

2022 Annual Report of the Iowa Consumer Credit Code

The Attorney General is directed by Chapter 537 of the Iowa Code to administer the Iowa Consumer Credit Code (hereinafter “ICCC”). Since 1974, the Attorney General has delegated primary authority for the administration and enforcement of the ICCC to the Consumer Protection Division (hereinafter “CPD”). Typically the head of the CPD has served as the Administrator of the ICCC and has appointed a Deputy Administrator to oversee the day-to-day duties of regulating and enforcing the ICCC. During calendar year 2022 the Administrator was Jessica Whitney, former Director of the CPD. Assistant Attorney General Amy Licht served as Deputy Administrator of the ICCC during 2022 and continues to do so.

The Administrator's responsibilities under the ICCC include resolving complaints, investigating serious complaints, formulating and carrying out litigation, drafting legal opinions, conducting consumer credit educational activities and programs, and monitoring the status of consumer credit in the state. The Administrator coordinates with other Iowa agencies, other states with versions of the Uniform Consumer Credit Code, and federal agencies with oversight of the consumer credit industry.

Iowa Code section 537.6104(5) directs the Administrator to report annually on the ICCC and the state agencies charged with administering the ICCC, as well as the general availability of credit. This report is broken down into sections that correspond with the reporting requirements of Iowa Code section 537.6104(5).

The contents of this report are compiled from the previous year’s report, with relevant information updated to reflect recent changes.

1. Consumer Complaints

Iowa Code section 537.6104 allows the Administrator of the ICCC to handle consumer complaints and encourage voluntary compliance with Code requirements. The Administrator engages in a conscious effort to combine those two responsibilities. When handling consumer complaints, the Administrator generally seeks voluntary compliance first and takes legal action second or as needed.

The processing, assignment, and handling of ICCC complaints are a part of the daily activity of the CPD. The CPD received approximately 3,569 written consumer complaints during the 2022 calendar year, slightly more than the 3,536 complaints received in calendar year 2021. Of those complaints, at least 828 complaints were filed regarding a credit issue. In addition, hundreds of other complaints also involved credit although not classified as such, like complaints about home improvements, new car buying, and the financing of cell phones.

Complaints concerning credit ranked highly in the top categories of consumer complaints and should continue to be regarded as an area of major concern. The credit complaints break down as follows, with their rank in relation to other categories of complaints:

1. Auto (includes financing)	532
14. Lending (non-mortgage)	110
15. Debt (including collections)	103

For all complaints, many of the inquiries handled by the CPD can be resolved by explaining the applicable provisions of the ICCC to those involved in the complaint. Other times, the office must first investigate the complaint and determine the facts to outline to the parties how the law applies to their situation. The CPD strives to resolve the complaints in a manner that makes the consumer whole, where appropriate.

Complaints regarding auto financing, home improvements, non-mortgage lending and debt collection all appeared in the top twenty during 2021. Once again, used car financing was an area the office focused on this year. Continued effort was spent on dealer education, complaint resolution, and enforcement actions. The CPD has two investigators that work motor vehicle complaints, both trained in the area of consumer credit. In addition, the CPD staff works closely with the Department of Transportation to resolve complaints and monitor the industry. As the primary regulator of traditional “Buy Here, Pay Here,” dealers the office looks closely at individual creditors.

In addition, to complaint handling, the office continued to work on larger investigations and settlements.

In January, the Attorney General entered into a multistate settlement with Navient Corporation and related Defendants to resolve allegations of widespread unfair and deceptive student loan services practices and abuses in originating predatory student loans, which included \$1.7 billion in debt cancellation and \$95 million in restitution nationwide. For Iowa, more than 1,545 borrowers received a total of almost \$412,000 in restitution, with an additional 434 Iowans receiving debt relief that totaled \$10.2 million of private loan debt cancellation.

In December 2022, the Attorney General and Iowa Division of Banking entered into an Assurance of Voluntary Compliance with Transportation Alliance Bank (TAB Bank) to resolve allegations that TAB, along with its service provider Duvera Billing Services LLC (d/b/a Easy Pay Finance), violated the ICCC by imposing a finance charge in excess of 21%, as permitted under Iowa Code section 537.2401. Under the Assurance, TAB Bank will provide restitution to 1,611 consumer loans that were originated between March 1, 2020 and April 8, 2022.

In general, Subprime auto finance continues to be an area of concern. In addition to traditional “Buy Here, Pay Here,” dealers, the securitization of subprime retail installment contracts has resulted in increases in the number of auto finance complaints and ICCC violations. A new and related area of concern pertains to add-on products that arise in a vehicle transaction, which increase the amount a consumer finances and the vehicle cost over time. The CPD is looking closely at this area and pursuing potential multistate action.

Debt collection complaints decreased in 2022, with 89 complaints, compared with 105 in

2021. The CPD's policy toward debt collection complaints is to resolve them at the administrative level, obtain redress for any aggrieved consumers, and stop any problematic practices. Article 7 of the ICCC sets forth with impressive thoroughness exactly what debt collection techniques, practices, and procedures are prohibited. Most debt collection complaints are filed by consumers aggrieved by what they believe is an unlawful debt collecting practice. Generally, the CPD resolves the problem through an informal agreement with the lender or debt collector. When the ICCC is clearly violated, the CPD requires not only redress for the aggrieved consumer but the Administrator may seek and obtain an Assurance of Discontinuance pursuant to Iowa Code section 537.6109 where the creditor or collector clearly states that they have been notified as to what is wrong with their practice in question and that they are agreeing to discontinue it. In some instances, the creditor or collector is able to demonstrate either that there has been no violation of the ICCC or that any violation was unintentional and the creditor or collector intends to comply with the statute.

When informal resolution of debt collection complaints is insufficient, the CPD engages in enforcement actions to ensure Iowa lenders and debt collection agencies keep their practices in compliance with the ICCC. Members of the CPD also consult with other states regarding debt collection and frequently participate in multistate efforts to investigate larger debt collection companies.

Additionally, the CPD continues to receive a number of complaints based upon problems arising from home mortgages, both the origination and servicing of mortgage loans. In 2022, the CPD received 83 such complaints. The CPD continues to look at and investigate the servicing of mortgage loans. A member of CPD currently leads the National Association of Attorneys General mortgage servicing working group.

The CPD also continues to be involved in multistate investigations involving student loan rescue scams. We also receive many complaints involving mortgage foreclosure rescue scams. The CPD handles these complaints on an individual basis. The CPD has also been involved in multistate and federal efforts to attempt to track down these often-temporary companies.

In addition to the formal written complaints the CPD receives, the day-to-day work of the attorneys and investigators assigned to ICCC inquiries, complaints, and investigations often involves interacting with the borrowing public, credit industry representatives, attorneys, and representatives of other state agencies about compliance with the ICCC. Iowa Code section 537.6104(1)(d) requires the Administrator to counsel persons and groups on their ICCC rights and duties. The day-to-day activities in administering the ICCC involve numerous emails, telephone calls, letters, informal interpretations, responses, and resolutions between the CPD staff office and the various parties outlined above. In addition to advice given via phone and email, the CPD also issues what are called informal advisory opinions, which are written responses to questions concerning credit and/or the interpretation of the ICCC.

2. Credit Education

The ICCC also requires that the Administrator establish educational programs on credit practices and problems. *See* Iowa Code § 537.6104(1)(e). With limited staff to devote to ICCC

matters, the CPD has made education for consumers, the lending industry, and members of the Bar a top priority.

Once again CPD staff members made a number of presentations to large groups concerning state and federal consumer credit laws. In January, the ICCC Administrator Whitney did a presentation on “Buy Now, Pay Later” arrangements and Iowa’s opt-out of the Depository Institutions Deregulation and Monetary Control Act at a Harvard conference. In February Investigator Al Perales provided three trainings on scams and elder fraud at Des Moines-area senior living facilities and as part of the “Straight Talk Senior Living Series.” Investigator Perales conducted trainings for American Bank/American State Bank in Lemars, Hospers and Sioux City in April. In May and June, Perales conducted four events for the Iowa Insurance Division’s “Iowa Fraud Fighters” in Sioux City, Davenport, Atlantic and Tama. During the period from late May through early July, Perales staffed mobile offices in Independence, Eldora, Monticello, Dyersville, Lake View, and Grinnell. ICCC Administrator Whitney led a legal education session regarding tech-enabled financial fraud as part of a Princeton University conference. In July Perales held an additional three sessions on elder fraud in Creston, Sioux City and Council Bluffs. Perales, along with the Attorney General, participated in the August kickoff of the AARP’s “Fraud Tour,” as well as thirteen additional events throughout the State in September and October.

The CPD also participates in a variety of less formal consumer-oriented conferences, seminars, meetings, and speaking presentations, including presentations to graduate level college classes, law school classes, high school classes, and senior citizens' groups. The attorneys and investigators of the CPD speak around the state on the general topic of consumer fraud and protection in Iowa. Though these presentations deal more generally with the overall work of the CPD, they also discuss the basic provisions of the ICCC and often respond to specific ICCC questions from audience members. The CPD also assists with an “Attorney General Booth” each year at the Iowa State Fair, staffed by employees from throughout the Attorney General's office. Many of the questions from consumers visiting the booth pertain to consumer credit, and many of the educational materials offered to the public through the booth seek to inform consumers about the ICCC and its consumer credit protections.

The Division has also provided guidance and education in the field of motor vehicle financing. The staff has given advice on continuing education courses for motor vehicle dealers, focusing on motor vehicle finance. The staff also routinely answers questions from motor vehicle trade groups and many of those questions are finance-related. Throughout 2022, a video presentation featuring ICCC Administrator Whitney and Assistant Attorney General Jayme Wiebold, who focuses on auto complaints, was shown as part of the training of Iowa used motor vehicle dealers pursuant to the requirements of Iowa Code section 322.7A. Consumer credit issues were interwoven throughout the presentation.

In addition, to public speaking, meetings, and publications, staff members also have informal discussions and meetings with industry and affected individuals. It is not uncommon for representatives of various businesses or members of the credit industry to come into the CPD office or participate in a virtual meeting with their attorneys to ascertain what they must do to comply with the ICCC. Staff members regularly respond to questions posed by other state

agencies, as well. The many ICCC-related questions posed to staff members during these public contacts shows that there is still a great deal of confusion about the law, and that the educational campaign needs to be continued.

3. Developments in Iowa Consumer Credit Law

In 2022, there was one Iowa Court of Appeals case which interpreted the ICCC.

In *Cavalry SPVI, LLC v. Brown*, 977 N.W.2d 511 (2022), a creditor alleged a consumer failed to pay \$7,096 due and owing on a revolving Citibank credit card account after receiving a demand. *Id.* at **1. The consumer denied having a Citibank credit card or a credit account with the designated number. *Id.* The District Court entered summary judgment for the creditor. *Id.* The debtor appealed, contending that District Court erred in finding there was a binding agreement because the creditor failed to produce a signed agreement or evidence of a binding oral or written agreement and based on his own attestation that he never had a Citibank credit card. *Id.*

The Court of Appeals affirmed the lower court. It found that Iowa Code section 537.5114 defines an “agreement” as an “oral or written bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance,” but does not require a written document signed by the consumer. *Id.* citing *Capital One Bank (USA), N.A. v. Denboer*, 791 N.W.2d 264 (Iowa Ct. App. 2010). The creditor produced a stock credit card agreement and credit card statements listing the consumer as the account holder; identifying him as a “member since 2017”; showing a balance transfer and “standard purchases”; and including two addresses, one of which was used for service of the lawsuit. The creditor also provided an agent’s attestation that periodic statements and a “final statement” showing the sum total of all amounts due were provided to the consumer. The Court found the creditor’s evidence sufficient to substantiate the summary judgment ruling despite the lack of a signed agreement with the consumer and quoted the *Denboer* case, “the Iowa statute does not explicitly require a full itemization of how the amount claimed by the creditor was determined.” *Id.* (quoting Iowa Code § 537.5114(1)).

4. Agency Reports on Consumer Credit

Two state regulatory units are charged by Iowa Code § 537.6105 with enforcing the ICCC with respect to the lending institutions they license and regulate: the Iowa Division of Banking and the Iowa Division of Credit Unions. Throughout the year the Administrator has frequent contact with these agencies regarding interpretation and enforcement of credit code provisions and changes in the consumer credit industry. The Administrator and the agencies work together on legislative issues and enforcement actions. The Administrator notifies a regulatory agency when the CPD receives a complaint involving one of the agencies' licensees. Likewise, the agencies alert the Administrator of serious violations that come to their attention. The Agencies work together with the Administrator whenever appropriate.

Each agency examines its licensees for ICCC compliance during the agency's regular, periodic examinations. The Credit Union Division, overseeing the state's 77 credit unions,

examines each credit union every twelve to fourteen months. The Credit Union Division received no ICCC-related complaints in 2022. The Banking Division oversees licensing for 242 state-chartered banks and 1005 consumer lenders including: delayed deposit branches, industrial and regulated loan company branches, and mortgage bankers. State-chartered banks are examined every 12 to 18 months, alternating with the federal regulator. The various consumer loan lenders are examined every 12 to 36 months depending on the type of license. Delayed deposit and in-state loan branches are examined annually. Mortgage bankers are examined every 24 months. Nonresident loan companies are examined about every 3-5 years. In 2022 the Banking Division received 4 complaints relating to the ICCC, compared to zero complaints received in 2021.

5. Consultation with Other Jurisdictions

The CPD benefits from the experience and knowledge of credit code administrators in other states by participating in the American Conference of Uniform Consumer Credit Code States (ACUCCCS) every year. The conference is an excellent forum at which to discuss common problems in UCCC administration and collectively work toward fair resolution. The meetings enable each state to keep its administration of its consumer credit code in harmony with other jurisdictions as required by section 537.6104 of the Iowa Code.

The 2022 ACUCCCS meeting was held in Denver, Colorado in August 30-31, 2022. Representatives from most credit code states attended the meeting. Buy Now, Pay Later arrangements continue to be a topic of discussion. There was discussion on use of remote work/telecommuting by creditors and licensees, and how such arrangements impact licensing and data security and examinations. The use of technology (such as e-signing license applications and generally allowing licensees to report electronically) was raised. Other topics of discussion included when/how credit sales are disguised as leases or rent-to-own (RTO) transactions; regulation of digital asset lending companies; distinctions between the revocable deduction of earnings v. wage assignment; and use of the bank partner model (rent-a-bank) to avoid state limitations on finance charges, fees and other consumer protections. Regulators who use the State Examination System (SES) for single-state and multistate examinations discussed development of that system.

Finally, States shared updates regarding their various experiences working together in large multistate groups as well as with the federal Consumer Financial Protection Bureau and on legislative changes to each state's consumer credit code statute and related laws.

The ACUCCCS states also keep in regular contact via an email listserve and a biannual call. The listserve and call provide an excellent opportunity for discussion of potential changes in the law regarding consumer credit and the states' interpretation of portions of the ICCC.

6. Availability of Consumer Credit

By keeping in frequent contact and exchanging information with other state consumer credit administrators throughout the year, the CPD has been able to keep abreast of trends in the nationwide consumer credit industry. Unfortunately, we have been unable to compile information regarding the availability of credit to Iowa consumers due to the high cost of such data gathering

and lack of any current data gathering system. However, the Consumer Financial Protection Bureau has compiled such data, although it has yet to be update with information for 2022. In comparing 2018 with 2019, Iowa consumers opened 7% more credit cards, 6% more auto loans, 1% more mortgages, and 22% more student loans.

Based on CPD's contacts with consumers, businesses, and the industry, as well as other state agencies, we are able to assess the availability of credit anecdotally. Credit continues to be available to many Iowa consumers. However, the quality of the credit that may be available to some is suspect. The proliferation of direct deposit services (also known as payday loans) and hard-to-police internet loans means much of the credit available to some consumers is only available at a very high cost. Higher interest open-end credit, in the form of credit cards, also appears to be widely available. With a strong housing market, home mortgages also appear easily obtainable to consumers with decent credit scores. Student loan debt continues to rise, and is of a real concern in the future as the debt becomes due. Generally, this type of debt cannot be discharged in bankruptcy but recent court rulings indicate that judges are relaxing the standard. Subprime auto financing continues to be a concern with many auto loans now being packaged and sold as securities. There is a fear that subprime auto loans might follow the same path that subprime mortgages did and lead to more global issues.

7. Changes to the ICCC

Finally, the Office of the Attorney General reviews the ICCC to suggest to the legislature amendments and improvements. In the 2022 legislative session, no substantive amendments were made to the ICCC: