National Consumer Law Center
Fighting Together for Economic Justice

FAQs on CFPB's Rule on Overdraft Lending: Very Large Financial Institutions

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The Consumer Financial Protection Bureau's (CFPB) rule on Overdraft Lending: Very Large Financial Institutions stops big banks from profiting off of abusive overdraft junk fees while allowing transparent, safer, and more affordable forms of overdraft protection without price limits. Below are answers to frequently asked questions about current overdraft fee practices, the requirements of the Overdraft Rule, and the likely impacts. Claims that the rule will have negative impacts on overdraft protection, small banks, or monthly fees are unwarranted.

Why are current overdraft fee practices a problem?

1. Why are overdrafts a form of high-cost credit?

When a financial institution covers an overdraft, it extends credit – it pays the transaction using its own funds, while the consumer incurs a debt that is repaid later, just as with other forms of loans. However, banks are not required to disclose the annual percentage rate (APR) for overdraft services or comply with other requirements that apply to loans because of a 50-year old exemption in regulations dating back to the paper-check era, when overdraft fees only covered an occasional courtesy to prevent a check from bouncing.

Today, many overdrafts involve debit card transactions. The average debit card overdraft loan is $26 and is repaid in three days, yet most big banks charge a $35 overdraft fee. That translates into an APR of over 16,000% because the fee is very high in relation to the size and length of the loan. Even a $300 overdraft repaid in 10 days with a $35 fee would have an APR of 426% APR, which is comparable to APRs for payday loans.

2. What are the similarities between overdraft credit and payday loans?

Both overdraft credit and payday loans are high-cost, short-term loans. The similarities between the two are evident by the fact that payday lenders claim that their loans help people avoid overdraft fees and banks claim that overdraft services are an alternative to payday loans. Both overdraft credit and payday loans are repaid in a short amount of time by a balloon payment taken out of the next deposit or paycheck, resulting in a shortfall that can trigger reborrowing and a cycle of debt. Most overdraft fees are paid by a small number of people who repeatedly overdraft, just as most payday loans are taken out by people who are in a cycle of repeat reborrowing.

3. How have big banks manipulated people into paying more overdraft fees?

Overdraft fees are a big profit center for banks, and thus banks have the incentive to use a number of complicated practices to push people into overdrafting and into incurring more fees. These practices include:

- Pushing people into opting in to overdraft fees on debit card transactions that people would rather have denied than pay a high fee.

- Charging overdraft fees when the account had sufficient funds at the time of the purchase or transaction ("authorize positive, settle negative").
- Changing the order of transactions to increase the number of overdraft fees.
- Charging multiple overdraft fees per day.
- Charging $35 overdraft fees on small overdrafts such as $10.
- Charging sustained overdraft fees for each day an account remains negative.

Some big banks–but not all–have ended these practices.

Consumers do not understand these complex practices or how they differ among banks. People also generally do not open up a bank account planning to overdraft or pick their bank based on overdraft fees or overdraft practices.

4. Are people happy with banks' current overdraft fee practices or do they think those practices are unfair?

No, people are not happy with banks' current overdraft practices:

- The Pew Charitable Trust found that 7 in 10 Americans (71%) believe that it is unfair for a bank to charge a $35 overdraft fee.
- An earlier Pew survey found that 68% of consumers who incurred an overdraft fee on a debit card transaction would have preferred to have had the transaction declined rather than pay a $35 fee.
- After reading information about overdraft fees, 70% of voters across party lines support the overdraft fee rule: two thirds of Republicans (64%), seven in 10 independents (70%), and over eight in 10 Democrats (84%) are in support.

Bank lobbyists argue that consumers want to have their overdrafts covered, but that does not mean that they are happy with overdraft fees or the way that banks currently operate overdraft services. As discussed below, the Overdraft Rule will enable people to have their overdrafts covered, but in a fairer and less exploitative manner.

5. Which groups are especially harmed by overdraft fees?

Almost one in five consumers incur overdraft fees each year, but some groups are disproportionately impacted. The CFPB found that 79% of overdraft and NSF fees were borne by only 9% of accounts, and the median account balance of this group is less than $350.

A study by the Federal Reserve Banks of Atlanta, Boston, and San Francisco found that 17% of Black consumers paid bank overdraft fees, versus 10% of white consumers. A 2023 CFPB report found that Black consumers are 84% percent more likely and Latino/Hispanic consumers

89% more likely to reside in a household that frequently overdrafts as compared to white, non-Hispanic consumers.

High fees like overdraft fees are a top reason people are unbanked. More than one in 10 (11.2%) households with a disability are unbanked, as are 12.2% of Native American, 10.6% of Black, and 9.5% of Latino households. Disparities exist even within the same income tier: among households with $15,000 to $30,000 in income, 17% of Black and Latino households were unbanked, compared with 4% of white households.

6. Are servicemembers and veterans harmed by overdraft fees?

Yes, servicemembers and veterans are impacted by overdraft fees. A Department of Defense survey found that 10 percent of active duty and reserve servicemembers paid overdraft fees two or more times in the past year. The rate of overdrafts is higher among junior enlisted servicemembers than comparable civilian groups. The CFPB forced Navy Federal Credit Union, whose members are largely servicemembers, veterans, and Department of Defense employees, to repay $80 million in illegal overdraft fees.

7. How have banks' overdraft practices changed in the last 55 years, making it appropriate to update overdraft rules?

Fifty-five years ago, during an era dominated by paper checks, banks would cover the occasional overdrawn checks as a true courtesy to their best customers, instead of returning it unpaid. They would charge the same amount as the fee for a bounced check. When the Federal Reserve first wrote regulations to implement the Truth in Lending Act in 1969, it exempted overdrafts and these fees from being treated as credit.

The source of overdrafts, and bank overdraft practices, have changed dramatically since 1969. Now most payments happen electronically and are instantly approved or declined. Most people would rather have a debit card declined than pay a high fee. But banks realized that they could exploit the paper-check loophole to make large back-end profits by routinely extending overdraft credit while charging high fees. Banks adopted automated programs to offer overdraft credit through undisclosed credit lines and developed programs to encourage overdrafts, while obscuring these practices from consumers and failing to comply with credit laws.

Thus, overdraft credit has gone from an occasional courtesy to prevent a check from bouncing into a routine source of high-cost credit. Reform of this loophole is long overdue.

What does the Overdraft Rule do?

8. How does the Overdraft Rule narrow a loophole from the paper-check era?

The Overdraft Rule does not ban overdrafts or set a hard cap on the fees. Instead, it narrows an over 50-year-old loophole in regulations under the Truth in Lending Act (TILA) that exempts high-cost overdraft credit from TILA's requirements to disclose the APR and to give consumers time to repay, among other requirements.

The Overdraft Rule allows very large financial institutions to offer overdraft services without complying with TILA as long as the fees are limited to $5 or the bank's costs of covering overdrafts, whichever is higher. Very large financial institutions that wish to charge higher fees and to make a profit off of overdraft credit must comply with TILA.

9. *What options do very large financial institutions have under the Rule to cover overdrafts?*

The Overdraft Rule gives very large financial institutions flexibility in how to cover overdrafts. They may:

- Continue to provide "courtesy" overdraft services the same way they do today with the fee limited to $5 or the bank's cost of covering the overdrafts.
- Offer overdraft links to saving accounts or credit cards.
- Make profits from overdraft lines of credit, with no price limits, as long as they provide APR disclosures and comply with other TILA requirements.

If the bank chooses to offer overdraft credit under TILA, consumers will get other protections that will make overdraft credit safer and more affordable. If the credit is accessible through a debit card, the very large financial institution would have to comply with the same protections required of credit cards:

- A clear box identifying all fees.
- Assessment of ability to repay so people are not offered debt they cannot afford.
- Periodic statements showing transactions and charges, and time to repay at least 21 days from the statement, along with flexibility in whether or not to authorize automatic repayment from incoming deposits.
- Limits on fees in the first year that exceed 25% of the credit line, to prevent the credit line from being depleted by fees.

These protections and others would make it easier for consumers to manage their finances and to access overdraft credit when they need it without becoming overextended.

10. *Does the Overdraft Rule cap prices for overdraft credit, impose a usury cap, or limit banks' profits?*

No. The Overdraft Rule allows very large financial institutions to offer overdraft credit at whatever price they like as long as they comply with TILA. A usury cap is a cap on the interest rate for credit, and as long as banks comply with the laws that govern credit, the Overdraft Rule imposes no limit. The Rule only limits the fees to $5 or cost if the bank wishes to take advantage of the exemption in the TILA regulations for overdraft services.

11. *What is the status of the Overdraft Rule?*

The Overdraft Rule is supposed to go into effect on October 1, 2025. But banks have sued the CFPB to overturn the rule and a court in Mississippi is considering a request to postpone the effective date. After President Trump fired CFPB Director Rohit Chopra, the CFPB also asked for a 90-day stay of the litigation to enable it to reconsider its position defending the rule.

What impacts will the Overdraft Rule have?

12. *How much are consumers expected to save from the Overdraft Rule?*

The CFPB projects that $5 billion a year will be returned to consumers' pockets through the Overdraft Rule. The typical household that pays overdraft fees is expected to save $225 a year.

13. *How will the Overdraft Rule discourage abusive practices, lead to more transparent, safer overdraft practices, and help people comparison shop?*

By requiring compliance with TILA if an overdraft fee is over $5 or the bank's costs, back-end overdraft fees will no longer be an unregulated profit center. Thus, banks will not have an incentive to manipulate people into overdrafting or incurring overdraft fees.

Banks will be able to offer overdraft credit at a profit, but they will have to provide APR disclosures that will enable people to comparison shop. Banks are unlikely to persuade consumers to accept overdraft credit at 16,000%, but they can offer an overdraft line of credit at 18% APR, 36% APR, or whatever consumers are willing to pay.

14. *Why are big banks' Chicken Little claims about an end to overdraft protection unrealistic?*

Banks can sustainably offer overdraft credit as people will find it easier to repay overdrafts if they are not charged high, snowballing fees. Lobbyists' predictions of large chargeoffs are unrealistic.

High fees are not necessary to sustain overdraft services. Capital One, which has a large subprime customer base, completely eliminated overdraft fees while continuing to cover overdrafts. The bank explained:

> [W]e have seen customers succeed by using no fee overdraft responsibly. At the same time, we believe that our decision has also been good for our business, by attracting new customers, retaining current customers and reducing operational complexity. Eliminating overdraft fees has also helped deepen our relationships with customers who

can continue to grow and thrive with us over the longer term. These types of win-wins are at the heart of our mission to change banking for good.

Even if banks wish to charge for overdrafts, they can simply apply with the same TILA rules that apply to credit cards. Those rules have not stifled a robust subprime credit card market. In fact, a CFPB survey found that the majority of consumers charged overdraft and NSF fees— even frequent overdrafters— had some credit available on a credit card at the time. One way that very large financial institutions can offer overdraft credit is by a link to a credit card, which could be a subprime card. The TILA ability-to-repay requirement is not onerous and would not be difficult to satisfy with a modest line of credit with reasonable repayment terms.

The Overdraft Rule is unlikely to cause institutions to eliminate overdraft coverage altogether. About 23 million households pay overdraft fees. Financial institutions cannot afford to ignore that market or to repeatedly bounce payments, causing friction with their customers. If they do, people will find another bank. Instead, banks will have an incentive to help consumers avoid overdrafting instead of pushing people to overdraft. People will have more money in their pockets, will adjust, and will find better ways to manage their finances.

15. Which very large financial institutions are most impacted by the Overdraft Rule?

Of the $5.8 billion in overdraft fees charged in 2023, $3.3 billion came from just eight very large banks, and $2 billion of that came from just two banks: JPMorgan Chase (headquartered in Ohio) and Wells Fargo (South Dakota). Those two banks will face the biggest impact.

The rule only applies to very large financial institutions with over $10 billion in assets. Those institutions are the ones supervised by the CFPB and are listed here. But many of those institutions have already reformed their overdraft practices.

16. Will the Rule impact smaller community banks and credit unions?

No. Banks and credit unions with fewer than $10 billion in assets are completely exempt from the Rule.

Bank lobbyists have complained that smaller institutions will face “market pressure” to lower their overdraft fees. But smaller institutions offer more personal service and have other reasons that consumers are drawn to them. Most consumers do not choose their bank based on its overdraft policies. Moreover, if consumers are happy with the way smaller banks offer overdraft services, then smaller institutions will be able to cater to that market. They will only face pressure to change if consumers are unhappy with their overdraft practices.

Smaller institutions already face competition from others that have reformed their overdraft practices, including the larger institutions listed below and smaller ones like Amplify Federal Credit Union. Smaller institutions also face competition from nonbank fintechs that offer banking services and no overdraft fees. Market competition is how free markets should work.

17. Do some very large financial institutions offer overdraft protection with no fees whatsoever?

Yes. Alliant Credit Union, Ally Bank, Capital One, Citibank, and EverBank (formerly TIAA), among others, do not charge any overdraft fees and continue to offer overdraft protection.

18. How will the Overdraft Rule improve confidence in banks and help to prevent people from losing their bank accounts and becoming unbanked?

Overdraft fees can quickly snowball at families' most financially vulnerable moments, increasing the negative balance and making it harder for people to bring the account positive. If the consumer is unable to repay the negative balance, the account will be closed. The consumer will get a negative report with checking account screening agencies like ChexSystems and Early Warning Services, making it difficult to open another account. Conversely, banks have found that when they eliminated overdraft fees, they closed fewer accounts and charged off less unpaid overdraft debt.

High, surprise fees like overdraft fees are also a big reason why some people do not trust banks and do not have bank accounts.

19. Why is it unlikely that banks will charge high monthly fees if they cannot charge high overdraft fees?

Free checking is very popular, and competition will prevent high monthly fees. Capital One completely eliminated overdraft fees and yet still charges no monthly fee. The average household that pays overdraft fees pays $225 a year – nearly $20 a month. A bank that charged that much for a checking account would attract few customers. Moreover, a modest monthly fee is better than high back-end overdraft fees and would make it easier for consumers to comparison shop.