. Bank	<u>\$79,000</u>
Wells Fargo	<u>\$108,500</u>
TOTAL:	\$783,000