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NYDFS Proposes Limits on Overdraft and NSF Fees

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On January 22, 2025, the New York State Department of Financial Services (NYDFS) **announced proposed regulations** that would limit fees associated with overdrafts, nonsufficient funds (NSF) transactions and returned deposit items. The proposed regulations would apply to state-chartered banking institutions.[1] This initiative is part of a broader push to combat so-called junk fees – an issue the **NYDFS** and **New York Legislature** have taken action on, and one the Consumer Financial Protection Bureau (CFPB), under the Biden administration, urged states to target in a **January 2025 report on proposals to strengthen state-level consumer protections**.

Key highlights of the proposal

The proposal would cap or restrict fees associated with overdrafts and NSF transactions. We highlight these provisions below.

Fee limitations based on overdraft amount

Under the proposal, banking institutions would be prohibited from charging overdraft fees for overdraft items of $20 or less, or overdraft fees that exceed the amount by which the account is overdrawn.

Limitations on number of fees

The proposal would bar banking institutions from:

- Charging more than three overdraft or NSF fees per account, per day, and from charging multiple fees for the same transaction.
- Charging "sustained," "continuous" or "daily" overdraft fees for each day an overdraft balance is not repaid.
- Charging one fee for transferring funds from another account to cover an overdraft and then imposing a second fee for the overdraft itself.

Restrictions on electronic transactions

The proposal would restrict NSF fees for electronic debit transactions that the banking institution declines instantaneously or near-instantaneously. Note that the CFPB under former President Joe Biden **withdrew its proposed rule**, which would have similarly prohibited financial institutions from charging fees, such as NSF fees, when consumers initiate transactions that are instantaneously declined.

Banks also would be prohibited from settling or otherwise completing electronic debits in a manner that maximizes NSF or overdraft charges.

Authorize positive, settle negative

The proposal would ban the practice of "authorize positive, settle negative" (APSN). Accordingly, banking institutions would be prohibited from imposing an overdraft charge on an electronic debit if the available balance at the time the debit is authorized is greater than or equal to the authorized amount, even if subsequently the consumer's available balance is less than the amount of the debit at the time it is received for settlement.

Return deposit item fees

Banking institutions would no longer be allowed to charge a return deposit item fee unless specific conditions are met, such as a returned check lacking a signature.

Fees for representment

If a merchant or other payee represents a debit that was previously charged an NSF fee, the banking institution would be prohibited from imposing another NSF fee upon represent of the debit.

Consumer notifications

The proposal would require banking institutions to notify consumers "via the most immediate and rapid means of communication" used by the institution to deliver written notices when an overdraft or NSF fee is likely to be charged in connection with an electronic debit. In addition, banking institutions would need to inform consumers after the first NSF or return deposit item charge in a calendar year, and 30 days in advance of any changes to overdraft or NSF fees.

What's next?

If adopted, the new regulations could significantly impact how state-chartered banks structure and charge overdraft and NSF fees. More broadly, the proposal demonstrates that state financial regulators will remain active to fill perceived gaps in regulation and consumer protection, as the future of the **CFPB overdraft rule** is uncertain under the new administration.

Note

1. "Banking institutions" means all state-chartered banks, trust companies, savings banks, savings and loan associations, and credit unions.

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