

GUIDANCE DOCUMENT

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STATEMENT OF POLICY #3

CREDIT CARD BANKS IN NEBRASKA

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #3 regarding credit card banks in Nebraska. This Statement of Policy uses a question and answer format due to the variety of issues addressed.

Question 1: What fees and charges are permissible for a credit card bank?

Answer: Neb. Rev. Stat. § 8-820 provides that the interest rate on any loan initiated by a credit card or other transaction card is any rate agreed to by the parties.

A registered bank or credit card bank may charge commercially reasonable fees for the service and use of a credit card or other transaction card on a per transaction and monthly or annual basis (see Section 8-820). Neb. Rev. Stat. § 8-821 sets forth permissible fees. Those fees include fees allowed in Sections 8-820 – 8-822. Those fees include, but are not limited to, fees in an amount agreed to by the parties for loan service costs for exceeding authorized limits, replacing lost cards, returning checks, or delinquency on the account.

Charges such as delinquency charges, returned check charges, fees for exceeding a credit limit, and other costs associated with credit card transactions affect the return received by a lender are material to Nebraska's regulation of this area.

Question 2: What constitutes a "commercially reasonable" fee?

Answer: Section 8-820 provides that credit card issuers may charge "commercially reasonable" fees for service and use of a credit card or other transaction card.

A "commercially reasonable" fee can be determined through what is prevailing in the credit card industry nationally. If a contemplated fee is not currently prevailing in the market place, a credit card bank may ask the Department for an Opinion Letter regarding the commercial reasonableness of a contemplated fee.

Question 3: What is an "other type of transaction card"?

Answer: Section 8-820 permits a registered bank or bank acquired pursuant to Neb. Rev. Stat. §§ 8-1512 and 8-1513 to engage in operations involving credit cards or "other type of transaction card." Transaction card is defined in Section 8-815(6) as "a device or means used to access a prearranged revolving credit plan account." The legislative history on Section 8-820 indicates the definition of transaction card is not meant to be limited to a plastic credit card but could encompass various other forms of transfers, whether electronic, telephonic, or a pad of "checks" which could be written against a line

of credit. Smart phone communications tied to a credit card for the purposes of enabling purchases would also be included.

Question 4: Do credit card banks which have been acquired pursuant to Neb. Rev. Stat. § 8-1511, et seq., or chartered pursuant to Neb. Rev. Stat. § 8-2401, et seq., also have to register pursuant to Neb. Rev. Stat. § 8-816?

Answer: Yes. Section 8-816 contemplates the necessity of certain financial institutions registering with the Department when they provide loans pursuant to credit cards. There is no relief in the registration requirement for credit card banks if they also desire to extend credit card services to Nebraskans. There is no registration requirement if credit card services are not provided to Nebraskans.

Question 5: For purposes of Neb. Rev. Stat. § 8-1511(4) and Neb. Rev. Stat. § 8-2401, to what extent may a bank outside the state of Nebraska retain some operations and comply with the statute by contracting for other services?

Answer: Section 8-1511(4) contemplates the possibility of a bank contracting for services in credit card operations with a "qualifying association," which can provide a number of services. The statute provides that the "qualifying association" will offer at least the following services: 1) distribution of credit cards; 2) preparation of statements of amounts due; 3) receipt of amounts on payment; and 4) maintenance of financial records of accounts.

A bank may have its cards prepared outside the state of Nebraska and sent to the "qualifying association" for distribution. In addition, as long as debiting and crediting of accounts is done in Nebraska, it is not necessary that the "qualifying association" actually receive the money on payment. In other words, as long as a Nebraska credit card bank has contracted with a qualifying association to provide for processing credit card operations, there is no requirement that the bank contract for embossing, authorization, or other services.

Question 6: If a cardholder has a credit balance on his or her card and the cardholder agreement provides for the payment of interest on the balance, would the payment of interest be deemed to be a "deposit" in violation of the law?

Answer: Yes. The payment of interest on a deposit in a credit card account represents an effort to secure deposits in direct competition with Nebraska banks. Consequently, such a practice would be competition prohibited by the credit card bank law. A credit balance may be maintained by a cardholder if no interest or other financial reward is earned by the account holder.

Question 7: For purposes of the credit card industry and its unique practices, what is the "date of commencement?"

Answer: The "date of commencement" is deemed to be that date, as determined by the credit card bank's records, when a customer first uses the credit card services. Transferring credit card operations to Nebraska involves a series of steps, which may or may not involve contractual relationships with other entities. Such steps include creation of the cards, marketing, employment of personnel, utilization of data processing, application processing, and correspondence. All of these matters could be done and not one card would have been mailed or used by a customer.

Question 8: May the capital injections be made through installment payments?

Answer: No. The statute is not sufficiently broad to permit the Department to authorize capital injections through installment payments. The injection must be made in a single payment.

Original Issue Date: September 1, 1987

Revision Date: December 19, 1990
March 31, 2016