

CFPB Finalizes Overdraft Rule, Related Legislation

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Overdraft refers to when the money in a consumer account cannot cover a given transaction, but a financial institution pays the transaction. While some financial institutions do not offer overdraft coverage, banks that do typically charge a fee for covering each overdraft, [often around \\$35](#). The Consumer Financial Protection Bureau (CFPB) [finalized a rule](#) in January 2025 that would cap the overdraft fee at either \$5 or an alternative price at institution costs. Alternatively, financial institutions could provide additional disclosures as required of credit subject to the [Truth in Lending Act \(TILA\)](#). Legislation introduced in the 119th Congress would overturn this recent rule using the [Congressional Review Act \(CRA\)](#): H.J.Res. 59 and S.J.Res. 18.

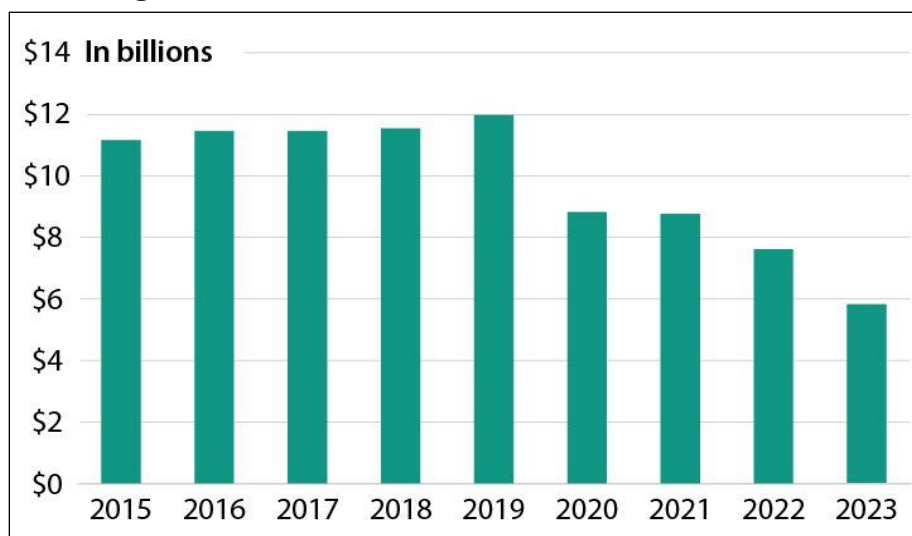
Overview of Overdraft and Recent Trends

Many financial institutions offer overdraft protections with different terms and conditions. [Overdraft fees](#) have generally been an increasingly significant component of noninterest bank income over the past 40 years, though the trend has reversed recently. From 2020 to 2023, [research from the CFPB](#) shown in **Figure 1** found that banks had reduced their revenue from overdraft and non-sufficient fund (NSF) fees by nearly 50%. This comes as [some financial institutions](#) have adjusted overdraft and NSF fee policies, including reducing overdraft fees, instituting grace periods, or eliminating these fees altogether. Other fee revenue remained flat from 2019 to 2023 even as overdraft/NSF revenue declined.

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Figure 1. Overdraft and NSF Fee Revenue: 2015-2023

Source: CFPB.

CFPB Overdraft Rule

The CFPB finalized a rule in January 2025 that gave financial institutions three options to comply with the new rule: either cap overdraft fees at \$5, cap them at a higher level if financial institutions justify additional expense, or treat overdraft like credit and mandate that financial institutions provide additional disclosures similar to other lending products under TILA. Prior to this point, in 1969, the Federal Reserve developed a rule (34 C.F.R. §2002) that was later transferred to the CFPB. This rule stated that overdraft was not credit and as a result exempted overdraft fees from being characterized as *finance charges* within TILA and thus imposed no price cap for an exemption. As a result, this new rule would significantly reduce the overdraft fees that many financial institutions charge or mandate a new set of disclosures. This rule would apply to banks and credit unions with \$10 billion or more in assets and would take effect in October 2025. The CFPB justified this new rule under provisions in TILA (15 U.S.C. §1604), the Electronic Funds Transfer Act (15 U.S.C. §1693), and the Consumer Financial Protection Act (12 U.S.C. §5512). The CFPB under former director Rohit Chopra brought enforcement actions related to overdraft fees under the prohibition on “unfair, deceptive, or abusive acts or practices” (12 U.S.C. §5536) against Wells Fargo, Navy Federal Credit Union, and Regions Bank. In total, these institutions were ordered to pay roughly \$491 million for overdraft-related issues.

Pursuant to a January 20, 2025, presidential memorandum (which has the effect of an executive order), the CFPB overdraft rule may be modified with further review. New leadership at the CFPB under Acting Director Russell Vought or a permanent director in the future could potentially reconsider this rule.

When the rule was finalized, the CFPB characterized it as part of the broader policy push under the Biden Administration to decrease “junk fees.” The CFPB asserted that this rule would “add up to \$5 billion in annual overdraft fee savings to consumers” and would disproportionately benefit consumers who overdraft repeatedly. CFPB data show a small number of consumers pay the overwhelming majority of overdraft fees: Roughly 9% of accounts comprise 79% of overdraft and insufficient funds fees, and these consumers overdraft more than 10 times a year. Some consumer advocates and the CFPB argued that the rule would protect vulnerable consumers from excessive fees and close a loophole in the law created by TILA. Previous research had argued that consumer overdrafting can result in worsening financial health and moving to products such as payday lending.

A group of financial trade organizations including the Consumer Bankers Association, American Bankers Association, and America's Credit Unions [brought a lawsuit](#) against the CFPB rule, arguing that it exceeded the CFPB's statutory authority, would lead consumers to other financial options including payday loans, and create a price cap inconsistent with prior policy at the CFPB and the Federal Reserve. Additionally, research from the [Consumer Bankers Association](#) argued that this overdraft change would limit checking account access including low- to no-fee checking account options in response to the expected reduction in revenue from checking accounts. Previous research [on overdraft regulation more generally](#) argued that a "serious reduction in overdraft revenues would ... result in many consumers being driven out of the mainstream financial system, especially low-income consumers." Research from the [New York Federal Reserve](#) argues that "overdraft fee caps hamper, rather than foster, financial inclusion," as low-income borrowers may lose access to checking accounts.

Legislation in the 119th Congress

On February 13, 2025, the chairs of the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs introduced, respectively, bicameral CRA resolutions to overturn this CFPB overdraft rule: H.J.Res. 59 and [S.J.Res. 18](#).

Disapproval of a rule under the CRA has the effect of overturning a rule or preventing a rule from taking effect if it had not gone into effect (as is the case here). Furthermore, the CRA provides that if a joint resolution of disapproval is enacted, an agency may not issue the rule in "substantially the same form" unless authorized in a subsequent law. The CRA does not define the phrase *substantially the same*. [Section 805 of the CRA](#) also has a general [prohibition on judicial review](#), and no courts have weighed in on the meaning of this phrase. For more information on effects of disapproval of rules under the CRA, see CRS Report R43992, *The Congressional Review Act (CRA): Frequently Asked Questions*, by Maeve P. Carey and Christopher M. Davis.

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