

BUDGET POLICY AND REPORTING MANUAL

<i>date</i> 4/1/93	<i>subject</i> Returned Check Charge	<i>item</i> K-034
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A. Purpose and Scope

This item establishes policies and procedures prescribed by the Director of the Budget for all State agencies regarding the treatment of dishonored checks.

Whenever a check paid to a State is dishonored, State agencies should follow a systematic approach to require payment by certified funds to replace a dishonored check. Additionally, effective January 1, 1993, State agencies will charge a fee for processing a dishonored check. Certified funds include bank teller checks, money orders, certified bank checks, and cash.

B. Statutory Reference

Pursuant to Section 19 of the State Finance Law, effective January 1, 1993, if any individual, business or other entity which is not a State agency makes a payment to a State agency by a check which is dishonored, the individual, business, or other entity is liable for a returned check charge. The law specifies that unless provided otherwise by an existing statute, regulation or contractual agreement, the returned check charge shall be established by the Director of the Budget and shall not exceed the amount set forth in Section 5-328 of the General Obligations law.

The amount of the returned check charge is hereby established to be \$20.00. This returned check charge shall be in effect unless changed by the Director of the Budget.

C. Categories of Dishonored Checks

There are several reasons why a check or like instrument would be dishonored or rejected by a bank (or like financial institution) upon which the check is drawn. These reasons include:

1. Insufficient Funds — The checking account does not contain sufficient funds to cover the check.
2. Uncollected Funds — A check has been written upon funds which have not yet cleared the bank.
3. Stop Payment — The debtor has instructed the bank to not honor the check.
4. Account closed — The debtor has instructed the bank to terminate the account.

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D. Procedure

It is important for State agencies to know whether a dishonored check has been received for an unsolicited payment or if a dishonored check has been received in response to a State agency's formal billing or notice requesting payment by a specific due date. If a dishonored check has been received for an unsolicited payment, then an account receivable is not established. If, however, a dishonored check has been received in response to a billing invoice or letter, an account receivable has been established.

1. Case # 1: Unsolicited Payment

Example: An individual sends a check to the Department of Civil Service with an application to take a Civil Service exam:

If a check or like instrument is not initially honored by the bank on which it is drawn due to **insufficient or uncollected funds**, the creditor State agency shall instruct the bank to redeposit the check a second time.

If after the second deposit, **insufficient or uncollectible checks** are returned, the creditor State agency should immediately contact the debtor in writing and request full payment in **certified funds**. This letter must clearly state that the total payment due includes the appropriate amount (e.g., application fee) **plus** the returned check charge (see Model Letter #1). If the debtor fails to provide certified funds to replace the dishonored check, the transaction is null and void.

The State agency terminates the processing of the application, license renewal, etc. for which payment has been made with a dishonored check. No account receivable has been established.

If a check has been returned due to a **stop payment** or because of a **closed account**, the creditor State agency should immediately contact the debtor in writing and request full payment in **certified funds** (see Model Letter #1).

2. Case # 2: Response To a Formal Billing or Notice

Example: The Department of Environmental Conservation sends a bill for regulatory fees and the bill specifies that \$2,000 is due by January 6, 1993.

If a check or like instrument is not initially honored by the bank on which it is drawn due to **insufficient or uncollected funds**, the creditor State agency shall instruct the bank to redeposit the check a second time for payment.

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If after the second deposit, **insufficient or uncollected checks** are returned, the creditor State agency should immediately contact the debtor in writing and request full payment in **certified funds**. This letter must clearly state that the total payment due includes the appropriate amount (e.g., regulatory fees) **plus** the returned check charge and any applicable interest charges (see Model Letter #2).

If a check has been returned due to **stop payment** or because of a **closed account**, the creditor State agency should immediately contact the debtor in writing and request full payment in **certified funds** (see Model Letter #2).

If the debtor fails to remit in full the total amount that is due (including the returned check charge fee), the creditor State agency should consider this amount a past-due debt. The debtor may be subject to further collection actions as described in these Guidelines (i.e., interest charges, referral to private collection agencies or the Attorney General's Office or certified for offset of State payments).

In the event that the debtor sends certified funds only in the amount of the original returned check, State agencies shall apply the certified funds to the original amount due. The debtor still owes the returned check charge. Therefore, State agencies should contact the debtor in writing to request payment of the returned check charge (see Model Letter #3).

Interest charges shall not be assessed on the returned check charge — only on the original amount of the debt. The late payment charge or interest shall be based on the original billing due date.

3. Procedures for Case #1 and Case #2

- a. Whenever administratively feasible and cost-effective, State agencies should provide a pre-addressed envelope to the debtor in order to facilitate and encourage prompt payment.
- b. Dishonored checks shall not be returned to a debtor until:
 - i. The debtor has satisfied the debt; **and**
 - ii. The debtor has satisfied the returned check charge.

State agencies should retain the original dishonored check or a copy of the check (front and back) for three years.

See Item K-035 for policies on waiving a returned check charge.

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E. Possible Exceptions From Returned Check Charges

In certain cases, State agencies should not assess a returned check charge. There may be situations, beyond a debtor's control, which cause a check to be returned. Such situations include (1) a bank error or (2) a State agency error.

In the event of a bank error, the debtor or bank must submit written documentation from the bank before the State agency can reverse the returned check charge.

F. Questions and Answers

Q. What should a State agency do if, after requesting certified funds to replace a dishonored check, the debtor has submitted uncertified funds?

A. A State agency should not consider uncertified funds as an acceptable replacement for a dishonored check. As a matter of policy, the agency should return such uncertified funds to the debtor and insist that certified funds be remitted.

In certain cases (e.g., the debtor does not have a history of remitting dishonored checks) a State agency may wish to take steps other than returning the uncertified check to the debtor. For example, the State agency could call the bank upon which the check is drawn. If the bank advises that funds are available to cover the uncertified check, the agency could then deposit the uncertified check.

Q. In cases when an unsigned check or an uncertified check has to be returned to the debtor, should a State agency charge interest?

A. A State agency should not charge additional interest for the time between when an unsigned or uncertified check is returned to the debtor and the time the debtor sends a signed or certified check to that agency.

Q. What steps should be taken if a State agency receives an unsigned check?

A. If a State agency receives an unsigned check, the State agency should return the check to the issuer and request that the issuer sign and return the check back to the State agency immediately.

In cases of unsigned checks:

! The State agency should not assess a returned check charge; and

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! The State agency need not require certified funds.

Following are model letters agencies may use to request replacement of a dishonored check.

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<u>MODEL LETTER #1 — REPLACE RETURNED CHECK*</u> (Unsolicited Payment)

STATE AGENCY LETTERHEAD

DATE:

THIS IS A NOTICE FOR PAYMENT

[Account #]
[Amount of Returned Check]
[Date of Check]
[Check Number]

[DEBTOR NAME]
[DEBTOR ADDRESS]

Dear Ms./Mr. _____

The above referenced check has been returned to this agency by your bank for the following reason(s):

___	Insufficient Funds	___	Uncollected Funds
___	Stop Payment	___	Account Closed
___	Other _____		

Please send **CERTIFIED FUNDS** in the amount of:

Dishonored Check	\$ _____
Returned Check Charge +\$	_____
Total Due	\$ _____

Your payment of the total amount is due and owing upon receipt of this notice.

If not paid by [insert applicable date], this agency shall terminate the processing of this transaction [e.g., this agency shall NOT process your application].

If you have any questions, you may call [State agency contact and telephone number].
Please make your certified check or money order payable to [Example: Commissioner, NYS Dept. of Agriculture and Markets]. For your convenience, an envelope is provided for your immediate payment [this provision is optional].

Thank you.

**Agency counsel should approve any form letters that will be used by that State agency.*

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MODEL LETTER #2 — REPLACE RETURNED CHECK* (Payment Received in Response to a Billing Notice)

STATE AGENCY LETTERHEAD

DATE:

THIS IS A NOTICE FOR PAYMENT

[Account #]
[Amount of Returned Check]
[Date of Check]
[Check Number]
[Original Billing Due Date]

[DEBTOR NAME]
[DEBTOR ADDRESS]

Dear Ms./Mr. _____

The above referenced check has been returned to this agency by your bank for the following reason(s):

___	Insufficient Funds	___	Uncollected Funds
___	Stop Payment	___	Account Closed
___	Other _____		

Please send **CERTIFIED FUNDS** in the amount:

Dishonored Check		\$ _____
Returned Check Charge	+\$ _____	
Interest Accrued to date (Based on original due date)	+\$ _____	
Total Amount Past-Due		\$ _____

Your account is now past-due. If you wish to avoid additional interest charges please remit the total past due amount immediately.

Please take notice, if payment is not received, this agency is authorized to pursue other collection alternatives.

If you have any questions, you may call [State agency contact and telephone number].

Please make your certified check or money order payable to [Example: Commissioner, NYS Dept. of Agriculture and Markets]. For your convenience, an envelope is provided for your immediate payment [this provision is optional].

Thank you.

**Agency counsel should approve any form letters that will be used by that State agency.*

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MODEL LETTER #3*
REQUEST FOR RETURNED CHECK CHARGE

STATE AGENCY LETTERHEAD

DATE:

[Account #]
[Amount of Returned Check]
[Date of Check]
[Check Number]
[Return Check Charge Due]

[DEBTOR NAME]
[DEBTOR ADDRESS]

Dear Ms./Mr. _____

Thank you for your payment of \$_____ to replace the above referenced check which had been returned to this agency by your bank. Your payment has been credited to your account.

However, as previously indicated in our first letter of [insert appropriate date] the total amount due included a return check charge of \$_____ which you failed to remit. This amount is still due and owing.

If you have any questions, you may call [State agency contact and telephone number].

Please make your certified check or money order payable to [Example: Commissioner, NYS Dept. of Agriculture and Markets]. For your convenience, an envelope is provided for your immediate payment [this provision is optional].

Thank you.

**Agency counsel should approve any form letters that will be used by that State agency.*