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Superintendent Guidance
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One-Time Overdraft Fees

TO: STATE CHARTERED BANKS

The Iowa Division of Banking (“IDOB”) has received requests to review Superintendent Bulletin #9, dated February 14, 1994 (“the Bulletin”), to clarify whether the conclusion in the Bulletin that initial overdraft charges are permissible applies even when the one-time overdraft fee is the result of a debit card or ATM transaction. With respect to one-time overdraft charges, the Bulletin stated, “there is no problem with the initial overdraft charge.”¹ The Bulletin made no distinction between overdraft charges based on a check, an ATM transaction, a debit card, or any other means. This Superintendent Guidance will supplement the Bulletin.

The IDOB has always interpreted Iowa law and the Bulletin as allowing Iowa state-chartered banks to charge a one-time overdraft fee when a customer overdraws his or her account – with the use of a check, debit card, ATM card, or other means – as an account fee related to the maintenance of the customer’s deposit account with the bank. In my opinion, there is no basis to distinguish between one-time overdraft fees based on a check from one-time overdraft fees based on ATM or debit card transactions. The Bulletin did not suggest such a distinction, nor did a letter issued later that year by the Attorney General’s office. See Department of Justice letter issued by Karen Doland, Deputy Administrator of the Iowa Consumer Credit Code (April 8, 1994) (“Doland letter”). A subsequent Attorney General ICCC Informal Advisory Letter also did not suggest a one-time overdraft fee on ATM or debit card transactions would be impermissible. See ICCC Informal Advisory #88 (August 12, 1999).²

¹ The Bulletin referred to “the initial overdraft charge.” The IDOB has historically considered this analysis as applying both to one-time overdraft fees and to one-time nonsufficient funds fees. Although the two fees are conceptually somewhat different, both are one-time fees associated with maintaining the deposit account.

² The Superintendent is charged with enforcing the Iowa Consumer Credit Code with respect to banks. Iowa Code §§ 524.227, 537.2303, 537.2305, and 537.6105. However, the administrator of the ICCC retains all other powers of the administrator under Iowa Code Chapter 537. As a result, we place great emphasis on interpretations of the Attorney General when enforcing the ICCC.

Iowa Code Section 524.805 explicitly authorizes Iowa state-chartered banks to receive money for deposit. Further, Iowa Code Subsection 524.801(1)(j) provides that a state bank has the power to “have and exercise all powers necessary and proper to effect any or all of the purposes for which the state bank is organized.” As Superintendent of Banking, the Iowa legislature has charged me with interpretation of the laws, rules, and regulations of this state relating to banks and banking. Iowa Code § 524.213. It is beyond question that deposit taking is a key purpose for which a state bank is organized. See Iowa Code § 524.805; Superintendent Bulletin #3 (deposit taking is a core banking function); *First Nat’l Bank in Plant City v. Dickinson*, 396 U.S. 122, 137 (1969) (deposit taking is a basic bank service). I further conclude the processing of an overdraft and recovery of fees for such processing activities by balancing debits and credits on a deposit account are activities directly connected with the maintenance of a deposit account and therefore are within a state bank’s powers.

The Office of the Comptroller of the Currency (OCC) has reached a similar conclusion for national banks and its conclusion is logical. See OCC Interpretive Letter No. 1082, at 3 (May 17, 2007). The process by which a bank honors overdraft items is typically part of the bank’s administration of a depositor’s account. Creating and recovering overdrafts have long been recognized as elements of the discretionary deposit account services that banks provide. *Id.* Banks’ deposit agreements with customers typically offer this as a service. Where a customer creates debits on his or her account for amounts in excess of the funds available in that account, a bank may elect to honor the overdraft and then recover the overdraft amount as part of its posting of items and clearing of the depositor’s account. These activities are necessary and proper to effect the business of deposit-taking. See OCC Interpretive Letter No. 1082, at n. 8 (noting clearing overdrafts and assessing fees are “activities that have long been considered associated with (as well as necessary to) the administration of deposit accounts.”) The activities occur whether or not the bank elects to pay the overdrawn item. The activities also occur whether the overdraft is the result of a check, ATM or debit card, or other means. The fees for these activities are tied to account maintenance, not to the extension of credit.

The reasoning in the opinions cited above indicates that one-time overdraft fees are account maintenance fees, not credit fees. That conclusion does not change whether a bank returns all insufficient funds transactions, pays all such transactions (thereby creating true overdrafts), or returns some transactions and pays some. Furthermore, the logic applies equally to withdrawals made by check, debit card (ATM or point-of-sale purchase), or other means despite the slight differences in how the withdrawals are made, returned, or paid.

I agree with this analysis and, therefore, confirm that one-time overdraft fees made by state banks in Iowa, as opposed to daily overdraft fees, are not finance charges subject to limits of the ICCC. This has always been the interpretation of law held by the Iowa Superintendent of Banking and applied to Iowa state banks.

Sincerely,



James M. Schipper
Superintendent of Banking