



On January 17, 2024, the Consumer Financial Protection Bureau (CFPB) released a proposed rule to amend Regulations E and Z to update applicable regulatory exceptions for overdraft credit provided by financial institutions with more than \$10 billion in assets.<sup>1</sup> The proposed rule is focused on closing what the CFPB describes as an “outdated loophole” exempting overdraft lending services from consumer protections required of similarly situated credit products.<sup>1</sup> Financial institutions and credit unions can comment on the proposal until April 1, 2024. Once finalized, the rule is scheduled to go into effect on the October 1 following the final rule’s publication in the *Federal Register* (tentatively October 1, 2025).

## 5 insights you should know

**Overdraft loan credit changes:** In alignment with the CFPB’s continued efforts to reign in “junk fees,” the proposed rule is focused on updating exemptions that were designed for the paper check era into the current digital age of banking. These changes would require financial institutions to treat overdraft loans like credit cards and other loans providing clear disclosures and consumer protections allowing consumers the ability to better compare credit types.

**Proposed rule applicability:** The proposed rule will apply to banks and credit unions with assets greater than \$10 billion (only “very large financial institutions”). The current proposal would not change or impact the regulatory framework for overdraft credit offered by those financial institutions under the \$10 billion threshold.

**Breakeven standard & benchmark fee:** While the proposed rule includes updating two regulatory exceptions from the statutory definition of finance charge, it will provide the flexibility for financial institutions to offer overdraft as a courtesy service or line of credit. In scope, financial institutions would have the ability to operate within this exception by either utilizing 1) the breakeven standard to calculate costs and losses (i.e., “breakeven standard”) or 2) a CFPB benchmark fee (considering either \$3, \$6, \$7, or \$14).

**Additional credit protections:** “Covered overdraft credit” offered by financial institutions would need to be placed in a credit account separate from the asset account. This proposed shift applies additional credit card provisions to covered overdraft credit by applying the portions of Reg Z that implement the Credit Card Accountability Responsibility and Disclosure Act (CARD) Act for instances where consumers may use hybrid debit-credit cards (e.g., debit card, single credit devices) to obtain overdraft credits.

**Alternative repayment methods:** To help ensure consumers have alternative methods of repayment, the proposed rule would also prohibit compulsory use of preauthorized Electronic Fund Transfers (EFTs) for repayment of covered overdraft credit. Financial institutions would need to begin to offer options for consumer repayment for any existing covered overdraft credit subject to Regulation Z.

## 5 considerations to evaluate

1

**Determine potential impacts:** While many financial institutions have already begun to implement changes to their overdraft and non-sufficient funds fees policies, those in-scope institutions should evaluate the potential impact of the proposed requirements across existing first line processes (including controls, documentation, and training), technology and data, and compliance oversight to determine and identify if potential gaps or opportunities for enhancement exist.

2

**Conduct independent cost analysis:** Under the proposed rule, financial institutions may have options to enable adherence to requirements. Conducting an independent analysis to better understand not only the costs associated with insufficient funds and the application of fees, but also management accounts with no funds or in collections will be critical to informing potential next steps and feasibility of choosing to over covered overdraft credit.

3

**Assess potential operational impacts:** For instances where financial institutions determine that the proposed CFPB benchmark fees are not in alignment with currently offered non-covered overdraft services, further assessment of operational impacts will be required. If financial institutions opt to continue offering such credits, significant operational changes may be necessary to enable adherence not only Truth in Lending Act (TILA) Regulation Z disclosure provisions, but also applicable state-level credit compliance requirements (e.g., usury limits) and the Military Lending Act (MLA).

4

**Evaluate strategic revenue opportunities:** For some financial institutions, particularly those who have a significant portion of revenue from these fees, alternative strategies and products may need to be considered to replace the revenue losses. As strategic alternatives are evaluated, financial institutions must maintain awareness of broader CFPB junk fee efforts and potential areas where new fee generation should not be considered. For example, the January 2024 proposed rule to prohibit non-sufficient funds fees on transactions declined right at the swipe, tap, or click demonstrates a more proactive proposal related to fees.<sup>2</sup>

5

**Consider compliance management system (CMS) capabilities:** As financial institutions consider next steps and potential approaches for implementation; it will be essential to re-evaluate existing CMS capabilities to manage, monitor, and test the process and controls associated with addressing identified risks and regulatory requirements.

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<sup>1</sup> CFPB, “Overdraft Lending: Very Large Financial Institutions Proposed Rule,” press release January 17, 2024. <sup>2</sup> CFPB, “Nonsufficient Funds (NSF) Fees for Instantaneously Declined Transactions”, press release January 24, 2024.