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The CFPB Takes Aim at Overdraft Fees

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The Consumer Financial Protection Bureau (CFPB) has a new target: overdraft fees. In a December 1 press call, CFPB Director Rohit Chopra targeted the use of overdraft fees in the consumer banking industry, claiming that some banks are "hooked on exploitative junk fees that can quickly drain a family's bank account." The CFPB, he said, is "considering a range of regulatory interventions to help restore meaningful competition in this market."[1]

Chopra's comments came after the CFPB released two research reports investigating the use of overdrafts fees within the banking industry. The first indicated that in 2019 alone, overdraft and other nonsufficient fund fees generated over $15 billion in revenue for consumer banks, with large banks (those with assets over $10 million), collecting three-quarters of the total revenue reported. Relying on information gathered from 2015 to the present, the report also indicated that reliance on overdraft fees has been growing slowly but steadily across the board.[2]

The second report provided industry-wide data regarding overdraft policies, practices, and outcomes, focusing in particular on banks and credit unions with assets under $10 billion. It concluded that although these smaller institutions typically charged lower fees, they generated a comparable amount of revenue per account as their larger peers.[3]

Based on these findings, Chopra announced that his agency would be "enhancing its scrutiny of banks that are heavily dependent on overdraft fees." Specifically, CFPB plans to "take action" against institutions with unlawful overdraft policies and "prioritize examinations" of banks that are heavily reliant on such fees, with the goal of creating industry-wide transparency about the use of fees, and preventing what Chopra described as a "race to the bottom." Chopra also indicated that the agency wants to see how technology can help push the American banking industry toward an era of "open banking infrastructure," which would allow consumers to "vote with their feet" by easily switching banks and ditching those that charge excessive fees.

The CFPB's announcement came on the same day that Capital One, the sixth largest U.S. retail bank, announced that it would eliminate overdraft fees for retail customers beginning in the new year.[4] Organizations like the National Consumer Law Center and Consumer Federation America have lauded this move, arguing that overdraft fees disproportionally affect a small number of vulnerable consumers. Chopra, for his part, said that he is not "holding out hope" that other large institutions will follow suit.

Based on the CFPB reports and Chopra's comments, banks should expect increased attention from regulators and the media, especially if other banks decide to follow in Capital One's footsteps. Further, the CFPB's new regulatory priority will presumably help foster an environment in which fintech companies, third-party apps, and other industry disruptors will continue to grow in popularity and generate pressure for industry-wide change.

[1] For a full transcript of Chopra's comments, *see* Rohit Chopra, Director, Consumer Prot. Fin. Bureau, Prepared remarks of CFPB Director Rohit Chopra on the Overdraft Press Call (Dec. 1, 2021), available at https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-rohit-chopra-overdraft-press-call/.

[2] *See* Consumer Prot. Fin. Bureau, Data Point: Overdraft/NSF Fee Reliance Since 2015—Evidence from Bank Call Reports (Dec. 2021). 2020 provided an exception to this general rule, as banks experienced a decline in overdraft/NSF fee revenue during the COVID-19 pandemic. *Id.* at 7.

[3] *See* Consumer Prot. Fin. Bureau, Data Point: Checking Account Overdraft at Financial Institutions Served by Core Processors (Dec. 2021).

[4] *See* Press Release, Capital One, Capital One Eliminates Overdraft Fees for Customers (Dec. 1, 2021), https://www.capitalone.com/about/newsroom/eliminating-overdraft-fees/.

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