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## **N.Y. Overdraft Plan Could Have a Nationwide Effect**

By Damian Paletta

WASHINGTON - A New York Banking Department plan to let state banks charge higher overdraft and bounced check fees could have broader implications for the dual banking system, according to observers, bankers, and community groups.

The proposal would establish a state policy similar to the guidelines federal regulators adopted in May that classify overdraft fees and other bounce-protection programs as banking services, not extensions of credit. If the state plan is finalized, New York banks could charge daily fees for accounts that have been overdrawn and fine customers up to \$20 for bounced checks.

In comment letters the department released last week, bankers argued that a final rule is needed in part to ensure state banks are not at a competitive disadvantage to nationally chartered ones. The bankers hope a New York rule could persuade other states to follow suit.

"These regulations level the playing field," William Y. Crowell 3d, the executive director of the Independent Bankers Association of New York State, wrote in a comment letter to the department. "The recent charter flips by several large banks may, in part, be attributed to advantages such as a permitted bounce protection program."

But consumer groups are alarmed at the idea. Critics argue that the department's plan would weaken consumer protection and was motivated primarily to prevent state-chartered banks from fleeing to a national charter. Last year JPMorgan Chase & Co. and HSBC Bank USA switched from state to federal charters. The two companies had contributed 30% of the department's operating budget.

"By stripping away existing protections and enabling state-chartered banks to offer an abusive product that adversely affects working poor families, the Banking Department is engaging in a race to the bottom, rather than taking a strong and principled stand on an issue that is vital to New Yorkers," said a letter from the Center for Responsible Lending.

For bankers, the stakes are high. New Yorkers for Responsible Lending estimated that banks would generate \$30 billion of fees this year for bounced checks, overdraft protection, and automated teller machine use.

Federal regulators declared in May that overdraft fees and other bounce-protection programs were not regulated by the Truth-in-Lending Act, which let national banks classify overdraft charges as fees, not as interest, and thus avoid bumping up against any usury caps. The guidelines did not automatically trump state law, so state legislators and local banking departments were left to decide how to proceed.

Current New York law classifies overdraft and bounce-protection charges as interest, but the Banking Department can use its "wild card" authority to grant state-chartered banks powers similar to those of national banks.

In a public hearing Oct. 17, New York Banking Commissioner Diana Taylor said her department issued the proposal in part because federal preemption policies have put state regulators in an awkward position.

"The ability of the federal banking agencies to preempt state law has increasingly meant that state regulators

must choose between allowing their banks to do whatever federal regulators allow and national banks... do or face the prospect that banks in the state will achieve the same result by simply switching to the federally regulated or... national charter," she said.

In an interview Monday, Ms. Taylor said consumer groups made some "very good arguments" in their comment letters and that her agency was working on a compromise. She said her department is still meeting with individual banks and consumer groups to discuss the issues in more detail. A final rule could come in the next two months, but she did not rule out the possibility that another proposal might be issued.

"We are going to try to come up with a compromise where one group isn't happy and the other group isn't really unhappy," she said.

It remains to be seen whether other states would follow suit. Some observers said Monday that if New York acts, other states will also.

"If New York does proceed, this will be an incentive for other states to proceed in like fashion," said former Rep. John LaFalce, D-N.Y. "I'm sure there will be pressure brought by state-chartered banks for other states to do the same thing."

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