

## CFPB Release Final Rule on Overdraft Fees

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On December 12, the CFPB released the [final version](#) of its overdraft rule that was first proposed in January. (We discussed it [here](#).) Currently, financial institutions that extend overdraft protection are exempt from certain disclosure and underwriting requirements under TILA. This exemption was intended to allow banks to provide limited overdraft services as a courtesy to customers who inadvertently overdraw on their accounts. The Bureau now claims that fees generated from these overdraft credit products are excessive and harmful to consumers, and estimates the rule will add up to \$5 billion in annual overdraft fee savings for consumers.

Under the final rule, which amends Regulation Z and E, banks and credit unions with over \$10 billion in assets will have three options when providing overdraft services:

- Cap their overdraft fee at \$5. First, covered banks and credit unions could simply cap their overdraft fee at \$5, which is the Bureau's estimated level at which most banks could be able to cover their costs associated with administering a courtesy overdraft program. In the proposed rulemaking, the Bureau was considering a benchmark fee of \$3, \$6, \$7, and \$14. The Bureau noted that it went with the \$3 fee initially, but increased it slightly to account for costs relating to overdraft notices, branch servicing, collection, core providers/vendors, compliance, and technology.
- Cap their fee at an amount that covers costs and losses. For banks that wish to offer overdraft as a convenience service, the final rule allows financial institutions to set their fee at an amount that covers their costs and losses using standards provided by the Bureau.
- Disclose the terms of their overdraft loan, just like other loans. The Bureau specified that financial institutions can continue charging high overdraft fees. But to do so, they must comply with TILA's disclosure requirements such as account-opening disclosures, sending periodic statements, and giving consumers a choice of whether to pay automatically or manually.

Among other things, the final rule also (i) requires overdraft credit offered by covered institutions to be "structured as a separate account," distinct from the asset account, (ii) applies portions of Regulation Z that implement the CARD Act to covered overdraft credit accessed by a hybrid debit-credit card, including underwriting requirements and limitations on penalty fees, and (iii) prohibits compulsory use of preauthorized electronic fund transfers for repayment of covered overdraft credit provided by very large financial institutions.

The final rule will take effect on October 1, 2025.

**Putting It Into Practice:** This final rule is the most recent instance of the CFPB cracking down on fees it alleges are improper. (See our discussions [here](#), [here](#), and [here](#).) However, the rule is likely the Bureau's last salvo in its war against "junk fees." What will remain of this rulemaking after the new administration takes office remains to be seen. We will monitor this space for further developments.

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National Law Review, Volume XIV, Number 348

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