GUIDANCE DOCUMENT

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

Delayed Deposit Services Interpretative Opinions
Nebraska Department of Banking and Finance

INTERPRETATIVE OPINION NO. 1

DETERMINING MAXIMUM SERVICE FEE THAT CAN BE CHARGED BY DELAYED DEPOSIT LICENSEES

The Nebraska Department of Banking and Finance ("Department") hereby issues this Interpretative Opinion regarding service fees charged by licensees under the Delayed Deposit Services Licensing Act.

Neb. Rev. Stat. § 45-918 states that no licensee may charge a fee that totals a dollar amount in excess of fifteen dollars per one hundred dollars or pro rata for any part thereof on the face amount of the check.

The Department interprets this to mean that a maker who writes a check for $100.00 must receive at a minimum $85.00. A maker who writes a check for $117.65 must receive $100.00 at a minimum. In short, the maximum fee that can be taken by a licensee is $15.00 for every $100.00 shown and a pro rata amount for any dollar amount in excess of $100.00.

Refer to the DDS Rate Chart**,** effective **October 1, 1994.** If the fee is to be included in the amount of the check, divide the amount the maker wishes to receive by .85 to arrive at the amount of the check to be written.

EFFECTIVE DATE: May 1, 2011
Revised July 15, 2006
Revised December 15, 2000
Originally issued October 1, 1994

INTERPRETATIVE OPINION NO. 2

DEFINITION OF "MAKER"

The Nebraska Department of Banking and Finance ("Department") hereby issues this Interpretative Opinion regarding joint accountholders under the Delayed Deposit Services Licensing Act.

Neb. Rev. Stat. § 45-919 sets forth a number of restrictions on a licensee, including the number of checks which can be held at any one time, the aggregate dollar amount of such checks, and the method of payment of deferred deposit checks. The statute uses the term "any one maker" in connection with these restrictions.

The Department interprets the term "any one maker" to mean any signatory on a personal account. As such, the statute does not require a licensee to aggregate delayed deposits of joint accountholders. For example, assume A and B are signatories (makers) on one account: the licensee may hold two checks aggregating $500.00 from A and two checks aggregating $500.00 from B, without being in violation of the statute. However, the licensee must ensure that transactions are separately signed and authorized by separate accountholders. For example, absent other authorizations, one spouse may not sign a check or transaction agreement for the other spouse on their joint account. While a licensee may set an internal policy restricting the aggregate amount outstanding on a joint account, it cannot cite the statute as justification for such a policy.

EFFECTIVE DATE: May 1, 2011
Revised July 15, 2006
Revised August 1, 2002
Originally issued October 1, 1994

INTERPRETATIVE OPINION NO. 3

PENALTY CHARGES

The Nebraska Department of Banking and Finance ("Department") hereby issues this Interpretative Opinion regarding the charging of a penalty for a non-negotiable check under the Delayed Deposit Services Licensing Act.

Neb. Rev. Stat. § 45-917 provides that at the time of any delayed deposit services transaction, a licensee must provide to the maker of the check a written notice in plain English disclosing the fees and penalties for all services provided. A licensee must specifically disclose to customers the date on which a check is to be deposited or presented for negotiation, and any penalty which will be charged if a check is not negotiable on the date agreed on. A licensee must also disclose that additional fees may be allowed by court order or required in association with civil collection efforts performed by a county attorney in accordance with Neb. Rev. Stat. § 28-611. A licensee may not, directly or indirectly, indicate to a customer that a non-sufficient funds check will be turned over to a county attorney for criminal prosecution.

Neb. Rev. Stat. § 45-917(1)(c) allows a licensee to charge a penalty not to exceed fifteen dollars if the check is not negotiable on the date agreed upon. Thus, the licensee is allowed to charge the fee allowed by the statute only if the check is presented by the licensee on the date negotiated between the licensee and the customer. If presentment does not occur on that date, a penalty may not be charged, unless presentment is delayed because the licensee has agreed to allow the customer to pick up the check at a later date within the thirty-four day maximum time period and the customer fails to do so, or the licensee has agreed to extend the date of presentment to a later date within the thirty-four day maximum time period. Extensions of time beyond the date originally negotiated between the licensee and the customer may be done only at the customer's request, must be documented in the customer's file, and may not exceed the thirty-four day maximum time period. No additional fees may be charged by the licensee for allowing the customer to extend the date of presentment.

The Department interprets this section to mean that a licensee must either deposit or physically present a check at the institution on which it is written, and the check must have been returned to the licensee as not negotiable. The returned item must carry a stamp or notation by the rejecting institution that it was not negotiable when deposited or presented. If there is no stamp or notation that the check was not negotiable, a licensee is not authorized to charge or collect any penalty. A licensee may not initially present or deposit a check as an electronic Automated Clearing House ("ACH") transaction instead of depositing or physically presenting a check to the institution on which it is written.

A licensee may not accept any partial payment prior to the date agreed on for presentment or pick up and then subsequently deposit the check because this results in the collection of more than the amount allowed by Neb. Rev. Stat. § 45-918. This is true even if the licensee returns the partial payment after the check has cleared. The licensee who collects partial

payments prior to the date agreed on for presentment or pick up could lose all right to collect the check and may also violate the thirty-four day maximum time period for holding the check.

For the purposes of Interpretative Opinion No. 3, the term "deposit" shall include back office capture for Check 21 purposes only, provided that the following items are complied with:

- A licensee has a copy of any agreement with its financial institution regarding back office capture for examiner review on file at each store location utilizing back office capture.

- A licensee develops a policy regarding destruction of the original check once a substitute check has been created. Such policy shall include the time frame for destruction of the original check which shall be no later than 90 days after the substitute check has been created. Such policy shall also include the licensee's risk management assessment regarding liability if the original check is re-presented. The policy shall be kept on file for examiner review at each store location utilizing back office capture.

Licensees should not confuse the back office capture process with Automated Clearing House or other Electronic Funds Transfers which are not permitted for initial presentment or deposit under the Delayed Deposit Services Licensing Act.

EFFECTIVE DATE: May 1, 2011
Revised October 1, 2008
Revised July 15, 2006
Revised August 1, 2003
Revised July 2, 2003
Revised May 8, 2000
Originally Issued October 1, 1994

INTERPRETATIVE OPINION NO. 4

METHOD OF PAYMENT

The Nebraska Department of Banking and Finance ("Department") hereby issues this Interpretative Opinion regarding the method of payment to a maker of a deferred check under the Delayed Deposit Services Licensing Act.

Neb. Rev. Stat. § 45-919(1)(d) prohibits a licensee from "[requiring] the maker to receive payment by a method which causes the maker to pay additional or further fees and charges to the licensee or other person[.]"

It is the opinion of the Department that it is permissible for a licensee to issue a money order as payment of a deferred check only if all of the following conditions are met:

1) the maker of the check requests in writing that a money order be issued;

2) each money order must be separately requested; blanket requests are not permissible;

3) the money order is mailed;

4) the recipient/addressee of the money order is a financial institution;

5) no charge is imposed for the issuance of the money order or the mailing of the money order;

6) the licensee maintains a record of each and every money order transaction, including the written request, date of mailing, and financial institution recipient/addressee; and

7) the licensee does not, directly or indirectly, receive any fees, money, or other remuneration from the maker of the check as a result of, or in connection with, the issuance of a money order, except for the fee permitted by Neb. Rev. Stat. § 45-918.

All records relating to money order transactions will be reviewed during the Department's examination of a licensee. Failure to comply with all of the above provisions will be considered a violation of Section 45-919(1)(d).

The circumstances under which a money order may be issued as payment of a deferred check are accordingly very limited. Every other transaction will continue to require a cash payment to the maker of the check. Payment via Automated Clearing House ("ACH") transactions is not permitted.

EFFECTIVE DATE: May 1, 2011
Revised July 15, 2006
Revised August 1, 2002
Revised September 25, 2000
Originally issued August 1, 1997

INTERPRETATIVE OPINION NO. 5

HOLDING OF CHECKS

The Nebraska Department of Banking and Finance ("Department") hereby issues this Interpretative Opinion regarding the holding of a delayed deposit check under the Delayed Deposit Services Licensing Act.

Neb. Rev. Stat. § 45-919(1)(c) prohibits a licensee from holding or agreeing to hold a check for more than thirty-four days. A check which is in the process of collection because it was not negotiable on the day agreed upon is not considered as being held in excess of that thirty-four day period.

It is the opinion of the Department that the term "in the process of collection" means that a licensee must first have physically presented, attempted to present, deposited, or attempted to deposit the check. A telephone call to the financial institution to determine if funds are available is not sufficient. A check may not be initially presented or deposited by an electronic Automated Clearing House ("ACH") transaction. Presentment must initially occur on the date negotiated between the licensee and the customer. Should this date be before the expiration of the thirty-four day maximum holding period prescribed by Neb. Rev. Stat. § 45-919(1)(c), the licensee may choose to attempt to present the check more than once, but no additional fees may be charged to the customer [See Interpretative Opinion No. 3]. Any checks being held for presentment are not in the process of collection.

If the financial institution refuses to allow presentment, or if the deposited check is returned unpaid because of insufficient funds or for any other reason, and the licensee does not intend to and does not attempt presentment again before the expiration of the thirty-four day maximum holding period as shown by a written notation to the customer file, then the check is considered non-negotiable and any actions taken by the licensee after that time are considered to be part of the check collection process.

For those licensees who allow a customer to bring cash into the office and pick up a check rather than the licensee depositing the check, it is important to know that if the customer does not pick up the check on the agreed upon date, the thirty-four day period does not stop running at that time. Rather, the licensee must take the additional step of presenting, attempting to present, depositing, or attempting to deposit the check in order for the check to be determined as non-negotiable. Thus, if the customer is required to pick up the check on day thirty-four, and fails to do so, the licensee must leave itself enough time to present, attempt to present, deposit, or attempt to deposit the check to the financial institution prior to the end of that same day in order to determine if the check is negotiable.

The Department is also of the opinion that an additional exception exists with respect to the thirty-four day holding period limit. This exception occurs when the licensee has received written notification that the maker of the check has filed for bankruptcy. This notification can be from any source, including the maker of the check, the maker's representative, a Bankruptcy

Court, or a trustee in bankruptcy. Upon receipt of such notification, the licensee has no authority to present, deposit, or attempt to present or deposit a check for negotiation, nor does it have the authority to collect the check. As such, the licensee is not deemed to be holding or agreeing to hold the check in violation of Section 45-919(1)(c).

All records relating to the holding of checks will continue to be reviewed during the Department's examination of a licensee. If the records show that the check was in the licensee's possession for more than thirty-four days, the licensee should have proof that it presented or deposited the check, or attempted to do so, or that it has received notice that the customer is in bankruptcy.

For the purposes of Interpretative Opinion No. 5, the term "deposit" shall include back office capture for Check 21 purposes only, provided that the following items are complied with:

- A licensee has a copy of any agreement with its financial institution regarding back office capture for examiner review on file at each store location utilizing back office capture.

- A licensee develops a policy regarding destruction of the original check once a substitute check has been created. Such policy shall include the time frame for destruction of the original check which shall be no later than 90 days after the substitute check has been created. Such policy shall also include the licensee's risk management assessment regarding liability if the original check is re-presented. The policy shall be kept on file for examiner review at each store location utilizing back office capture.

Licensees should not confuse the back office capture process with Automated Clearing House or other Electronic Funds Transfers which are not permitted for initial presentment or deposit under the Delayed Deposit Services Licensing Act.

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Revised October 1, 2008
Revised July 15, 2006
Revised August 1, 2003
Revised July 2, 2003
Revised August 1, 2002
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INTERPRETATIVE OPINION NO. 6

COLLECTION OF RETURNED CHECKS,
PARTIAL COLLECTION PAYMENTS

The Nebraska Department of Banking and Finance ("Department") hereby issues this Interpretative Opinion regarding collection practices under the Delayed Deposit Services Licensing Act.

If any check is returned to a licensee as not negotiable following an initial presentment or deposit, a licensee may attempt to collect any such returned check as an electronic Automated Clearing House ("ACH") transaction, provided the following conditions are met.

1) The licensee shall comply with all National Automated Clearing House Association ("NACHA") rules.

2) Electronic collection efforts will be permitted for full collection of the check and full amount of any penalty fee only; partial debits will not be allowed unless the licensee has entered into a separate written contract with the consumer as outlined in paragraph 6, below. Separate debits must be initiated for the full amount of the returned check and the full amount of any penalty fee.

3) If the licensee intends to use ACH to collect the returned item fee allowable by Neb. Rev. Stat. § 45-917(1)(c), the customer must provide a separate authorization for this potential charge in the original customer agreement. In addition, the returned item fee must appear as a separate item for each customer on the report maintained as part of the collection files.

4) The licensee must maintain, as part of its collection files maintained at the office where the item originated for examiner review, a report which:

    a) contains each customer's name, checking account number, check number, and amount of item;

    b) clearly differentiates between the date of the customer's contract, the initial physical presentment date, and the return date of each item;

    c) shows each date of ACH presentment for each item, the date the check was collected, the date the returned item fee was collected, if collected and/or each date the item was returned, with the reason for return, if applicable; and

d) the report shall be maintained as either a physical copy in each customer's collection file or if maintained electronically, shall be easily accessible at the time of examination by the Department.

5) The licensee must provide conspicuous notice to the customer that a returned check may be collected as an ACH transaction.

a) Such notice must include a statement describing an ACH transaction and what additional charges could be incurred from third parties if the licensee attempts to collect a returned check and the returned item fee allowable by Neb. Rev. Stat. § 45-917(1)(c) as an ACH transaction.

b) Such notice shall also include a statement that if the customer has any concerns about the transaction, they should contact the Nebraska Department of Banking and Finance at (402) 471-2171.

c) Such notice must be included and highlighted in the customer contract or attached as a separate notice which is given to the customer at the time of each transaction. If a separate notice is used, the customer must sign and date the notice to acknowledge receipt and a copy must be maintained in the customer's file.

d) Such notice must be posted in each office of the licensee, including any branch office.

6) There may be circumstances in which the licensee determines that it would be beneficial to allow the customer to make partial payments on a returned check. After initial presentment or deposit, if the item is returned, the licensee may enter into a separate, written contract with the customer for repayment, authorizing a partial payment schedule either via ACH or by cash installments. The contract may be for the total amount of the returned check plus the returned item fee allowable by Neb. Rev. Stat. § 45-917(1)(c). No additional fees may be charged to the customer to enter into such a contract. This contract shall contain, at a minimum, the following items:

a) the date and amount of each payment and that ACH will be used (if applicable);

b) a confirmation that the original check will not be re-presented and will be returned to the customer upon successful completion of the contract; and

c) if ACH is to be used, a disclosure that presentment of each payment via ACH may cause the customer to incur additional fees from the customer's financial institution if any payment is returned.

Should a licensee allow partial payments by written contract as part of the collection process, such payments shall be accurately reflected in each customer's collection file.

EFFECTIVE DATE: May 1, 2011
Originally issued July 15, 2006

INTERPRETATIVE OPINION NO. 7

COLLECTION ITEMS; DOCUMENTATION REQUIRED

The Nebraska Department of Banking and Finance ("Department") hereby issues this Interpretative Opinion regarding collection practices under the Delayed Deposit Services Licensing Act.

Neb. Rev. Stat. § 45-917(1)(c) states that a licensee may charge a penalty not to exceed fifteen dollars which the licensee will charge if the check is not negotiable on the date agreed upon.

Neb. Rev. Stat. § 45-915.01 states that each licensee shall keep or make available the books and records relating to transactions made under the Delayed Deposit Services Licensing Act ("Act") as are necessary to enable the Department to determine whether the licensee is complying with the Act.

1) If a licensee conducts its own collection efforts or turns over a check to a collection agency, any payments made on a customer's check need to be accurately reflected in that customer's file. The licensee must keep copies of any court orders authorizing any additional fees, if applicable. Once payments are accepted on a check, that check should not be re-presented to a financial institution for payment.

2) If a licensee turns over a check to a collection agency and retains an ownership interest in the check, the licensee must keep copies of court orders authorizing any additional fees that were assessed by the collection agency. In addition, the collection agency should submit updated information regarding the collection accounts to the licensee on at least a monthly basis. The monthly reports should include information such as: customer name, check number(s), check amount(s), NSF penalty fee, payments, amount due, date paid in full, and status of paid in full check (sent back or destroyed). A licensee who uses a collection agency may not allow the collection agency to charge an additional fee for its services.

3) If a licensee sells a check to a collection agency, and retains no ownership interest, then no further information is needed to be kept in a customer's file once that notation is made.

4) A licensee who proceeds to small claims court may add court fees and costs in addition to the fifteen dollar penalty so long as those fees and costs are awarded by the court and included in the judgment. All such items must be documented separately along with the court order and kept in the customer's collection file available for review by the Department.

5) If post judgment interest, as defined by Neb. Rev. Stat. § 45-103 is awarded by the court, it may be collected by the licensee. The customer's collection file must document the awarding of post judgment interest and an up-to-date accounting of interest due on the judgment.

6) Any post judgment "increased costs," as noted on Small Claims Form 4:4 11/99 Rev, sought after an awarded judgment in a collections proceeding (such as garnishment, execution, cost of serving, etc.) must be as provided for by the court and noted in the customer's collection file. Any fees not provided for by the court or not listed in the customer's collection file may not be collected.

7) A licensee may accept a charge card as payment for a collection item so long as the licensee does not charge an additional "convenience fee." Any additional collections payment considerations must meet Interpretative Opinion No. 6 criteria.

EFFECTIVE DATE: May 1, 2011

INTERPRETATIVE OPINION NO. 8

USE OF THE TERMS "LOAN" AND "PAYDAY LOAN"

The Nebraska Department of Banking and Finance ("Department") hereby issues this Interpretative Opinion regarding the improper use of the term "loan" and the permissible use of the term "payday loan" by licensees under the Delayed Deposit Services Licensing Act ("Act").

Neb. Rev. Stat. § 45-908 provides that in order to issue a delayed deposit services business license, the Director must determine that the character and general fitness of the applicant and its officers, directors, and shareholders are such as to warrant a belief that the business will be operated honestly, fairly, efficiently, and in accordance with the Act.

Neb. Rev. Stat. § 45-902(2) defines "delayed deposit services business," as a person who for a fee (a) accepts a check dated subsequent to the date it was written or (b) accepts a check dated on the date it was written and holds the check for a period of days prior to deposit or presentment pursuant to an agreement with or any representation made to the maker of the check.

The definition of "delayed deposit services business" does not include offering loans. The Department interprets this to mean that delayed deposit transactions are not recognized as loans and therefore should not be represented as loans by the licensee.

In order to operate in accordance with the Act, a licensee may use the phrase "payday loan" in its advertising, signage, coupons, contracts, or other customer contacts, but may not use the term "loan" by itself for any purpose. All printed materials and websites, including the fine print, should be reviewed to ensure compliance. Licensees may not be listed, or advertise, in a telephone book under the Loans section. Permissible telephone book sections include: Cash Advance Services, Payday Loan, and Payroll Advancement.

Improper use of the term "loan" may lead to Department administrative action, as the Department could find that the licensee is not operating honestly or in accordance with the Act.

EFFECTIVE DATE: June 5, 2014