

FACT SHEET: THE CFPB'S PROPOSED RULE TO CURB EXCESSIVE FEES ON OVERDRAFT LOANS BY VERY LARGE BANKS AND CLOSE A DECADES-OLD LOOPHOLE

In January 2024, the Consumer Financial Protection Bureau (CFPB) proposed a rule addressing overdraft loans. The proposal would close an outdated loophole exploited by very large financial institutions that has exempted highly profitable overdraft loans from longstanding provisions of the Truth in Lending Act and other consumer protection laws.

The CFPB estimates that this rule may save consumers \$3.5 billion or more in fees per year. This figure reflects an average of \$150 per household for the 23 million households who pay overdraft fees in any given year, while the households hardest hit by overdraft fees could save much more. These potential savings are on top of the \$3.5 billion in annual overdraft fees consumers are already saving compared to 2019. By reining in excessive overdraft fees, the proposal would also address a major reason that consumers lose their checking accounts.

Under the proposal, very large financial institutions would still be able to offer profitable overdraft loans, as long as they comply with longstanding consumer protections on loans. For example, this would require them to disclose interest rates and fees, just as they would if they offered a credit card or other loan.

The CFPB's proposal would apply to the very largest banks and credit unions that dominate the consumer deposit and overdraft lending markets. The proposed rule provides clear rules of the road for banks that offer credit features linked to debit card products, which may emerge as a competitor to traditional credit cards.

Overdraft: From occasional convenience to routine, expensive loan product

In the paper check era, overdraft service was intended to be a convenience, rather than a massive profit driver. Decades ago, many payments were made through paper checks sent through the U.S. Postal Service. When a consumer's account lacked the funds to cover a check, the financial institution would occasionally honor it nonetheless, since the time needed for the bank and the consumer to correct the error could be substantial. Institutions provided this service on a manual, ad hoc, discretionary basis, and not pursuant to a formal agreement. After Congress enacted the Truth in Lending Act (TILA) in 1968, the Federal Reserve Board voted to create an exemption for this type of service, so it was not subject to credit regulations.

Over time—as automation increased and overdraft was extended to more frequent, and smaller, debit card transactions—overdraft evolved into a routine, expensive loan product. Banks also increased the size of overdraft fees, even as increased automation generally made banks' operations more efficient. Large banks typically charge \$35 for an overdraft loan today, even though the majority of consumers' debit card overdrafts are for less than \$26 and are repaid within three days—translating to pricing in annual percentage rate (APR) terms of over 16,000 percent. And today, only a very small portion of overdrafts are caused by paper checks.

Federal banking regulators have identified abuses in overdraft lending since the early 2000s. These problems have included high fees and complex transaction processing practices that trigger multiple overdraft fees. Consumers have paid an estimated \$280 billion in overdraft fees over the past two decades, including, the CFPB estimates, roughly \$9 billion in 2022.

Starting in 2012, the CFPB [has carefully studied](#) the overdraft lending market and published a series of research reports using market data to shed light on the use of the product. These include [a 2021 study](#) that showed that overdraft revenue from the beginning of public reporting of these fees in 2015, through 2019, remained persistent.

Overdraft abuses by very large financial institutions

The CFPB has repeatedly uncovered abuses related to overdraft loans by very large financial institutions.

Because these loans are extremely profitable, many financial giants sought ways to ratchet up revenues from their deposit account customers. This has required regulators to spend substantial resources to prevent illegal activity that inhibited fair competition.

- In 2017, the [CFPB sued TCF Bank](#), which has since merged with Huntington Bank, for extreme abuses of its overdraft operations. According to the complaint, bank executives showered branch managers with bonuses if they obtained opt-ins for overdraft for more customers. The bank would host major celebrations related to overdraft, including when the bank enrolled 500,000 customers. The bank's CEO named his boat the "Overdraft." In 2018, TCF settled the matter for approximately \$30 million.
- In 2020, the [CFPB sanctioned TD Bank](#), which paid \$123 million for, among other violations, deceptive practices related to debit card overdraft. These included claiming that overdraft was a "free" service that "comes with" the account, when in reality the bank charged customers \$35 per debit card overdraft and could only do so if consumers opted in. The CFPB also found that TD Bank engaged in abusive practices, including by requiring new customers to sign pre-checked forms indicating their consent to enroll in debit card overdraft without mentioning the service at all.
- In 2022, the [CFPB ordered Regions Bank](#) to pay \$191 million for charging illegal surprise overdraft fees, even after telling consumers they had sufficient funds at the time of the transactions. The CFPB found that Regions leadership knew about and could have discontinued the fees years earlier, but they chose to wait while Regions pursued changes that would generate new fee revenue to make up for ending the illegal fees. Regions was a repeat offender in the overdraft space; the [CFPB also sanctioned Regions](#) in 2015 for charging approximately \$49 million in debit card overdraft fees to customers who had not opted-in.
- In late 2022, the [CFPB ordered Wells Fargo](#) to refund over \$200 million in illegal surprise overdraft fees. As in the Regions matter, these were fees charged when the consumer had available funds at the time of a purchase, but then subsequently had a negative balance once the transaction settled. As early as 2015, the CFPB and other regulators began cautioning banks against this practice.

In 2022, the [CFPB also began a targeted effort](#) to scrutinize a broader swath of banks to detect illegal overdraft activity. Consumers will be refunded at least \$120 million in connection with this effort.

Existing requirements for overdraft loans

Most overdraft loans remain exempted from regulation under the Truth in Lending Act. As a result of the exception from TILA created during the paper check era, overdraft is primarily regulated under the Electronic Fund Transfer Act (EFTA) and Truth in Savings Act. EFTA regulations include the opt-in requirements for overdraft on debit card purchases and ATM withdrawals. Consumers generally do not receive any loan-related disclosures for “overdraft services” that would facilitate comparison to other loan products, and are not entitled to any substantive protections under TILA. On the other hand, formal overdraft lines of credit are generally subject to TILA’s requirements that apply to open-end (revolving) loan products, although there are notable exceptions.

The CFPB’s proposed rule

Overview & Scope

The CFPB’s proposed rule would apply to only very large financial institutions, with assets of \$10 billion or more. This threshold covers the roughly 175 largest banks and credit unions that overwhelmingly dominate today’s consumer deposit and overdraft lending market. The CFPB estimates they are responsible for more than two-thirds of total marketwide overdraft fee revenue. The remaining institutions are overwhelmingly relationship-focused community banks and credit unions.

The proposal provides large financial firms flexibility to offer overdraft as a courtesy service or as a line of credit. When providing courtesy overdraft service, banks may recover their costs and losses through breakeven fees. When offering loans in connection with debit card transactions, banks would follow clear guideposts consistent with the longstanding rules that apply to credit cards.

Banks may provide courtesy overdraft services with breakeven fees

The proposed rule would preserve courtesy overdraft, where fees do not exceed the very large financial institution’s costs and losses. The proposal would provide two options for very large financial institutions to operate within this exception—calculating their own costs using a “breakeven standard” or relying on a “benchmark fee” set by the CFPB:

- **Financial institutions may determine the amount of the fee they need to charge to break even using the breakeven standard.** The losses they incur when they write off overdrawn account balances that are not returned to positive would generally comprise the majority of what the fee would recover. In addition, very large institutions may include their direct costs specifically traceable to the provision of courtesy overdraft.
- **Alternatively, financial institutions may charge a benchmark fee, which could be set as low as \$3.** The CFPB has proposed several options for the benchmark fee, including \$3, \$6, \$7, or \$14. The [CFPB analyzed](#) charge-off losses and cost data that it collected from financial institutions in order to arrive at these values. These values are composed primarily of institutions’ charge-off losses, with additional allowances of \$0.50 per overdraft transaction to cover the very large institution’s cost of funds and \$0.50 per transaction to cover call center expenses and other potential operational costs. In the final rule, the benchmark chosen, if any, would depend in part on whether the CFPB uses the average losses

in its dataset, or the bank with the highest losses, and whether the CFPB includes losses from transactions where overdraft fees were waived.

Courtesy overdraft loans—i.e., overdraft loans that remain exempt from TILA—will continue to be subject to the opt-in requirements for one-time debit card and ATM transactions.

Banks may offer profitable overdraft loans that comply with longstanding credit laws

The proposed rule would apply credit protections to overdraft loans provided by very large financial institutions outside of the courtesy exception. Very large financial institutions may choose to offer overdraft loans that comply with the requirements of TILA. The proposal refers to this overdraft credit as “covered overdraft credit.”

- **Consumers receiving covered overdraft credit from very large financial institutions would receive the loan disclosures required under TILA, promoting the informed use of credit and the ability to compare costs with other loans.** Many consumers who incur overdraft fees report being [surprised by overdrafts](#) and have access to cheaper credit sources, such as available credit on a credit card. Loan disclosures would help consumers understand that they are entering into a contract for a credit product. They would also promote the comparison of the cost of covered overdraft credit relative to competing loan products.
- **The protections that apply to traditional credit cards would apply to covered overdraft credit issued by very large financial institutions that is accessed by debit cards or routing/checking account numbers.** For example, consumers would apply for the credit and institutions would underwrite to determine the consumer’s ability to repay. Consumers would be able to repay the credit manually if they prefer manual repayment over auto-pay. And institutions would have to comply with limitations on penalty fees and fees charged during the first year.

Effective date

The proposed rule would go into effect the October 1 that follows the final rule’s publication in the *Federal Register* by at least six months. This approach to setting an effective date is a statutory requirement. The CFPB expects this date would be October 1, 2025.

The Consumer Financial Protection Bureau is a 21st century agency that implements and enforces Federal consumer financial law and ensures that markets for consumer financial products are fair, transparent, and competitive. For more information, visit www.consumerfinance.gov.