

2019 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 Assistant Attorney General Amy Licht spends 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 3,225 written consumer complaints during the 2019 calendar year. Of those complaints, at least 924 were filed directly pursuant to the ICCC. Complaints whose main focus was credit, not just those specifically filed pursuant to the ICCC, concerned about 28% 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)	565
10. Lending (non-mortgage)	134
14. Debt (including collections)	112
14. Home Mortgage	112

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 twenty during 2019. 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 compliant handling, the office continued to work on larger investigations and settlements. Last year the CPD secured multiple high-profile settlements from predatory for-profit schools and from companies that negligently exposed sensitive consumer information.

In January 2019 Attorney General Miller successfully negotiated a settlement against Career Education Corp (CEC), a for-profit education company that ran several schools including American InterContinental University and Colorado Technical University. A five-year investigation revealed that CEC took advantage of students in numerous ways including pressuring prospective students, failing to fully disclose the total costs of enrollment, misrepresenting the transferability of credits, distorting statistics to give an inaccurate representation of employment outcomes, and then compromising graduates’ employment prospects by not disclosing programs lacked necessary accreditation for certain fields. To remedy this, in total CEC will grant \$493.7 million in debt relief and agreed to reform recruiting practices, increase transparency and give students risk free trials. From the settlement Attorney General Miller secured \$1,424,662 in debt relief and \$264,285.71 in compensation for the 715 students affected in Iowa. CEC will also forgo any and all efforts to collect amounts from defrauded students.

That same month, AG Miller joined with 43 other attorneys general to reach a settlement with the Neiman Marcus Group LLC for a 2013 data breach that exposed information from over 370,000 payment cards. In addition to paying \$1.5 million to affected consumers, Neiman Marcus is required to implement several policies aimed to prevent future breaches including

better monitoring practices and new information security technology. In Iowa, the owners of 268 affected cards received \$20,823.89 in compensation from the settlement.

In June, Attorney General Tom Miller secured another victory for Iowa students who were defrauded by the now defunct for-profit school ITT Tech. The settlement is with Student CU Connect CUSO, LLC, a credit union that worked with ITT Tech to finance tuition for students. CUSO provided temporary credit due to be paid back before the next academic year. Both entities knew most students would be unable to repay so they pressured students into accepting high interest CUSO loans. Under the settlement CUSO has agreed to provide \$1,358,754.40 in debt relief to 143 former ITT Tech students in Iowa and will notify credit reporting agencies to correct credit information for affected borrowers, and will cease all business operations.

In July, the Iowa Attorneys General Office announced a proposed settlement for the largest data breach enforcement action in history. In 2017 Equifax's failure to maintain reasonable security systems resulted in a breach that exposed the personal information of over half of American adults. Equifax is required to set up a Consumer Restitution Fund of up to \$425 million, a \$175 million payment to the states, and offer free extended credit-monitoring services for ten years. Iowa's share of the state settlement is \$1,347,721, which will go into the Consumer Education and Litigation Fund. For all consumers Equifax will make it easier for consumers to freeze their credit, dispute inaccurate information, and better assist those who might be victims of identity theft. Equifax will also take strengthen its security practices going forward.

In the same month, a settlement was reached with Premera Blue Cross over its failure to secure the health and personal information of more than 10.4 million consumers. The largest health insurance company in the Pacific Northwest is required to pay \$10 million total to the states, including \$54,133.90 to Iowa. After failing to implement security measures and allowing sensitive consumer data vulnerable to hackers for over a year the company is required to implement rigorous new programs to adequately protect health information.

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 104 complaints in 2019 compared with 106 in 2018. 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 2019, the CPD received 112 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. On April 10th Attorney General Tom Miller and Iowa Insurance Commissioner Doug Ommen joined AARP Iowa for a livestream town hall which reached over 5,500 Iowans across the state. AG Miller was joined by the Administrator Jessica Whitney and the event focused on protecting consumers' savings from scammers and fraudulent investment schemes.

Throughout the year CPD staff members joined the Iowa Insurance Division as part of Fraud Fighters, a traveling fraud awareness program attended by 1,110 Iowans in 2019. Fraud Fighters gave six presentations regarding all types of fraud, including consumer credit, in Ames, Burlington, Linn, Cedar Rapids, Altoona, Moravia, and Dubuque.

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 2019, 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 2019 topics addressed in these bulletins included private student loans, income sharing agreements, and dealing with home contractors including financing tips. The bulletins are sent statewide to thousands of groups and communities and are free to print 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 2019, there were no new judicial cases regarding the ICCC.

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 86 credit unions, examines each credit union every twelve to fourteen months. The Credit Union Division received four ICCC-related complaint in 2019. The Banking Division oversees licensing for 255 state-chartered banks and 838 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 2019 the Banking Division received 1 complaint relating to the ICCC, compared to no complaints received in 2018. 3-5 years. In 2019, the Banking Division received 1 complaint relating to the ICCC, compared to no complaints received in 2018.

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 2019 ACUCCCS meeting was held in Charleston, South Carolina. All credit code states, except Oklahoma, attended the meeting. The Iowa Administrator served as 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, the CFPB's interest in FinTech, 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. Also, discussed were point-of-sale internet lending companies such as Affirm. Concerns were raised that these

companies were not complying with state law. 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 cryptocurrency'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 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. 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. Generally this type of debt cannot be discharged in bankruptcy but recent court rulings indicate that judges are relaxing the standard. One of these cases is on appeal so a definitive answer is unlikely to come anytime soon. 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

In the 2019 session, the legislature made changes to the ICCC by passing two bills that were signed into law by the governor.

House File 260 increases the loan amount the Iowa Superintendent of Banking (Superintendent) may set. Prior law allowed the Superintendent of Banking to establish the maximum rate of interest or charges for regulated loans with unpaid principal balances of \$10,000 or less. House File 260 increases this amount to \$30,000. For loans in excess of \$30,000, the maximum interest rate or charges permissible remains the greater of the rate permitted in Iowa Code chapter 535 or chapter 537. The bill also allows creditors to collect a nonrefundable service charge not to exceed the lesser of 10% or \$30.00 on an interest bearing account.

House File 263 bars state banks and credit unions from including application fees in the “finance charge” assessed only to those approved for the loan. This differs from the federal law where the Truth-In-Lending Act allows an application fee to be excluded from the finance charge only if it is assessed to all applicants.