Banking and Finance Law Daily Wrap Up, TOP STORY—CFPB reports that bank revenue continues to be heavily supported by overdraft fees, (Dec. 2, 2021)

Banking and Finance Law Daily Wrap Up

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Two CFPB "data points" reveal that overdraft and non-sufficient fund penalties accounted for two-thirds of reported bank fee revenue.

The Consumer Financial Protection Bureau has published two data points highlighting that bank revenue still relies heavily on overdraft and non-sufficient funds (NSF) fees. The two reports, which looked at larger financial institutions in particular, showed that overdraft fees accounted for $15.5 billion in revenue in 2019. Further, the second report showed that while these fees are less common among smaller institutions, the amount of fees generated per account at small banks and credit unions was similar to those charged per consumer across the industry.

"Rather than competing on quality service and attractive interest rates, many banks have become hooked on overdraft fees to feed their profit model," said CFPB Director Rohit Chopra. "We will be taking action to restore meaningful competition to this market."

The CFPB suggests that the data is especially important because families who are getting hit hardest with these complicated charges are often the ones who can least afford them. The CFPB has noted that past research studies have shown that under 9 percent of account holders have more than 10 overdrafts annually and pay close to 80 percent of overdraft revenue.

CFPB Director Rohit Chopra concluded a press call on the overdraft data points with the following statements: "The bottom line is that we will make sure that this market is upfront, not underhanded. The last quarter was a blockbuster quarter for the big banks, taking in $69 billion in net income. Consumers are handing over billions of dollars of their hard-earned money in these fees, even during a pandemic. By promoting a well-functioning market, American families can save billions and law-abiding banks can thrive."

Bank eliminates overdraft charges. On the heels of these reports, one of the nation's largest banks announced that it will be eliminating overdraft and NSF charges. Capital One, America's 6th-largest retail bank, announced on Dec. 1, 2021, that it will completely eliminate all overdraft fees and NSF fees for its consumer banking customers. Lauren Saunders, Associate Director of the National Consumer Law Center, commented, "This move by Capital One will have tremendous benefits for the most vulnerable consumers. It's critical we keep working to make the banking system more inclusive and fair for all."

Report highlights. The first report, *Overdraft/NSF Fee Reliance Since 2015—Evidence from Bank Call Reports*, showed that overdraft fee revenue continued a steady rise across the industry since 2015, toward $15.5 billion in 2019. Additionally, the research revealed that overdraft charges continue to account for more revenue than other sources of fees, including account maintenance and ATM fees. Since 2015, aggregate overdraft and NSF fee revenues reported in Call Reports for banks with assets over $1 billion saw a small annual increase of around 1.7 percent per year to $11.97 billion in 2019. While reliance on these types of fees varies among institutions, some banks have a heavy reliance on overdraft and NSF fees—and such fees making up close to two-thirds of reported fee revenue.

Looking at the three largest banks, the report noted that JPMorgan Chase, Wells Fargo, and Bank of America brought in 44 percent of the total reported that year by banks with assets over $1 billion. Bank of America had the lowest reliance at 51.6 percent in 2019, JPMorgan Chase had the highest reliance, at 69 percent in 2019,

while Wells Fargo was second moving at 65.7 percent in 2019. The report did show a decline in 2020 of 26.2 percent in overdraft and NSF fee revenues among large banks, which was suggested to be from more robust checking account balances from federal stimulus payments in the 2020 data.

The second data point, *Checking Account Overdraft at Financial Institutions Served by Core Processors*, examined data on overdraft policies, practices, and outcomes at smaller financial institutions taken from core processors. This data point on smaller banks and credit unions looked at consumer overdraft use and fee revenue for a 12-month period predominantly covering 2014. The report showed that 92.9 percent of smaller banks and 60.9 percent of credit unions had an overdraft program, which overall is a smaller amount compared to larger financial institutions. Looking at the smaller institutions, overdraft and NSF fees were 13 to 19 percent lower at small banks and credit unions than at large banks; however, the amount earned per account within the small banks and credit unions was not too far off from the largest institutions at just 6 percent and 11 percent less in total fees per account than large banks, respectively.

Companies: Bank of America; Capital One; JPMorgan Chase; National Consumer Law Center; Wells Fargo

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