



Regulatory Alert

Regulatory Insights



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Regulatory focus on overdraft fees

As greater scrutiny is being placed by financial regulators on consumer protections and fairness, all deposit-taking financial companies should anticipate an increased potential for investigative letters, supervisory examinations, and enforcement actions related to overdraft and NSF fees. Consumer complaints will likely factor into the supervisory focus toward certain policies and/or practices as well as to individual entities. Financial companies should consider re-evaluating their overdraft business model in light of the agencies' enhanced supervisory attention. It should be noted that several large financial institutions have recently made changes to or eliminated their overdraft programs.

CFPB Statement

The CFPB has [released](#) two research papers, on overdraft fees, finding that banks, including large banks, rely on these fees as a major source of revenue. CFPB estimates that, overall, approximately two thirds of the fee revenue reported by banks is derived from overdraft and NSF fees which, the Bureau states, indicates heavy reliance on such income.

Based on these and other earlier research reports, CFPB states that it will enhance its scrutiny of banks that are heavily dependent on overdraft fees. As [outlined](#) by CFPB Director Chopra, the CFPB will:

- Take action against large financial institutions whose overdraft practices violate the law.
- Take action against individuals who “directed any illegal conduct” related to overdrafts.
- Consider issuing additional policy guidance outlining unlawful practices.
- Prioritize examinations of financial institutions that are “heavily reliant on overdraft,” and focus supervisory attention on financial institutions that have a higher share of frequent overdrafters or a higher average fee burden for overdrafting.

- “Harness” new technology that will shift toward an open banking infrastructure and allow consumers to change their banking relationships more easily.

The reports released by the CFPB include:

- *Overdraft/NSF Fee Reliance Since 2015 – Evidence from Bank Call Reports* (click [here](#))
- *Checking Account Overdraft at Financial Institutions Served by Core Processors* (click [here](#))

OCC Statement

In a separate but related [statement](#), the OCC noted that it also had recently concluded a review of bank overdraft programs and identified attributes of responsible and fair overdraft programs, including:

- Requiring consumer opt-in to the overdraft program.
- Providing a grace period before charging an overdraft fee.
- Allowing negative balances without triggering an overdraft fee.
- Offering consumers balance-related alerts.
- Providing consumers with access to real-time balance information.



- Linking a consumer’s checking account to another account for overdraft protection.
- Collecting overdraft or NSF fees from a consumer’s next deposit only after other items have been posted or cleared.
- Not charging separate and multiple overdraft fees for multiple items in a single day and not charging additional fees when an item is re-presented.

The OCC also suggested that all banks should offer basic accounts that do not allow overdrafts, such as Bank On accounts or their equivalent.

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