

Enforcement Alert from Hudson Cook, LLP: CFPB Announces Resolution with Regional Bank over Alleged "Surprise Overdraft Fees"

September 28, 2022 | [Kristen Yarows](#) and [Mark E. Rooney](#)

HIGHLIGHTS:

- CFPB announced an administrative resolution of Consumer Financial Protection Act claims against a regional bank concerning unfair and abusive acts and practices for allegedly charging consumers "surprise overdraft fees."
- The regional bank neither admitted nor denied the allegations but agreed to stop charging the fees and to pay \$141 million in consumer redress and a \$50 million penalty to the Bureau.

CASE SUMMARY:

On September 28, 2022, the CFPB issued an administrative consent order against a regional bank for committing unfair and abusive acts and practices in violation of the Consumer Financial Protection Act of 2010 (the "CFPA"). The Bureau alleges that from August 2018 through July 2021, the regional bank charged consumers approximately \$141 million in "surprise overdraft fees" on certain ATM withdrawals and debit card purchases. The bank charged a type of overdraft fee known as an authorized-positive fee. This occurs when a consumer's account had sufficient available funds for the transaction at the time the bank authorized the transaction, but lacked sufficient funds when the transaction later settled due to a separate intervening withdrawal.

In announcing the consent order, the Bureau highlighted regulatory guidance from 2015 warning financial institutions over the sort of authorized-positive fees at issue in this case. It also pointed out that the same bank was subject to a prior consent order relating to overdraft fee practices. The prior matter related to the bank's opt-in process for overdraft coverage and was not centered on authorized-positive fees. Under the leadership of Director Rohit Chopra, the Bureau recently announced its intention to focus enforcement efforts on "[repeat offenders](#)." By invoking the prior consent order against this same bank for only nominally related issues, the Bureau appears to be taking an expansive view of what constitutes a "repeat offender."

Without admitting any liability, the bank agreed to pay \$141 million in consumer redress

and a \$50 million penalty to the Bureau. The order also prohibits the bank from charging authorized-positive overdraft fees.

RESOURCES:

You can review all of the relevant court filings and press releases at the [CFPB's Enforcement Page](#).

- [Consent Order](#)
- [Stipulation](#)
- [CFPB Press Release](#)

Enforcement Alerts by Hudson Cook, LLP, written by the attorneys in the firm's [Government Investigations, Examinations and Enforcement](#) and [Litigation](#) practice groups, are provided to keep you informed of federal and state government enforcement actions and related actions that may affect your business. Please contact our attorneys if you have any questions regarding this Alert. You may also view [articles](#), register for an upcoming [CFPB Bites monthly webinar](#) or request a [past webinar](#) recording on our website.

Hudson Cook, LLP provides articles, webinars and other content on its website from time to time provided both by attorneys with Hudson Cook, LLP, and by other outside authors, for information purposes only. Hudson Cook, LLP does not warrant the accuracy or completeness of the content, and has no duty to correct or update information contained on its website. The views and opinions contained in the content provided on the Hudson Cook, LLP website do not constitute the views and opinion of the firm. Such content does not constitute legal advice from such authors or from Hudson Cook, LLP. For legal advice on a matter, one should seek the advice of counsel.

SUBSCRIBE TO INSIGHTS

HUDSON COOK

Hudson Cook, LLP is a national law firm representing the financial services industry in compliance, privacy, litigation, regulatory and enforcement matters.

7037 Ridge Road, Suite 300, Hanover, Maryland 21076
410.684.3200

[hudsoncook.com](https://www.hudsoncook.com)

© Hudson Cook, LLP. All rights reserved. Privacy Policy | Legal Notice
Attorney Advertising: Prior Results Do Not Guarantee a Similar Outcome

