



February 23, 2024

Director Rohit Chopra
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Dear Director Chopra,

Small businesses are the beating heart of our economy, providing vital goods and services to consumers across all 50 states. Founded in 1937, the National Small Business Association (NSBA) has been a leading voice for these small businesses across the country.

Today, I am reaching out to you with a concern that recent regulatory efforts did not entirely consider the potential impacts on this critical community. More specifically, as the Consumer Financial Protection Bureau (CFPB) prepares to announce a final rule on credit card late fees, it is our understanding, the organization did not complete the required analysis of its impact on small businesses.

Providing a voice for small businesses in the federal rulemaking process is essential. Congress recognized this need as far back as 1996 when it adopted the Small Business Regulatory Enforcement Fairness Act (SBREFA) with the strong urging of the NSBA. Under SBREFA, federal agencies are obligated to assess whether a proposed rule will impose a substantial economic burden on small businesses. Should such an impact be identified, the pertinent agency is required to evaluate the potential consequences of the proposed rule and explore alternative measures that are less onerous.

For nearly 30 years, this law has been in place to ensure that federal regulators understand the potential benefits and harm to small businesses that are easily overlooked in the rulemaking process. Furthermore, per the Small Business Jobs Act, agencies are compelled to consider comments submitted by the Office of Advocacy of the U.S. Small Business Administration.

When the CFPB certified its rule, the agency claimed it could circumvent the small business impact assessment. In a rare public statement, the Small Business Administration's Office of Advocacy criticized the CFPB's certification process and "recommended that the CFPB maintain the status quo until it has sufficient data to ascertain the economic impact of this action on small entities."

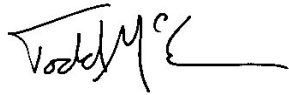
Before we can issue our views on this proposal – and certainly before the agency would consider finalizing it – we must have a thorough analysis of this impact. A refusal to adhere to the requirements laid out by SBREFA, may jeopardize the final rule's ability to even withstand a legal challenge. Accurately or not, capital providers including community and regional banks – key to small business lending – have raised concerns about changes to these fees and ability to lend to small businesses, particularly underserved entrepreneurs.

The NSBA and our members believe that the CFPB should understand the broad effects of this rule, not just on cardholders, but on the institutions that could most acutely feel its downstream

effects. However, the agency's flawed process has only left us to wonder what the potential harm – or lack thereof – might be.

Until we know the reality of this proposal and its impact, no one should be calling for its advancement. We request you conduct the analysis and allow for comment and review before moving forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd McCracken". The signature is stylized with a large, sweeping initial "T" and a long horizontal line extending to the right.

Todd McCracken
President & CEO
National Small Business Association