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## Department of Justice

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Dear

You have requested an opinion of the Administrator of the Iowa Consumer Credit Code (ICCC) on the legality of financial institutions charging a "cash advance" fee when cash is received through the use of a lender credit card such as a Mastercard or Visa. This opinion is issued pursuant to Iowa Code § 537.6104(1)(d) and 61 IAC 10.4 and is therefore not a formal opinion of the Attorney General nor an ICCC declaratory ruling under 61 IAC 12.

It is our opinion that a cash advance fee is legal in Iowa if the charge is disclosed as part of the finance charge and calculated within the annual percentage rate (APR). If the charge is separate from the finance charge, then it is an unauthorized additional charge not permitted in Iowa.

Essentially there are two types of "charges" creditors can assess in consumer credit transactions. The first type includes "finance charges" as described in Iowa Code § 537.1301(19). This term includes:

[T]he sum of all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit including . . .  
(1) Interest or any amount payable under a point, discount or other system of charges, however denominated . . .

This definition is virtually identical to that used in the federal Truth-in-Lending Act, 15 U.S.C. § 1601 *et seq.*. See 15 U.S.C. § 1605, 12 C.F.R. § 226.4. The finance charge must be disclosed separately and also calculated as an "annual percentage rate" (APR) as prescribed by the Federal Reserve Board regulations. See 12 C.F.R. §§ 226.5, 226.5a. The finance charge

is the cost of credit on a dollar basis and the APR the cost on a yearly percentage-rate basis.

The second category of charges are those specified in Article 2, Part 5, and include "additional charges", "delinquency charges" and "deferral charges".<sup>1</sup> These charges may be assessed separately from a finance charge and not included within the APR. Such charges are incorporated within the "amount financed" of the credit transaction. See Iowa Code § 537.1301(4). Since a cash advance fee does not relate to delinquency or deferral charges, we must examine Iowa Code § 537.2501, "additional charges". Additional charges include credit card annual fees, official taxes and fees, closing costs in real estate transactions, credit insurance, insufficient fund check charges and over-the-limit fees in certain credit card transactions.<sup>2</sup>

A cash advance fee is not listed as a permitted additional charge under this section. It is the longstanding opinion of the Administrator that charges not included within the finance charge must be specifically authorized by the ICCC through either statute or regulation. Charges not found in the Code are not permitted in consumer credit transactions in Iowa. This opinion is based upon the ICCC's statutory language, legislative history and the purpose of the Credit Code.

Iowa Code § 537.2501(1) states: "In addition to the finance charge permitted by parts 2 and 4, a creditor may contract for and receive the following additional charges . . . ." This language indicates that the list of permitted charges not included within the finance charge are limited to those set out in the ICCC. To add flexibility to this provision the Legislature explicitly granted the Administrator the authority through rule making to permit other charges not specified in Iowa Code § 537.2501. See Iowa Code § 537.2501(h).

Furthermore, the definition of "amount financed" in Iowa Code § 537.1301(4) specifies that this term includes the "cash price" of the goods or services, or the amount received by the consumer for a loan, plus "additional charges if permitted under paragraph 'c'." Iowa Code §§ 537.1301(4)(a) - (b). Paragraph C states:

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<sup>1</sup> Iowa Code §§ 537.2501, 537.2502, 537.2503.

<sup>2</sup> For credit card transactions where the card permits the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer. Iowa Code § 537.2501(1)(f).

In the case of a sale or loan, additional charges permitted under section 537.2501, to the extent that payment is deferred, that the charge is not otherwise included, in the amount permitted respectively in paragraph "a" or "b", and that the charge is authorized by and disclosed to the consumer as required by law.

Iowa Code § 537.1301(4)(c). (Emphasis added.)

This language confirms that additional charges are limited to those set out in the ICCC.

Further support for this conclusion is found in the Uniform Consumer Credit Code. Iowa's adoption of the ICCC is based on the 1974 version of the Uniform Consumer Credit Code. Iowa Code §§ 537.1301(19) and 537.2501 were drawn from the uniform act. The Official Comment to Section 2.501 states:

1. The two categories of charges a creditor is permitted to make at the inception of a credit extension are finance charges (Section 1.301(20)) and additional charges as enumerated in this section. (Emphasis added.)<sup>3</sup>

The relationship in the ICCC between finance charges and additional charges demonstrates the legislative intent that costs and charges related to credit extensions be included generally within the finance charge and, accordingly, disclosed as part of the APR. A fundamental purpose of Truth-in-Lending and the ICCC is to create a uniform system of credit disclosures and allow consumers to shop for credit through accurate comparisons of the APR.<sup>4</sup> The more charges associated with the extension of credit that are excluded from the finance charge, the more inaccurate the finance charge and APR become as indicators of the true cost of credit.

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<sup>3</sup> The Official Comment to the definition of finance charge in Section 1.301(20) states: "This definition, together with the provisions on 'additional charges' (Section 2.501), is substantially similar to the concept of finance charge embodied in Regulation Z Section 226.4. In general, charges 'incident to or as a condition of the extension of credit' are finance charges, whatever the parties call them, if imposed by the creditor on the consumer, unless the charge is excluded by paragraph (b) as a default or delinquency charge, an additional or deferral charge, or a credit card discount."

<sup>4</sup> See 15 U.S.C. § 1601(a), Iowa Code § 537.1102(1)(c).

The Iowa Legislature enacted generous finance charge ceilings to permit creditors to fully recapture all costs of credit, plus sufficient profit to encourage the extension of credit to consumers. In particular, there is no limitation on the finance charge that can be assessed in lender credit card transactions. See Iowa Code § 537.2402(5). Therefore, lender credit card issuers can assess any charge deemed desirable, in any amount, so long as the charge is properly included within the finance charge and disclosed as part of the APR.

However, the Legislature explicitly limited the number of additional charges that may be contracted for outside the finance charge, recognizing that such charges distort the cost of credit, and allowing expenses associated with credit extensions to be recouped largely through the finance charge. Accordingly, creditors may only contract for charges outside the finance charge that are specifically included within the "additional charges" section of the ICCC, or found elsewhere within the Code. Creditors can also petition the Administrator to conduct rule making authorizing other charges under this section.

Therefore, the permissibility of a cash advance fee in a credit card transaction depends upon how the creditor applies the charge. If the charge is included within the finance charge, calculated as part of the APR, and disclosed correctly under Truth-in-Lending, then a creditor can assess a cash advance fee to Iowa residents. However, if the charge is outside of the finance charge and APR, such as certain flat rate or percentage-based charges, then the charge would be considered an unauthorized additional charge and cannot legally be charged to Iowa residents. As noted, the test is whether the cash advance fee is included within the disclosed finance charge and APR.

Please note that all financial institutions extending consumer credit must comply with the ICCC. General statutory authority provided to these institutions to charge interest and fees does not permit them to collect charges in consumer credit transactions that are not authorized by the Credit Code. See Iowa Code §§ 524.913, 533.14, 533.16(9), 534.208, 536.13(7), 536A.31. These provisions specify that the ICCC supersedes any conflicting provisions regarding consumer loans in their respective chapters.

In summary, creditors have wide latitude under the ICCC to include within the finance charge whatever charges associated with the extension of credit deemed desirable. However, charges or fees outside the finance charge are limited to those specifically enumerated in the ICCC, particularly with reference to the "additional charge" section in Iowa Code § 537.2501. A cash advance fee in a credit card transaction is legal in Iowa

only if the fee is included within the finance charge and APR, since this charge is not otherwise provided for in the ICCC.

I hope this information is helpful. Please do not hesitate to contact me if you have any questions.

Sincerely,



Peter Kochenburger  
Assistant Attorney General  
Deputy Administrator of the  
Iowa Consumer Credit Code

Enclosures: UCCC Commentary