

# **2018 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”). The head of the CPD is the Administrator of the ICCC and has traditionally appointed a Deputy Administrator to oversee the day-to-day duties of regulating and enforcing the ICCC. The current Administrator is Jessica Whitney, Director of the CPD. There is not a Deputy Administrator in place, but two Assistant Attorney Generals, Amy Licht and Ben Miller-Coleman, spend time on ICCC cases and issues.

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 3,495 written consumer complaints during the 2018 calendar year, an increase of 18% from 2017. Of those complaints, at least 338 were filed directly pursuant to the ICCC. Complaints whose main focus was credit, not just those specifically filed pursuant to the ICCC, concerned about 24% of the total received by the CPD. 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)	493
9. Lending (non-mortgage)	136
12. Debt (including collections)	114
15. Home Mortgage	96

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 in order 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 ten during 2018. 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.

The CPD reached several important settlements in 2018. In January 2018, Attorney General Miller joined 48 other attorneys general to reach a \$45 million-dollar settlement with PHH Mortgage Corporation, the ninth largest non-bank residential mortgage originator and servicer, for improperly serviced mortgage loans issued over a four-year period. Approximately 739 Iowans were eligible for a payment. In December 2018, Attorney General Miller reached a \$6 million-dollar settlement with Midland Credit Management, Inc. and Midland Funding, LLC, one of the largest debt buyers in the nation. The settlement claims that Midland signed and filed large volumes of affidavits in state courts without verifying that the information was correct. Midland will eliminate the judgment balances for 97 Iowans, and partially reduce the balance of 48 more. Also, in December 2018, Attorney General Miller joined 50 other attorneys general to reach a \$575 million-dollar settlement with Wells Fargo, alleging Wells Fargo employees created more than 3.5 million accounts without the customer’s knowledge or consent. Iowa’s \$6,180,941.33 share of the settlement will go to the state’s Consumer Education and Litigation Fund.

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. The CPD is looking closely at this area and pursuing potential multistate action.

Debt collection complaints held steady, with 106 complaints in 2018 compared with 103 in 2017. 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 2018, the CPD received 96 such complaints. The CPD 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. Attorney General Miller himself joined a May 14<sup>th</sup> AARP live-stream event on consumer fraud viewed by 5,500 people. Throughout the year CPD staff

members joined the Iowa Insurance Division as part of Fraud Fighters, a traveling fraud awareness program attended by 565 Iowans in 2018. Fraud Fighters gave four presentations regarding all types of fraud, including consumer credit, in Sioux City, Iowa City, Dubuque, and Decorah. In July, our office spoke to the Iowa Identity Theft Victim Assistance Coalition. In May, Administrator Jessica Whitney gave a presentation at the National Association of Attorneys General Consumer Protection Conference in Washington, D.C. about federal laws that state Attorneys General can enforce, including consumer credit laws. In January and February, investigator Al Perales delivered presentations on fraud at events in Dallas and Story counties. In addition, he gave multiple presentations to Kiwanis groups throughout Iowa.

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 2018, a video presentation featuring Administrator Jessica Whitney 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 monthly publications entitled "Consumer Focus" the CPD reaches tens of thousands of Iowans. The "Consumer Focus," are bulletins that provide tips and information to consumers on relevant consumer issues. During 2018 topics addressed in these bulletins included tax return scams, Facebook scams, and tips to protect against robocalls. The bulletins are sent statewide to over 3,000 groups and communities and are free to reprint and redistribute. They are also available on the Attorney General's website.

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 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 2018, there were no developments in Iowa Consumer Credit Law.

### **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 87 credit unions, examines each credit union every twelve to fourteen months. The Credit Union Division received zero ICCC-related complaint in 2017. The Banking Division oversees licensing for 270 state-chartered banks and 865 loan companies, including delayed deposit locations, mortgage bankers, industrial lenders, and regulated lenders. State-chartered banks are examined every 12 to 18 months, alternating with the federal regulator. The various loan companies are examined every 12 to 24 months depending on the type of company. Delayed deposit companies, industrial lenders, and regulated lenders are examined annually. Mortgage bankers, nonresident industrial lenders, and nonresident regulated lenders are examined every 24 months. In 2018, the Banking Division received zero complaints relating to the ICCC, compared to 13 complaints received in 2017.

### **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 2018 ACUCCCS meeting was held in Lawrence, Kansas. All credit code states, except Oklahoma, attended the meeting. The Iowa Administrator served as Vice President of ACUCCCS. Financial Technology, otherwise known as FinTech continued to be a hot topic including efforts by the Office of the Comptroller of the Currency's FinTech (financial technology) charter and state sandbox programs. Members again expressed concerns about the impact on state-chartered lending and the potential for large-scale preemption of state law by businesses traditionally regulated by states. States continue to investigate loans or consumer credit sales disguised as leases appear to be a growing phenomenon. Discussion was had about the different types of putative leases including companies leasing services like auto repairs and for the purchase of pets. As always,

internet lending was a popular topic for discussion. In particular, internet lending controlled or facilitated behind the scenes by state banks or Native American Tribes. The states updated each other on the ongoing litigation involving the legality of this type of lending and discussed the possibility of the organization doing an amicus brief in a particular Colorado case. Other important topics concerned crypto currency's lending impact, private student loans, the reemergence of peer-to-peer lending, subprime auto lending, mortgage servicing, and high interest small installment lending. States again shared updates regarding their various experiences working together in large multistate groups as well as with the federal Consumer Financial Protection Bureau. And, as always, discussion on legislative changes to each state's statute was held.

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. In comparing 2017 with 2018, 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. Currently, credit is widely available to almost all Iowa consumers. However, the quality of the credit that may be available to some is suspect. Thanks to the proliferation of direct deposit services (also known as payday loans) and hard-to-police internet loans, 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 and fairly low interest rate, home mortgages, also appear easily obtainable to consumers with decent credit scores. Additionally, student loan debt continues to rise, and is of a real concern in the future as the debt becomes due and is particularly difficult to discharge in bankruptcy. 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 2018 the Iowa legislature did not pass any substantive changes to the Consumer Credit Code Chapter 537. However, House File 2348 amended the ICCC with several non-substantive code corrections. The non-substantive changes included a punctuation change, replacing "open end" with "open-end" in several places throughout the Code.

While no substantive legislation changes were made to the ICCC in 2018, Attorney General

Miller proposed legislation to eliminate credit freeze fees to access credit reports. Senate File 2177 unanimously passed both chambers of the Iowa legislature and was signed into law by Governor Reynolds in April 2018. Prior to the law, Iowans paid some of the highest freeze-related fees in the nation. The law makes several changes to Iowa's existing Consumer Credit Security statute, Iowa Code chapter 714G. The law prohibits credit reporting agencies from charging a fee related to a credit fee. Now, Iowa consumers may place, remove, temporarily suspend or reinstate security fees without incurring a fee. The law also reduces the deadline for placing and removing a freeze from 5 days to 3 days.