

Advisory



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August 7, 1984

RE: Your Inquiry Concerning Charges Permitted on Bank Credit Cards

Dear

This letter will acknowledge the receipt on July 27, 1984, of your inquiry concerning whether a bank credit card issuer may assess: 1) annual card fees; 2) over the limit fees; and 3) late payment fees, and whether if the fees can be assessed, there are limits on the amount of such fees.

Our reply is based on the provisions of the Iowa Consumer Credit Code which applies to such card issuers. Please be advised that this reply is not an opinion of the Attorney General nor is it a formal response by the Administrator of the credit code.

A bank credit card issuer may charge annual card fees to Iowa card holders based on § 537.2501(1)(d) of the ICCC which explicitly permits this type of charge as an "additional charge" which is excluded from the finance charge. The ICCC does not set a limit on such charges. However, the Attorney General as Administrator of the ICCC has administrative rule-making power which could be used to set a dollar limit on the charge. Also, any bank which would be issuing a credit card in conjunction with a "home equity line of credit" plan should be aware that recent legislation, H.F. 2415, 70th G.A. 1984 Reg. Session, provides for a limit of \$15.00 for annual fees on such plans.

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The ICCC does not expressly permit "over the limit fees." In contrast, the federal Truth-In-Lending Act provides in Regulation Z § 226.4(c)(2) that "over the limit charges" are not part of the finance charge. The ICCC at § 537.1301(19)(b) does however recognize that charges as a result of default or delinquency if made for an actual unanticipated late payment or default are not part of the finance charge. An over the limit charge would constitute a charge for default as defined in § 537.5109 of the ICCC which provides that default means either failure to make a payment within ten days of the due date or "failure to observe any other covenant...breach of which materially impairs...the consumer's prospect to pay amounts due under the transaction." Such a charge would then be excluded from the finance charge only if once it is imposed, the consumer is not permitted to continue to have purchases debited to his account.

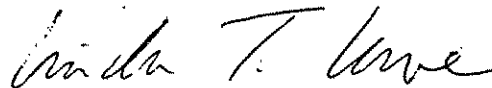
In determining whether an over-the-limit charge is permitted by the ICCC, the provisions discussed above must be considered along with § 537.3402 which expressly limits default charges to "those authorized by this chapter." As noted above, the ICCC does not expressly authorize "over the limit charges." Accordingly, it must be concluded that such a charge is not permitted unless it is included and disclosed in the finance charge and the consumer can continue to use his credit card after it is assessed.

Late payment fees or delinquency fees are permitted by § 537.2502 of the ICCC so long as the transaction is a pre-computed consumer credit transaction. Use of a bank credit card is an "open-end" credit arrangement and does not constitute a precomputed credit transaction (see definition at § 537.1301[33]) and therefore there is no statutory authority for assessment of a delinquency charge. (See C.C.H., Consumer Credit Guide, Vol. 1A, 1974 U.C.C.C. § .2502, Comment 1.)

In summary, of the three charges in question, only the annual fee is clearly permitted by the ICCC. There is no ICCC statutory limit on this fee; however, recent "home equity credit" legislation does contain such a limit.

I hope this information answers your inquiry. Please feel free to call the undersigned if you would like to further discuss the matter.

Sincerely,



LINDA THOMAS LOWE
Assistant Attorney General

cf

Enclosures: § 537.1301(19)
§ 537.1301(33)
§ 537.2501(1)(d)
§ 537.2502
§ 537.3402