

Advisory



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ADDRESS REPLY TO:
CONSUMER PROTECTION DIVISION
HOOVER BLDG., SECOND FLOOR
1300 EAST WALNUT
DES MOINES, IOWA 50319
515/281-5926

March 5, 1984

RE: Your Inquiry Concerning Charging Yearly Fees
for Overdraft Protection

Dear

Please excuse the delay in responding to your inquiry concerning whether a yearly fee for checking account overdraft protection is either part of the finance charge or a permissible "additional charge" under §§ 537.1301(19) and 537.2501 of the Iowa Consumer Credit Code (ICCC).

This response to your inquiry is provided pursuant to § 537.6104 of the ICCC and should not be construed as either an opinion of the attorney general or as a rule of the ICCC administrator.

One purpose of the ICCC is "to conform the regulation of disclosure in consumer credit transactions to the Truth-In-Lending Act." (§ 537.1102[2][f]) The administrator, therefore, in any interpretation of the credit code, should seek to harmonize it with any provision of the Truth-In-Lending Act which pertains to the question at hand.

As you noted in your correspondence, the Official Commentary to Regulation Z does address the issue which you raised. Comment 1 to § 226.4(c)(4) of Regulation Z provides that fees for participation in a credit plan are not finance charges so long as the payment of the fee is a condition of access to the plan itself. The Comment also provides that "participation fees" do not have to be formal membership fees and are not limited to credit card plans.

If the purpose of Regulation Z § 226(c)(4) and the Official Commentary to that section is to be incorporated into

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the credit code, it would have to be by means of an interpretation of § 537.2501(1)(d). Unlike the Truth-In-Lending Act which refers to fees charged for participation in a "credit plan", § 537.2501(1)(d) refers to:

...charges...for the privilege of using a credit card which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, under an arrangement pursuant to which the debt resulting from the purchases or leases are payable to the card issuer.
(Emphasis added)

Also see: definition of "credit Card" at § 537.1301(1)(b).

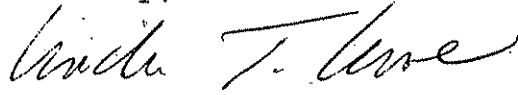
On its face, the language of § 537.2501(1)(d) appears to be more restrictive than the Truth-In-Lending Act. Nevertheless, an argument could be made that in light of the Official Commentary to § 226.4(c)(4) of Regulation Z, § 537.2501(1)(d) should be read to include yearly participation charges for overdraft checking plans.

Because there does appear to be a possible inconsistency between § 537.2501(1)(d) and § 226.4(c)(4) of Regulation Z, I believe the appropriate course of action would be for such charges to be permitted as an additional charge by rule of the administrator pursuant to § 537.2501(1)(f). However, you should advise your client that presently there are no ICCA administrative rules. This office is now involved in the process of promulgating ICCA procedural rules pursuant to Chapter 17A and we hope to have this process completed in the near future. We will then proceed to promulgate substantive rules. I will keep your letter on file as a request for a rule permitting such charges under § 537.2501(1)(f).

In closing I should note that you also stated that the Bank would charge interest on any amount of funds charged to the overdraft protection. You should advise the bank to be aware of Official Comment 1 to Regulation Z § 226.4(c)(3) which states that such interest charges would not be a finance charge unless the bank agrees in writing that it will pay such items. Furthermore, Official Comment 1 to § 226.4(c)(4) states that in regard to participation fees any "other charges based on current account activity are not excluded from the finance charge."

I hope this letter answers your inquiry. If you wish to discuss the matter further, please feel free to contact the undersigned.

Sincerely,



LINDA THOMAS LOWE
Assistant Attorney General

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