

2020 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 4,011 written consumer complaints during the 2020 calendar year, a 24.4% increase over 2019. COVID-19 and the August 10 derecho that hit Iowa played a big role in the increase. Of those complaints, at least 725 were filed directly pursuant to the ICCC. Complaints whose main focus was credit, not just those specifically filed pursuant to the ICCC, concerned about 18% 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)	514
14. Lending (non-mortgage)	108
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 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 2020. 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, companies that negligently exposed sensitive consumer information, and a target mortgage servicer.

In May, Attorney General Tom Miller and 33 other attorneys general announced a settlement with Santander Consumer USA Inc. that includes approximately \$550 million in relief for consumers. The settlement resolved allegations that Santander violated consumer protection laws by exposing subprime consumers to unnecessarily high levels of risk and knowingly placing these consumers into auto loans with a high probability of default. In Iowa, 2,155 consumers are eligible to receive restitution of \$484,534, or approximately \$225 each, depending on how many consumers respond to the claims process. In addition, Iowa’s Consumer Education and Litigation Fund will receive \$30,000. The settlement also includes significant consumer relief by way of loan forgiveness. In Iowa, Santander will waive the remaining balance on the 211 defaulted loans totaling \$2.46 million.

In September, Attorney General Miller secured an agreement to obtain \$1.3 million in debt relief for former ITT Tech students in Iowa as part of a settlement involving 48 attorneys general and the federal Consumer Financial Protection Bureau. Nationally, the settlement will result in debt relief of about \$330 million for 35,000 borrowers who have outstanding principal balances. The Iowa Attorney General's Office led the states’ negotiations in the settlement. The settlement is with PEAKS Trust, a private loan program run by the for-profit school and

affiliated with Deutsche Bank entities. PEAKS was formed after the 2008 financial crisis when private sources of lending available to for-profit colleges dried up. ITT developed a plan with PEAKS to offer students temporary credit to cover the gap in tuition between federal student aid and the full cost of the education.

September also marked the announcement that Attorney General Miller has joined 43 other AGs in a \$39.5 million settlement with Anthem stemming from the massive 2014 data breach that involved the personal information of 78.8 million Americans. Iowa will receive \$199,694 from the settlement. In addition to the payment, Anthem also agreed to a series of data security and good governance provisions designed to strengthen its practices going forward.

In October, Attorney General Miller joined 27 other attorneys general to obtain a \$5 million judgment against Tennessee-based CHS/Community Health Systems, Inc., and its subsidiary, CHSPSC LLC. This judgment resolved an investigation of a data breach that affected approximately 6.1 million patients, including 7,002 Iowans. Those exposed in the 2014 data breach were the names, birthdates, Social Security numbers, phone numbers, and addresses of patients. The judgment requires a \$5 million payment to the states, including \$38,895 to Iowa.

In November, Attorney General Miller and 46 other attorneys general have obtained a \$17.5 million settlement against the Home Depot, resolving a multistate investigation of a 2014 data breach that exposed the payment card information of approximately 40 million consumers nationwide. The state of Iowa will collect \$152,756. The breach occurred when hackers obtained the payment card information of customers who used self-checkout lanes at The Home Depot stores throughout the U.S. between April 10 and Sept. 13, 2014. In addition to the \$17.5 million total payment to the states, the Home Depot agreed to implement and maintain a series of data security practices designed to strengthen its information security program and safeguard the personal information of consumers.

In December, Attorney General Miller joined with 50 other attorneys general and other federal and state agencies to reach an \$86.3 million settlement with Nationstar Mortgage, who violated consumer protection laws during its servicing of mortgage loans. The settlement provided restitution for a variety of harms that were identified in the investigation. The judgment provided approximately \$79.2 million in relief affecting 55,814 loans nationally. It covered conduct by Nationstar occurring from Jan. 1, 2011, until Dec. 31, 2017. In Iowa, the settlement affected 312 loans for a total of \$220,817. Miller's office helped lead the investigation, and the state will separately receive \$455,450 from the settlement.

Finally, in December, Attorney General Miller and 26 other attorneys general entered into a settlement with Sabre Corp. that resolved an investigation into the 2017 data breach of its hotel booking system. The breach exposed the data of approximately 1.3 million credit cards. The settlement resulted in injunctive relief and a payment of \$2.4 million, of which the state of Iowa will receive \$47,797. Sabre Hospitality Solutions, a business segment of Sabre, operates the SynXis Central Reservation system, which facilitates the booking of hotel reservations.

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 103 complaints in 2019 compared with 104 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 2020, the CPD received 80 such complaints. The CPD continues to look at and investigate the servicing of mortgage loans. As noted below, in 2020 the office entered into a settlement agreement with one of the nation’s largest mortgage servicer. 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 and as noted below, drafted legislation on the topic. 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. The pandemic made reaching consumers a challenge this year as many of our normal forums did not occur, and many of the people we want to most reach, the elderly and financially insecure, still do not have reliable high-speed internet. However, we continued our education throughout the year, attempting to reach as many people as possible.

Prior to the pandemic, CPD staff members made several presentations to large groups concerning state and federal consumer credit laws. On February 2nd, AAGs Andrew Cederdahl and Chantelle Smith presented on elder fraud at the People’s Law School in Des Moines. They reprised that training on March 1st, for the Annual Iowa Fire School Training. Investigator Al Perales joined AARP for large group meetings about general consumer fraud March 10-12 in Winterset, Indianola, Pella, and Newton. Attorney General Tom Miller, Administrator Jessica Whitney, and Investigator Perales joined AARP once again on April 30th for a teletown hall meeting on pandemic fraud that reached over 5,000 Iowans across. Investigator Perales participated in a webinar hosted by the Coraville Corridor Business Journal to discuss consumer fraud. On May 21, Investigator Perales again partnered with AARP on a webinar to further discuss COVID-19 scams. Investigator Perales joined the Iowa Insurance Division on July 22 for a fraud fighters webinar on online scams. Occurring on that same day, Administrator Whitney participated in a webinar on Income Share Agreements and student loans hosted by the Student Borrower Protection Center. Investigator Perales did a zoom consumer fraud presentation for Vintage Park Cooperative residents on September 16. AAG Cederdahl once again spoke on elder fraud at the remote Equal Justice Works National Leadership Development Training Conference. And the year ended on December 1st with AG Miller, Administrator Whitney, and Investigator Perales once again participating in an AARP teletown hall that reached over 5,000 Iowans to talk all things holiday fraud related, including buying on credit.

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. These meetings did not occur after that start of the pandemic around March 16, 2020. 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. Unfortunately, due to the pandemic, the fair was

cancelled and CPD was unable to have its usual booth but will be back in 2021.

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 2020, 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 2020 topics mainly addressed the pandemic and derecho natural disaster. In April 2020 we addressed the available student loans assistance during the pandemic. In June, we discussed mortgage payment assistance. Finally, in October, we focused on how to manage the affairs of deceased loved ones including protecting their identity. 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 (or meet via Zoom during the pandemic) 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 2020, 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 82 credit unions,

examines each credit union every twelve to fourteen months. The Credit Union Division received five ICCC-related complaint in 2020. The Banking Division oversees licensing for 251 state-chartered banks and 889 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 2020 the Banking Division received 2 complaints relating to the ICCC, compared to one complaint received in 2019.

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.

Due to the pandemic, the 2020 ACUCCCS meeting was held virtually in October. All credit code states attended the meeting. Indeed, each credit code state was able to have a number of people participate due to the virtual nature of the meeting, making for robust attendance and participation. 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 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 listserv and a biannual call. The listserv 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 2020. 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. Even in the midst of a pandemic, credit continues to be available to almost many 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 (see the Santander settlement above).

CPD also worked with creditors to provide assistance to borrowers during the pandemic., For example, reaching out student loan servicers about working with borrowers on the options available to them. We also worked with the Governor's Office on proclamations putting some limits on debt collection during the beginning of pandemic when much of the world, including the court system, was shut down.

There is also some concern that the pandemic with a large impact on mortgage foreclosures. Thus far, thanks to federal assistance and law, a large wave of foreclosures has been avoided. Indeed, low mortgage rates during the pandemic triggered a wave of refinancing and an uptick in home buying. However, our office remains concerned about the number of foreclosures after the federal help and moratoriums end.

7. Changes to the ICCC

Finally, the Office of the Attorney General reviews the ICCC to suggest to the legislature amendments and improvements. In 2020 the Iowa legislature did not pass any substantive changes to the Consumer Credit Code Chapter 537.

However, House File 321 amended Iowa Code chapter 533A to clearly require Student

Loan Debt Relief Companies (SLDRs) to obtain a debt management license from the Iowa Division of Banking, and subject SLDRs to the requirements of that chapter. Other significant features of HF 321:

- Consumers have three days to cancel their SLDR contract and SLDRs are required to provide notice of the right to cancel.
- SLDRs are barred from charging money until they have provided the promised services.
- SLDR cannot prohibit or impede a borrower from directly contacting his or her loan servicer.
- SLDR cannot access or obtain a borrower's Federal Student Aid ID.
- Restricts use of commissions or referrals as basis for employee compensation.
- Restricts sale of borrower names to other companies.
- Makes any violation of the SLDR requirements a violation of the Iowa Consumer Fraud Act.