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United States Senate
COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS
WASHINGTON, DC 20510-6075

April 13, 2023

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Director Chopra:

We write to express our concerns with the Consumer Financial Protection Bureau's ("CFPB's") efforts to demonize commonsense incentives that promote financial responsibility, such as overdraft fees and credit card late fees,¹ as well as perfectly reasonable and legal business service fees including for timely distribution of Government benefits.² These efforts, under your leadership, are misguided and will unnecessarily cause financial harm to American consumers—particularly low- and middle-income consumers with a limited credit history—and restrict their access to credit, bank accounts, and financial products.

Last year, the CFPB launched an unfair initiative targeting standard fees charged by credit providers that included reasonable payment incentive mechanisms such as overdraft and credit card late fees.³ This initiative mislabeled lawful payment incentives by calling them "junk fees" and falsely suggested that their only purpose is corporate greed.⁴ In truth, these fees are used for a variety of legitimate purposes, including encouraging consumers to make responsible financial decisions such as balancing their checkbooks and discouraging consumers from paying their bills late or otherwise violating the terms of financial agreements. These fees also enable companies to offset the costs of late payments and their associated risks so that they can continue to offer the financial products that people want and need, particularly to the financially vulnerable and those who are trying to build credit. The CFPB's efforts to eradicate responsible financial

¹ See e.g., CFPB Press Release: *Consumer Financial Protection Bureau Launches Initiative to Save Americans Billions in Junk Fees* (Jan. 26, 2022), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-initiative-to-save-americans-billions-in-junk-fees/>; CFPB Blog Post: *The hidden cost of junk fees* (Feb. 2, 2022), <https://www.consumerfinance.gov/about-us/blog/hidden-cost-junk-fees/>; CFPB Proposed Rule with Request for Public Comment: *Credit Card Penalty Fees (Regulation Z)* (Feb. 1, 2023), https://files.consumerfinance.gov/f/documents/cfpb_credit-card-penalty-fees-nprm_2023-01.pdf.

² See e.g., CFPB Issue Spotlight: *New CFPB Issue Spotlight Examines High Fees that Chip Away at Public Benefits* (Mar. 01, 2023), <https://www.consumerfinance.gov/about-us/newsroom/new-cfpb-issue-spotlight-examines-high-fees-that-chip-away-at-public-benefits/>.

³ *Id.*

⁴ *Id.*

incentives under the guise of consumer aid is deceptive and should have no place in the United States Government.

Last month, the CFPB continued its work to punish businesses for charging commonplace and completely legal fees for the financial services they offer by publishing a proposed rule on Credit Card Penalty Fees. This proposal, if finalized, would: (1) lower the safe harbor dollar amount for late fees charged on credit cards from as much as \$30 for initial violations like late payments and \$41 for subsequent violations of the same type to a fixed fee of \$8; (2) disallow companies from adjusting the late fee safe harbor dollar amount for inflation; and (3) reduce the cap for the late fee dollar amount from 100 percent to 25 percent of the required minimum payment.⁵ These proposed changes will disincentivize timely payments, increase the cost of providing credit to borrowers, and thus substantially decrease the availability and provision of credit to American consumers.

Capriciously lowering the cost of late fees that a credit provider may legally charge to a fixed dollar figure arbitrarily selected by your agency will raise the cost of credit for all American consumers. As you should know, if the expenses incurred by credit providers as a result of late payments by delinquent borrowers are not compensated for by those borrowers, then such expenses will have to be compensated for by other borrowers. Shifting costs from a small subset of borrowers to the entire pool of borrowers raises the cost of borrowing for all, including those who made sacrifices to pay their bills on time.

Alternatively, if your unjustified rule takes effect, providers of credit understandably may seek to limit their exposure to borrowers they determine to be less likely to make timely repayments, choking a lifeline that the availability of credit from a reputable and regulated source can provide to cash-strapped Americans. Unfortunately, it is likely to be the most vulnerable consumers with the most urgent financial needs who will suffer most as a result of this regulatory proposal.

Our fellow Americans are already reeling from the economic mismanagement of the current Administration that has caused the worst inflation in over forty years. For example, a special assessment fee will now be imposed on the American taxpayer to replenish the deposit insurance fund (DIF) due to government intervention following the failures of Silicon Valley Bank and Signature Bank. In light of the CFPB's recent efforts to attack financial institutions and businesses for charging reasonable fees that promote financial responsibility and allow broader credit access, this will compound the financial pain that many Americans are already experiencing. Accordingly, we request that you promptly rescind this misguided proposed rule, and stop unfairly disparaging commonsense fees that allow businesses to offer credit, bank accounts, and financial products to individuals with a limited credit history, before these efforts cause unnecessary harm to American consumers.

Thank you for your attention to this matter.

⁵ See CFPB Notice & Opportunity to Comment: *Credit Card Penalty Fees (Regulation Z)* (Feb. 1, 2023), <https://www.consumerfinance.gov/rules-policy/notice-opportunities-comment/credit-card-penalty-fees-regulation-z/>.

Sincerely,



Tim Scott
Ranking Member



Mike Crapo
U.S. Senator



Mike Rounds
U.S. Senator



Thom Tillis
U.S. Senator



Bill Hagerty
U.S. Senator



Cynthia Lummis
U.S. Senator



Katie Boyd Britt
U.S. Senator



Kevin Cramer
U.S. Senator



Steve Daines
U.S. Senator

cc: The Honorable Sherrod Brown, Chairman, Senate Committee on Banking, Housing, and Urban Affairs