Rhetoric vs. Reality: The CFPB's Irresponsible Commentary on Credit Card Late Fees

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The CFPB has repeatedly denounced legitimate bank fees, like credit card late fees, as "illegal" and as "junk fees." The Bureau has compared these fees to excessive fees charged by concert ticketing firms and is employing this rhetoric to push through a proposal that would significantly reduce the safe harbor for late fees that issuers may charge when a consumer misses a payment. This rhetoric mischaracterizes late fees as inherently bad, despite Congressional recognition that these fees serve an important purpose in encouraging responsible borrowing and in allowing issuers to provide affordable credit to borrowers across the credit risk spectrum. It also ignores the robust consumer protection laws and comprehensive supervisory standards that banks must meet as well as the fact that banks are clear and transparent with their customers about their fees up front. The accusation that banks charge "illegal fees" or are not committed to providing robust disclosures to their customers is false and confuses rhetoric with reality.

Rhetoric	Reality
"Has your financial institution charged you with a surprise overdraft fee, surprise depositor fee, or other unexpected #JunkFee? If you have concerns that this fee may be illegal, submit a complaint with us online or by calling us at (855) 411-CFPB (2372)." *(Source)*	Bank fees are legal and disclosed, as further explained below, so they are not a "surprise." Banks are required to be transparent with fees in their terms and conditions contracts that borrowers sign. Additionally, the CFPB has the authority to write rules and pursue enforcement actions if it has concerns about banks' fee practices. For example, if the Bureau felt credit card late fees are not adequately disclosed, it could have included disclosure changes in their new rule, but it did not. It is concerning that the agency is using official resources to solicit negative feedback about legal and clearly disclosed fees while using misleading and false talking points, rather than studying any perceived issue and taking corrective action if it believes that there are illegal practices in the marketplace.
"Many financial institutions obscure the true price of their services by luring customers with enticing offers and then charging excessive junk fees." *(Source)*	The law already requires transparency. Banks are legally required to disclose credit card fees upfront. This framework has been administered and refined by the CFPB through multiple regulations. Rules requiring clear fee disclosures include: • TILA/Reg Z (credit card fees) • Regulations DD and E (deposit account and electronic fund transfer fees) • TILA/RESPA (mortgage origination and settlement service fees) • Truth in Savings Act

Rhetoric	Reality
"…the credit card market continues to rely on revenue from late fees disproportionately paid by economically vulnerable consumers. Cardholders with subprime and deep subprime scores are far more likely to incur repeat late fees in a given year than those in higher credit score tiers." *(Source)*	Late fees are based on payment timeliness, which does not neatly correlate to income level. Income is an important element used in underwriting; however, the majority of borrowers — across all demographics — pay their credit card bills on time. The CFPB also acknowledges that "late fees are a cost to consumers of paying late, and a lower late fee amount for the first or subsequent late payments might cause more consumers to pay late." Late fees are intended to incentivize healthy repayment habits. Significantly reducing or eliminating the late fee, without adequate empirical evidence and data, would undermine the deterrence effects of these fees.
"By our estimates, 75 percent of late fees—$9 billion—have no purpose beyond padding the credit card companies' profits. They're a reflection of the asymmetry of power that punishes and penalizes consumers when they make mistakes, while credit card companies are often allowed to fine print themselves out of trouble." *(Source)*	Banks want to extend credit responsibly and in amounts that borrowers can pay back. Moreover, banks have robust safety and soundness requirements that mandate they lend responsibly and within appropriate credit risk standards. Late fees serve an important purpose; they help incentivize responsible financial behavior and allow institutions to offer affordable credit to borrowers across the credit risk spectrum. Put simply, if credit and loans aren't repaid, that money cannot be lent out. Indeed, if these institutions on a large scale were to loan money to individuals who could not pay it back, there could be significant risk to the financial system as a whole if these borrowers all defaulted. Banks also have the incentive to retain customers and match them with products that best serve their financial needs. The American credit card industry is by far the most competitive in the world with more than 5,000 credit card issuers of all sizes. These issuers are under constant pressure to offer better rates, lower fees, more rewards and enhanced digital offerings to attract and retain customers. Costs and fees are disclosed upfront when the consumer applies for a credit card, rate comparison services are widely available, and many institutions have multiple product offerings allowing customers to select those that best align with their spending habits.
"Over a decade ago, Congress banned excessive credit card late fees, but companies have exploited a regulatory loophole that has allowed them to escape scrutiny for charging an otherwise illegal junk fee." *(Source)*	Characterizing a fee as "otherwise illegal" because the CFPB doesn't agree with a rule established by the Federal Reserve – and consistent with the underlying statute passed by Congress – is irresponsible rhetoric at its worst. The CFPB has administered the regulations established by the Fed for over a decade and, until recently, the CFPB has never indicated, including in any of its biennial credit card reports to Congress, that fees generally or the safe harbor in particular present concerns with regard to the competitiveness of the credit card market or consumer harm. If late fees become little more than a "late payment convenience fee," many more consumers would become delinquent on their accounts, which could result in higher interest rates and annual fees for all credit card users — not just those who pay late — and increased reporting to credit bureaus.