

THE $12 BILLION OVERDRAFT TRAP

STATE OPTIONS TO LIMIT OVERDRAFT AND NONSUFFICIENT FUNDS FEES

NCLC National Consumer Law Center
Fighting Together for Economic Justice

June 2026

National Consumer Law Center
Fighting Together for Economic Justice

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ACKNOWLEDGMENTS

The authors thank NCLC Advocacy Operations Assistant Nick Fiacco for research assistance, Co-Director of Federal Advocacy Chi Chi Wu for her substantive input and review, and Digital Content Coordinator Ella Halpine for layout and design.

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EXECUTIVE SUMMARY

Bank accounts are critical to participation in the financial mainstream and to financial well-being. But for individuals and families struggling to make ends meet, bank accounts come with pitfalls or are simply inaccessible. Overdraft and nonsufficient funds (NSF) fees can drain money that people need for rent, food, and medical expenses.

Banks and credit unions earn a substantial amount of revenue from overdraft and NSF fees – over $12 billion in 2025. About a quarter of people live in households that incur overdraft fees each year. Some financial institutions actually manipulate people into these fees. These high fees and predatory overdraft programs devastate individuals and families already in economically precarious situations. Excessive overdraft fees can lead to bank account closures and prevent people from opening new ones.

Banks and credit unions earn a substantial amount of revenue from overdraft and NSF fees – over $12 billion in 2025.

Abusive overdraft and NSF fee practices fall most heavily on economically disadvantaged households, which have lower incomes and lower credit scores and are more likely to incur multiple fees. Black and Latino households are more likely to incur overdraft fees than white households are. Banks make most of their overdraft and NSF fee income from a small portion of accounts. Thus, bank profits derive primarily from the households that can least afford the fees and exacerbate longstanding racial injustices.

Overdraft and NSF fees had been coming down in recent years in the face of public attention and regulatory pressure. In 2024, the Consumer Financial Protection Bureau (CFPB) finalized a rule that would have limited most overdraft fees to $5, saving $5 billion a year, an average of $225 for households that pay overdraft fees. But Congress overturned that rule in 2025, and both the CFPB and federal banking agencies began backtracking from efforts to limit overdraft and NSF fees. Not surprisingly, overdraft fee revenue is now rising at some banks.

States can rein in financial institutions' extractive policies and help their constituents maintain financial well-being by limiting overdraft and NSF fees. States have authority over the practices of their own state-chartered banks and credit unions, over state-chartered credit unions regardless of the chartering state, over out-of-state banks that do not have branches in the consumer's state, and over nonbank financial technology ("fintech") companies that offer banking services. With respect to federally chartered banks and credit unions, and out-of-state banks operating out of a branch in the consumer's state, the full

contours of preemption are not clear, but states can address practices as long as they do not prevent or significantly interfere with the financial institution's powers.

In addition to traditional bank accounts, states should pay attention to the growing market of banking apps offered by nonbank companies. These apps typically do not charge traditional overdraft or NSF fees, but they may have other features or costs that work similarly.

The strongest reforms would be to:

- Limit overdraft fees to $5
- Limit the annual number (six) or cost (no more than $200/year) of overdraft fees, with no more than one fee per episode
- Prohibit NSF fees

Other lesser measures can also limit the destructive impact of overdraft and NSF fees:

- Prohibit overdraft fees on debit card and ATM transactions
- Prohibit multiple fees for a single negative balance episode, even one involving multiple payments or days
- Require a cushion for small overdrafts and a grace period before charging a fee
- Ban "surprise" overdraft fees incurred when the balance was positive at the time of the transaction but later settled negative.
- Prohibit reordering of transactions that increases fees
- Prohibit multiple fees for a single overdrawn check or payment
- Require institutions to offer safe bank accounts without overdraft and NSF fees

To ensure that reforms are effective and to prevent evasions, state should:

- Include so-called "tips" on nonbank banking apps and transfer fees from savings accounts or other accounts and in any limit on overdraft fees
- Cover nonbank fintechs and out-of-state banks without branches in the state that often partner with fintechs and predatory lenders
- Include an anti-evasion provision
- Ensure that rules are privately enforceable

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Reform could be adopted through legislation, or some of these measures could be adopted through state regulation or guidances. To build the case for reform, to encourage voluntary improvements, and to enhance regulatory authority, states should:

- Give the state regulator authority and a mandate to adopt reforms and address new practices or evasions
- Collect and publicize data on overdraft and NFS fee revenue and practices

States can build on the progress to date, prevent backsliding, and enhance a core component of family financial stability by making overdraft and NSF fee reform a priority.

1. BACKGROUND

1.1. Overview of Overdraft and NSF Fees and Their Regulation

An "overdraft fee" is a fee charged when a bank pays a transaction (*i.e.*, check, debit card, electronic payment, or ATM withdrawal) but the transaction puts the account into a negative balance. A nonsufficient funds or "NSF" fee is charged when the bank does not pay and the check or electronic payment fails to clear ("bounces") because there is not enough money in the account.

An "overdraft fee" is charged when a bank pays a transaction despite a negative balance. A "nonsufficent funds" or "NSF" fee is charged when the payment bounces.

Banks may charge both overdraft and NSF fees on the same day, especially when there are multiple transactions in a short period of time. Imagine a person who has $25 in their account and purchases $10 in gas, but the bank put a $25 hold on the account when the card is authorized. Before driving away, the individual goes inside the gas station store to purchase $10 in food items. In this scenario, the bank processes the gas and food purchases but charges a $35 overdraft fee for the food, leaving the account negative by $30. Shortly afterwards, a $30 preauthorized payment for a utility bill and a $50 payment on a loan come in. Both are declined and the bank charges NSF fees. As a result, people can be charged an overdraft fee for transactions that are paid when the account does not have enough money to cover the transaction, and then they can be charged an NSF fee for other transactions that are subsequently declined.

Years ago, overdraft fees were charged rarely, merely to cover the cost and risk to the bank for the occasional courtesy of covering a check that would otherwise bounce. NSF fees

were charged to cover the costs of handling paper checks that had to be returned. But as electronic banking has spread, banks have developed overdraft fees into a profit center and a regular form of high-cost credit.

Overdrafts are a form of credit, as the bank is providing funds to cover a check, debit card transaction, or other payment, and that credit is repaid later.[1] Thus, overdraft fees are essentially interest. But in the pre-electronic era, because covering overdrawn checks was not a routine form of credit and was merely as an occasional courtesy, regulators exempted the fees from credit regulations.

Overdrafts are a form of credit, as the bank is providing funds to cover a check, debit card transaction, or other payment, and that credit is repaid later.

Modern technology has virtually eliminated time delays and the costs of handling bounced payments. People receive wages, benefits, and other income by direct deposit and make payments using debit cards or other forms of electronic transfer that can be approved or declined in real time. Yet banks have retained overdraft and NSF fees and primed them for the modern era, seeing profits in approving transactions that overdraw an account. In theory, technology such as mobile banking apps and text alerts should also make it easier for people to track their balances and payments to avoid overdrafts. But in practice, doing so is actually much harder today than it was during the paper check era. Back then, many purchases were made with cash, and people wrote only a few checks and tracked them and their balances in check registers. People also had some wiggle room between the time they wrote a check and when it cleared.

Today, people make a far greater number of electronic payments large and small that come out of their accounts at times that can be difficult to predict. Debit cards are routinely used when cash would have been. Some merchants, like gas stations and restaurants, put holds on accounts that can exceed the purchase.

Automatic payments can also lead to unexpected overdrafts. Creditors and billers encourage people to sign up for automatic payments, and the amount of those payments may vary considerably month to month. People may not know when the payments will hit their accounts, and canceling or rescheduling them is confusing and cumbersome. The growth of buy now, pay later loans, with debits hitting bank accounts every two weeks for six weeks after every purchase, can especially complicate account management.[2]

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Another issue is that the account balance that a person sees in a mobile app or online may not be the same as when a transaction is processed. Transactions are not necessarily processed in chronological order and can overdraft even if the balance appeared positive at the time of the transaction.

Instead of helping people avoid overdrafts, banks have adopted a variety of policies and practices that put them at odds with their customers. These practices transform overdraft and NSF fees into a revenue-generating scheme.

For many years, bank regulators went along with these pernicious practices. Overdraft and NSF fees have become one of the most abusive and deceptive taxes on being poor.

After years of growing abuses, in 2009 the Federal Reserve Board was finally motivated to act. The Fed adopted a rule requiring consumers to "opt in" to overdraft coverage before an overdraft fee could be charged on ATM and one-time debit card transactions. Yet banks found ways to manipulate people into authorizing fees they did not want.[3] The ATM/debit card opt-in rule also did not address many other overdraft and NSF fee abuses discussed below.

After the CFPB was created, it started spotlighting the problems with overdraft fees. Eventually, in 2024, the CFPB adopted a rule that recognized overdrafts as a form of high-cost credit. The rule generally required banks, if they wanted to make a profit off of overdraft credit, to offer a formal overdraft line of credit or a link to a credit card and to provide annual percentage rate (APR) disclosures. Banks could continue to offer "courtesy" overdraft services without a formal credit agreement but only if the fees were limited to the bank's costs, with a safe harbor fee of $5. The rule was expected to save struggling families up to $5 billion a year.[4]

Unfortunately, in 2025 Congress overturned the overdraft fee rule using the Congressional Review Act.[5] In addition, the CFPB, under new leadership, reversed guidances and enforcement actions that had addressed particularly egregious practices by banks and credit unions, such as the consent order requiring Navy Federal Credit Union to pay $95 million for charging "surprise" overdraft fees[6] and a related guidance.[7] The Trump Administration has also attempted to eviscerate the CFPB.

In 2025, the CFPB, under new leadership, reversed guidances and enforcement actions that had addressed particularly egregious practices by banks and credit unions.

In addition, in 2025 the National Credit Union Administration rescinded a requirement that credit unions with over $1 billion in assets report their overdraft and NSF fee revenue.[8] Even transparency has taken a downturn.

Thus, the onus is now on the states to protect consumers.

1.2. The High Cost and Detrimental Impact of Overdraft and NSF Fees

About a quarter of people live in households that pay overdraft fees each year.[9] Consumers incurred an estimated $12.1 billion in overdraft and NSF fees in 2024.[10] Overdraft fee revenues at the largest banks increased 2.3% from 2024 to 2025. If that same increase holds for the industry as a whole, total overdraft and NSF fees for 2025 could exceed $12.4 billion.[11]

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A bank may help people to avoid overdraft fees or may actually push people into incurring fees in order to increase revenue.

While the size of individual overdraft fees can be similar from bank to bank – an average of $27 and as high as $35[12] – bank practices can make a big difference in whether people pay fees and how many they pay. A bank may help people to avoid overdraft fees or may actually push people into incurring fees in order to increase revenue.

People are often surprised by overdraft and NSF fees. A 2022-2023 CFPB survey found that 43 percent of people in households charged an overdraft fee in the past year were surprised by their most recent overdraft; 35 percent thought it was possible, and just 22 percent expected it.[13] Among those charged an NSF fee, 39 percent were surprised by their most recent NSF fee, 33 percent thought it was possible, and just 28 percent expected it.[14] The complicated and varying practices that banks use to determine whether to assess a fee adds to this confusion.

A single overdraft episode can explode into hundreds of dollars in fees, as shown by the experience of one individual who reached out to NCLC.[15] In June 2023, she miscalculated her available balance and withdrew an extra $100. In just three days, she incurred $736 in overdraft fees and $288 in NSF fees, including a $32 NSF fee for a 41-cent bounced charge for a foreign currency conversion fee charged separately from a purchase.

Exploding overdraft and NSF fees can make it impossible for people to return their accounts

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One person miscalculated her account balance and withdrew an extra $100. In three days, she incurred $736 in overdraft fees and $288 in NSF fees.

to a positive balance. When this happens, banks can close the account.[16] The resulting negative reports to account screening agencies such as ChexSystems and Early Warning Services then can stop people from getting new accounts and exile them from the banking system.[17]

Abusive overdraft practices also lead to diminished access to other financial products. Without a bank account to corroborate cash-flow history and income data, these same vulnerable people will have less access to other financial services.[18]

1.3. Populations Impacted by Overdraft and NSF Fees

Overdraft and NSF fees are paid by the people who can least afford them.

A 2022-2023 survey by the CFPB found that consumers who are more likely to be economically disadvantaged—those with lower incomes, who have limited education, or who are non-white—are more likely to reside in households charged an overdraft and/or NSF fee. While roughly 10 percent of consumers with an annual household income above $175,000 were in households charged an overdraft or NSF fee, the share was more than three times higher (34 percent) for consumers with an annual household income below $65,000.[19] Consumers who incurred frequent overdraft or NSF fees were much more likely to have a subprime credit score and to have no available credit on a credit card or delinquent debt.[20] A large portion, 81 percent, of frequent overdrafters reported difficulty paying a bill at least once in the past year.[21]

34% of consumers with an annual household income below $65,000 pay overdraft fees.

A 2017 CFPB report had similar findings, concluding that frequent overdrafters tend to have low end-of-day balances, low or moderate credit scores, and low or moderate monthly deposits.[22]

At the same time, the CFPB's analysis suggests that the majority of consumers charged overdraft and NSF fees have some credit available on a credit card.[23] The CFPB noted that credit card debt is likely to be substantially cheaper than overdraft credit.[24]

The 2017 CFPB report found that 79% of bank overdraft and NSF fees were borne by only 9% of accounts.[25] The median account balance of this group was less than $350.

Black and Latino households with checking accounts are more likely than white households to incur overdraft fees.[26] A study by the Federal Reserve Banks of Atlanta, Boston and San Francisco found that 17% of Black consumers paid bank overdraft fees, versus 10% of white consumers.[27]

Black and Latino households with checking accounts are more likely than white households to incur overdraft fees.

High fees such as overdraft and NSF fees are one of the main reasons why people do not have a bank account.[28] The cost of these abusive practices effectively pushes people out of the banking system, especially communities of color. More than one in 10 (11.2%) households with a disability are unbanked, as are 12.2% of Native American, 10.6% of Black, and 9.5% of Latino households.[29] Disparities exist even within the same income tier: among households with $15,000 to $30,000 in income, 17% of Black and Latino households were unbanked, compared with 4% of white households.[30] Even for those with less than $15,000, 35% of Black households are unbanked while only 13% of white households are.[31]

More than one in 10 (11.2%) households with a disability are unbanked, as are 12.2% of Native American, 10.6% of Black, and 9.5% of Latino households.

Older adults living on fixed or limited incomes are also at risk of incurring overdraft and NSF fees. Over 16.5 million (or roughly 1 in 3) older adults aged 65 or over are economically insecure, with incomes below 200% of the Federal Poverty Level.[32] Inflation poses a particular challenge to those on fixed incomes. Overdraft charges can derail tight budgets, making it harder for older adults to pay for necessary expenses such as food and medicine. Older adults whose financial resources are depleted by caregiving responsibilities or by the loss of a partner who contributed financially to the household are also at heightened risk of incurring these fees, as are those with cognitive impairments that can come with aging. Fees imposed on older adults are more likely to be collected from exempt income such as Social Security.

Other recipients of government benefits who are likely to be struggling financially, such as recipients of unemployment benefits, disability income, Temporary Assistance for Needy Families (TANF) or public benefits, can also have their funds drained by overdraft and NSF fees. Even though those types of income are generally exempt from garnishment by debt collectors, courts have ruled that garnishment protections do not apply to overdraft fees.[33]

Servicemembers and veterans are also impacted by overdraft fees. On a per account basis, Navy Federal Credit Union has among the highest overdraft fee revenue.[34]

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USAA Federal Savings Bank, which requires a family military affiliation, had the largest jump in overdraft fees from 2023 to 2025.[35] In addition, the banks that collect the most overdraft fees, JP Morgan Chase and Wells Fargo, offer military banking and have a significant presence on or around military bases.[36]

Servicemembers and veterans are also impacted by overdraft fees. On a per account basis, Navy Federal Credit Union has among the highest overdraft fee revenue.

1.4. Specific Problematic Overdraft and NSF Fee Practices

Banks have implemented a variety of other pernicious overdraft and NSF practices that cause devastating harm.[37] These practices include:

- Charging unreasonably high fees for each overdraft, typically $35, far higher than needed to cover the banks' costs.
- Charging fees up to $35 for NSF transactions, far higher than the bank's costs, despite modern electronic check clearing methods and the ability to reject an electronic transaction at virtually no cost.
- Charging multiple overdraft and NSF fees per day, with no limits at some banks and as many as six $35 overdraft fees ($210) per day at banks that do limit the number.
- Charging "extended" or "sustained" overdraft fees for each day that an account has a negative balance, making it more difficult for a struggling account holder to recover.
- Engaging in opaque and often abusive practices to increase overdraft and NSF fees including:
  - Manipulating the order in which transactions are processed to deduct the largest one first, causing the account to overdraft sooner with more overdraft or NSF fees.
  - Charging fees as a result of a debit hold (*i.e.*, by a restaurant, hotel, or gas station) even though the account had sufficient funds for the purchase once the hold was released.
  - Charging fees when the person had sufficient funds in the account when the transaction was authorized but not later when the transaction settles.
  - Pushing people into opting in to "courtesy" overdraft services that allow overdraft fees for ATM and debit card transactions—often using deceptive tactics that obscure the cost—instead of simply declining the transaction at no charge.

States must put an end to these types of abuses.

1.5. Recent Trends and The Need for Reform

In the early 2020s, a renewed focus by the CFPB and consumer advocates on abusive overdraft and NSF fee practices encouraged voluntary reforms from a number of financial institutions that reduced fees. But more recently, the movement has been backwards at some institutions.

On the positive side, all of the top 20 banks have eliminated NSF fees.[38]

Four of the largest banks do not charge any overdraft fees – Ally Bank, American Express, Capital One and Citibank.[39] Bank of America reduced its overdraft fee to $10 and made several other changes that together reduced its overdraft fee revenue over the past decade by 97 percent.[40] While most of the changes were at larger institutions, some mid-size and smaller banks and credit unions also eliminated overdraft fees, including Alliant Credit Union, Amplify Federal Credit Union, and Stearns Bank.[41] Out of 204 banks and credit unions chartered in California, 28 banks and 13 credit unions reported no overdraft revenue in 2025.[42]

Four of the largest banks do not charge any overdraft fees – Ally Bank, American Express, Capital One and Citibank.

Other institutions have made changes with more modest impact, though in the aggregate they can be significant. Among the banks with the most overdraft and NSF fee revenue in 2021, in addition to those that have completely eliminated overdraft fees:

- Four do not charge for ATM transactions, and one does not charge for debit cards (in addition to the three large banks that do not charge any overdraft fees).
- All have daily limits from 1 to 5 fees, at a total daily cost of $15 to $175 depending on the size of the overdraft fee.
- 16 have a cushion for overdrafts from $1 to $50 that will not trigger a fee.
- 13 have eliminated sustained overdraft fees.
- 10 allow the accountholder to cure the overdraft the next day before charging a fee.[43]

Many smaller banks have similar policies.[44]

But even many of these institutions still charge three or more overdraft fees (of $35 or more) per day. That is more than $100 in a single day, a huge amount for a low-income person.

In addition, the trend towards reducing fees has stalled or reversed under the Trump Administration. In 2025, Congress overturned a CFPB rule that would have lowered most

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overdraft fees to $5, saving people $5 billion a year – $225 per household that pays overdraft fees.[45] In 2025 and 2026, the CFPB and other federal banking agencies took steps to dismiss enforcement actions and repeal guidance or regulations that curtailed some abusive practices, which relieved the pressure on institutions to reduce fees.[46]

In 2025, Congress overturned a CFPB rule that would have lowered most overdraft fees to $5, saving people $5 billion a year – $225 per household that pays overdraft fees.

Not surprisingly, overdraft fee revenues are now rising, especially at some institutions.[47] Overdraft revenues at the largest 20 consumer banks rose 2.6%, from $12.1 billion to about $12.4 billion in 2025 over 2023, the last year that the CFPB published figures.[48] Several large institutions stand out for their high or increasing overdraft fee revenue:[49]

- **JP Morgan Chase** and **Wells Fargo** lead the pack, taking about $1 billion each a year in overdraft fees in 2025, both about the same as in 2023. PNC Bank, though much smaller, was third with $279 million, and had a significant 8% increase over 2023.
- **USAA Federal Savings Bank**, which focuses on the military community, had a huge 471% increase in overdraft revenue from 2023 to 2025. There were also large increases at **Huntington Bank** (40%), **M&T Bank** (36%), **Citizens Bank** (24%), **First Citizens** (23%) and **TD Bank** (22%).
- On a per account basis, among large banks, **Regions Bank** had the most overdraft fee revenues at $30 a year on average (and more of course for some families). **Citizens Bank** ($19), **TD Bank** ($18), **Fifth Third Bank** ($17) and **Huntington National Bank** ($17) also had high fees per account compared to other banks, as did **Wells Fargo** ($15). Of course, those are averages, and many families paid far more.
- Overdraft revenues are no longer available for credit unions after the National Credit Union stopped requiring reporting of that data, but in 2024 **Navy Federal Credit Union** also had especially high overdraft revenue of $28 per account.

Additionally, the practices at small and mid-sized banks and credit unions, which receive less national attention, can be even more problematic than those of larger banks.[50] For example:

- **Woodforest Bank** grabbed a whopping $94 in overdraft fees per account in 2025; **First Convenience Bank** took $68 in overdraft and NSF fees per account;[51] and **Arvest Bank** collected $45 a year per account in overdraft fees.

A 2025 report on institutions chartered in California shows a considerable disparity in their overdraft and NSF fee revenue. Many smaller institutions derive well under 1% of their income from overdraft and NSF fees. But some credit unions reap as much as 12 percent of their revenue from overdraft and NSF fees.[52]

Some California credit unions reap as much as 12 percent of their revenue from overdraft and NSF fees.

While the voluntary steps some institutions have taken provide some relief, only legally binding public policy can stop predatory overdraft practices. Half measures and voluntary changes that are not broadly adopted by other financial institutions are insufficient.

Today, with the pressure off at the federal level, movement on voluntary reforms has largely disappeared and more backsliding can be expected. Consequently, state action is needed now more than ever.

1.6. The Role of and Limits of State Policy Solutions

1.6.1. Banks and Credit Unions

With federal and voluntary efforts stalled or in reverse, state reform is an important option in the effort to curb abusive banking practices. While state authority has limitations, states have a key role to play in stopping abusive overdraft fees and NSF practices.

In the banking area, some state activities are preempted by federal banking law. The strongest preemption occurs in the area of state interest rate limits on loans, where banks are generally able to ignore interest rate laws outside their home state. State regulation in other areas, such as deposit accounts and non-interest fees like overdraft and NSF fees, also face federal preemption concerns but are not as categorically preempted.

The law of preemption is complex and evolving.[53] The risk of challenges is greater if the legislation affects banks or credit unions with federal charters or bank charters in other states. But the degree of risk depends on the type of institution and the type of regulation, and even outside of their own banks, states may have some authority to address abuses.

With respect to national banks and federal savings associations, federal banking laws generally preempt non-interest rate laws only if the law prevents or significantly interferes with the bank's exercise of its powers.[54] This test, derived from the Supremacy Clause of the U.S. Constitution, is known as the "*Barnett Bank*" standard after a Supreme Court case that was incorporated into the National Bank Act in the Dodd-Frank Wall Street Reform

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and Consumer Protection Act of 2010 ("Dodd-Frank Act").[55] *Barnett Bank* is not a bright-line test and its application is evolving in the courts.[56] In addition to *Barnett Bank* preemption, states are also prohibited from exercising "visitorial" authority, such as supervision or licensing, over federally chartered banks. That ban includes demands for information outside of litigation.[57]

The Supremacy Clause *Barnett Bank* standard also generally applies to federal credit unions, though there is some uncertainty.[58] A recent court of appeals decision found that state common law claims regarding surprise overdraft fees are preempted by an NCUA regulation.[59] However, the court did not consider whether NCUA had the power to preempt state law so broadly and whether the regulation was valid; it may not be.[60]

State laws that are preempted as to national banks are generally also preempted as applied to out-of-state branches of state-chartered banks.[61] However, except for interest rate limits, that preemptive force only applies to activities taking place in physical bank branches and not to activities centered in the out-of-state bank's headquarters outside the consumer's state.[62] Thus, states may be able to regulate overdraft practices of out-of-state banks that do not have a branch in the state or that do not conduct the relevant activities out of those branches.

States may be able to regulate overdraft practices of out-of-state banks that do not have a branch in the state or that do not conduct the relevant activities out of those branches.

Out-of-state, state-chartered credit unions are not entitled to preemption and must comply with state laws outside their home state.

States do, however, have full authority to regulate the practices of banks and credit unions chartered in their own state. But states should assess the impact of any state parity law that could give home state banks or credit unions the authority to follow the practices of out-of-state banks.[63] In other words, the state parity law should be reviewed to ensure that it will not take away the effect of any overdraft legislation.

To date, states that have started to address overdraft and NSF fee issues have limited their activities to their own state-chartered institutions. That is certainly the safest approach from a preemption point of view. But states should consider a broader approach, especially with respect to nonbanks and state-chartered banks that do not have a branch in the consumer's state, as discussed in Section 4.3 below.

1.6.2. Nonbank Entities that Offer Banking and Other Services

Increasingly, nonbank entities are offering banking services through banking and payment apps such as Cash App, Chime, Current, Dave, MoneyLion, OnePay, PayPal and others. Most of these apps do not charge overdraft or NSF fees. But some may disguise those fees as "tips," as discussed in Section 4.1, below.

Some cash advance apps also attempt to evade state interest rate limits by structuring their loans as overdrafts, with interest disguised as overdraft fees.[64] Overdraft fee reforms may be able to address these evasions, and states should also consider enforcement actions under their credit laws against lenders who disguise their loans as overdrafts.[65]

In general, states have authority to regulate nonbank entities and do not face the same preemption issues that they do regarding banks. Nonbank services are often offered in partnership with a bank, but the National Bank Act does not preempt state laws as applied to nonbank agents of banks.[66] In addition, many of the partner banks are state-chartered banks that do not have branches outside their home state, and those banks are subject to state regulation, as discussed in Section 1.6.1 above. Other banks that partner with nonbanks, depending on their role, may have some preemption rights, but state laws that address the nonbank's activities should not be preempted.

2. TOP OVERDRAFT AND NSF FEE REFORMS

States can adopt several reforms to curtail the harm that overdraft and NSF fees cause. The most effective steps states can take are to limit overdraft fees to $5 so that the fees are not a profit center; to impose annual limits on the number and total cost of overdraft fees; and to ban NSF fees. Other "next best" solutions are addressed in Section 3.

2.1. Limit the Price of Overdraft Fees to $5

Overdraft fees should not be a profit center that gives financial institutions the incentive to push their customers into overdrafting and incurring fees. People broadly view $35 overdraft fees as unfair.[67] The strongest reform would be to eliminate overdraft fees altogether, as some banks have done. But much of the harm of overdraft fees could be eliminated by limiting banks to a $5 fee that would cover their costs but not allow the fees to be a profit center.

In 2024, the CFPB issued a rule limiting most overdraft fees to $5.[68] That rule was expected to save people $5 billion a year. Households that pay overdraft fees would have saved about

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$225 a year. Unfortunately, in 2025 Congress overturned the overdraft fee rule using the Congressional Review Act.[69]

The CFPB had concluded that a $5 fee would generally be sufficient to cover the costs to banks of overdrafts, including both charge-offs and costs relating to overdraft notices, branch servicing, collection, core providers/vendors, compliance, and technology.[70] A CFPB study of overdraft fees found that the primary cost banks occur with respect to overdraft programs come from charge-offs[71] when consumers fail to repay negative balances after institutions cover overdraft transactions.[72]

A fee even lower than $5 could be sufficient for banks to cover their costs.[73] Charge-offs will likely decrease if banks stop piling on overdraft and NSF fees, which make it more difficult for people to repay a negative balance. In fact, some banks have found that they closed and charged off fewer accounts after eliminating overdraft fees.[74]

Banks will argue – without evidence -- that overdraft fees are necessary as a deterrent to overdrafting. However, Capital One, which eliminated overdraft fees but continued to cover overdrafts, found:

> [W]e have seen customers succeed by using no fee overdraft responsibly. At the same time, we believe that our decision has also been good for our business, by attracting new customers, retaining current customers and reducing operational complexity. Eliminating overdraft fees has also helped deepen our relationships with customers who can continue to grow and thrive with us over the longer term. These types of win-wins are at the heart of our mission to change banking for good.[75]

Banks will also argue that if they cannot charge high fees, they will eliminate overdraft protection and will decline more overdraft transactions. That is unlikely, as bouncing payments creates friction with their customers, and banks have eliminated overdraft fees completely while continuing to offer courtesy overdraft services.[76]

Capping back-end overdraft fees would still allow banks to charge, and make a profit on, overdraft lines of credit or credit cards linked for overdraft protection. Banks could offer overdraft credit at a profit, but they would have to provide APR disclosures that will enable people to comparison shop. Banks are unlikely to persuade consumers to accept overdraft credit at 16,000%, but they can offer an overdraft line of credit at 18% APR, 36% APR, or whatever consumers are willing to pay.

The attorneys general of 22 states and the District of Columbia, along with Hawaii's Office of Consumer Protection, supported the CFPB's rule limiting most overdraft fees to $5 and opposed a congressional resolution to overturn the rule.[77] A broad coalition of 144 consumer, civil rights, military, legal services, and community groups urged the CFPB to adopt an even lower $3 benchmark fee.[78]

A California law that went into effect January 1, 2026 limits overdraft and NSF fees to $14.[79]

Some other countries cap overdraft fees. France limits overdraft fees to 4 to 8 Euros, depending on the type of account, with monthly limits of 20 to 80 Euros, respectively.[80] The monthly limit drops to 25 Euros for financially vulnerable customers.

2.2. Limit the Annual Quantity and Cost of Overdraft Fees

Snowballing overdraft fees are one of the biggest problems with overdraft programs. Capping total costs is critical to reform. Even with fees capped at $5, people could still incur hundreds of dollars in overdraft fees. Thus, it is important to limit the number and overall cost of the fees. States should:

- Limit banks to six courtesy overdraft fees per year. Beyond that, overdraft credit can be provided through explicit credit products.
- Limit banks to no more than $200 a year in overdraft fees.

The OCC noted in its April 2023 guidance that high or no limits on the number of overdraft fees or NSF fees for multiple transactions in a single day could contribute to a determination that an institution's overdraft protection program is, as a whole, unfair.[81] Limiting the number of overdraft fees permitted would protect people from excessive overdraft fees.

Six fees a year would allow banks to cover overdrafts as an occasional courtesy but would prevent overdraft fee programs from being a more regular form of high-cost credit, like payday loans, that leads to rollovers and a debt trap. Bank regulators have recommended that payday loans be limited to about six a year to prevent rollovers.[82]

Limiting the number and total cost of overdraft fees will also help with cash advance apps that structure loans as overdrafts, discussed in Section 1.6.2 above. The fees charged for cash advances may be nominally small but can multiply to several hundred dollars a year when people get caught in a reborrowing trap that results in dozens or even hundreds of loans a year.[83]

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An alternative reform would be to allow no more than $200/year in overdraft fees. This would encourage banks to either reduce the number of overdraft fees (for example, either six $33 overdraft fees a year or five $35 ones) or reduce the fee so they could charge a higher number of fees.

While not as effective as imposing overall annual limits on the number or cost of overdraft fees, another approach is to limit the number of overdraft or NSF fees per day or episode, as discussed in Sections 3.2 and 3.6 below.

2.3. Ban NSF Fees

NSF fees hurt the most vulnerable households—those whose finances are so strapped that any courtesy overdraft coverage has been exhausted. NSF fees also harm people who did not even receive the benefit of having the item paid and will likely face a returned item fee from the payee. Banning NSF fees would protect people from being penalized for not having enough money in their account.

Banning NSF fees would protect people from being penalized for not having enough money in their account.

Virtually all large banks have eliminated NSF fees. None of the top 20 consumer banks charges NSF fees.[84] Some smaller banks and credit unions also do not charge NSF fees.[85] Other financial institutions should be required to follow suit.

A weaker and more cumbersome alternative would be to limit NSF fees to an amount that is reasonable and proportional to a financial institution's costs in handling NSF transactions. The Office of the Comptroller of the Currency (OCC)[86] and FDIC (later rescinded)[87] included similar recommendations for banks to adopt as an appropriate risk-management practice. But since the costs of declining and handling NSF transactions is so low, it is simpler to ban the fees outright rather than to assess the costs incurred and ensure that fees do not exceed those costs.

A California law limits state credit union NSF fees to $14.[88] A separate California law prohibits state-chartered banks and credit unions from charging NSF fees for transactions that are instantly or nearly instantly declined.[89]

Canada caps NSF fees at $10 effective March 12, 2026.[90]

3. NEXT BEST OVERDRAFT AND NSF FEE REFORMS

The reforms described above will have the strongest impact in protecting consumers from excessive overdraft and NSF fees and prevent new abuses from emerging. If those strong reforms are not politically possible, there are a number of second-best steps states can take to limit these fees and unfair practices.

The following list is roughly in priority order starting with the most effective reforms. However, no single reform will stop all abuses, and it is important to enact the reforms in combination. For example, Bank of America reduced the fees charged to consumers by 97 percent through a combination of reforms over the years including eliminating fees for debit and ATM transactions, eliminating extended overdraft fees and NSF fees, and reducing overdraft fees to $10, along with more balance alerts and other tools.[91]

Bank of America reduced the fees charged to consumers by 97 percent through a combination of reforms over the years including eliminating fees for debit and ATM transactions, eliminating extended overdraft fees and NSF fees, and reducing overdraft fees to $10, along with more balance alerts and other tools.

The fact that many of the reforms listed below have been adopted voluntarily by some banks and credit unions shows that these measures are feasible and will help to level the playing field.

These reforms can be adopted through legislation, and some state regulatory agencies may also have the authority to implement changes through regulatory guidance or rules.

3.1. Prohibit Overdraft Fees on Debit Card and ATM Transactions

Put in lending terms, a $34 fee for a $24 loan over three days equals a 17,000% APR, much higher than a traditional payday loan.

Overdraft fees from debit card payments are the most common source of overdrafts.[92] Most overdrawn debit card transactions are very small, typically less than $24, and are generally repaid within three days.[93] Put in lending terms, a $34 fee for a $24 loan over three days equals a 17,000% APR, much higher than a traditional payday loan.

“Overdraft” fees on ATM withdrawals that the bank approves also make no sense. Dispensing cash when the account has insufficient funds, while imposing an overdraft fee, is simply a form of high-cost payday loan, skirting credit laws.

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While banks cannot charge an overdraft fee on a one-time debit card or ATM transaction unless the consumer has opted in to overdraft coverage, banks have manipulated people into opting in thinking that they were protecting themselves from fees. People are deeply confused and not making opt-in choices based on correct information.[94] Most people would rather have a debit card or ATM transaction denied rather than pay a high fee, as there is no charge for declining those transactions. A Pew survey found that more than 68 percent of people who incur over $100 in overdraft and NSF fees a year would prefer to have a transaction declined than pay a $35 fee.[95]

To curb this problematic practice, states should prohibit overdraft coverage fees on any one-time debit card or ATM transactions. Prohibiting overdraft fees on debit card and ATM transactions would significantly reduce the amount of overdraft fees charged.

Banks virtually never charge NSF fees on transactions like debit card and ATM transactions that can be instantaneously declined, though declined transaction fees do appear sometimes on prepaid cards. New York has proposed a regulation to ban NSF fees for instantaneously declined electronic transactions.[96] The CFPB had also proposed such a rule, using its authority to prohibit abusive practices, but withdrew it in January 2025 as the new Administration was taking over.[97]

3.2. Prohibit Multiple Fees for a Single Negative Balance Episode, Even One Involving Multiple Days

People can incur multiple overdraft and NSF fees per day if more than one item overdrafts or bounces. In addition, if the account remains negative for several days, additional overdraft or NSF fees may be incurred, as well as "sustained" overdraft fees for failure to bring the account positive.

If the account remains negative for several days, additional overdraft or NSF fees may be incurred, as well as "sustained" overdraft fees for failure to bring the account positive.

Banks should not be allowed to charge more than one fee for each overdraft episode – that is, the time until the balance returns to a positive balance, regardless of the number of overdrawn transactions in a day or the number of days the account is in the negative. Fees that multiply make it harder to repay overdrafts and lead to closed accounts.

The FDIC took enforcement action against Higher One, Inc. and The Bancorp for conduct that included allowing the accounts to remain in overdrawn status over long periods of time, which allowed NSF fees to continue accruing.[98]

New York has proposed to prohibit charging more than three overdraft or NSF fees per day and to prohibit "sustained," "continuous," or "daily" fees imposed for each day an overdraft balance is not repaid.[99] That is a start, but even just three fees can be over $100 and additional fees can accrue as new payments come in.

People who are not able to immediately bring an account back to positive need the most help. Cascading fees simply increase the chance of a bank account being closed without the bank recovering any of those fees.

3.3. Require a Cushion and Grace Period Before Charging a Fee

The most vulnerable households should not be penalized with exorbitant fees for small overdrafts or for overdrafts that are quickly remedied. A survey of consumer experiences published by the CFPB in 2023 noted that participants in its interviews and focus groups "felt they did not receive timely notifications [of overdraft transactions] or have sufficient control to address shortfalls" and "welcomed recent reductions in overdraft fees and the adoption of grace periods."[100] The OCC also indicated that grace amounts and grace periods are among potentially appropriate risk management practices banks may consider adopting to avoid risk of overdraft programs which may be unfair or deceptive.[101]

As noted above, a growing number of banks recognize the abuse of charging a $35 fee on a $2 overdraft or high fees that can reach $100 or more for an overdraft that lasts only 24 hours. At least 16 of the top banks have a cushion ranging from $1 to $50, and 10 allow people to cure the overdraft the next day before incurring a fee.[102] New York has proposed to prohibit fees on overdrafts of less than $20.[103]

At least 16 of the top banks have a cushion ranging from $1 to $50, and 10 allow people to cure the overdraft the next day before incurring a fee.

States should require a $50 cushion and a grace period until midnight on the next day. Requiring a small cushion before a fee can be charged, and a grace period to correct a negative balance would promote fairness and allow struggling families to avoid excessive fees.

While less effective and less clear than a $50 cushion, another option is to prohibit overdraft and NSF fees that exceed the amount of the overdraft. New York has proposed such a rule.[104] That rule would also be consistent with the regulations for credit card late fees, which prohibit fees that are larger than the missed payment.[105]

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3.4. Ban "Surprise" Overdraft Fees (Authorize Positive, Settle Negative)

"Authorize positive, settle negative" (ASPN) transactions, also known as "surprise" overdraft fees, occur when banks charge an overdraft fee even though the account had a sufficient positive balance when the transaction was authorized or paid by the institution. For example, a debit card transaction may have been approved at a store, but then when the account's transactions were re-ordered at the end of the day, the account was determined to have an insufficient balance to cover the purchase. Or, a small debit card transaction could have been batched by the merchant and submitted at the end of the day, but in the interim period, an automatic payment depleted the account.

The practice of APSN has already been described as an unfair and in some cases deceptive practice by the CFPB,[106] the FDIC,[107] the OCC,[108] and the New York Department of Financial Services (NY DFS).[109]

Banning APSN transactions would help to prevent surprise, unfair overdraft and NSF fees that consumers have difficulty predicting and preventing.

3.5. Prohibit Reordering in a Manner That Increases Overdraft or NSF Fees

The order in which a financial institution processes transactions can determine the number of overdraft and NSF fees assessed.[110] Financial institutions have an incentive to process the largest transactions first (known as "high to low reordering"), as this will overdraw the account more quickly and maximize the number of transactions that are paid as overdrafts (or that bounce) and can generate fees.[111]

For example, assume that a person with $90 in their account bought a $6 cup of coffee before work, then a $12 sandwich for lunch, and then after work went shopping and spent $100 on a pair of shoes. Without reordering, only the shoe purchase would be an overdraft, generating a single overdraft fee. But if the purchases are re-ordered high to low, making the shoe purchase first, that purchase will overdraw the account, resulting in a fee, and then when the coffee and sandwich are processed, those transactions will be considered overdrawn as well, generating fees. Thus, the person would incur three overdraft fees rather than one.

Changing the order of a person's purchase of a cup of coffee, sandwich and pair of shoes to shoes, sandwich, coffee can result in three overdraft fees rather than one.

Like fees for APSN transactions, reordering to increase fees is unfair, confuses people, and deprives them of control. Even when people check their balances online, preauthorized payments and complex processing and settlement policies can lead to the bank considering the account overdrawn when it appears to the accountholder to have funds.

Some courts have sustained legal challenges to reordering.[112] Federal banking regulator guidance supports the position that financial institutions cannot reorder transactions to increase fees.[113] New York has also proposed to prohibit processing electronic transactions in a manner intended to maximize the number of overdraft and NSF fees.[114] The case against reordering is especially strong for debit card transactions, all of which must be paid regardless of the order in which they are processed.

One study found longer term beneficial impacts of eliminating reordering beyond lower fees. After a series of class-action lawsuits mandated that some banks stop reordering, a study found that after banks cease high-to-low reordering, low-income individuals reduce payday borrowing, increase consumption, realize long-term improvements in financial health, and gain access to lower-cost loans in the traditional financial system.[115] The study also found that branches of banks that were reordering were more likely to be located in close proximity to payday lenders, suggesting that banks with aggressive overdraft policies co-locate and service similar customers.[116]

The study found that branches of banks that were reordering were more likely to be located in close proximity to payday lenders, suggesting that banks with aggressive overdraft policies co-locate and service similar customers.

While many banks have moved away from reordering, the practice persists at some institutions. Prohibiting transaction reordering could provide relief from multiplying overdraft and NSF fees.

Of course, a simpler reform would be to limit banks to one fee per day or per overdraft episode. In that case, the order of the transactions would not change the number of fees.

3.6. Prohibit Multiple Fees For a Single Overdrawn Check or Payment

After a check or electronic payment is declined due to insufficient funds, the payee (the person or entity to whom payment is owed) may re-present the payment. Banks typically

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charge an NSF fee when a check bounces, and the bank may charge another NSF fee if the check is later re-presented and is declined again. In other words, financial institutions may assess multiple NSF fees arising from re-presentment of the same unpaid transaction. NSF fees are less common for declined electronic payments, but some banks and prepaid cards charge them, especially for declined ACH transactions.

If a payment begins as a paper check and then is re-presented electronically through the ACH system, as most are, then Nacha rules allow the check to be re-presented twice.[117] That is, the consumer could potentially be subjected to three NSF fees. The same is true for a payment that begins as an electronic ACH payment and then is re-presented twice.

While the preferred policy option is to ban all NSF fees, as discussed above, at a minimum, states should ensure that people do not incur snowballing fees. Many regulators have stated that the practice of charging multiple NSF fees because of a single transaction is deceptive if not clearly disclosed, and potentially unfair if customers cannot reasonably avoid the harm associated with the re-presentment fees.[118] In 2026, the FDIC rescinded, without explanation, its 2023 guidance cautioning against multiple NSF fees on the same item,[119] part of a trend of the Trump Administration rolling back protections. The rescission does not affect the persuasive value of the 2023 guidance.[120]

Many regulators have stated that the practice of charging multiple NSF fees because of a single transaction is deceptive if not clearly disclosed, and potentially unfair if customers cannot reasonably avoid the harm associated with the re-presentment fees.

Multiple fees for a single transaction should be prohibited regardless of whether the practice is clearly disclosed. In 2023, the CFPB entered into a consent order with Bank of America requiring penalties for conduct that included “double-dipping” by charging multiple NSF fees for the same transaction.[121] Similarly, in 2012 the FDIC took enforcement action against Higher One, Inc. and the Bancorp for charging student account holders multiple NSF fees from a single merchant transaction.[122]

As noted above, most large banks have eliminated NSF fees. For banks that continue to charge those fees, they certainly should not be allowed to pile on the punishment to people who are struggling to bring their accounts positive. Prohibiting multiple NSF fees arising from the same unpaid transaction would protect households from excessive and unnecessary costs.

3.7. Work with Local "Bank On" Coalitions, and Require State Banks and Credit Unions to Offer an Account Without Overdraft and NSF Fees (A "Safe Account")

"Bank On" coalitions across the country, composed of local governments, financial institutions, and community groups, help to bring unbanked people into the banking system by offering them safe accounts with no overdraft or NSF fees, among other features.[123] Cities for Financial Empowerment supports these coalitions, publishes National Account Standards for safe accounts,[124] and identifies accounts that meet the standards.

More than 500 Bank On certified accounts without overdraft or NSF fees are now publicly available at financial institutions in every state.[125] As of 2024, 14 million Bank On certified accounts were currently open, with more than 4.8 million accounts opened in 2024 alone; 84% of them were opened by customers new to the financial institution.[126]

More than 500 Bank On certified accounts without overdraft or NSF fees are now publicly available at financial institutions in every state: joinbankon.org/accounts.

Some states may have a requirement that state-chartered banks offer a low-cost bank account. New York State has such a requirement,[127] and the New York Department of Financial Services declared that a Bank On account would satisfy the requirement.[128]

Other states should follow suit and require that state-chartered banks offer an account that meets the Bank On standards and does not charge any overdraft or NSF fees.

Banks should also be required to list the account prominently on their website along with other checking accounts and to offer the account as an option to any individual interested in a checking account. Some banks that have Bank On accounts refuse to offer overdraft fee-free accounts except as a "turn down" account to people whom the bank declines for a traditional checking account that generates overdraft fees.

4. ENSURE REFORMS ARE EFFECTIVE AND PREVENT EVASIONS

4.1. Cover Overdraft Fees Collected Through "Tips"

Any effort to address abuses stemming from overdraft practices must also prevent overdraft fees from emerging in a new form. One new type of overdraft fee takes the form of a "tip."

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The “tips” model has appeared in the context of fintech companies that offer banking apps and services (sometimes in partnership with a bank) discussed in Section 1.6.2 above. While these apps typically do not charge traditional overdraft or NSF fees, some do push people to pay a “tip” after an overdraft is covered. For example, Chime heavily promotes its banking app that allows people to “Overdraft fee-free with SpotMe” up to $200.[129] However, Chime urges people to pay a “tip” for the overdraft.[130] Other apps that offer cash advances also push people to pay “tips” and make it difficult not to.[131]

“Tips” collected on overdrafts should be treated like any other overdraft fee. Any cost collected in connection with an overdraft, even if purportedly voluntary, should be considered an overdraft fee and covered by the reforms discussed above.

4.2. Cover Transfer Fees

Another potential way that overdraft fee reforms can be evaded is through the use of transfer fees when an overdraft is covered through a transfer from a savings account, overdraft line of credit, or linked credit card. While a reasonable interest rate applied to a line of credit or a credit card is not concerning, transfer fees can effectively be an overdraft fee and can drive up the true interest rate exponentially.

Transfer fees can also multiply the cost of an overdraft if the bank charges both an overdraft fee and a transfer fee. New York has proposed to ban that practice.[132]

Some banks are starting to eliminate their overdraft transfer fees, as Bank of America has done.[133]

Thus, fees for transfers from other accounts to cover overdrafts should be included in the definition of overdraft fee and should be covered by the reforms discussed above.

4.3. Cover Nonbanks and Out-of-state, State-chartered Banks Without Branches in the States

As discussed above, banking services are increasingly offered through companies that are not banks (nonbanks). While the law of preemption is complex and evolving, states generally have authority over nonbanks, even if they partner with an out-of-state bank. To address problematic practices by nonbanks, such as those discussed in Sections 1.6.2 and 4.1 above, and to prevent evasions, states should include nonbanks in their coverage.

States should also consider covering out-of-state, state-chartered banks. Those banks may not be protected by preemption if they have no branches in the consumer’s state or do not conduct their activities out of those branches, as discussed in Section 1.6.1 above.

4.4. Include an Anti-evasion Provision

Evasions can be hard to predict. Any legislation or regulation should also include general anti-evasion language.

4.5. Ensure that Overdraft and NSF Fee Reforms are Enforceable

In enacting reforms, care should be taken to ensure that the rules are both privately enforceable by consumers and enforceable by the banking regulator and state attorney general. Depending on the state's statutory scheme and the strength of the state's law against unfair or deceptive practices,[134] conduct that violates the rules could be deemed a violation of the state UDAP statute. Reforms also could be incorporated into another statute that provides a private right of action. Or, a new private right of action could be included with the reforms.

5. CREATE THE BUILDING BLOCKS FOR REFORM

5.1. Give the State Regulator a Mandate and the Authority to Adopt Reforms, Address New Practices, and Prevent Evasions

Another option to legislating specific reforms is to give the state regulator the authority to do so. Many regulators may already have such authority. But regulators may be more willing to act if the legislature broadens and clarifies that authority and directs the regulator to act. That is what happened in New York, as discussed in the Appendix.

Another approach is to give the state regulator broader and more flexible general regulatory power to prevent and enact rules governing unfair, deceptive, or abusive practices. California did so when passing and strengthening the California Consumer Financial Protection Law.[135]

5.2. Require State Banks and Credit Unions to Report Their Overdraft and NSF Fee Volume, and Require State Regulators to Study Overdraft Practices

States should collect data on overdraft and NSF fee volume and practices and publicize the results. The reports can be utilized to build the case for reform, to motivate voluntary change, and to show the impact of reforms.

California requires an annual report from state-chartered banks and credit unions on overdraft and NSF fee revenues, both in dollars and as a percentage of their net income.

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The California Department of Financial Protection and Innovation publishes an annual report with the institution-by-institution data, which provides transparency into the profits made by financial institutions and the costs to consumers.[136] The report also applies regular pressure to institutions to reduce their dependency on these pernicious fees.

The New York legislature mandated a study of particular overdraft and NSF fee practices.[137] The New York Department of Financial Services published a one-time report in 2023 summarizing its findings.[138]

Ideally, states should adopt a combination of both approaches: require annual reports that cover both fee revenue and particular practices. State regulators should make the data public in an annual report.

6. CONCLUSION

States have an opportunity to protect the bank accounts of struggling families to make sure that snowballing overdraft and NSF fees do not push people out of their bank accounts or leave them without enough funds for necessities. This paper offers an array of policy approaches that can be considered in states with different political landscapes.

APPENDIX: OVERDRAFT AND NSF FEE RESOURCES

Federal Regulators

Below is a summary of the more recent and pertinent actions by federal regulators on overdraft and NSF fees. The list is not exhaustive. Many older guidances are summarized in New York's 2023 report on overdraft and NSF fee practices[139] and in NCLC's treatise Consumer Banking & Payments Law.[140]

The CFPB

The CFPB has published multiple reports and bulletins regarding overdraft and NSF fees, including:

- Trends in overdraft/non-sufficient (NSF) fee revenue and practices (last updated Apr. 24, 2024) (site referencing all the materials below along with charts listing banks' NSF fee practices).
- Overdraft/NSF metrics for Top 20 banks based on overdraft/NSF revenue reported during 2021.[141]
- Data spotlight: Consumer experiences with overdraft programs (May 18, 2023) (report detailing findings of interviews with consumers on overdraft and NSF fees).
- Supervisory Highlights Junk Fees Special Edition, Issue 29, Winter 2023 (March 2023) (discussing unfair practices by various financial institutions' use of APSN and multiple NSF fees on representment).
- Data spotlight: Banks' overdraft/NSF fee revenue declines significantly compared to pre-pandemic levels (Feb. 7, 2023) (analysis of NSF and overdraft revenue for 2022).
- Consumer Financial Protection Circular 2022-06: Unanticipated overdraft fee assessment practices (Oct. 26, 2022) (guidance to help banks avoid charging illegal junk fees on deposit accounts utilizing practices that a consumer may not reasonably anticipate such as ASPN) (since rescinded[142]).
- Banks' overdraft/NSF fee revenues evolve along with their policies (April 10, 2025) (analysis of impact of bank changes to overdraft practices on revenue collected from overdraft and NSF fees)
- Data Point: Overdraft/NSF Fee Reliance Since 2015- Evidence from Bank Call Reports (Dec. 1, 2021) (study of banks' reliance on overdraft and NSF fees since 2015)

Additionally, the CFPB has filed enforcement actions concerning overdraft fees.

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In 2018, the CFPB entered into a consent decree requiring $25 million in restitution and $3 million in civil money penalties by TCF National Bank[143] for tricking people into signing up for costly overdraft services.[144] The bank's CEO even named his boat "Overdraft."[145]

In 2023, the CFPB brought an enforcement action and entered into a consent decree, together with the OCC, against Bank of America for its overdraft practices.[146] Specifically, the CFPB found that the re-presentment of declined transactions leading to the assessment of repeat NSF fees on the same transaction was unfair.[147] The order required Bank of America to refund all repeat NSF fees it had collected since September 2018 that had not been refunded, around $80.4 million. The bank also was ordered to pay a $60 million civil penalty to the CFPB and a separate fine to the OCC of $60 million.[148]

In 2024 the CFPB entered into a consent decree against Navy Federal Credit Union for charging "surprise" overdraft fees on authorize positive, settle negative transactions, ordering Navy Federal to pay $95 million.[149] However, in 2025 under new leadership the CFPB ended the consent order.[150]

The OCC

Along with the CFPB, the OCC jointly undertook the 2023 enforcement action which led to the consent order against Bank of America mentioned above.

In 2023, the OCC published a bulletin discussing practices of overdraft protection programs that could potentially be considered unfair or deceptive acts or practices or pose compliance, operational, reputation, and credit risks.[151] The bulletin discusses APSN, multiple NSF fees on representment, high limits or lack of daily limits, and sustained overdraft fees as potentially unfair or risky practices. The bulletin also offers guidance on what may help manage these risks, for example, single daily fee assessments that are reasonably related to the costs of providing overdraft protection or NSF services or offering low-cost accounts or alternatives such as lines of credit.

The FDIC

In 2023, the FDIC issued guidance on two of the overdraft practices the CFPB and the OCC highlighted as potentially unfair: ASPN[152] and multiple NSF fees on representment.[153]

The guidance on ASPN discusses the FDIC's concerns with the available and ledger balance methods used by institutions when assessing overdraft fees, how those practices may violate federal law on unfair, deceptive, and abusive practices, and clarifies that disclosures describing the transaction processing may not be sufficient to mitigate those concerns.

The 2023 guidance on multiple re-presentment NSF fees is similar; practices involving the charging of multiple NSF fees arising from the same unpaid transaction are at higher risk of violating federal law prohibiting unfair or deceptive acts or practices, especially where such practices are not adequately disclosed. The guidance also offers practices that may reduce this risk, such as eliminating NSF fees or not charging more than one NSF fee for the same transaction.

In 2026, the FDIC rescinded the 2023 guidance on multiple NSF fees without explanation.[154] The rescission does not affect the persuasive value of the 2023 guidance.[155]

State Legislation and Regulation

California

California law[156] requires the Department of Financial Protection and Innovation to issue an annual report on the overdraft and NSF fee revenue of California-chartered banks and credit unions. The reports, issued since 2023, show that some institutions charge no fees at all and others heavily depend on overdraft and NSF fees as a share of their overall revenue.[157]

A California law prohibits state-chartered banks and credit unions from charging NSF fees for transactions that are instantly or nearly instantly declined.[158]

A California law that went into effect January 1, 2026 limits overdraft and NSF fees to $14.[159]

Massachusetts

The Massachusetts Division of Banks put out a supervisory alert on charging multiple NSF fees for the same transaction.[160]

New York

New York has been taking increasing action to address overdraft and NSF fees, starting with actions to highlight practices that could be unfair or deceptive, and culminating in additional measures after obtaining more authority from the legislature.

Through its supervisory processes, the New York Department of Financial Services (NY DFS) issued a 2022 letter[161] on overdraft practices it deemed to be unfair and/or deceptive. The state then issued a 2023 report[162] more broadly analyzing overdraft, NSF, and similar fee practices of New York-regulated depository institutions.

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The 2022 NY DFS supervisory letter highlighted overdraft practices it deemed unfair. These practices include ASPN, double fees arising from overdraft transfer fees,[163] and multiple NSF fees relating to representments. The letter also indicated that failure to disclose that multiple NSF fees could be charged for a single transaction is a deceptive practice.

The 2023 New York report offers a comprehensive history of overdraft fees, problematic overdraft practices, national overdraft and NSF trends and changes, and regulatory developments on overdraft fees (including federal regulatory developments. It also provides a summary of actions the NY DFS has undertaken to address overdraft and NSF fee practices and findings of its survey of overdraft and NSF fee practices among New York-regulated institutions. Some of these findings include:

- 81% of responding institutions charge a fee in association with overdraft transactions;
- 68% of responding institutions charge a fee for NSF transactions;
- 46% of responding institutions require customers to maintain a minimum balance, with 100% of those responding institutions charging a fee when the account falls below the defined minimum;
- 34% of responding institutions offer a Bank On account product or similar, low-fee, or no-fee account product;
- 29% of responding institutions charge a negative balance fee, often referred to as a "sustained overdraft fee" if a customer has not cured a negative balance with an additional deposit after a determined period of time;
- The average fee charged per overdraft was $25.77;
- Only 10% of responding institutions allow a grace period for a customer to make a deposit to avoid assessment of an overdraft fee; and
- Some responding institutions capped the limit of overdraft transactions permitted daily (up to six), while others capped the total dollar value of overdraft coverage extended per day (up to $210).

In 2023, New York passed a bill granting NY DFS additional authority to combat unfair bank fee practices.[164] In January 2025, using that authority, NY DFS proposed regulations,[165] not yet finalized as of this writing, that would prohibit state-chartered banks from:

- Charging overdraft fees on overdrafts of less than $20.
- Charging overdraft fees that exceed the overdrawn amount.
- Charging more than three overdraft or non-sufficient funds ("NSF") fees per consumer account per day.

- Charging NSF fees for instantaneously declined electronic transactions.
- Charging multiple NSF or overdraft fees for the same transaction, including when a merchant resubmits a declined transaction.
- Charging a “sustained,” “continuous,” or “daily” fee for each day an overdraft balance is not repaid.
- Charging double fees to cover an overdraft, such as one fee for automatically transferring funds from another account and a second fee for the overdraft itself.
- Processing electronic debit transactions in a manner intended to maximize the number of overdraft and NSF fees.
- Charging an overdraft fee for an electronic transaction when the consumer’s account indicates sufficient funds at the time the transaction was initiated.

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ENDNOTES

1. *See* NCLC, Comments to the CFPB on Overdraft Lending at Very Large Financial Institution at 32-36 (Apr. 1, 2024).
2. *See* NCLC, Risks and Advice for Buy Now, Pay Later Borrowers (May 19, 2025).
3. *See* § 3.1, *infra*.
4. *See* NCLC, Press Release, House Republicans Ignore Rising Prices, Vote to Keep $35 Big Bank Overdraft Fees (Apr. 9, 2025).
5. CFPB, Press Release, CFPB Closes Overdraft Loophole to Save Americans Billions in Fees (May 4, 2025).
6. CFPB, Press Release, CFPB Orders Navy Federal Credit Union to Pay More Than $95 Million for Illegal Surprise Overdraft Fees (Apr. 11, 2025), *terminated by* Order Terminating the Consent Order, *In re*: Navy Federal Credit Union, No. 2024-CFPB-0014 (CFPB July 1, 2025).
7. Consumer Financial Protection Circular 2022-06: Unanticipated Overdraft Fee Assessment Practices, 87 Fed. Reg. 66,935 (Nov. 7, 2022), *rescinded by* 90 Fed. Reg. 20084 (May 12, 2025). Authorize positive, settle negative transactions are discussed in § 3.4, *infra*.
8. *See* NCUA Board Member Tanya F. Otsuka Statement on the Decision to Remove Total Overdraft and Non-sufficient Fund Fee Data (Mar. 2025).
9. CFPB, Overdraft and Nonsufficient Fund Fees: Insights from the Making Ends Meet Survey and Consumer Credit Panel at 5 (Dec. 2023).
10. Hannah Gdalman, MK Falgout, David Silberman, Financial Health Network, Overdraft, NSF Fees Bigger Burden Than Previously Estimated (Mar. 24, 2025) ("Financial Health Network, Bigger Burden").
11. *See* NCLC, Overdraft Fees Rising In Absence of CFPB Rule (June 2026) ("Overdraft Fees Rising").
12. Karen Bennett, Bankrate, Survey: ATM fees hit record high for third straight year while average overdraft fee dips (Sept. 10, 2025).
13. Giordano Palloni et al., CFPB, Overdraft and Nonsufficient Fund Fees: Insights from the Making Ends Meet Survey and Consumer Credit Panel at 5 (Dec. 2023) ("CFPB Making Ends Meet Survey").
14. *Id*.
15. July 18, 2023 email on file with NCLC.

16. City and County of San Francisco Office of Financial Empowerment, Blacklisted: How ChexSystems Contributes to Systemic Financial Exclusion (June 2021); NCLC, Statement Before the Senate Banking Committee on Overdraft Fees and Their Effects on Working Families at 4 (May 4, 2022).
17. *See* NCLC, Press Release, Report: Account Screening Consumer Reporting Agencies Impede Access for Millions (Oct. 19, 2015).
18. Chi Chi Wu & Katie Plat, CFE Fund & NCLC, Account Screening Consumer Reporting Agencies – A Banking Access Perspective at 6 (Oct. 19, 2015).
19. CFPB Making Ends Meet Survey, *supra*, at 6.
20. *Id*. Among those incurring frequent fees, 41 percent had a subprime credit score, 40 percent had no credit available on a credit card, and 42 percent had debt 60 or more days past due.
21. *Id*. at 7.
22. CFPB, Data Point: Frequent Overdrafters (Aug. 2017) ("CFPB 2017 Data Point").
23. CFPB Making Ends Meet Survey, *supra*, at 6-7.
24. *Id*. at 7.
25. CFPB 2017 Data Point, *supra*.
26. Financial Health Network, Amid Resurgence of Interest in Overdraft, New Data Reveal How Inequitable It Can Be (Sept. 3, 2021) ("Black and Latinx households with accounts were also far more likely to report having overdrafted than White households (1.9 times as likely and 1.4 times as likely, respectively), contributing to the disproportionate financial costs borne by people of color.") (citing The FinHealth Spend Report 2021).
27. Kate Fitzgerald, American Banker, "Wealthy, white consumers pay fewer bank fees: Report" (Jan. 22, 2023); Oz Shy, Fed. Reserve Bank of Atlanta, Joanna Stavins, Fed. Reserve Bank of Boston, Who Is Paying All These Fees? An Empirical Analysis of Bank Account and Credit Card Fees (Aug. 2022).
28. Who Is Paying All These Fees?, *supra*.
29. FDIC, 2023 FDIC National Survey of Unbanked and Underbanked Households (Nov. 2024).
30. *Id*. at 22.
31. *Id*.
32. NCOA, Get the Facts on Economic Security for Seniors (June 8, 2023).

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33. *See, e.g.*, Lopez v. Washington Mut. Bank, 302 F.3d 900 (9th Cir. 2002) (bank did not violate Social Security Act's protections by deducting overdraft and overdraft fees from consumers' next deposit of SSI benefits because account agreement allowed this).

34. *See* NCLC, Top Overdraft Fee Offenders Hitting Civilian, Military Families (Apr. 3, 2025).

35. Douglas Gillison, Reuters, US overdraft fees jump at big banks amid regulatory, economic shifts (Dec. 16, 2025) (USAA had the biggest year-on-year jump in overdraft fee revenue, 20%, among the top 20 banks studied by Reuters).

36. *See* NCLC, Top Overdraft Fee Offenders Hitting Civilian, Military Families (Apr. 3, 2025).

37. *See* Peter Smith et al., Center for Responsible Lending, Banks Must Stop Gouging Consumers During the COVID-19 Crisis at 1-2 (June 2020); NCLC, Statement Before the Senate Banking Committee on Overdraft Fees and Their Effects on Working Families (May 4, 2022).

38. *See* § 2.3, *infra*.

39. *See* Overdraft Fees Rising, *supra*.

40. Bank of America, Press Release, Bank of America Announces Sweeping Changes to Overdraft Services in 2022, Including Eliminating Non-Sufficient Funds Fees and Reducing Overdraft Fees (Jan. 11, 2022).

41. Amplify Credit Union, Press Release, "Amplify Credit Union Eliminates All Banking Fees on All Deposit Accounts" (Feb. 8, 2022); Alliant Credit Union, Press Release, "Alliant Eliminates Overdraft Fees" (Aug. 2, 2021); John Reosti, American Banker, Why this Minnesota bank dropped its overdraft fees (May 6, 2025). California data also shows that a number of banks and credit unions chartered in the state do not have any overdraft fee or NSF fee revenue. *See* CA DFPI, Annual Report of Income from Nonsufficient Funds and Overdraft Fees (Apr. 2025).

42. *See* CA DFPI, Annual Report of Income from Nonsufficient Funds and Overdraft Fees (Apr. 2025).

43. The CFPB compiled a table detailing the overdraft practices of the 20 banks that had the most overdraft/NSF revenue in 2021. The practices listed were last updated in 2024. *See* CFPB, Overdraft/NSF metrics for Top 20 banks based on overdraft/NSF revenue reported during 2021 (updated Apr. 11, 2024) ("CFPB Overdraft/NSF metrics").

44. *See* New York Department of Financial Services ("NYDFS") Report on Overdraft, Non-sufficient Funds, and Similar Fee Practices of New York-Regulated Depository Institutions at 9 (July 14, 2023).

45. *See* NCLC, Press Release, House Republicans Ignore Rising Prices, Vote to Keep $35 Big Bank Overdraft Fees (Apr. 9, 2025).

46. *See* NCLC, Overdraft Fees Rising, *supra*.

47. Douglas Gillison, Reuters, US overdraft fees jump at big banks amid regulatory, economic shifts (Dec. 16, 2025).

48. *See* NCLC, Overdraft Fees Rising, *supra*.

49. *Id*.

50. Aaron Klein, Brookings, A few small banks have become overdraft giants (Mar. 1, 2021).

51. First Convenience Banks is the only one of these banks that charges NSF fees.

52. *See* CA DFPI, Annual Report of Income from Nonsufficient Funds and Overdraft Fees (Apr. 2025).

53. *See* NCLC, Consumer Banking and Payments Law § 1.6 (7th ed. 2024), *updated at* library.nclc.org ("State Laws and Preemption").

54. 12 U.S.C. § 25b(b).

55. 12 U.S.C. § 25b(b)(1)(B) (citing United States in Barnett Bank of Marion County, N. A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996)).

56. *See* Carolyn Carter, NCLC, Supreme Court Reinvigorates State Law's Applicability to Banks (July 3, 2024); Cantero v. Bank of America, 144 S. Ct. 1290 (2024).

57. Cuomo v. Clearing House Ass'n, L.L.C., 557 U.S. 519 (2009).

58. *See* Consumer Banking & Payments Law § 1.6.13.

59. King v. Navy Fed. Credit Union, 148 F.4th 628 (9th Cir. 2025).

60. The court did not consider whether the regulation was consistent with Supremacy Clause preemption or the standard articulated in the *Barnett Bank* case.

61. NCLC, Consumer Credit Regulation § 4.2.6.2 (4th ed. 2024), *updated at* library.nclc.org.

62. NCLC, Consumer Credit Regulation §§ 4.2.6.2.5, 4.2.6.2.6 (4th ed. 2024), *updated at* library.nclc.org.

63. *See id.* § 3.7. Parity laws often allow banks to charge higher interest rates than home state law allows, but they can also extend to other areas.

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64. *See* NCLC et al., Comments in Support of CFPB's Proposed Interpretive Rule on Earned Wage Advances at 18-22 (Aug. 30, 2024) (describing Dave's ExtraCash advance). Walmart's OnePay is also piloting an advance product structured as an overdraft. *See* OnePay, OnePay Advance (Sept. 23, 2025) (last visited May 28, 2026).

65. One court has sustained a challenge to Dave's cash advances disguised as overdrafts, finding that they are subject to credit laws. *See* Russell v. Dave, — F.Supp.3d — 2025 WL 3691977 (C.D. Cal. Dec. 12, 2025).

66. 12 U.S.C. § 25b(h)(2). In addition, anti-evasion doctrines such as the "true lender" doctrine may allow courts to look behind the technical form of transactions to determine that the true actor is a nonbank not entitled to preemption.

67. Pew, Americans Support Affordable Small Loans in the Banking System; In survey, most say prevailing fees for nonsufficient funds or overdrafts are unfair (June 6, 2023).

68. CFPB, Press Release, CFPB Closes Overdraft Loophole to Save Americans Billions in Fees (May 4, 2025).

69. Public Law No: 119-10 (May 9, 2025) (S.J. Res. 118, 119th Congress).

70. The CFPB initially proposed $3 as a potential benchmark fee by calculating the average charge-off loss per applicable overdraft transaction for the five financial institutions in its sample with sufficient data to analyze. CFPB, Overdraft Lending: Very Large Financial Institutions, Proposed Rule, 89 Fed. Reg. 13852, 13871 (Feb. 23, 2024). In the final rule, the CFPB increased that figure to $5 to take into account other costs raised by commenters. CFPB, Overdraft Lending: Very Large Financial Institutions, Final Rule, 89 Fed. Reg. 106768, 106769 (Dec. 30, 2024).

71. A charge-off occurs when a financial institution writes off debt it does not believe it will ever recover and closes the associated account.

72. CFPB, CFPB Study of Overdraft Programs at 17 (June 2013). Data collected by the CFPB showed that charged-off account principal balances represented 14.4% of net overdraft fees (not including NSF fees). Applying that 14.4% to a common $35 overdraft fee suggests that a $5 fee would cover charge-offs.

73. Costs at some banks could also exceed $5. The CFPB rule would have allowed banks to charge more than $5 if they showed that their costs were higher. Alternatively, banks could offer overdraft protection through a line of credit with a transparent annual percentage rate (APR). States could offer these two options, though they should make sure that APRs on lines of credit are capped at a reasonable interest rate.

74. One bank told NCLC that the number of accounts charged off dropped by 30% after it eliminated overdraft fees.

75. Comment of Capital One to CFPB re Overdraft Lending: Very Large Financial Institutions (Docket No. CFPB– 2024–0002 or RIN 3170–AA42) (Apr. 1, 2024).

76. *See, e.g.*, Capital One, Avoid overdraft fees and keep your cash ("What does "no overdraft fee" mean? This means you won't be charged a fee if your bank approves a transaction and there isn't enough money in your account to cover it. While some banks charge overdraft fees, Capital One does not charge overdraft fees for consumer checking accounts.") (last visited May 28, 2026). *See also* NCLC, FAQs on CFPB's Rule on Overdraft Lending: Very Large Financial Institutions (Mar. 19, 2025) (Questions 13 and 14).

77. Letter to congressional leadership re House Joint Resolution 59 Overturning CFPB Final Rule on Overdraft Fees (Apr. 8, 2025).

78. Comments of 144 Consumer, Civil Rights, Legal Services and Community Groups to CFPB re Docket No. CFPB–2024–0002 or RIN 3170–AA42 at 2 (Apr. 1, 2024).

79. SB-1075 Credit unions: overdraft and nonsufficient funds fees (2023-2024), codified at Financial Code § 14053.

80. Genevieve Mansfield, The Local, France tightens up bank rules for loans and overdrafts (Oct. 27, 2025).

81. Office of the Comptroller of the Currency, Bulletin 2023-12, Overdraft Protection Programs: Risk Management Practices (Apr. 26, 2023).

82. *See* FDIC, FIL-14-2005, Payday Lending Programs (Mar. 1, 2005) (customers should not have payday loans outstanding for more than three months in the previous 12 months).

83. *Cf*. NCLC, DailyPay Extracts Hundreds of Dollars From Low-Wage Workers' Pay (May 8, 2025) (describing New York Attorney General (NY AG) complaint alleging that one borrower took out over 450 loans over two years, paying nearly $1,400 in fees); NCLC, MoneyLion's Costly "0% APR" "Earned Wage" Payday Loans (May 22, 2025) (describing NY AG complaint alleging that 40% of users paid fees for 10 or more advances a month and that MoneyLion limited the size of advances so that many users were forced to take out back to back advances within minutes of each other to get the advertised amounts).

84. *See* Overdraft Fees Rising, *supra*. Similarly, a CFPB survey of the 25 banks that had the most overdraft fee revenue found that only one, First National Bank Texas dba First Convenience Bank, charges NSF fees. CFPB, Overdraft/NSF metrics, *supra*.

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85. New York Department of Financial Services ("NYDFS"), Report on Overdraft, Non-sufficient Funds, and Similar Fee Practices of New York-Regulated Depository Institutions at 9 (July 14, 2023); California Department of Financial Protection & Innovation, Annual Report of Income from Nonsufficient Funds and Overdraft Fees at 5-18 (Apr. 2025).

86. Office of the Comptroller of the Currency, Overdraft Protection Programs: Risk Management Practices (Apr. 26, 2023). ("Single daily fee assessments that are reasonably related to the costs of providing either overdraft protection or returned item for NSF services, offer effective transparency to customers, and eliminate confusion caused by item-posting order protocols or the use of available account balances.")

87. FDIC, FIL-32-2023, Supervisory Guidance on Multiple Re-Presentment NSF Fees at 2 (Aug. 2022, revised June 2023), *rescinded by* FDIC, FIL-14-2026, FDIC Rescinds Supervisory Guidance on Multiple Re-Presentment NSF Fees (Apr. 10, 2026).

88. SB-1075 Credit unions: overdraft and nonsufficient funds fees (2023-2024), codified at Financial Code § 14053.

89. AB-2017 Banks and credit unions: nonsufficient funds fees (2023-2024), codified at Financial Code § 530.

90. Pat Foran, CTV News, New $10 cap on NSF fees could save Canadians $600 million a year: Credit Counselling Society (Oct. 17, 2025).

91. Bank of America, Press Release, Bank of America Announces Sweeping Changes to Overdraft Services in 2022, Including Eliminating Non-Sufficient Funds Fees and Reducing Overdraft Fees (Jan. 11, 2022).

92. CFPB, Data Point: Checking Account Overdraft, (July 2014) at 15. ("On one end of the distribution, 92.3 percent of accounts that do not use debit cards have no overdrafts in a year of account use. Only 0.6 percent of these accounts incur more than 10 overdrafts per year. At the other end of the distribution, accounts that use their debit cards more than 30 times per month have the lowest percentage of non-overdrafters (51.2 percent) and the highest percentage of most frequent overdrafters (18.0 percent).")

93. CFPB, Data Point: Checking Account Overdraft at 5 (July 2014).

94. Nick Bourke & Rachel Siegel, Pew Charitable Trusts, "Customers Can Avoid Overdraft Fees, but Most Don't Know How; Bank disclosures and poor communication obscure options despite federal law" (Mar. 21, 2018).

95. Pew Charitable Trusts, Heavy Overdrafters: A financial profile (Apr. 20, 2016). A CFPB survey, which does not appear to have focused specifically on debit card and ATM transactions, found a range of perspectives: some preferred that their financial institution decline transactions, especially for smaller dollar amounts; some preferred to have one or two transactions go through, but have subsequent transactions declined to prevent cascading fees; and others preferred to have transactions approved, dealing with an overdraft fee rather than facing consequences with the merchant. CFPB, Data Spotlight, Consumer experiences with overdraft programs (May 18, 2023).

96. NY DFS., Press Release, Protecting Consumers: Governor Hochul Cracks Down on Exploitative Overdraft Fees Targeting Low-Income New Yorkers (Jan. 22, 2025).

97. CFPB, Proposed Rule, Fees for Instantaneously Declined Transactions, 89 Fed. Reg. 6031 (Jan. 31, 2024), *withdrawn by* 90 Fed. Reg. 3044 (Jan. 14, 2025).

98. Consent Order, Order for Restitution, and Order to Pay Civil Money, *In re*: Higher One, Inc., FDIC 11-700b, FDIC 11-704k (Aug. 7, 2012), *available at* www.fdic.gov.

99. NY DFS, Press Release, Protecting Consumers: Governor Hochul Cracks Down on Exploitative Overdraft Fees Targeting Low-Income New Yorkers (Jan. 22, 2025).

100. CFPB, Data Spotlight: Consumer Experiences with Overdraft Programs at 5 (May 18, 2023).

101. Office of the Comptroller of the Currency, Overdraft Protection Programs: Risk Management Practices (Apr. 26, 2023). Grace amounts are described in the bulletin as "de minimis exclusions from fees that are based on transaction size or the magnitude of the overdrawn balance," while grace periods "provide additional time before the assessment of fees sufficient for customers to address a potential or actual negative account balance through an additional deposit or transfer of funds."

102. CFPB Overdraft/NSF metrics, *supra*.

103. NY DFS, Press Release, Protecting Consumers: Governor Hochul Cracks Down on Exploitative Overdraft Fees Targeting Low-Income New Yorkers (Jan. 22, 2025).

104. NY DFS., Press Release, Protecting Consumers: Governor Hochul Cracks Down on Exploitative Overdraft Fees Targeting Low-Income New Yorkers (Jan. 22, 2025).

105. Regulation Z, 12 C.F.R. § 1026.52(b)(2)(i); Official Interpretation of 52(b)(2)(i)-1.i.

106. In 2022, the CFPB stated that the imposition of an overdraft fee on APSN transactions is likely an unfair practice. Consumer Financial Protection Circular 2022-06 Unanticipated Overdraft Fee Assessment Practices (Oct. 26, 2022), at 8. The CFPB rescinded that guidance in 2025 under new leadership. 90 Fed. Reg. 20084

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(May 12, 2025). But the rescission, which lacked any discussion, does not change the persuasive force of the guidance. *See* NCLC, Continued Vitality of 67 Withdrawn CFPB Guidance Documents (May 13, 2025).

In 2015, the CFPB also advised that certain institutions' failure to disclose their ASPN practice was deceptive. CFPB, Supervisory Highlights at 8 (Winter 2015).

107. On April 26, 2023, the FDIC issued guidance to institutions about the consumer compliance risks associated with overdraft fees charged against APSN transactions and concluding that certain overdraft practices related to APSN transactions were unfair. FDIC, Supervisory Guidance on Charging Overdraft Fees for Authorize Positive, Settle Negative Transactions at 2 (2023).

108. In its April 2023 guidance the OCC noted that some disclosures of overdraft programs that assess overdraft fees on ASPN transactions were found to be deceptive, but even when APSN practices were accurately disclosed, the overdraft fees charged for APSN transactions are also unfair because "consumers were still unlikely to be able to reasonably avoid injury." Office of the Comptroller of the Currency, Overdraft Protection Programs: Risk Management Practices (Apr. 26, 2023).

109. On July 12, 2022, the NY DFS issued a letter stating that the imposition of overdraft fees for APSN transactions is an unfair practice. NY DFS, Industry Letter: Avoiding Improper Practices Related to Overdraft and Non-Sufficient Funds Fees, (July 12, 2022). In January 2025, NY DFS proposed a formal regulation to prohibit APSN overdraft fees. NY DFS, Press Release, Protecting Consumers: Governor Hochul Cracks Down on Exploitative Overdraft Fees Targeting Low-Income New Yorkers (Jan. 22, 2025).

110. *See generally* Tanisha M. Edward, *The Banking Shuffle: Barring the Reordering of Consumer Transactions and Other Recommendations*, 20 N.C. Banking Inst. 253 (Mar. 2016).

111. National Bureau of Economic Research, Bank Ordering of Debit Charges and the Use of Payday Lenders (Mar. 2021). *See also* Aaron Klein, Brookings Institute, Getting Over Overdraft, (Nov. 7, 2022).

112. *See* Consumer Banking & Payments Law § 2.7.9.2.2.

113. Fed. Deposit Ins. Corp., Supervisory Guidance for Overdraft Protection Programs and Consumer Protection, FIL-81-2010 (Nov. 24, 2010); Fed. Deposit Ins. Corp., Overdraft Payment Program Supervisory Guidance: Frequently Asked Questions (transactions should be processed "in a neutral order that avoids manipulating or structuring processing order to maximize customer overdraft and related fees"; "Reordering transactions to clear the highest item first is not considered neutral.").

114. NY DFS., Press Release, Protecting Consumers: Governor Hochul Cracks Down on Exploitative Overdraft Fees Targeting Low-Income New Yorkers (Jan. 22, 2025).

115. Marco Di Maggio et al., Harvard Business School, In the Red: Overdrafts, Payday Lending and the Underbanked (Sept. 14, 2021).

116. *Id*. at 4.

117. RCK Eligible Items, 2025 Nacha Operating Rules § 2.5.13.3(h).

118. Office of the Comptroller of the Currency, Overdraft Protection Programs: Risk Management Practices (Apr. 26, 2023); FDIC, FIL-32-2023, Supervisory Guidance on Multiple Re-Presentment NSF Fees (Aug. 2022, revised June 2023), rescinded (Apr. 10, 2026); New York State Department of Financial Services, Industry Letter: Avoiding Improper Practices Related to Overdraft and Non-Sufficient Funds Fees (July 12, 2022); Massachusetts Division of Banks, Office of Consumer Affairs and Business Regulation, Supervisory Alert Regarding Charging Multiple Non-Sufficient Fund Fees (NSF) for Representment of Unpaid Transactions (Sept. 23, 2021).

119. FDIC, FIL-14-2026, FDIC Rescinds Supervisory Guidance on Multiple Re-Presentment NSF Fees (Apr. 10, 2026).

120. *See* NCLC, Continued Vitality of 67 Withdrawn CFPB Guidance Documents (May 13, 2025).

121. *See* CFPB, Press Release, "CFPB Takes Action Against Bank of America for Illegally Charging Junk Fees, Withholding Credit Card Rewards, and Opening Fake Accounts" (June 15, 2025).

122. Consent Order, Order for Restitution, and Order to Pay Civil Money, *In re*: Higher One, Inc., FDIC 11-700b, FDIC 11-704k (Aug. 7, 2012), *available at* www.fdic.gov.

123. A list of coalitions across the country along with other information is available at joinbankon.org.

124. Cities for Financial Empowerment Fund, Bank On National Account Standards (2025-2026).

125. *See* joinbankon.org/accounts/.

126. Cities for Financial Empowerment, New: Bank On National Data Hub 2024 Findings Highlight Exciting Progress for the Movement (Dec. 3, 2025); Federal Reserve Bank of St. Louis, Bank On National Data Hub: Findings from 2024 (Nov. 13, 2025).

127. *See* New York Consolidated Laws, Banking Law – BNK §14-f: Power of the superintendent of financial services to require the provision of basic banking services.

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128. New York Department of Financial Services ("NYDFS"), Industry Letter: Avoiding Improper Practices Related to Overdraft and Non-Sufficient Funds Fees, (July 12, 2022).

129. chime.com (last visited May 28, 2026).

130. *See* Chime, What are SpotMe® tips? (last visited May 28, 2026).

131. *See* NCLC, The Tricks Cash Advance Apps Use to Coerce Borrowers to "Tip" (Apr. 23, 2025) (video of the EarnIn app).

132. NY DFS, Press Release, Protecting Consumers: Governor Hochul Cracks Down on Exploitative Overdraft Fees Targeting Low-Income New Yorkers (Jan. 22, 2025).

133. *See* Bank of America, Press Release, Bank of America Announces Sweeping Changes to Overdraft Services in 2022, Including Eliminating Non-Sufficient Funds Fees and Reducing Overdraft Fees (Jan. 11, 2022).

134. State UDAP laws vary considerably and some have major gaps. *See* Carolyn Carter, NCLC, Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws (Mar. 1, 2018).

135. Calif. AB 1864 (2019-2020) & Calif. SB 825 (2025-26) (effective Jan. 1, 2026).

136. All of the annual reports are listed on DFPI's webpage on Income from Fees on Nonsufficient Funds and Overdraft Charges.

137. Chapter 380 of the Laws of 2022 (S.9348/A.8292).

138. New York Department of Financial Services ("NYDFS"), Report on Overdraft, Non-sufficient Funds, and Similar Fee Practices of New York-Regulated Depository Institutions (July 14, 2023).

139. New York Department of Financial Services ("NYDFS"), Report on Overdraft, Non-sufficient Funds, and Similar Fee Practices of New York-Regulated Depository Institutions (July 14, 2023).

140. NCLC, Consumer Banking & Payments Law (7th ed. 2024), *updated at* library.nclc.org. Overdraft and NSF fees are covered in chapter 6. Preemption issues are discussed in § 1.6.

141. The following tables track the overdraft/NSF metrics for the 20 banks that had the most overdraft/NSF revenue in 2021: Table as of Apr. 11, 2024; Table as of Dec. 2022; Table as of June 2022; Table as of Apr. 2022; Table as of Sept. 2021.

142. 90 Fed. Reg. 20084 (May 12, 2025). The fact that the CFPB, under new leadership, rescinded the previous guidance does not change its persuasive force. *See* NCLC, Continued Vitality of 67 Withdrawn CFPB Guidance Documents (May 13, 2025).

143. CFPB, Press Release, Bureau of Consumer Financial Protection Settles With TCF National Bank (June 4, 2025).

144. CFPB, Press Release, CFPB Sues TCF National Bank for Tricking Consumers Into Costly Overdraft Service; Bank Obscured Fees, Adopted Loose Definition of Consent to Preserve Overdraft Revenue (July 15, 2025).

145. *Id*.

146. CFPB, Press Release, CFPB Takes Action Against Bank of America for Illegally Charging Junk Fees, Withholding Credit Card Rewards, and Opening Fake Accounts (June 15, 2025).

147. Bank of America, N.A., No. 2023-CFPB-0006 (Consumer Fin. Prot. Bureau July 11, 2023) (Consent Order).

148. Bank of America, N.A., AA-ENF-2023-19 (Off. of the Comptroller of the Currency June 28, 2023) (Consent Order).

149. CFPB, Press Release, CFPB Orders Navy Federal Credit Union to Pay More Than $95 Million for Illegal Surprise Overdraft Fees (Nov. 7, 2024).

150. Order Terminating the Consent Order, *In re*: Navy Federal Credit Union, No. 2024-CFPB-0014 (CFPB July 1, 2025).

151. OCC Bulletin 2023-12; Overdraft Protection Programs: Risk Management practices (Apr. 26, 2023).

152. FDIC, Supervisory Guidance on Charging Overdraft Fees for Authorize Positive, Settle Negative Transactions (2023).

153. FDIC, FIL-32-2023, Supervisory Guidance on Multiple Re-Presentment NSF Fees (Aug. 2022, revised June 16, 2023), *rescinded by* FDIC, FIL-14-2026, FDIC Rescinds Supervisory Guidance on Multiple Re-Presentment NSF Fees (Apr. 10, 2026).

154. FDIC, FIL-14-2026, FDIC Rescinds Supervisory Guidance on Multiple Re-Presentment NSF Fees (Apr. 10, 2026).

155. *See* NCLC, Continued Vitality of 67 Withdrawn CFPB Guidance Documents (May 13, 2025).

156. Calif. Fin'l Code § 521.

157. *See* CA DFPI, Income from Fees on Nonsufficient Funds and Overdraft Charges.

158. AB-2017 Banks and credit unions: nonsufficient funds fees (2023-2024), codified at Financial Code § 530.

159. SB-1075 Credit unions: overdraft and nonsufficient funds fees (2023-2024), codified at Financial Code § 14053.

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160. Massachusetts Division of Banks, Office of Consumer Affairs and Business Regulation, Supervisory Alert Regarding Charging Multiple Non-Sufficient Fund Fees (NSF) for Representment of Unpaid Transactions (Sept. 23, 2021).

161. New York Department of Financial Services ("NYDFS"), Industry Letter: Avoiding Improper Practices Related to Overdraft and Non-Sufficient Funds Fees, (July 12, 2022).

162. New York Department of Financial Services ("NYDFS"), Report on Overdraft, Non-sufficient Funds, and Similar Fee Practices of New York-Regulated Depository Institutions (July 14, 2023).

163. These double fees arise from failed overdraft protection transfers. A fee is charged for an overdraft protection transfer from another account belonging to the consumer to cover the overdraft, but when it's an insufficient amount to avoid an overdraft, the consumer is charged both an overdraft fee as well as a fee for the overdraft protection transfer.

164. A05519 (2023-34), codified at NY Banking Law § 9-y.

165. NY DFS, Press Release, Protecting Consumers: Governor Hochul Cracks Down on Exploitative Overdraft Fees Targeting Low-Income New Yorkers (Jan. 22, 2025).



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