

# United States Senate

WASHINGTON, DC 20510

April 14, 2024

Suzanne P. Clark  
President and Chief Executive Officer  
U.S. Chamber of Commerce  
1615 H St. NW  
Washington, D.C. 20062

Dear Ms. Clark:

We write today regarding the Chamber's outrageous and unwarranted decision to sue the Consumer Financial Protection Bureau (CFPB) over its rule that caps most credit card late fees at \$8.<sup>1</sup> This lawsuit was filed just two days after the CFPB finalized the rule, which will help consumers save as much as \$10 billion annually.<sup>2</sup> We seek an explanation for the Chamber's opposition to this rule and its defense of credit card companies' deeply exploitative late fee practices.

Big banks and other card issuers abuse late fees to pad their bottom line. The CFPB found that credit card companies charged cardholders \$25.4 billion in overall fees in 2022, charging \$5 billion more in 2022 than they charged two years earlier.<sup>3</sup> The majority (\$14.5 billion) of these fees were late fees.<sup>4</sup> Late fees can be incurred for payments that are only a few hours late, with some fees as high as \$41.<sup>5</sup>

The CFPB's rule protects consumers and small businesses from these abusive tactics. Credit card issuers are required to justify late fees exceeding \$8 (the amount that CFPB estimates is sufficient for covering costs to most card issuers), automatic annual inflation adjustments to late fees are terminated, and late fees are capped at 25% of the required minimum payment.<sup>6</sup> The rule, which covers large credit card issuers that have at least 1 million open accounts, is expected to apply to just 30 to 35 of the very largest credit card issuers – or less than 1% of the 4,000

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<sup>1</sup> Reuters, "US consumer agency sued by banks, US Chamber over credit card late fee cap," Jonathan Stempel, March 7, 2024, <https://www.reuters.com/legal/us-consumer-agency-sued-by-banks-us-chamber-over-credit-card-late-fee-cap-2024-03-07/>.

<sup>2</sup> Law360, "Banking Groups Sue CFPB Over Credit Card Late Fee Rule," Jon Hill, March 7, 2024, <https://www.law360.com/articles/1811445/banking-groups-sue-cfpb-over-credit-card-late-fee-rule>.

<sup>3</sup> CFPB, "The Consumer Credit Card Market," October 2023, p. 62, [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-credit-card-market-report\\_2023.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2023.pdf).

<sup>4</sup> *Id.*

<sup>5</sup> Consumer Financial Protection Bureau, "CFPB Proposes Rule to Rein in Excessive Credit Card Late Fees," press release, February 1, 2023, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees/>.

<sup>6</sup> *Id.*

financial institutions in the U.S. that offer credit cards.<sup>7</sup> The CFPB received 57,000 comment letters on the rulemaking, with 56,000 of those in support.<sup>8</sup>

We are deeply concerned by the Chamber’s lawsuit to prevent the CFPB’s rule from taking effect. The Chamber describes its vision of its role: “the future we want to build gives everyone the opportunity to build a better future for themselves. It’s why our job today—and every day—is to build the strongest relationship possible among the American people, business leaders, and elected officials in Washington, state capitals, and countries around the globe.”<sup>9</sup> Your decision to abuse the legal system to overturn a CFPB rule that would drastically improve the lives of millions of Americans is not consistent with those goals.

The decision to file the lawsuit also indicates that the Chamber is not adequately representing its membership. The Chamber claims that “[o]ur members range from the small businesses and chambers of commerce across the country that support their communities, to the leading industry associations and global corporations that innovate and solve for the world’s challenges, to the emerging and fast-growing industries that are shaping the future.”<sup>10</sup> The Chamber further claims that it “work[s] every day to fight for policies and regulations that benefit small business” and “elevate the voice of America’s small business owners.”<sup>11</sup>

But here, it does not appear that the Chamber is representing the broad range of Main Street businesses, or their customers. Instead, the “Chamber is again doing the dirty work of its big bank members,” such as JPMorgan, Citi, and Bank of America, who are notorious for ripping off Americans with credit card late fees.<sup>12</sup> Indeed, a recent report finds that a majority of the Chamber’s litigation activity since 2018 has been in support of large corporations, while “only 23 of the roughly 28 million small businesses in the U.S. (0.0001%) directly benefited from the Chamber’s litigation.”<sup>13</sup>

The lawsuit is frivolous. CFPB’s rule is clearly consistent with Congress’s intent to protect consumers from excessive and exploitative fees. In the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), Congress required that late fees be “reasonable and proportional” to costs incurred by the issuer.<sup>14</sup> Big banks are not meeting this standard today: they charge fees as much as five times higher than the costs they incur because of late payments.<sup>15</sup> The CFPB proposed this rule to rein in exploitative late fee practices and

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<sup>7</sup> Federal Register, “Credit Card Penalty Fees (Regulation Z),” March 15, 2024, <https://www.federalregister.gov/documents/2024/03/15/2024-05011/credit-card-penalty-fees-regulation-z>.

<sup>8</sup> CNN, “Why credit card late fees may drop to \$8,” Jeanne Sahadi, July 10, 2023, <https://www.cnn.com/2023/07/10/business/credit-card-late-fees-drop/index.html>.

<sup>9</sup> U.S. Chamber of Commerce, “About Us,” <https://www.uschamber.com/about>.

<sup>10</sup> *Id.*

<sup>11</sup> U.S. Chamber of Commerce, “Small Businesses,” <https://www.uschamber.com/work/small-businesses>.

<sup>12</sup> Accountable.US, “U.S. Chamber Sues in Conservative-Friendly Court to Keep Credit Card Fees As High As \$41 on Behalf of Big Bank Members,” March 7, 2024, <https://accountable.us/u-s-chamber-sues-in-conservative-friendly-court-to-keep-credit-card-fees-as-high-as-41-on-behalf-of-big-bank-members/>.

<sup>13</sup> Public Citizen, “Empty Promises,” Zachary Brown, January 29, 2024, <https://www.citizen.org/article/empty-promises/>.

<sup>14</sup> Credit Card Accountability Responsibility and Disclosure Act, Public Law 111-24.

properly enforce the law. The Chamber’s decision to sue the CFPB represents exactly the type of “frivolous litigation” that your organization claims to oppose.<sup>16</sup>

This meritless lawsuit is just the latest in a string of outrageous industry-backed court challenges in Texas against the CFPB.<sup>17</sup> The CFPB has stated, “the industry [has] engaged in ‘forum shopping,’ in which litigants go to considerable lengths to bring their suits before sympathetic judges.”<sup>18</sup> As the CFPB explained in a recent court filing,

“[o]nly one plaintiff resides in this District, the Fort Worth Chamber of Commerce. But the Fort Worth Chamber — suing on behalf of its members, only one of whom is named, Synchrony Bank of Draper, Utah (apparently, a recent addition to its roster) — lacks standing and, therefore, cannot provide the foundation for venue in this Court. The other Plaintiffs are associations headquartered in Washington, D.C., or other parts of Texas. And those other Texas groups identify zero members with standing.”<sup>19</sup>

The Chamber owes the American public an explanation for its opposition to this rule and its defense of deeply exploitative late fee practices that harms consumers. Given our concerns about the Chamber’s actions, we request answers to the following questions no later than April 29, 2024:

1. How did the Chamber reach the decision to sue the CFPB to stop the agency from putting this rule in place?
2. Did the Chamber conduct a vote or otherwise receive input from its members before deciding to file this lawsuit?
  - a. If so, how did it do so?
  - b. What did the opinions received by the Chamber indicate about members’ opposition or support for the rule?
3. How many Fortune 500 companies are members of the Chamber?
  - a. How many of these members are banks that benefit from the limit on credit card late fees?
  - b. How many are retailers that benefit when consumers have more money to spend because they are not charged exorbitant late fees?
4. How many Chamber members are small businesses that would potentially benefit from a lower credit card late fees?
  - a. Did you survey these members to determine if they supported the CFPB rule?
  - b. If so, how did you conduct this survey and what did it reveal?

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<sup>15</sup> Consumer Financial Protection Bureau, “CFPB Proposes Rule to Rein in Excessive Credit Card Late Fees,” press release, February 1, 2023, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees>.

<sup>16</sup> U.S. Chamber of Commerce, “Lawsuits,” <https://www.uschamber.com/lawsuits>.

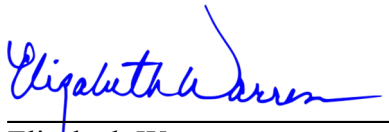
<sup>17</sup> Law360, “Banking Groups Sue CFPB Over Credit Card Late Fee Rule,” Jon Hill, March 7, 2024, <https://www.law360.com/articles/1811445/banking-groups-sue-cfpb-over-credit-card-late-fee-rule>.

<sup>18</sup> American Banker, “CFPB says bank engaged in ‘forum-shopping’ to fight \$8 late fee rule,” Kate Berry, March 14, 2024, <https://www.americanbanker.com/news/cfpb-says-bank-engaged-in-forum-shopping-to-fight-8-late-fee-rule>.

<sup>19</sup> *Id.*

5. Has the Chamber conducted an economic analysis of how the CFPB proposal would impact its members?
  - a. If so, what did this analysis entail?
  - b. What did the analysis reveal? How many members will benefit from the rule? How many will not be affected at all? How many members are big banks that will benefit from the rule?
6. Why did the Chamber and co-Plaintiffs decide to file the lawsuit in the Northern District of Texas?
7. Which Chamber members have donated to the Chamber's efforts to challenge this rule?
  - a. Please provide a list of all corporations participating in this effort and the amount of money pledged from each.

Sincerely,



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Elizabeth Warren  
United States Senator



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Sheldon Whitehouse  
United States Senator