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CFPB Issues Final Rule Limiting Overdraft Fees at Large Banks, Treats Overdraft as Credit

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On December 12, 2024, the Consumer Financial Protection Bureau (CFPB) issued a final rule that treats covered overdraft services offered by banks with more than $10 billion in assets (large banks) as credit, bringing them for the first time under the Truth in Lending Act (TILA) and Regulation Z. The final rule, which is materially the same as the January 17, 2024, proposed rule, requires large banks to treat discretionary, fee-based overdraft services (covered overdraft services) similar to credit cards under Regulation Z – including by providing consumers with certain disclosures and evaluating consumers for their ability to repay loans. The final rule also makes changes to overdraft provisions of Regulation E, the implementing regulation of the Electronic Fund Transfer Act.

Although compliance with the new rule is required by October 1, 2025, a consortium of trade associations and banks jointly filed a lawsuit on the day it was issued challenging the final rule and have since filed for a preliminary injunction.

Who is covered?

The final rule applies solely to insured depository institutions and insured credit unions with assets of more than $10 billion and their affiliates. Institutions and credit unions with $10 billion or less in assets are not required to comply with these new requirements.

Key highlights of the final rule

The final rule is materially the same as the proposed rule. Key requirements of the final rule include:

1. Overdraft fee restrictions

The CFPB amends Regulation Z to require that large banks treat covered overdraft services as credit. However, the final rule establishes an exemption for "courtesy" overdraft services if the bank charges $5 or less for the service, or the fee covers only the break-even cost of the service as prescribed in the final rule. As a result, large banks seeking to charge more than the break-even costs for covered overdraft services must disclose this and treat those services as credit.

2. Overdraft accounts

The final rule requires large banks to create dedicated accounts for the overdraft credit. Instead of combining the covered overdraft services (i.e., the overdraft credit) with the consumer's asset account – for example, a deposit or checking account – the final rule requires large banks to separate the asset account from the overdraft credit account. This effectively prohibits structuring covered overdraft credit as a negative balance on a checking or other transaction account.

3. Overdraft repayment methods

Large banks will be required to comply with Regulation E's compulsory use provision in connection with covered overdraft services, which prohibits financial institutions from requiring consumers to use preauthorized electronic fund transfers (e.g., automatic Automated Clearing House, or ACH, payments) to repay credit extended by the financial institution as a condition of extending the credit.

4. Continued monitoring of smaller banks

The CFPB declined to apply the final rule to banks with $10 billion or less in assets, in part because "smaller financial institutions may face difficulty in adapting to these regulatory changes without negatively impacting their consumer base." Consequently, the final rule creates two different regulatory regimes for larger and smaller banks, which some commenters believe may cause confusion in the marketplace. However, the CFPB indicated in the final rule that it plans to monitor the market's response to the final rule, analyze additional

information and consider whether to apply “expanded protections” to covered overdraft services offered by smaller financial institutions.

What’s next?

Although the final rule takes effect on October 1, 2025, the rule already is being challenged in court, could be nullified by the next Congress and could even be revised under the new administration. As with other recent CFPB rules and guidance, a group of trade associations and banks filed a lawsuit challenging the rule. The lawsuit argues that the final rule exceeds the CFPB’s rulemaking authority and reverses 50 years of legal precedent without justification. It also contends that overdraft services do not meet the definition of credit under TILA, and that the definition may not be changed absent congressional action. On December 18, 2024, the banks and trade associations also filed a motion for preliminary injunction to stop the final rule from taking effect while the case is litigated, asserting that in preparation to comply with the final rule, large banks will “suffer irreparable harm in the form of nonrecoverable compliance costs absent a preliminary injunction.”

In addition, the incoming Republican-controlled Congress will have the opportunity to block the final rule from going into effect, pursuant to its authority under the Congressional Review Act, which permits Congress to overturn agency rules within specific time frames.

If the rule does go into effect, it will require large banks to significantly change their overdraft programs or otherwise comply with the fee caps prescribed by the final rule. Given that the rule is for now final, those that are required to comply may still need to consider the implications on their business and operations. For example, large banks that offer overdraft credit with fees above break-even costs or the $5 benchmark will be required to adopt Regulation Z disclosure requirements and, if applicable, credit card provisions such as assessing the consumer’s ability to pay. Large banks may also need to revise their operating systems to create overdraft credit accounts and offer consumers the option to repay overdraft balances without the use of autopay or preauthorized electronic fund transfers.

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