

CFPB's Overdraft Final Rule Harms Community Banks

The CFPB's overdraft final rule – which would impose a price cap on the overdraft fee banks and credit unions could charge – purports to apply only to institutions with more than \$10 billion in assets. But all depository institutions regardless of asset size – and their customers – will be negatively impacted, as community banks will face market pressure to conform their practices to the CFPB's rule. With fewer revenue sources available to them, community banks may feel compelled to increase deposit account fees, raise minimum balance requirements, and limit access to low-cost, full-service deposit accounts. This result is directly at odds with the goal of regulators and banks to promote financial inclusion and reduce the number of unbanked and underbanked individuals.

Background

On December 12, 2024, the Consumer Financial Protection Bureau finalized a [rule](#) that goes beyond the agency's statutory authority and, if allowed to take effect, will lead banks to restrict, if not eliminate, access to overdraft.

The final rule applies Truth in Lending Act (TILA) and Regulation Z requirements to overdraft protection services offered by banks and credit unions with assets in excess of \$10 billion that charge an overdraft fee above a certain dollar threshold — i.e., either the bank's "breakeven" cost to offer overdraft protection or the CFPB's "benchmark" fee of \$5. The CFPB calculated its \$5 benchmark fee by dividing the charge-off losses of five very large financial institutions by the number of transactions that overdraw customers' accounts. But this calculation omitted banks' costs to process overdraft payments, respond to customer questions, and pay for compliance, core provider, and technology expenses.¹

The final rule requires large banks and credit unions with fees above these "caps" to comply with Regulation Z's disclosure requirements. It also imposes significant and burdensome substantive restrictions on overdraft services in violation of TILA, which only mandates disclosure of the cost and terms of credit so consumers can make an informed choice. The rule has an effective date of October 1, 2025.

Harm to Community Banks

The final 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 \$5² or to discontinue the service to their customers. Banks cannot sustainably offer overdraft services to the vast majority of their customer base at \$5 per overdraft.

Large banks' response to the rule will significantly impact community banks and smaller credit unions. Large banks have a presence in nearly every community in America. Smaller institutions will face market pressure to lower their overdraft fees to the fee amount charged by their large bank competitors. If a large bank reduces its overdraft fee to the \$5 benchmark fee, the neighboring community bank will feel compelled to do the same or risk losing its customers to the large bank.

Community banks are particularly ill-equipped to reduce their overdraft fee to \$5. These banks have limited product lines – and therefore fewer sources of revenue to offset reduced overdraft fee income. Moreover, the CFPB's price cap on overdraft fees is just one of the pressures on fee income that banks face. Proposed changes by the Federal Reserve to Regulation II and the CFPB's final rule capping credit card late fees would significantly reduce interchange and credit card revenue, respectively. Coupled with these other regulations, the overdraft final rule may lead to greater consolidation in the banking industry – a result that policymakers from across the political spectrum have expressed concern over.

Most significantly, the final rule 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."

¹ In the final rule, the CFPB increased its initial \$3 benchmark fee calculation to \$5 to cover "costs relating to branch servicing, collections, core provider/vendor services, compliance, technology, and the provision of overdraft notices." The CFPB did not explain how it determined that these costs add up to an additional \$2 per overdraft transaction.

² Bankers uniformly state that they will not take on the operational costs and compliance and litigation risks of calculating the bank's breakeven costs to offer the service or of offering an overdraft program subject to Regulation Z.