



1700 G Street NW, Washington, DC 20552

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Executive Summary of the Overdraft Lending: Very Large Financial Institutions Rule

On January 17, 2024, the Consumer Financial Protection Bureau (CFPB) issued a notice of proposed rulemaking that would increase consumer protections that apply to overdraft credit offered by very large financial institutions. In general, an overdraft occurs when consumers do not have a sufficient balance in their account to pay a transaction, but the financial institution pays the transaction anyway. Typically, the financial institution pays an overdraft transaction by either transferring the consumer's own funds from another account held by the financial institution, such as a savings account, or by extending overdraft credit (i.e., using the financial institution's own funds and requiring the consumer to repay).

On December 12, 2024, the CFPB issued a final rule that amends Regulations Z and E to ensure that extensions of overdraft credit offered by very large financial institutions adhere to consumer protections required of similarly situated products, unless the overdraft fee is at or below the institution's costs and losses. These changes will allow consumers to compare certain overdraft credit to other types of credit and will provide consumers with several protections that already apply to other consumer credit.

This is a Compliance Aid issued by the Consumer Financial Protection Bureau. The CFPB published a Policy Statement on Compliance Aids, available at <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/policy-statement-compliance-aids/>, that explains the CFPB's approach to Compliance Aids.

The final rule will take effect on October 1, 2025. The final rule is available at <https://www.consumerfinance.gov/rules-policy/final-rules/overdraft-lending-very-large-financial-institutions-final-rule/>.

Very Large Financial Institutions

The final rule applies only to very large financial institutions, which is defined as an insured depository institution or an insured credit union with total assets of more than \$10 billion and any affiliate thereof. The final rule does not change the regulatory framework for overdraft services offered by financial institutions with assets of \$10 billion or less.

A financial institution may determine whether it has total assets of more than \$10 billion using the same determination that is used to determine whether the institution is subject to the CFPB's supervisory authority under 12 U.S.C. § 5515(a). The CFPB currently publishes a list of such institutions at <https://www.consumerfinance.gov/compliance/supervision-examinations/institutions/>.

Overdraft Credit Under Regulations Z and E

Under the final rule, Regulation Z will generally apply to all consumer overdraft credit provided by very large institutions unless it is provided at or below the institution's costs and losses. The final rule defines overdraft credit as generally including consumer credit extended by a financial institution to pay a transaction from a checking or other transaction account (other than a prepaid account) held at the financial institution when the consumer has insufficient or unavailable funds in that account. For ease of reference, the final rule generally refers to overdraft credit that is not subject to Regulation Z as "non-covered overdraft credit," and overdraft credit that is subject to Regulation Z as "covered overdraft credit."

The final rule applies Regulation Z to very large financial institutions' overdraft credit by updating two regulatory exceptions from the definition of finance charge. First, the final rule updates an exception that provides that a charge for overdraft is not a finance charge if the financial institution has not previously agreed in writing to pay items that overdraw an account. The rule updates this exception by limiting it to only overdraft credit that is provided at or below costs and losses. The final rule provides a financial institution the ability to determine whether an overdraft charge is at or below costs and losses by either: (1) calculating its own costs and losses using a standard set forth in the rule; or (2) relying on a benchmark fee of \$5. Overdraft that incurs charges that exceed costs and losses is currently non-covered overdraft credit, but it will become covered overdraft credit when this rule becomes effective.

Second, the final rule updates a related exception that provides that a charge imposed in connection with an overdraft credit feature is not a finance charge if the charge does not exceed the charge for a similar transaction account without a credit feature. The final rule updates this provision by clarifying what is and is not a comparable charge.

The final rule also applies additional requirements to covered overdraft credit offered by a very large financial institution. Specifically, the final rule does the following:

- **Prohibits Compulsory Use of Preauthorized Transfers:** The final rule removes an exception to Regulation E's compulsory-use prohibition for covered overdraft credit. As a result, covered overdraft credit offered by very large financial institutions cannot be conditioned on consumer repayment by automatic electronic fund transfers from the consumer's account (e.g., their checking account). Instead, a very large financial institution must offer a consumer at least one method of repaying an overdraft credit balance other than automatic repayment by preauthorized electronic fund transfer. Under the final rule, consumers could still opt into automatic repayments on a periodic basis if offered by their financial institution, but they will have the right to repay this overdraft credit manually if they prefer.
- **Requires Covered Overdraft Credit to be Structured as a Separate Credit Account:** The final rule requires covered overdraft credit extended by a very large financial institution to be put in a credit account that is separate from the asset account. Accordingly, the final rule prohibits structuring covered overdraft credit as a negative balance on a checking or other transaction account.
- **Applies CARD Act Provisions to Hybrid Debit-Credit Cards:** The final rule updates exceptions to apply all the credit card provisions of Regulation Z to covered overdraft credit accounts offered by very large financial institutions if the credit account can be accessed by a hybrid debit-credit card. The final rule defines hybrid debit-credit card to mean any card, plate, or other single credit device that a consumer may use from time to time to obtain covered overdraft credit from a very large financial institution. This definition includes, for example, a debit card that a consumer can use to complete transactions using funds drawn from an asset account held at a very large financial institution when that device can also be used to access covered overdraft credit.

When consumers at very large financial institutions are offered covered overdraft credit, that covered overdraft credit will not be subject to the Regulation E opt-in requirement. However, that covered overdraft credit will be subject to the requirements of Regulation Z, as applicable. The

final rule does not modify requirements applicable to non-covered overdraft credit, such as the Regulation E opt-in requirement and those found in Regulation DD.