

Press Coverage | December 23, 2024

# CFPB Issues Final Rule Capping Overdraft Fees

## RELATED PROFESSIONALS

Virginia Bell Flynn

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Virginia Bell Flynn, a partner in Troutman Pepper's Consumer Financial Services Practice Group, was quoted in the *AccountsRecovery.net Compliance Digest* article, "[CFPB Issues Final Rule Capping Overdraft Fees](#)."

The Consumer Financial Protection Bureau yesterday issued a final rule to cap overdraft fees, which was quickly followed by a lawsuit seeking to block the rule from going into effect. The regulation, effective October 1, 2025, aims to save consumers \$5 billion annually and eliminate a regulatory loophole from the 1960s that allowed overdraft services to operate outside of lending laws. [More details here](#).

**WHAT THIS MEANS, FROM VIRGINIA BELL FLYNN OF TROUTMAN PEPPER:** On December 12, 2024, the Consumer Financial Protection Bureau (CFPB) issued a final rule to cap overdraft fees, set to take effect on October 1, 2025. The rule targets a regulatory loophole from that allowed overdraft services to operate outside of lending laws. To comply with the rule, financial institutions with total assets of \$10 billion or more must either (1) cap fees at \$5, (2) set fees to cover costs and losses only, or (3) treat overdrafts as loans, including clear interest rate disclosures. After the CFPB proposed this rule in January 2024, a number of banks announced changes to their overdraft fee programs.

But, following publication of the final rule, industry groups and banks immediately filed lawsuits claiming the new rule exceeds the CFPB's authority. The American Bankers Association, Consumer Bankers Association, America's Credit Unions, Mississippi Bankers Association, and banks directly affected jointly filed a complaint in the Southern District of Mississippi seeking declaratory and injunctive relief. The plaintiffs argue that discretionary overdraft services provide a significant benefit to consumers who overdraw their accounts. Moreover, they argue that overdraft programs are not "credit" under the Truth in Lending Act (TILA) because customers have no right to overdraw their accounts and financial institutions have the right, under their respective account agreements, to immediately recoup the amount paid and accompanying fee by deducting funds from the account balance once it is replenished. The CFPB, plaintiffs argue, has exceeded its rulemaking authority because it extends no further than what is "necessary and proper to effectuate the purposes" of the TILA. The complaint alleges that the CFPB has exceeded its statutory authority under the TILA by unlawfully interpreting "credit" and "finance charge" and by imposing substantive credit restrictions, that it has exceeded its statutory authority under the Consumer Financial Protection Act (CFPA), and has violated the Administrative Procedure Act (APA) by publishing an arbitrary and capricious rule. The plaintiffs ask the court to enter an order (1) declaring the final rule violates the APA, TILA, and CFPA, and (2) holding unlawful, enjoining, and setting aside the final rule.

Financial institutions subject to this rule promote the idea that consumers in need will be hit the hardest by this rule by reducing the availability of overdraft services, while the CFPB reasons this rule will save the average household \$225 a year, and save consumers \$5 billion annually.

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