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INSIGHT

Congress Repeals CFPB's Overdraft Rule

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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 December 2024 that would have capped the overdraft fee at either $5 or an alternative price at institution costs. Alternatively, financial institutions could have provided additional disclosures as required of credit subject to the Truth in Lending Act (TILA).

This rule would have taken effect October 2025. However, Congress overturned the rule using the fast-track procedures of the Congressional Review Act (CRA) through the passage of S.J.Res. 18, which the President signed into law (P.L. 119-10).

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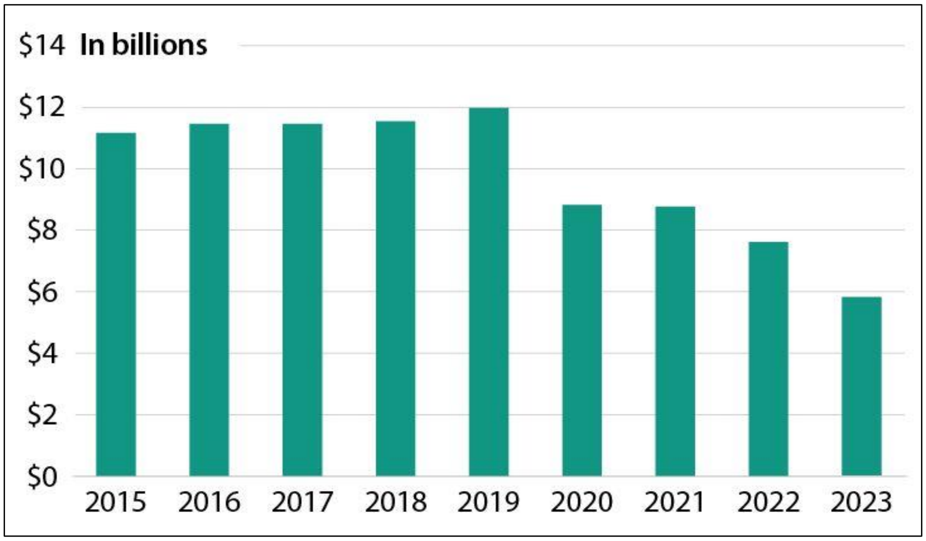
Figure 1. Overdraft and NSF Fee Revenue: 2015-2023



Source: Consumer Financial Protection Bureau.

CFPB Overdraft Rule

The CFPB finalized a rule in December 2024 that would have given 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. This new rule would have significantly reduced the overdraft fees that many financial institutions charge or would have mandated a new set of disclosures. This rule would have applied to banks and credit unions with $10 billion or more in assets and would have taken 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.

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 have added “up to $5 billion in annual overdraft fee savings to consumers” and would have disproportionately benefited 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—previously brought a lawsuit against the now-vacated CFPB rule, arguing that it exceeded the CFPB’s statutory authority, would have led consumers to other financial options including payday loans, and would have created 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 have limited 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

Congress overturned this rule under the fast-track legislative procedures of the CRA. 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 joint resolutions to overturn this CFPB overdraft rule: H.J.Res. 59 and S.J.Res. 18. In March and April 2025, respectively, the Senate and the House voted to pass S.J.Res. 18, which the President signed into law (P.L. 119-10). Because a joint resolution of disapproval was enacted, the CFPB may not issue a rule in "substantially the same form" in the future absent authorization 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 *substantially the same form*.

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