

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

September 22, 2021

Ronald B. Gordon, Jr.
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Judicial Council

FROM: Karl Sweeney and Suzette Deans

RE: Request to Enable Charging “Transaction Fees” for Credit Card Use for Criminal and Civil Payments

Summary

AOC Finance has responsibility for monitoring the difference between the interest the Courts earn (on trust accounts and earned surpluses retained inside the trust account¹) and the credit card and other fees the Courts pay from the interest received. Historically, the Courts either generated a cash surplus, or in years where we had general funds were going to lapse to the legislature, we moved general funds into the trust account to have on hand to cover future years expenses.

Except for cash, each type of payment the Court takes in has a cost associated with it (as shown on Exhibit 1). Payments by check and ACH have a nominal fee. Payments by credit card are the highest as there is both a per transaction (15 cents) and a fixed percentage charged on the payment amount (“Transaction Fee”). The total Transaction Fee is 2.95%. We had 246,000 credit card payment transactions in FY 2021 for a gross amount of \$32,064,968 of funds collected through credit card payments (average \$130 per transaction). As our society transitions more and more to “cashless” we expect credit card fees to increase due to both increases in (1) the rate charged by credit card companies and (2) volume as more Court patrons shun cash in favor of credit cards.

For the past several years, Federal Reserve actions (see Exhibit 2) to keep interest rates low have reduced the Court’s earnings by approximately 2/3rds, leaving the Courts in a situation where (in FY 2021) every month our trust expenses exceeded our trust revenues and our trust earned surplus are shrank. If current trends continue, with our available cash of \$2.2M at the end of FY 2021 we have approximately 2.5 – 3 years worth of cash to pay for the credit card costs before we must either request funding from the legislature or charge a transaction fee to offset the costs. The advantage of addressing this now is that we can use a portion of our earned surplus to cover the IT costs to convert to a transaction fee Court system.

Trends for Court Bank Fees, net of Court Trust Earnings

¹ “Earned Surpluses” represent the accumulated excess of interest received over expenses over time.

The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.

To illustrate the types of transactions noted above, per Exhibit 1, in FY 2019 the last full year of “normal” Courts operations, the Courts had more fees than revenues as follows:

FY 2019

Total Court bank related fees	\$1.0M
Less: Total Court earnings	<u>\$.8M</u>
Net Reduction in Available Cash	(\$.2M)
Transfer of General Funds	<u>\$.4M</u>
Net Change in Available Cash	<u>\$.2M</u>

After the budget reductions in FY 2020, the ability of the Courts to supplement any shortfalls in bank fees over bank earnings was basically lost. Let’s review the activity in the Court fees accounts for FY 2020 (shown in more detail in Exhibit 1):

FY 2020

Total Court bank related fees	\$.9M
Less: Total Court earnings	<u>\$.8M</u>
Net Reduction in Available Cash	(\$.1M)
Transfer of General Funds	<u>\$.0M</u> This capability is now zero
Net Change in Available Cash	<u>(\$.1M)</u>

It is important to note that the reduction in interest rates by the Fed (see Exhibit 2) is passed through to the Court’s earnings on a delayed basis as bonds on hand when the interest rates are reduced do not get impacted until they mature and roll over. Thus the reduction in earnings takes approximately a year to fully show.

Here is the activity in the Court fees accounts for FY 2021 (shown in more detail in Exhibit 1):

FY 2021

Total Court bank related fees	\$.9M
Less: Total Court earnings	<u>\$.3M</u>
Net Reduction in Available Cash	(\$.6M)
Transfer of General Funds	<u>\$.0M</u> This capability is now zero
Net Change in Available Cash	<u>(\$.6M)</u>

Trust Investment Manager – Zions Bank Update

On September 2, 2021, Scott Burnett of Zions Bank, who manages our trust account investments in accordance with the State of Utah Money Management Rules (the “Rules”²), provided an update on our Trust fund investments. Here are their points:

1. Federal Reserve has cut the Fed fund rate to 1/10 of 1% (10 basis points; 100 basis points = 1.0%). On \$1M of bonds, this earns us only \$1,000 per year. Our investments all earn rates above this amount but since this is the “floor” upon which our investment returns are based, it gives insights into what happens if current trends continue.

² The Rules provide direction on the type of investments Zions can choose to invest our Trust funds in. These are all low-risk, ultra-conservative bonds, commercial paper and Treasuries. See Exhibit 3.

2. Our invested trust funds for the month of August 2021 total \$37M and yielded \$14K in GAAP income for a blended yield rate of 45 basis points. About ½ of our investments were in Treasuries with a 35 basis point yield. The balance was invested in short term and long term (1 year – 3 year) corporate bonds. Our August 2021 credit card fees totaled \$76,114. We would need our blended yield rate to rise to 2.47% in order to break even with our credit card fees. By comparison, the blended yield rate for July 2020 was 48 basis points.
3. Inflation has kicked up to well over the Fed’s target rate of 2% annually. CPI-U for the last 12 months has been at 5.5%. This increase is expected to be temporary and as long as that expectation holds, the Fed will not need to raise interest rates to put the brakes on inflation. The Fed would more likely raise rates in response to robust economic growth.
4. Our investment portfolio is “laddered” meaning it has a variety of durations. Because Zions expects yields to rise over the near term, they are continuing to invest in short-term instruments so that these funds can be relatively quickly invested in higher yielding bonds as rates rise.

Conclusion: Should the economy soften (jobs growth in August 2021 was only 235,000 versus an expected 720,000 and much smaller than July 2021’s upwardly revised growth of 1.1M) and inflation remain elevated, the possibility exists that “stagflation” could result in the Fed having less desire to raise interest rates. That is still an outlier position, per Zions, who expect rates to rise and inflation to return closer to the Fed’s target rate of 2%.

Transaction Fees as a Practice for State Courts

Through the National Center for State Courts (NCSC), we have surveyed State Courts throughout the country to see if they charge a Transaction Fee for the use of credit cards and if they did what was the methodology. As noted earlier, our credit card servicer, Heartland, charges us 2.95% as a Transaction Fee for the use of credit cards.

The results from 11 Courts who have responded to the NCSC survey show 82% do charge a transaction fee for some or all of their credit card payments:

State	Charges?	If Yes, what terms?
Pennsylvania	Yes	
North Dakota	No	
Oregon	Part	for on-line or by phone for criminal fines/fees; not in-person
Connecticut	Yes	all types of criminal and civil
Hawaii	No	
Kentucky	Yes	all types of criminal and civil
Alaska	Yes	all types of criminal and civil
Rhode Island	Yes	all types of criminal and civil
Indiana	Yes	all types of criminal and civil
Minnesota	Part	Same as Oregon
Maryland	Yes	all types of criminal and civil (except Appellate in person)

Judicial Council Latitude and Process to Establish Transaction Fees

Effective July 1, 2021, the Judicial Council has the authority to add Transaction Fees to criminal cases that we are servicing per HB 260 – incorporated into 77-32b-103 (2)(c) Establishment of a criminal accounts receivable -- Responsibility -- Payment schedule -- Delinquency or default:

For a criminal accounts receivable that a court retains responsibility for receiving, processing, and distributing payments under Subsection (2)(b)(i), the Judicial Council may establish rules to require a defendant to pay the cost, or a portion of the cost, that is charged by a financial institution for the use of a credit or debit card by the defendant to make payments towards the criminal accounts receivable.

There is no current statute that authorizes the charging of Transaction Fees to civil cases. This is an important gap to address as civil cases credit card charges make up approximately 80% of total credit card Transaction Fees.

IT Steps to Charge Transaction Fees for Civil and Criminal Filings [Draft]

Per Paul Barron's research on our internal costs and Heartland's cost to implement full credit card processing in existing court applications, this transition could be used with no changes to the Heartland Merchant Accounts, but would require significant programming changes to CORIS, CARE, eFiling, and online payment systems to:

- compute a transaction fee/service charge,
- display that amount to users where needed,
- communicate the entire amount including fee to Heartland for charging a patron's card, and to
- record the transaction fee within our case management system(s).

This implementation would incur a one-time cost of about \$200,000 and the courts would continue to manage payment of interchange and account fees to Heartland monthly. In this version, because we only have one Merchant ID ("MID") we charge the transaction fee, collect the transaction fee funds, post the transaction fee to all CORIS and CARE cases and use the cash collected to pay Heartland for the cc costs.

A less-expensive alternative approach would be to implement Heartland's "Standard Convenience Fee Model" in which we would modify the Merchant Account settings and create a separate MID just for collecting the transaction fee. This requires less programming, as Heartland would do the computations of the fee outside of CORIS and CARE. Patrons would see two charges on their credit card charge statements with the second smaller charge being for the transaction fee. Court applications where the transaction fee is to be collected would only need to be modified to display a static text message about the percentage added fee. We would also have minor modifications to facilitate allowing Justice Courts to switch to this model. Because of the separate MID for cc transaction collections, the court would not run these transaction fees through our case management system as the fees would go directly to Heartland who, in turn, pays the credit card companies directly. There would be no ongoing costs for the new MID and

the monthly charges for existing MIDs would no longer be paid by the court. The transaction fee would be slightly higher than 2.95% to pay for the swipe card machines which we currently use.

The one-time costs for these modifications to court applications and the district court eFiling system are estimated at \$70,000.00. Neither of these options would be unaffordable to the Courts. We have a maximum amount of \$600,000 that we could pay for the conversion out of the trust earned surplus– and still have approximately \$1.0M as a buffer as of July 1, 2022.

Recommendation

The decision to charge a Transaction Fee has potential impacts that go far beyond recouping our out-of-pocket expenses for offering credit cards. This change could be used to expand the use of electronic payment locations to include Wal-Mart and Smiths as we would no longer be concerned with more customers going cashless at places convenient to them. It should result in a much more efficient process as the Courts would encourage customers to pay with a credit card or ACH instead of cash or check. The latter two methods are time consuming as they require strict internal controls to prevent defalcation. The former generally result in efficiencies as they are electronic by design.

We strongly recommend the adoption of a Transaction Fee for all credit card payments.

Exhibit 1

Expenses (analysis account banking fees, dividends, interest earned and budget allocations)

FY 2019

	Carry Forward	July	August	September	October	November	December	January	February	March	April	May	June	Grand Total
<i>Analysis Fees FY19 (Banking/Credit Card Fees)</i>		(75,314)	(76,600)	(101,504)	(83,267)	(83,687)	(81,824)	(91,278)	(87,019)	(80,397)	(88,900)	(83,863)	(85,851)	(1,019,503)
Non Cash Funding Court Trust Support Fund (fund 1451)														0
Dividends Earned (Gross Earnings)		63,575	62,909	66,741	65,872	61,170	67,716	56,425	61,784	77,287	62,615	70,417	69,207	785,718
Interest Earned (Acct 006)		3,416	5,733	2,306	2,248	3,042	2,056	3,340	3,029	2,968	5,052	5,695	4,664	43,550
Cash Deposits by Courts Using General Funds (Budget Surplus)										150,000			300,000	450,000
Non Cash Book Entry														0
Carry Over From FY18	2,633,202													2,633,202
Grand Total	2,633,202	(8,323)	(7,958)	(32,456)	(15,147)	(19,474)	(12,052)	(31,512)	(22,205)	149,857	(21,233)	(7,751)	288,020	2,892,967
Uses of Cash and General Fund for the FY														709,765

FY 2020

	Carry Forward	July	August	September	October	November	December	January	February	March	April	May	June	Grand Total
<i>Analysis Fees FY20 (Banking/Credit Card Fees)</i>		(81,543.35)	(94,250.36)	(79,599.46)	(78,948.04)	(87,069.60)	(79,966.54)	(75,629.39)	(79,889.49)	(72,150.27)	(84,786.63)	(54,693.27)	(63,357.34)	(931,883.74)
Non Cash Funding Court Trust Support Fund (fund 1451)								(250,000.00)						(250,000.00)
Dividends Earned (Gross Earnings)		73,645.12	74,765.86	72,883.12	67,683.59	63,722.10	66,042.46	65,907.26	60,167.94	65,749.61	52,655.06	48,183.11	40,358.73	751,763.96
Interest Earned (Acct 006)		7,223.70	6,516.27	3,523.56	5,366.53	5,623.21	4,139.95	4,916.69	4,916.69	2,812.42	705.03	347.90	217.11	46,309.06
Cash Deposits by Courts Using General Funds (Budget Surplus)														0.00
Non Cash Book Entry								250,000.00						250,000.00
Carry Over From FY19	2,892,967.15													2,892,967.15
Grand Total	2,892,967.15	(674.53)	(12,968.23)	(3,192.78)	(5,897.92)	(17,724.29)	(9,784.13)	(4,805.44)	(14,804.86)	(3,588.24)	(31,426.54)	(6,162.26)	(22,781.50)	2,759,156.43
Uses of Cash and General Fund for the FY														133,810.72

FY 2021

	Carry Forward	July	August	September	October	November	December	January	February	March	April	May	June	Grand Total
<i>Analysis Fees FY21 (Banking/Credit Card Fees)</i>		(63,425.07)	(67,618.92)	(71,018.17)	(69,330.46)	(77,386.90)	(64,935.77)	(76,053.96)	(74,172.87)	(71,216.73)	(82,918.84)	(79,761.62)	(76,370.08)	(874,209.39)
Non Cash Funding Court Trust Support Fund (fund 1451)													(256,000.00)	(256,000.00)
Dividends Earned (Gross Earnings)		33,351.80	25,675.24	26,719.25	24,480.78	22,906.50	22,126.07	33,169.00	19,655.30	20,089.94	19,237.74	19,265.52	18,780.11	285,457.25
Interest Earned (Acct 006)		115.30	33.74	19.03	18.89	22.33	20.59	33.97	22.28	23.06	22.41	28.28	24.16	384.04
Cash Deposits by Courts Using General Funds (Budget Surplus)														0.00
Non Cash Book Entry													256,000.00	256,000.00
Carry Over From FY20	2,759,156.43													2,759,156.43
Grand Total	2,759,156.43	(29,957.97)	(41,909.94)	(44,279.89)	(44,830.79)	(54,458.07)	(42,789.11)	(42,850.99)	(54,495.29)	(51,103.73)	(63,658.69)	(60,467.82)	(57,565.81)	2,170,788.33
Uses of Cash and General Fund for the FY														588,368.10

***Heartland: Merchant process cost for transactions is \$0.15 per transaction plus a 2.95% of the transaction amount. FY2021 there were 244,676 credit transactions. Other credit card fees include, \$9.95 account fee per MID (115) and chargebacks/returns. Current transaction fees will remain the same until 12/23/2023 when the Heartland contract expires.

***Currently, the court accounts are not set up take ACH payments from court patrons. Cost per check is less than 1%

***Court Investments - Courts portfolio is made up of bonds with variable rate that changes monthly. Dividends are calculated on book yield and is at currently 5.2%. Dividends on the courts sweep bank account is calculated daily, current rate is 0.010%.

2,170,788 is not allocated to District or Juvenile courts. This amount represents funds that can be used to cover banking fees.

2.5-3.0 If no changes, estimated years left before general funds are needed to cover banking expenses.

Exhibit 2 Federal Funds Rate 1955-2020

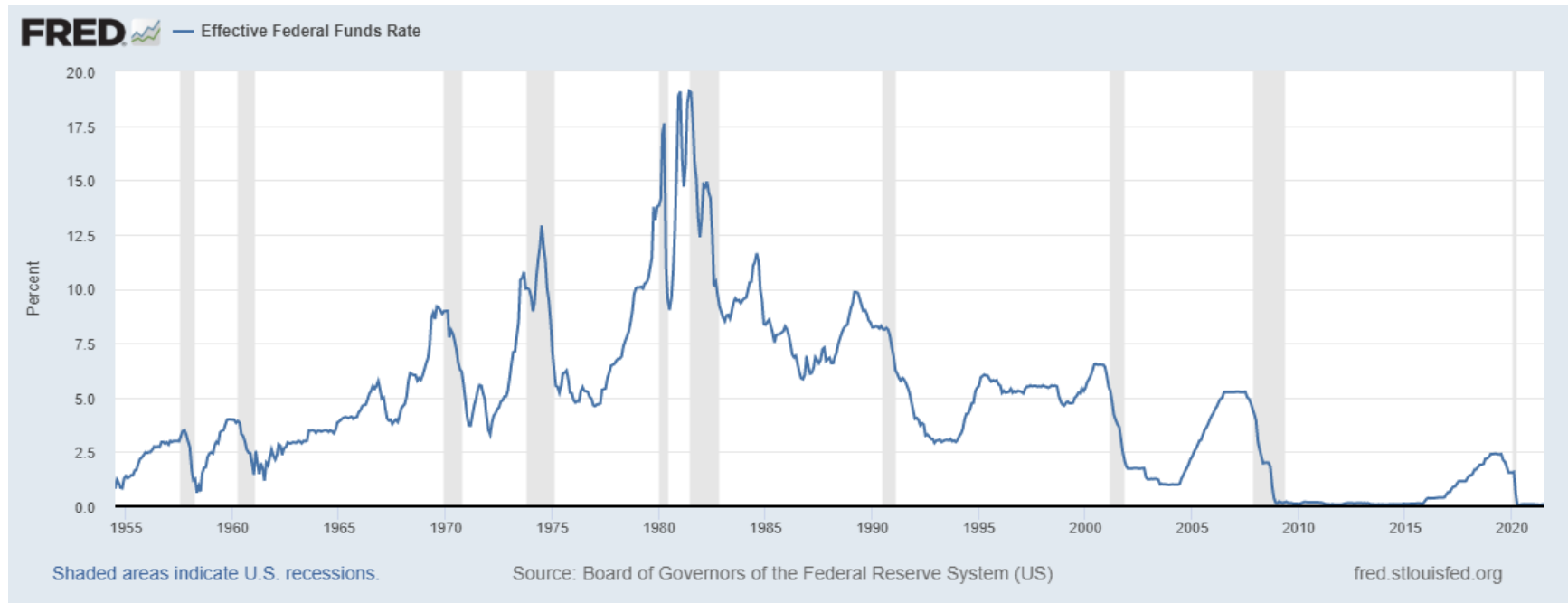


Exhibit 3

State of Utah Money Management Rules – Acceptable Investments of State Funds

- U.S. Government securities / Agencies / Certificates of Deposit
 - 5 year maximum maturity
- Commercial Paper (CP)
 - A1/P1 minimum rating
- Corporate Notes
 - Minimum rating A- by at least 2 NRSRO's (Nationally Recognized Statistical Rating Organization)
 - 15 month maximum maturity for fixed rate securities
 - 3 yr. maximum maturity for floating rate securities
- Municipal bonds – Issued by a municipality located in Utah
 - 5 year maximum maturity