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## Summary of CFPB Proposed Rule: Overdraft Lending - Very Large Financial Institutions

On January 17, 2024, the Consumer Financial Protection Bureau (CFPB or Bureau) released a [notice of proposed rulemaking](#) to amend Regulations E and Z to update regulatory exceptions for overdraft credit provided by very large financial institutions, thereby subjecting extensions of overdraft credit to the consumer protection regulations required of similar extensions of credit, unless the overdraft fee is a small amount that only recovers applicable costs and losses.

### Highlights

- The proposed rule would apply to credit unions with at least \$10 billion in assets.
- The proposed rule would go into effect in October 2025, after the 2024 Presidential election. A new presidential administration might rescind the rule prior to the effective date.
- The proposed rule would provide three options for covered financial institutions:
  - Treat overdrafts as extensions of credit, which would require Regulation Z disclosures with each overdraft.
  - Charge a “breakeven” amount that allows the credit union to only recoup the cost of providing the overdraft.
  - Charge the safe harbor amount that the CFPB establishes. The CFPB is considering setting the benchmark fee at \$3, \$6, \$7, or \$14 and has requested comment on which calculation is best.
- The proposed rule would also prohibit covered credit unions from automatically repaying overdrafts from a consumer's account. Instead, the consumer would have the choice of how to repay the overdraft and the fee.

### Impact on Credit Unions

The CFPB's proposal to cap overdraft fees for covered financial institutions would have a significant negative impact. This move could reduce revenue of covered institutions by \$3.5 billion to \$5.6 billion, resulting in a substantial loss of income. The options offered by the CFPB, such as treating overdrafts as extensions of credit or calculating the cost of providing overdrafts separately, is likely not to be cost-effective for covered institutions, potentially forcing them to use the safe harbor option, further limiting their revenue potential. For those that choose to calculate their costs, this rule introduces litigation risk. Additionally, the fact that the CFPB continues to overstep its mandate into fee regulation, sets a precedent for potential future fee caps, increasing regulatory uncertainty for credit unions.



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## Section Summary

### **A. Who is covered? (§ 1026.62(b)(8))**

The proposed rule aims to enhance consumer protections for overdraft credit at financial institutions with more than \$10 billion in assets while maintaining the existing regulatory framework for institutions with \$10 billion or less in assets. To specify the scope, the rule defines "very large financial institution" as those with assets exceeding \$10 billion, using the same criteria as the CFPB's supervisory authority. This rule is based on the belief that consumers will benefit from increased protections at very large financial institutions, covering around 80 percent of consumer deposits and 68 percent of overdraft charges as of December 2022. Smaller institutions with assets of \$10 billion or less are exempt from the rule, and their regulatory requirements remain unchanged. The CFPB invites feedback on this preliminary determination and the \$10 billion threshold for defining very large financial institutions.

### **B. What transactions and accounts are covered?**

The CFPB proposes to add § 1026.62(a) and (b) to define the scope of transactions and accounts that would be covered under the proposed rule. This would introduce new terms and amends existing definitions under Regulation Z to clarify that overdraft credit is considered credit. It would define overdraft credit, confirms that overdraft credit subject to finance charges is open-end credit under Regulation Z, and introduces definitions for covered and non-covered overdraft credit. Covered overdraft credit includes credit subject to finance charges or payable in more than four installments, while non-covered overdraft credit is neither subject to finance charges nor payable in more than four installments. Additionally, a new definition for covered overdraft credit accounts is proposed for reference to accounts where financial institutions extend this type of credit.

### **C. Changes to the definition of "finance charge" (§ 1026.4(b)(2), (b)(12), and (c)(3); § 1026.62(d))**

The proposed rule would make changes to Regulation Z regarding the definition of a "finance charge" and seek to specify which charges related to overdraft transactions should be considered as finance charges subject to the Truth in Lending Act (TILA) and Regulation Z requirements. Currently, under Regulation Z, a finance charge is defined as the cost of consumer credit, including charges imposed by the creditor as part of the extension of credit. However, certain fees by financial institutions for overdrafts are excluded from this definition unless there was a prior written agreement.



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The proposed amendments would modify this definition in three ways. First, it would remove the partial exception for certain charges on checking and other transaction accounts, no longer applying it to "covered asset accounts." Second, it would introduce new examples of charges related to covered overdraft credit that would be considered finance charges. Third, it would eliminate the exception for "above breakeven overdraft credit" concerning proposed § 1026.62. These changes intend to clarify which overdraft transactions fall under the finance charge category, thus determining their applicability to TILA and Regulation Z requirements.

**D. Changes to covered overdraft credit offered by very large financial institutions**

The proposed rule would introduce several changes regarding covered overdraft credit offered by very large financial institutions. Firstly, it requires covered overdraft credit to be structured as a separate account. Secondly, it extends additional credit card provisions to covered overdraft credit accessible through a hybrid debit-credit card. Lastly, it applies Regulation E's compulsory-use prohibition to covered overdraft credit. Importantly, for existing open-end covered overdraft credit products, the new designation as covered overdraft credit accounts will not impose duplicate or additional requirements for opening these accounts, ensuring a smooth transition for existing customers.