# 2021 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 3,536 written consumer complaints during the 2021 calendar year, a 12.6 decrease% from 2020, when complaints rose significantly, but a 9.6% increase over the 3,225 complaints received in 2019. Of those complaints, at least 820 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:

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| 1. | Auto (includes financing) | 516 |
| 14. | Debt (including collections) | 105 |
| 15. | Lending (non mortgage) | 93 |

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. Last year the CPD secured high-profile settlements from a credit card company and a company that negligently exposed sensitive consumer information.

In February, Attorney General Tom Miller and four other attorneys general announced a $4.2 million settlement with Citibank to resolve allegations that the company overcharged credit card interest for about 25,000 customers in Iowa and four other states. Citi refunded 1,407 Iowa consumers a total of $216,325, with an average refund of $153.75. The investigation arose from Citi's failure to properly re-evaluate and reduce the annual percentage rate (APR) consistent with the federal Credit Card Accountability Responsibility of Disclosure Act of 2009 (CARD Act).

In March, Attorney General Miller, along with a coalition of 41 attorneys general, resolved allegations related to data privacy against Retrieval-Masters Creditors Bureau, d/b/a American Medical Collection Agency (AMCA), a debt collection agency. The attorneys general found that AMCA exposed personal information of over 7 million people, including 9,892 Iowans, and potentially exposed personal information of up to 21 million people throughout the United States. An unauthorized user gained access to AMCA's internal system in 2018, but the company failed to detect the intrusion despite warnings from banks that processed its payments. The unauthorized user gained access to personal information including Social Security numbers, payment card information and, in some instances, names of medical tests and diagnostic codes. AMCA provided notice to states on June 3, 2019, but eventually filed for bankruptcy. The settlement announced in March was approved by the bankruptcy court. Under the settlement, AMCA is responsible for a $21 million payment, which was suspended due to its financial condition, as well as implementing and maintaining data security practices.

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 105 complaints in 2021 compared with 103 in 2020. 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 2021, the CPD received 63 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. The pandemic continued to make 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.

Once again CPD staff members made a number of presentations to large groups concerning state and federal consumer credit laws. In April, Investigator Al Perales conducted four presentations on consumer scams for American State Bank in Le Mars, Remsen, Hospers and Sioux Center, Iowa. On May 11-12, Assistant Attorneys General Chantelle Smith and Dan Garcia, as well as Investigator Perales, provided trainings on scams and elder fraud at retirement communities The Shores at Pleasant Hill in Pleasant Hill and Graceview Courtyard in Council Bluffs (AAG Smith joined only the first presentation). On May 27 Administrator Whitney conducted a virtual training on Covid-19 scams for the Attorney General Alliance with over 100 attendees. On September 13 and 15 Investigator Perales held presentations on scams at the Griswold Public Library in Griswold, Heritage House in Atlantic, and in Jefferson at the Home State Bank ReFire Event at Wild Rose Casino, which was attended by over 300 people. On October 27 Administrator Whitney and Investigator Kathi Gosnell presented on the topic of Financial Aid and Student Loans at the Iowa Association of Student Financial Aid Administrators' annual gathering. Finally, on November 17-18, Investigator Perales did presentations on scams at the Cedar Falls Rotary in Cedar Falls and the Grand River Community Center in Grand River.

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 Fair resumed in 2021 after its cancellation in 2020 and the Attorney General Booth was open for all attendees.

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 2021, 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. "Consumer Focus," bulletins provide tips and information to consumers on relevant consumer issues. In June, the Consumer Focus discussed how to opt-out of some data tracking features on smartphones or devices. The August issue shared an Attorney General report regarding student loan borrowing based on the AG's survey of Iowa student loan lenders, including 7,803 fixed interest rate loans from 10 lenders. The report concluded that just because consumers have good credit scores does not ensure they will be offered the lowest interest rate available and encouraged borrowers to "shop around" for rates and other conditions. In November the Consumer Focus provided five tips to keep in mind during holiday shopping. Finally, the December issue discussed fraudsters' use of "welfare checks" to gather personal information from potential scam victims. 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 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 2021, there was one Iowa District Court case which interpreted the ICCC.

In *Tuggle v. Wells Fargo, N.A.*, No. 4:20-CV-321, 2021 WL 6804071, at *1 (S.D. Iowa Sept. 1, 2021), the plaintiff alleged violations of the ICCC. Plaintiff, a Mississippi resident, purchased a home in Mississippi in 2007 with a mortgage loan through Wells Fargo. *Id.* Plaintiff's mortgage was insured by the Federal Housing Administration ("FHA"), and required payment of a monthly mortgage insurance premium ("MIP") to Wells Fargo. *Id.* In 2013, plaintiff refinanced his mortgage with Wells Fargo, and he was still required to pay a monthly MIP payment. *Id.* Plaintiff claimed he stopped owing monthly MIP payments in January 2015, but that defendant continued to collect the payments until July 2018 and did not inform him of overpayments until July 2020. *Id.* Plaintiff alleged seven causes of action, including violations of the ICCC. *Id.* The defendant moved to dismiss the complaint. *Id.* The defendant's motion to dismiss was granted in part and denied in part. *Id.*

Regarding the ICCC violations, the defendant claimed that no consumer credit transaction occurred, specifically arguing that "consumer credit transactions exclude first liens on real property and debts exceeding $53,000." *Id.* at *6. The court first asked whether the MIP payments constituted a debt under the ICCC. *Id.* The ICCC defines debt as "actual or alleged obligation arising out of a consumer credit transaction . . . ." ICCC § 537.7102(3). A "consumer credit transaction" is defined as "a consumer credit sale or consumer loan . . . ." *Id.* at § 537.1301(12). There is a threshold amount that cannot be exceeded by the amount financed in a consumer loan. *Id.* at § 537.1301(15)(a)(5). The threshold amount is "determined by 12 C.F.R. § 1026.3(b), in effect during the period the consumer credit transaction was entered into." *Id.* at §537.1301(47). It further states that a "consumer loan" does not include "[a] debt which is secured by a first lien on real property." *Id.* at § 537.1301(15)(b)(2). The court did not address defendant's claim that the first lien on real property exclusion applies because they found it to be outside the scope of the pleadings. *Id.* at *7.

Although the plaintiff was only disputing the MIP payments, the court said the statute specifically referred to "amount financed" to determine the threshold amount. *Id.* In this case, the principal sum owed was $188,730.00, well over the 2013 threshold amount of $53,000. *Id.* The court found that the transaction did not qualify as a consumer loan because the amount financed by the plaintiff exceeded the threshold amount. *Id.* This also meant the transaction did not qualify as a consumer credit transaction. *Id.* The court held that since the MIP payments did not arise out of a consumer credit transaction, the obligation to make the payments did not meet the definition of a "debt" under the ICCC. *Id.* As a result, the court concluded the complaint failed to state a plausible claim for relief with respect to the ICCC violations. *Id.* at *8.

### 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 80 credit unions, examines each credit union every twelve to fourteen months. The Credit Union Division received 2 ICCC-related complaints in 2021. The Banking Division oversees licensing for 242 state-chartered banks and 979 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 2021 the Banking Division received 0 complaints relating to the ICCC, compared to two complaints received in 2020.

## 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 2021 ACUCCCS meeting was held virtually in November. 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. Buy Now, Pay Later arrangements continue to be a topic of discussion. There was discussion on some new and emerging financial products, including Income Share Agreements, which are primarily available to pay for post-secondary educational services, and Wage Advance services. States discussed the history and impact of Iowa's 1980 decision to opt out of the Depository Institutions Deregulation and Monetary Control Act (DIDMCA). One state shared a case study involving a bank and bank partner arrangements to avoid usury caps in a CCC state. ACUCCCS members also discussed practicalities of regulation, such as issuance of annual reports, fees and fee changes, creation of manuals for licensee examination, and examiner training. There was also discussion of challenges that have arisen in the pandemic, such as how to handle examination of licensees working remotely. Other important topics concerned rent-to-own arrangements, increase in mortgage loan originator applications and efforts to evade consumer credit code regulation. 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, although it has yet to be update with information for 2021. 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 an ongoing 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. 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 and low interest rates, 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. 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.

There is also some concern that the pandemic will have 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 the 2021 legislative session, there were two substantive amendments to the ICCC:

In House File 699 the legislature amended the definition of "consumer credit transaction" by adding the following sentence: "'Consumer credit transaction' does not include goods, services, or any other benefits provided by or on behalf of the state or a state agency."

House File 235 removed the words, "an interest-bearing" before the words "consumer credit transaction" in Sections 537.2501(1)(l) and 537.2510(3)(a). As a result, those sections now read as follows:

- "For ~~an interest-bearing~~ *a* consumer credit transaction, a service charge in an amount not to exceed the lesser of ten percent of the amount financed or thirty dollars." Iowa Code § 537.2501(1)(l)

- "If the prepayment is in full, the creditor may collect or retain a minimum charge not exceeding five dollars in a transaction which had an amount financed of seventy-five dollars or less, or not exceeding seven dollars and fifty cents in a transaction which had an amount financed of more than seventy-five dollars, if the minimum charge was contracted for, and the finance charge earned at the time of prepayment is less than the minimum charge contracted for. If, however, a creditor has collected a service charge in association with ~~an interest-bearing~~ *a* consumer credit transaction pursuant to section 537.2501, subsection 1, paragraph "l", the creditor shall not collect or retain a minimum charge upon prepayment pursuant to this subsection." Iowa Code § 537.2510(3)(a).

These changes permit lenders to collect a non-refundable “service charge” on precomputed consumer credit transactions. Lenders were already authorized to collect such a charge on “interest-bearing” loans due to an earlier amendment, which did not apply to precomputed loans.