

# REDUCING NSF FEES: PROPOSED REGULATIONS AMENDING THE FINANCIAL CONSUMER PROTECTION FRAMEWORK REGULATIONS

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## Background

On November 16, 2024, the Governor in Council announced their proposal to amend the *Financial Consumer Protection Framework Regulations* (the “**Proposed Regulations**”). The Proposed Regulations pertain to non-sufficient funds (“**NSF**”) fees to relieve the financial burden on consumers who are called upon to pay these fees. This comes after [budget 2024](#) which announced the federal government’s intention to lower banking fees and make banking more affordable to Canadians.

## Context

NSF fees are amounts charged by banks when a non-instantaneous payment by pre-authorized debit and cheque is processed which cannot be met due to insufficient funds in a customer’s account. While NSF fees were introduced to incentivize customers to maintain sufficient funds in their accounts and serve as a revenue stream for Canadian banks, data collected by Statistics Canada show that it disproportionately affects low-income Canadians. To avoid NSF fees, banks may offer overdraft protection to credit worthy customers, but this only benefits a select few. Approximately 34% of Canadians incur an NSF fee in a given year and it is estimated that in 2023 Canadian banks charged NSF fees on 15.8 million NSF transactions.

## Proposed Regulations

If these Proposed Regulations come into force, it would change the NSF landscape as we currently know it. Below, we’ve outlined the proposed changes:

1. **NSF Fee Cap:** Banks would not be permitted to impose an NSF fee amounting to more than \$10. Currently, Canada-wide, banks charge NSF fees ranging anywhere from \$45 to \$48;
2. **Temporary Restriction on Fees Charged Within a 72-hour period:** There would be a temporary halt on a bank’s ability to charge additional NSF fees to customers who have been charged an NSF fee within the last 72 hours;

3. **Cease NSF Fees for Nominal Amounts:** The Proposed Regulations would prevent the imposition of an NSF fee when the overdrawn amount is a nominal amount of less than \$10. The federal government advises that banks can still decline the payment if the customer's balance is insufficient, however, they would not be permitted to impose an NSF fee;
4. **Customer Grace Period:** Banks would need to notify customers within the hours of 8:00 a.m. to 4:00 p.m. when their account balance falls below zero or below their overdrawn limit, as applicable. This alert would need to detail that the customer has insufficient balance, that they could incur an NSF fee, that they can deposit or transfer funds to their account to avoid the NSF fee and state the minimum amount that they must transfer or deposit to avoid the NSF fee. Banks would also be required to provide a minimum 3-hour grace period to customers so that they may deposit or transfer funds to their account to avoid an NSF fee. If the customer has opted out of alerts or failed to provide accurate contact information, they may incur an NSF fee; and
5. **Increased Transparency Surrounding NSF Fees:** Banks would be called upon to collect information to publicly disclose the total revenue generated from NSF fees, the number of customers who incur NSF fees and the number of NSF fees charged during each calendar year. This information would need to be publicly available within 30 days following each calendar year, with a retention period of 3 years from the day this information was made publicly available.

The Proposed Regulations would apply to a total of 80 "institutions" as defined in Part XII.2 of the *Bank Act*, which includes banks operating in Canada and authorized foreign banks in Canada, and would only apply to accounts maintained by natural persons. That is, the Proposed Regulations would not apply to corporations or business accounts.

## Conclusion

In drafting the Proposed Regulations, the Department of Finance consulted with banks and consumer advocacy groups, carefully balancing the benefits of the amendments with the importance of encouraging consumers to make timely payments. Interested persons are encouraged to provide comments on the Proposed Regulations by December 16, 2024.

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## A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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