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ATTORNEY GENERAL

CONSUMER PROTECTION DIVISION



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Department of Justice

August 5, 2011

W. Charles Smithson
Chief Clerk of the Iowa
House of Representatives
Iowa House of Representatives
Iowa State Capitol

VIA Local Mail and e-mail

RE: Annual Iowa Consumer Credit Code Report

Dear Mr. Smithson:

Attached please find the 2010 Annual Report of the Administrator of the Iowa Consumer Credit Code. This Report has been generated pursuant to the duties of the Administrator under Iowa Code section 537.6104(5).

Section 537.6104(5) further requires this Report to be communicated to the general assembly. This correspondence, along with a simultaneous correspondence to the Secretary of the Iowa Senate, constitutes that communication.

Members of the Iowa House of Representatives may contact us at any time with any questions or comments they may have regarding this Report or about any facet of the administration of the Iowa Consumer Credit Code.

Sincerely,

A handwritten signature in black ink that reads "William L. Brauch".

William L. Brauch
Special Assistant Attorney General
Administrator-Iowa Consumer Credit Code
Director-Consumer Protection Division

A handwritten signature in black ink that reads "Jessica Whitney".

Jessica Whitney
Assistant Attorney General
Deputy Administrator-Iowa Consumer Credit Code

2010 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 Bill Brauch, Director of the CPD, and the current Deputy Administrator is Assistant Attorney General Jessica Whitney.

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 and other states with versions of the Uniform Consumer Credit Code.

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).

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 when needed.

The processing, assignment, and handling of ICCC complaints is a part of the daily activity of the Division. The CPD received a total of 4,054 written consumer complaints during the 2010 calendar year, at least 1,060 of which were filed directly pursuant to the ICCC. Though complaints whose main focus was credit concerned about 25% of the total received by the CPD, hundreds of other complaints also involved credit, such as home improvements and auto issues.

Complaints concerning credit ranked highly in the top categories of consumer complaints and should 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. Home Mortgages	591
2. Debt Collection	403
13. Motor Vehicle Credit	66

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 concerning debt collection practices continue to appear close to the top of the list, coming in second place this year after a string of years ranking first. 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 respondent 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. The CPD has also been involved in potential multi-state actions against debt collectors. Two of those cases are expected to settle in 2011. These multi-state actions provide an excellent opportunity to investigate companies, stop any prohibited practice, and obtain appropriate redress thanks to their increased resources and jurisdictional reach.

Additionally, the CPD receives a number of complaints based upon problems arising from automobile financing. The growth of automobile dealers that self-finance, known as "Buy Here, Pay Here," has caused an increase in the number of auto finance complaints and ICCC violations. Many of these complaints have led to larger investigations of dealers. The investigations have revealed the underreporting of finance charges, illegal late fees, and failure to issue notices of rights to cure, among other violations. The resolution of these investigations is usually a refund of all illegal charges, new proper paperwork and procedures, a civil penalty, and the signing of an Assurance of Discontinuance pursuant to Iowa Code section 537.6109

In addition to the formal written complaints the CPD receives, the day-to-day work of the attorneys working on ICCC problems often involves interacting with the borrowing public, credit industry, attorneys, and 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 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. The CPD has recently placed all informal ICCC advisory opinions on the Attorney General's website.

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 recent financial crisis has only served to underscore the need for greater financial education.

During the past year presentations were made to a number of large groups concerning credit and the Iowa Consumer Credit Code. In February at the Iowa Credit Union League's annual meeting the Deputy Administrator gave a talk and took questions on ICCC hot topics for credit unions. In July, the Deputy Administrator addressed the Iowa Jumpstart Coalition's annual training for Iowa educators on the new CARD Act and teaching students about the dangers and proper uses of credit cards. In October, the Deputy Administrator gave a continuing legal education presentation to government attorneys on the consumer credit and mortgage provisions of the Dodd-Frank Act.

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.

In monthly publications entitled "Consumer Advisories" the CPD reaches tens of thousands of Iowans. The "Consumer Advisories," are bulletins that provide tips and information to consumers on relevant consumer issues. During 2010 a number of these focused on consumer-credit issues including wire fraud, credit card offers, "free trial offers," new protection for credit card holders, and foreclosure rescue scams. These advisories 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 affected individuals. It is not uncommon for businessmen 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 all these public contacts shows that there is still a great deal of confusion about the law, and that even a stronger educational campaign may be needed.

3. Developments in Iowa Consumer Credit Law

In June 2010, the Attorney General argued a case involving the ICCC and credit card debt collection before the Iowa Court of Appeals. The action, *Capital One Bank (USA), N.A., v. Denboer*, 791 N.W.2d 264 (Iowa Ct. App. 2010), considered accounting requirements upon a creditor seeking to recover debt against a defendant in small claims court. The two consumer defendants in the action never appeared in court and a default judgment was issued. The Court of Appeals requested that the Attorney General in his roles as Administrator of the ICCC weigh in on the case. The Attorney General appeared as amicus curiae, filing a brief which the court found "very helpful" and appeared at oral argument. See *Denboer*, 791 N.W.2d at 276.

The case concerned the ICCC's requirement that certain information be provided to the court in order to prove the amount of the credit card debt claimed in cases where the consumer defendant fails to appear and defend the action. Iowa Code section 536.5114 states that in cases of default judgment

the creditor must provide “an indication of how the amount (owed) was determined.” Two lower courts had ruled that the language in section 537.5114 meant that creditors seeking to recover credit card debt in default judgments must provide a full transaction history starting with a zero balance. In the cases at issue, Capitol One had provided some of the debtors’ account statements, including the final “charge-off” statement, but its claim was dismissed in small claims court based on a reading of the ICCC that required a full transaction history to validate the debtor's balance.

The Court of Appeals reversed, finding that creditors seeking to collect credit card debt in default judgments may satisfy the ICCC's documentation requirements in two ways. First, a creditor may make a prima facie case under the common-law doctrine of “account stated” if the elements of account stated can be shown (specifically, if the debtor can be shown to have assented to the most recent billing statements), the creditor has established a valid account balance. *Denboer*, 791 N.W.2d at 282. To meet the requirements of an account stated cause of action the creditor must provide: (1) a charge-off statement that includes the consumer’s address; and (2) a sworn statement from a person with knowledge that regular monthly account statements were sent to the consumer at an address provided by the consumer and that the charge-off statement is the sum total of those statements, that the consumer used the credit card, and that the consumer never objected to the monthly statements. *Id.* Alternatively, a creditor may recover by providing an itemization of the debt it is seeking to recover (essentially the holding of the lower courts, but allowing for creditors to recover some debt in cases where they cannot provide the entire transaction history starting with a zero balance). *Id.* The creditor seeking to itemize the debt must file an account agreement and a transaction history ending at the charge-off statement along with a sworn statement from a person with knowledge authenticating both items. *Id.* In cases where itemization is provided, a creditor is limited to recovering only the increase in debt shown on the transaction history plus ongoing interest. *Id.*

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 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.

Each agency examines its licensees for ICCC compliance during the agency's regular, periodic examinations. The Credit Union Division, overseeing the state's 134 credit unions, examines each credit union every two years. The Credit Union Division received three ICCC-related complaints in 2010. The Banking Division, which oversees licensing for loan companies, delayed deposit locations, and mortgage companies, received 98 written complaints in 2010, with 11 of them relating to the ICCC. Four complaints involved advertising, four involved payment posting, two involved delinquency charges, and one complaint involved releasing security. The Banking Division has also noted concern with difficulties in regulating Internet payday lending.

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 2010 ACUCCCS was held in Chicago in an attempt to keep costs down by providing a central location. Iowa and a number of other states drove to the meeting. Much of the discussion centered around the Dodd-Frank Act and the creation of the Consumer Financial Protection Bureau. In addition, a large amount of time was spent on the current financial crisis, potential regulatory fixes to the crisis, and the proliferation of short-term, high interest credit offers such as payday loans.

The ACUCCCS states also keep in regular contact via an email listserve. The listserve provides 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. However, we have been unable to compile information regarding the availability of credit to Iowa consumers.

The Iowa CPD currently lacks the resources to undergo proper, comprehensive study of the current availability of credit to Iowa consumers. From its contacts with consumers, businesses, and the industry, as well as other state agencies, the CPD is 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 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 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. Additionally, home loans have been harder to obtain for people with lower credit scores due to the ongoing financial crisis and new federal regulation. The tightening of home lending standards brought about by increased regulation may benefit consumers by better assuring they only obtain home loans that they may reasonably be expected to repay.

7. Proposed Changes to the ICCC

Finally, the Office of the Attorney General reviews the ICCC to suggest to the legislature amendments and improvements. In 2010, the Attorney General proposed raising the jurisdictional limit of the Code to \$50,000, the same jurisdictional limit now applicable under the federal Truth in Lending Act. Currently, only consumer transactions under \$25,000 receive the substantial protections of the ICCC. However, that \$25,000 limit was set in 1974; in today's dollars, that 1974 limit is actually valued at over \$100,000. In fact, the average price of a new car—one of the classic models of a consumer credit transaction—is over \$25,000. The result is that many transactions are now excluded from the protections of the ICCC. Excluding a wide swath of consumer transactions which were originally contemplated to fall within the ICCC's jurisdiction leaves Iowa consumers deprived of the rights the ICCC sought to grant. The Attorney General's modest proposal of increasing the jurisdictional limit failed to make it out of subcommittee on either side of the Iowa legislature.

The interpretation and enforcement of the Iowa Consumer Credit Code is an important area where the activities of the Attorney General's office affect every Iowan. As the office deals with broad

authorities in the areas of interest rates, lending practices, and debt collection, it is clear that the ICCC is one of the more comprehensive and complicated of the state's laws. And as the financial crisis continues, ICCC protection and enforcement are more important than ever.