

CFPB Amends Regulation E's Compulsory Use Exemption for Large Institutions' Overdraft Credit Plans

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On December 12, 2024, the Consumer Financial Protection Bureau issued a final rule amending Regulation E to prohibit large financial institutions from conditioning overdraft credit services on repayment through preauthorized electronic funds transfers.

Reg E generally prohibits financial institutions from conditioning the extension of credit to a consumer on repayment by preauthorized EFTs.^[1] Currently, Reg E exempts overdraft credit plans—temporary loans to cover account charges exceeding an account's available balance—from this prohibition.^[2] As a result, financial institutions have been able to condition the use of their overdraft credit plans on consumers agreeing to repay the overdraft automatically through EFTs. The Bureau's new regulation, scheduled to become effective October 1, 2025,^[3] would end this practice for large banks and credit unions.

WHAT INSTITUTIONS WILL BE AFFECTED?

The Bureau's final rule applies solely to insured depository institutions and credit unions with more than \$10 billion in assets.^[4] The Bureau justified this limitation on the rule's scope by explaining that the \$10 billion threshold would provide additional protections to most consumers using overdraft credit, while also accounting for the different challenges smaller institutions face in adapting to changing regulatory frameworks.^[5]

Although this rule would not apply to financial institutions with less than \$10 billion in assets, the Bureau noted that it will "continue to monitor the market in coordination with State and Federal supervisors," suggesting the rule could eventually be extended to cover all financial institutions offering overdraft credit plans.^[6]

HOW WILL AFFECTED INSTITUTIONS NEED TO CHANGE?

Financial institutions with more than \$10 billion in assets will no longer be able to condition their overdraft credit plans on repayment by preauthorized EFTs. Such institutions will be required to offer consumers at least one other option to repay overdraft credit. While consumers can still agree to automatic repayment by preauthorized EFT, affected institutions will need to offer, for example, an option to manually authorize repayment online or in-app with a one-time transfer from the consumer's asset account.^[7]

LEGAL AND POLITICAL HEADWINDS: THE FINAL RULE'S UNCERTAIN FUTURE

Although slated for October 1, 2025, there is no guarantee that the final rule will take effect as written. A group of trade associations and banks has sued the Bureau, challenging the rule and moving for a preliminary injunction to stop the rule from going into effect while the case is litigated.^[8] In addition to surviving this litigation, the rule will also need to survive scrutiny from the new Republican administration, which has already halted the effective date of all final rules that have been issued but not yet come into effect.

While this pending litigation and the Bureau's uncertain posture raise questions, financial institutions should still closely monitor the legal and political developments around this rule. If it does go into effect, affected institutions will have to reevaluate their overdraft loan programs to remain in compliance with Reg E.

[1] 12 C.F.R. § 1005.10(e)(1).

[2] *Id.*

[3] Overdraft Lending: Very Large Financial Institutions, 89 Fed. Reg. 106768, 106768 (Dec. 30, 2024) (to be codified at 12 C.F.R. pts. 1005, 1026).

[4] *Id.* at 106777.

[5] *Id.* at 106778–79.

[6] *Id.* at 106778.

[7] *Id.* at 106815.

[8] *Miss. Bankers Ass'n v. Consumer Fin. Prot. Bureau*, 3:24-cv-792-CWR-LGI (S.D. Miss. Dec. 12, 2024).

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