

SUBMISSION

Re: Canada Gazette, Part 1, Volume 158, Number 46
*Regulations Amending the Financial Consumer Protection Framework
Regulations*

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Prosper Canada – Who we are

Prosper Canada is a national charity dedicated to expanding economic opportunity for Canadians living in poverty through program and policy innovation. As Canada's leading champion of financial empowerment, we work with government, business, and community partners to develop and promote financial policies, programs and resources that transform lives and foster the prosperity of all Canadians. www.prospercanada.org

Background

The Department of Finance is seeking comment on the proposed *Regulations Amending the Financial Consumer Protection Framework Regulations* that would: cap NSF fees at \$10; prohibit the imposition of NSF fees on persons who have been charged an NSF fee within the last 72 hours and on overdrawn amounts of under \$10; require banks to alert customers when their account balance falls below zero (or beyond their overdraft limit) as a result of a payment; provide them with a grace period of at least three hours in which they may make a deposit or transfer into their account to cover the payment without being charged an NSF fee; and require banks to publicly disclose the number of NSF fees charged, the number of customers impacted, and the total revenue generated from these fees on an annual basis.

General comments

Thank you for the opportunity to provide comment on the proposed *Regulations Amending the Financial Consumer Protection Framework Regulations* related to non-sufficient funds (NSF) fees.

As noted in the regulatory analysis, “non-sufficient funds (NSF) fees represent a source of financial hardship for consumers. These fees disproportionately harm low-income Canadians and contribute to cycles of debt.”

Prosper Canada strongly supports the changes outlined in the proposed regulations. These changes will significantly reduce the negative impact of NSF fees on people with low incomes, who are the most likely to incur these fees, bear most of the associated financial burden, and are the least able to afford the unexpected costs they impose. These changes will help alleviate financial strain for people with low incomes who have also been disproportionately impacted by Canada’s ongoing affordability crisis.

The proposed regulatory changes will help Canadians with low and moderate incomes to better manage their financial resources, reduce unexpected financial shortfalls resulting from the imposition of multiple NSF fees, and leave them with more money to pay for essential goods and services. We thank the Department of Finance and the Government of Canada for making these changes.

Background - legitimate purposes of fees

In the Background section of the proposed regulations, it states:

NSF fees are charged by banks to incentivize financial consumers to maintain sufficient funds to cover payments coming out of their accounts, and to provide a revenue stream for banks. NSF fees also help to offset the costs to banks resulting from missed payments, which stem mainly from communication costs with consumers and merchants.

While we support the right of banks to charge penalty fees to cover legitimate costs associated with missed payments, as per the approach taken by the [U.S. Consumer Financial Protection Bureau](#) and the [Financial Conduct Authority in the U.K.](#), we do not support the use of NSF fees as “incentives” to prompt optimal customer behaviour¹. Incentivization as the basis for fees

See also: 1) Data from the [Consumer Financial Protection Bureau](#) estimates that consumers are saving almost \$2 billion a year as a result of this voluntary measure.

2) Analysis on the FCA regulatory changes in North Economics, [Competition in Canadian Retail Banking](#). p6. February 2024. This analysis notes that costs for refused payments should reasonably correspond to the costs of refusing payments.

opens the door to banks charging fees far in excess of their actual costs to increase their supposed “deterrence” value, all the while [ignoring the role that their own product and service choices and fee structures play in driving up NSF rates](#).

Many people with low incomes experience difficulty predicting and managing bank fees associated with their accounts. Because these accounts often have low limits on the number of different transactions consumers are entitled to each month and consumers are charged each time they exceed these limits for different types of transactions, consumers find it very challenging to keep track of when they are at risk of triggering a fee for exceeding a transaction limit. Further, people with low incomes also pay more fees for their high reliance on out-of-network ATMs because they are more likely to live in communities and neighbourhoods where many or most banks have withdrawn their branches and ATMs². Additionally, in the [U.S. research](#) has shown that some financial institutions practice “reordering” where financial institutions reorder transactions from highest to lowest, rather than chronologically, putting account holders at higher risk of multiple NSF charges after the first and largest transaction fails to go through.

These institutional practices mean that people with low incomes are far more likely than higher-income Canadians to incur multiple fees that are hard to monitor and push them into NSF situations. Because these are structural causes that consumers have little or no control over, “incentivization” through high NSF charges only results in driving low-income consumers away from mainstream banks and to higher-cost fringe financial services. We know from feedback from our community partners that provide financial help services to people with low incomes that fear of unpredictable fees is a common reason that underbanked clients give for not using their bank account.

Consumers with low incomes do not need “incentivization” through penalties, they need better low-cost accounts that enable them to manage their day-to-day banking needs without triggering fees that push them into NSF situations. In the U.S., [Bank On National Account Standards](#) developed to address the problem of NSF and other fees for consumers with low incomes have provided a positive alternative to risky low-cost accounts. As of December 2023, according to the [Bank On National Data Hub](#), over 11 million Bank On-certified accounts were open and active at 44 reporting financial institutions, across 89% of U.S. ZIP codes. 3.4 million of these were new accounts opened in 2023.

See also:1) Federal Reserve Bank of St. Louis. 2024. [Number of bank branches for Canada](#). Data from the World Bank.

2) Chen, H. and M.-H. Felt. 2022. [Canadians access to cash before and during the COVID-19 pandemic](#). Bank of Canada Staff Discussion Paper No. 2022-15.

3) Buckland, Jerry. 2008. [Strengthening banking in inner-cities: practices & policies to promote financial inclusion for low-income Canadians](#), p.10. Canadian Centre for Policy Alternatives, Ottawa.

4) Brennan, Marilyn B., McGregor and Buckland. 2011. [The changing structure of inner-city retail banking: examining bank branch and payday loan outlet locations in Winnipeg, 1980-2009](#). Canadian Journal of Urban Research 20 (1), 1-32.

For all of these reasons, we believe that “incentivization” to maintain an adequate balance should not be considered a legitimate rationale for NSF fees. Instead, these penalty fees should reflect the actual cost to banks of missed payments, and the disclosure requirements should be expanded to make this analysis possible.

Proposed NSF fee cap of \$10

Prosper Canada supports the proposed cap of \$10 for NSF fees charged by banks. This amount is substantially lower than the status quo that is in the range of \$45-\$48 at Canada’s largest banks. Lowering the current rate will have a positive impact on low-income consumers.

In the future, we are hopeful that stronger disclosure requirements will lead to a stronger understanding of the cost to banks of covering missed payments. If the average cost to banks is lower than \$10, we would support further lowering this cap. Notably, in the US [many of the large banks have dropped NSF fees altogether](#), and in the UK updates to the Financial Conduct Authority’s policies, have specified that [costs for refused payments should reasonably correspond to the costs of refusing payments](#). Prosper Canada would like to see Canada’s regulatory environment further evolve and come closer in line with the consumer protections in these jurisdictions.

Prohibition of the imposition of multiple NSF fees within a 72-hour period

Prosper Canada is highly supportive of this proposed change. When a Canadian living on a low income experiences a shortfall of income, or unexpected expense, the imposition of multiple NSF fees on their account only compounds the financial harm, making it more difficult for them to recover financially and taking away vital funds that would otherwise be used to cover basic needs such as food and shelter.

[Research from the U.S.](#) suggests that multiple NSF fees can also increase the likelihood of low-income consumers taking out high-cost, high-risk, payday loans to cover basic needs, putting them at risk of incurring rapidly escalating debt. The changes the government is proposing to limit the number of NSF charges in 72 hours will protect vulnerable Canadians with low incomes and prevent financial harm. We are further supportive of ensuring that there is a limit of one NSF fee per transaction so that consumers don’t receive multiple NSF fees for the same transaction.

Proposed alert and grace period

Prosper Canada is broadly supportive of the objective for this change. However, we believe that the period of 3 hours is insufficient and does not account for the real-world nature of work and life for Canadians living on a low income.

Many Canadians living on a low-income work shift work and are not permitted access to personal technology (computers, cell phones) during their shifts, or are working night shifts, making it impossible for them to receive and respond to an alert from their financial institution within this short timeframe. Some people with low incomes may need to borrow funds to rectify the overdrawn amount. We believe that there is opportunity to strengthen this measure and do more to protect people with low incomes from financial harm.

We believe a more realistic option for people with low incomes would be extending the deadline until midnight of the same day or giving people a 24-hr grace period. Giving people a longer grace period would increase the likelihood of people with low incomes being able to rectify overdrawn amounts.

Prohibition on charging NSF fees on overdrawn amounts less than \$10

Prosper Canada strongly supports this change, as it protects Canadians with low incomes from being penalized for small errors, miscalculations, and unexpected charges. Often, these nominal overdrawn amounts are due to unexpected charges in the form of bank fees, monthly fees, and other fees imposed by financial institutions, and the additional charge of an NSF fee causes significant harm to the consumers' financial wellbeing. This is a very positive change.

Proposed disclosure and reporting requirements

We were struck by the data limitations noted in the regulatory analysis, specifically that no Canadian data was available to form the basis of the analysis. Prosper Canada is highly supportive of the proposed disclosure requirements. These requirements will provide consumers, governments, and advocacy groups with transparency about the frequency, cost, and implications of NSF fees for Canadians. These changes will also facilitate the monitoring and evaluation of the impact of these proposed regulatory changes.

Additionally, Prosper Canada recommends that banks be required to report their actual costs to process NSF payments. This will enable the Government to determine if the proposed \$10 cap is aligned with actual bank costs for missed payments or whether the cap can be lowered further to prevent excessive fees being charged to consumers.