Compliance Bulletin

November 1, 2024

SB 1075 – Credit Unions: Overdraft and Nonsufficient Funds Fees

In September 2024, Governor Gavin Newsom signed **Senate Bill 1075 (SB 1075)** into law, which limits the amount of nonsufficient funds (NSF) and overdraft fees that state-licensed credit unions may charge. The law also mandates that credit unions provide a notification to members each time a fee is assessed.

I. Effective Date

- **January 1, 2025:** Notification requirements take effect.
- **January 1, 2026:** The maximum fee credit unions may charge is $14, or the amount specified by the CFPB, whichever is lower.

II. Applicability

SB 1075 applies to California state-licensed credit unions and state-licensed credit unions doing business in California.

III. Statute Affected

SB 1075 adds Section 14053 to the California Financial Code, relating to the California Credit Union Law.

IV. Background

SB 1075, introduced on February 12, 2024, was authored by Senators Steven Bradford and Monique Limon, former and current chairs of the Senate Banking and Financial Institutions Committee.

The California Credit Union League (CCUL) worked closely with Senator Bradford's office to amend the bill. Initially, SB 1075 included a five-day waiting period before charging an overdraft or NSF fee and capped the monthly fees at three per member. Through CCUL's advocacy, these requirements were removed, and the bill now mandates notification to members when an overdraft occurs, along with a fee limit of $14 or the amount determined by the CFPB upon finalizing its proposed overdraft rule.

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Key Points:

- Originally, SB 1075 posed challenges for state-chartered credit unions by potentially forcing them to scale back or discontinue overdraft services, impacting members who rely on overdraft protection.
- The amendments secured by CCUL align SB 1075 with CFPB's recent proposal, allowing credit unions to maintain their overdraft programs without disruptions.

Key Compliance Considerations and Related Regulations

- **Truth in Lending Act (TILA)/Regulation Z**[i] **–** Requires lenders to disclose all charges and fees associated with a loan. Provides, through Regulation Z, an exception for charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing.
- **Electronic Fund Transfer Act (EFTA)/Regulation E**[ii] **–** Financial institutions may not assess a fee for an overdraft related to an ATM or one-time debit transaction unless the certain disclosures have been made and the consumer affirmatively opts-in for this service[iii].
- **Truth in Savings Act (TISA)/NCUA Part 707**[iv] **–** Mandates disclosure of fees and conditions for imposing them, including a breakdown of monthly and year-to-date overdraft and NSF fees on statements.
- **Joint Guidance on Overdraft Protection Programs –** Issued in 2005 by the National Credit Union Administration (NCUA) and the other federal banking regulators, this guidance outlines best practices for notifying members when overdraft protection is accessed[v]. Of note, the guidance outlines a number of requirements that the notification should identify. This guidance remains in effect and is particularly useful in determining whether an overdraft program meets basic regulator expectations for clarity and fairness.
- **CFPB's Proposed Overdraft Rule –** In January 2024, the CFPB proposed a rule related to overdraft programs at depository institutions with at least $10 billion in assets. The proposed rule would limit fees on most overdraft transactions to the depository institution's costs and losses for providing the overdraft program. The rule would also establish a benchmark fee, which may have the effect of establishing a de facto fee cap on overdraft transactions. The CFPB proposed and sought comment on four potential benchmark fee amounts: $3, $6, $7, or $14. According to the CFPB's Spring 2024 Unified Agenda, the agency anticipates finalizing this proposed rule by January 2025, with the expectation that it will take effect on October 1, 2025.

V. Key Provisions of SB 1075

A. Key Definitions

- "**Fee**": Refers to nonsufficient funds fees or an overdraft fees.
- "**Nonsufficient funds fee**": A fee from initiating a transaction exceeding the available balance when payment is declined.

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- "**Overdraft fee**": A fee resulting from processing a transaction that exceeds the account balance.

B. New Notification Requirement

Each time a fee is assessed, credit unions must provide notice meeting **all of** the following requirements:

1. Notice must be sent via the communication method designated by the member.
2. Notice must be sent on the same business day the fee-generating transaction occurs, or the next business day if same-day notification is not feasible.
3. The notice must include:
    a. Transaction date and type
    b. Whether the transaction was declined or processed
    c. Overdraft amount (if applicable)
    d. Amount needed to restore a positive balance
    e. Timeframe to avoid potential consequences if the account remains negative.
    f. If applicable, the amount of time the member has to return the account to a positive balance to avoid the consequences.

If the account has multiple accountholders, notice to one is sufficient.

C. Fee Limitation

Beginning January 1, 2026, SB 1075 restricts credit unions from charging overdraft or NSF fees above $14 or the CFPB-specified amount, whichever is lower.

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[i] *See* 12 CFR 1026.4

[ii] *See* 12 CFR §1005.17

[iii] These disclosures include the following:

1) A brief description of the credit union's overdraft service and the types of transactions that would trigger a fee for paying an overdraft, including ATM and one-time debit card transactions.
2) The amount of any fees for paying an ATM or one-time debit card transaction, including any daily or other overdraft fees. (If the amount of the fee is determined by the number of times the consumer has overdrawn the account, the amount of the overdraft, or other factors, it must disclose the maximum fee that may be imposed.)
3) The maximum number of overdraft fees that may be assessed per day, or, the fact that there is no limit.
4) An explanation of the consumer's right to affirmatively consent (opt-in) to payment of overdrafts for ATM and one-time debit card transactions, including the methods to do so.
5) Whether the credit union offers either a line of credit subject to Regulation Z or a service that transfers funds from a member's other credit union account to cover overdrafts. It may also, at its option, list other overdraft payment alternatives.

A credit union may also, at its option, include the following:

1) Notice of the consumer's right to opt-in or opt-out for the payment of overdrafts for other types of transactions (e.g., checks, ACH transactions, automatic bill payments, etc.).
2) Provide a means for the consumer to exercise this choice; and
3) The associated overdraft fee;
4) The fact that additional merchant fees may apply; and
5) The consumer's right to revoke consent.

[iv] *See* 12 CFR 707.4(b)(4) and 12 CFR 707.11

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[v] *See* NCUA Letter to Credit Unions 05-CU-03 (February 18, 2005): Joint Guidance on Overdraft Protection Programs available at: **https://ncua.gov/files/letters-credit-unions/LCU2005-03.pdf**.

If you have any questions regarding this information, contact the Compliance Hotline at 844.731.6072 or CANV@VICLARITYUS.COM.

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