

Issue Update

Regulators, consumer advocacy organizations, and some members of Congress have criticized bank overdraft programs, asserting that overdraft fees contribute to the ranks of the unbanked and are paid predominantly by low- to moderate-income consumers. On December 12, 2024, the Consumer Financial Protection Bureau (CFPB) finalized a [rule](#) that goes beyond the agency's statutory authority and, if not enjoined or rescinded, will lead banks to restrict, if not eliminate, access to overdraft. That evening, ABA, other industry trade associations, and three ABA member banks filed a [lawsuit](#) seeking to enjoin the rule. On February 13, 2025, Senator Tim Scott (R-SC) and Congressman French Hill (R-AR) introduced resolutions of disapproval that, if passed, would invalidate the final rule and, significantly, prevent the CFPB from issuing a new rule in "substantially the same form."

The CFPB's final rule applies Truth in Lending Act and Regulation Z requirements to overdraft protection services offered by banks and credit unions with assets in excess of \$10 billion (Large Banks) that charge an overdraft fee above a certain dollar threshold. Overdraft services provided by a large bank would be "overdraft credit" that is subject to Reg. Z unless the bank charges a "true courtesy" overdraft fee that is below the bank's "breakeven" costs to offer the service or below the CFPB's "benchmark" fee of \$5. Large Banks with fees above its breakeven costs or the benchmark fee may no longer structure the overdraft payment and fee as a negative balance on a checking account and instead must create a "separate credit account" from which the bank would extend overdraft "credit." The rule is effective on October 1, 2025.

If allowed to take effect, the rule will lead banks to restrict, if not eliminate, access to overdraft. This would effectively bring an end to overdraft services for millions of consumers who – following receipt of a consumer-tested disclosure – choose to use the product to cover emergency expenses and other liquidity shortfalls, all to advance the prior administration's political campaign against "junk fees."

The rule purports to apply only to banks and credit unions with more than \$10 billion in assets, but if the rule takes effect, all depository institutions – and their customers – will be impacted. Large banks will be forced to lower their overdraft fee to the benchmark fee of \$5 or to discontinue or restrict access to overdraft services. If a large bank reduces its overdraft fee to \$5, the neighboring community bank will feel compelled to do the same or risk losing its customers to the large bank. Community banks have limited product lines and fewer sources of revenue to offset reduced overdraft fee income; therefore, the overdraft rule may lead to greater consolidation in the banking industry.

Why It Matters

ABA survey data and consumer use demonstrate that overdraft programs provide an important form of short-term liquidity to customers, ensuring that important payments such as rent, mortgages, car loans, and utilities are made on time and that customers avoid utility shut-off or eviction.

- Studies have found that the average transaction that overdraws the customer's account is between \$200 and \$400 (see [here](#), p. 13 & 18, and [here](#)).
- [Survey](#) after [survey](#) show that consumers appreciate and value their bank's overdraft program and are glad that their bank covered their overdraft payment, rather than returned or declined the payment. For example, 69% of consumers [find](#) their bank's overdraft protection valuable – as compared with only 13% who do not find it valuable. Eight in 10 consumers (80%) who have paid an overdraft fee in the past year were glad their bank covered their overdraft payment, rather than

Overdraft

returning or declining payment – which can result in consumers incurring the fee imposed by the payment recipient and embarrassment or other negative consequence caused by a declined transaction (Oct. 2024 survey).

The Federal Reserve’s 2009 “opt-in” rule ensures that consumers have the information necessary to make informed and deliberate choices regarding overdraft. After receiving information about overdraft services, including the costs, consumers must “opt in” before banks may charge fees for overdrafts resulting from one-time debit card and ATM transactions. Consumers receive written confirmation of their choice and may opt out of ATM and debit card overdraft services at any time. Consumers also receive a summary of their monthly and year-to-date overdraft charges on their monthly statements in a special box, so that consumers understand what they are paying.

In the years following the 2009 rule, banks have provided an increasing number of ways for customers to limit or avoid overdraft fees. These include sending low-balance alerts, linking the customer’s checking account to another account, imposing *de minimis* thresholds and caps on total fees that the bank may charge per day, and providing overdraft “grace periods” during which a customer can make a deposit and avoid a fee. Some banks have announced they have reduced, or no longer charge, overdraft or NSF fees. Almost 400 banks offer overdraft-free accounts that meet the [Bank On Initiative’s National Account Standards](#).

Recommended Action Items

- Urge Members of Congress to support a disapproval resolution (S.J. Res. 18 and H.J. Res. 59), under the Congressional Review Act, to invalidate the CFPB’s final rule.
- Explain to policymakers that some of your customers use overdraft as a form of liquidity and provide concrete examples of how individual customers use the product, if possible.
- Urge the CFPB, under new leadership, to extend the October 1, 2025 effective date of the rule and, in the intervening time period, propose a rule to rescind the final rule.