

Banknorth Group, Inc.
Notice of Proposed Rule – Regulation DD, FRB Docket Number R-1197

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Dear Ms. Johnson:

Thank you for the opportunity to comment on the proposed amendments to Regulation DD, 12 CFR 230, Truth-in-Savings Act, regarding Overdraft Protection Programs that were published in the Federal Register on June 7, 2004.

Banknorth Group, Inc. (“Banknorth”) is a \$29 billion banking and financial services company headquartered in Portland, Maine. Banknorth is one of the 35 largest commercial banking companies in the country and currently serves communities in six northeastern states. Banknorth, N.A., a subsidiary of Banknorth Group Inc., operates branches under the following names: Banknorth Connecticut, Banknorth Massachusetts, Bank of New Hampshire, Peoples Heritage Bank in Maine, Banknorth Vermont, and Evergreen Bank in upstate New York. Banknorth, N.A. also owns several insurance agencies in New England, an investment planning subsidiary, and a leasing company. Other services include wealth management (trust), mortgage banking, asset-based lending, private banking, and merchant services.

Courtesy Overdraft Protection

Generally, courtesy overdraft or “bounce protection” programs are established to allow a customer to overdraw his or her account up to a specific amount, with the understanding that the customer will cover the overdraft in a set period of time, e.g., three or four days. The programs are available for customers that do not have an overdraft line of credit or another account linked for the purpose of covering overdrafts. Customers that use the programs are allowed the privilege (at bank discretion) to overdraw their accounts up to a certain limit, unless the bank has determined that the customer should not be allowed to have overdrafts and the bank’s system is coded to reflect that overdrafts are not allowed.

However, it should be noted that probably every bank in the country has a policy or program with respect to overdrafts. These policies and programs are more or less restrictive, more or less automated and may or may not involve the services of a third party vendor. Probably every bank in the country will pay an overdraft for certain of its customers under certain circumstances. The only difference, then, would seem to be the evolution of the decision-making process and the increased use of technology to introduce greater predictability and fairness to that process. Respectfully, these would seem to be favorable developments for both banks and customers and do not warrant burdensome regulation.

Consumer Benefits

In some cases, the fee to pay an item may be less than would be assessed by the bank for a check returned for insufficient funds (NSF), saving the customer money. Even if the fee to pay is the same as or greater than the NSF fee, a courtesy overdraft program allows the customer to avoid the merchant charge for a returned check (which can be as much as \$50); lets the customer avoid being listed in databases as having bounced a check; and allows the customer to avoid the

embarrassment, inconvenience and headaches of having a check returned and having to make alternative payment arrangements. Establishing an overdraft protection program also takes the guesswork out of covering overdrafts, and ensures consistency of treatment while providing a useful tool for consumers who inadvertently overdraw their account. There are protections against abuse, since the bank can monitor usage and deny the privilege to customers in appropriate circumstances.

Proposed Amendments

1. Under the proposed revisions, financial institutions that provide periodic statements would be required to include the total amount of fees imposed for overdrafts and the total amount of fees for returned items for the statement period and for the calendar year to date.

Currently, Banknorth provides the customer a notice each time a check (or other item) on his or her account is either returned for insufficient funds or paid (causing an overdraft). Included on the notice is information regarding the item(s) and any associated fee(s). On each monthly statement, the customer receives a listing of transactions for the period, including any associated fees for NSF and returned checks. As is already required by Regulation DD, we provide a listing of our fees, including Overdraft and Returned Item fees, to customers at account opening and when such fees are changed. We expect customers to take responsibility for the manner in which they handle their banking relationship with us and with merchants. We cannot make decisions as to how they spend or use their money.

Because we provide a notice when an overdraft occurs or when an item is returned unpaid, and then detail this information including fees on their monthly statement, we see no reason to provide the information a third time in the form of annual totals for fees associated with both overdrafts and returned items. This will only create customer confusion and unnecessary concerns for the customer. In addition, the time and cost to make the required statement programming changes at Banknorth has been estimated to be approximately \$80,000 to \$120,000 and take between five and eight months of programming time. In addition, there are questions as to how an annual total would be calculated for certain statement cycles. For instance, unless a customer's statement cycle is at month end, the annual total will not be a true annual total. (Ex. Customer's cycle ends on 10th of the month, January's statement will reflect any overdraft/returned item fees since the last statement ending December 10th of the previous year.) Finally, we question the value of these statement programming changes to the customer. They will not provide the customer with any information that he or she does not already have and they are likely to provide a distorted impression of the effect of an overdraft protection program because they will not and cannot tell the customer how much money has been saved, i.e., by not also having to pay merchant return check charges.

2. Under the proposed revisions, financial institutions would be required to specify in the account opening disclosures provided under the Truth-in-Savings Act, whether overdraft protection fees may be imposed in connection with checks, automated teller machine (ATM) withdrawals, or other electronic fund transfers.

It appears from the proposed revision that there might be an impression that an individual can only overdraw his or her account by writing a check, making an ATM withdrawal or processing an electronic fund transfer. By disclosing only certain scenarios, customers may

think a fee will not be charged if an overdraft occurs in a manner that is not specifically disclosed. The term "other electronic fund transfers" is not clear enough for customers who may not think of a particular transaction as being "electronic". It also would not be prudent to provide a "laundry list" of ways in which a customer can overdraw his or her account as disclosures will need to be modified as new methods are identified. Such descriptions serve no purpose, as customers only need to know that if they overdraw their account or we return an item, a fee will be charged. In addition, most banks identify the items that contributed to the fee when they send an overdraft/returned item notice to the customer.

To imply that individuals do not know when they are overdrawn is a misconception as most financial institutions send notices to their customers at the time an account is overdrawn or a check is returned unpaid. The real problem is the fact that some customers do not keep track of their account balances and do not reconcile their account statements. This type of behavior will not be improved by regulation. In fact, customers who fail to reconcile their statements are likely to be unaware of the additional fee calculations that would be mandated by the proposed regulation.

If overdraft protection arrangements were not available to customers, they would not only pay the bank fee for a returned item, but also the merchant fee which is, in many cases, much higher than the bank fee. In addition, they would have to contend with the embarrassment associated with the returned item and the possibility of being adversely reported to a consumer reporting agency.

3. Under the proposed revisions, additional advertising disclosures would be required to market automated overdraft payment services that are not covered by the Truth-in-Lending Act.

There are other types of automated overdraft payment services that are covered by an agreement with the customer but are not covered by TILA, such as Savings Overdraft Programs and the like. These programs typically utilize a savings, money market, or liquid funds within an investment account to cover checks written by the customer (or other debits), which would otherwise be returned for insufficient funds.

At minimum, it would make sense to exempt from the additional proposed advertising requirements any overdraft programs covered by a formal agreement with the customer, as such agreements typically disclose all of the items identified in the proposal.

Banknorth is opposed to the proposed amendments to Regulation DD. We see no justification for the changes. Rather, the proposed changes appear to be a reaction to criticism that banks might actually profit from offering greater choice and flexibility to their customers while, at the same time, saving their customers money. Lost from this discussion is the fact that all returned item fees and overdraft fees can be avoided by prudent account management. Banknorth would hope that the Federal Reserve will work hard at trying to eliminate undue regulatory burden and cost with respect to this proposal.

In the event you have questions, please do not hesitate to contact the undersigned. Thank you for your assistance.

Sincerely,

Nina B. Calkins, CRCM
Vice President
Deposit Compliance Manager

Cc: Office of the Comptroller of the Currency