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BLOG

Mississippi Judge Allows Reg E's Newest Defenders to Pick Up Where CFPB Left Off

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- Regulation E (Reg E) establishes the basic rights, liabilities, and responsibilities of consumers who use electronic funds transfers (EFTs) and remittance transfer services, and of the financial institutions or others that offer these services.
- Since the beginning of the Trump administration, essentially all of the CFPB's ongoing rulemaking and enforcement activity has ceased. However, state agencies, and now nonprofits, appear to be stepping in to fill the gaps left by the CFPB.
- Federal courts may see an increase in nonprofits moving for intervenor status where regulatory agencies have been stripped of their power under the new administration.

On March 4, 2025, a Mississippi federal judge granted two outside nonprofits intervenor status in a lawsuit defending the CFPB's $5-overdraft-fee rule, amending Reg E and Reg Z, allowing nonprofits to mount a vigorous defense that the judge believed the CFPB would have presented absent administration changes in January.[1] In receiving intervenor status, the nonprofits are now parties to the ongoing lawsuit and can fully participate in defending their interests accordingly.

Last year, on December 12, the CFPB finalized a rule that adopted a general $5 fee cap for overdraft programs at larger banks and credit unions with over $10 million in assets. In enacting the rule, the CFPB explained it was closing a loophole in Reg E and the Truth in Lending Act that previously exempted overdraft fees as finance charges, allowing banks to profit from overdrafts. The new rule allows banks to collect enough to cover the cost of providing overdraft services to consumers,[2] but closes the profit-making loophole. This was met with immediate opposition by banking-industry groups.

The same day the rule was announced, the plaintiffs—a collection of banks and bankers' associations—filed suit against the Bureau in the United States District Court for the Southern District of Mississippi, claiming that the overdraft rule violates the Administrative Procedure Act. After a series of changes in the Bureau's leadership following the administration change in January 2025, consumer groups became fearful that the CFPB would

abandon the overdraft rule, either through new regulations or by failing to defend the action pending in the Southern District of Mississippi.

Thus, on February 5, 2025, the Mississippi Center for Justice and MyPath moved to intervene in that action as defendants.[3] They are nonprofit organizations that "provide financial counseling services to individual consumers within their communities." The following day, the CFPB filed an agreed motion to stay that proceeding and the effective date of the overdraft rule. The court then asked both parties to fully brief their positions. The CFPB did not file an opposition to the intervention—in contrast to the bankers, who opposed the intervention of the nonprofits.

In granting intervenor status, the court emphasized the adequacy of the CFPB's anticipated defense as the "most important" aspect of the motion. The court explained, "Had the administration and leadership of the CFPB not changed in January, the CFPB would have mounted a vigorous defense of the Overdraft Rule in this litigation. Its first brief opposing injunctive relief suggests as much. But the situation changed. The CFPB might now seek to abandon the Overdraft Rule. Indeed, its 'agreed motion to stay' suggests as much. . . . And the CFPB's failure to take a position on intervention is telling; the agency could have used that opportunity to communicate the vigor of its anticipated defense, but elected not to. The adequacy of the CFPB's representation is therefore legitimately in question. It may fall to the movants to defend the Overdraft Rule."

While the federal regulatory landscape has been in flux in the past few weeks, this development suggests that nonprofits may pick up where Chopra's Bureau left off. In granting intervenor status, the court commented,

> [I]t seems undeniable that consumers groups such as the [nonprofits] bring a perspective to the litigation that a large federal agency and America's banking sector either institutionally cannot or in their discretion will not. It is the voice of ordinary people. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 434-35 (2024) (critiquing agency regulations that change "year-to-year and election-to-election" as a "trap" for "ordinary people") (Gorsuch, J., concurring). And the Court believes it would be beneficial for the movants to bring that perspective to bear, even if the course of litigation later reveals no need for discovery. It is better to do so now than "decide such questions blindly." *Id.* at 402 (majority op.).

Dkt. 76, at 7.

We will continue to update the *Reg E Reader* as new developments shape Reg E enforcement. For further information or if you have any questions, please contact the authors of this blog post or your regular Winston contacts.

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[1] *See* Doc. 76, *Miss. Bankers Ass'n v. Consumer Fin. Prot. Bureau*, No. 3:2024cv00792 (S.D. Miss. 2025). [324-cv-00792 Docket Entry 02-05-2025_56]

[2] For a summary of the rule, see CFPB, *CFPB Closes Overdraft Loophole to Save Americans Billions in Fees* (Dec. 12, 2024), https://www.consumerfinance.gov/about-us/newsroom/cfpb-closes-overdraft-loophole-to-save-americans-billions-in-fees/.

[3] *See* Doc. 56, *Miss. Bankers Ass'n v. Consumer Fin. Prot. Bureau*, No. 3:2024cv00792 (S.D. Miss. 2025). [324-cv-00792 Docket Entry 03-04-2025-76]

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