

2016 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, and currently two Assistant Attorney Generals, Amy Licht and Max Miller, spend time on ICCC cases and issues.

The Administrator's responsibilities under the ICCC include resolving complaints, investigating serious complaints, formulating and carrying out litigation, drafting legal opinions, conducting consumer credit educational activities and programs, and monitoring the status of consumer credit in the state. The Administrator coordinates with other Iowa agencies, other states with versions of the Uniform Consumer Credit Code, and federal agencies with oversight of the consumer credit industry.

Iowa Code section 537.6104(5) directs the Administrator to report annually on the ICCC and the state agencies charged with administering the ICCC, as well as the general availability of credit. This report is broken down into sections that correspond with the reporting requirements of Iowa Code section 537.6104(5).

The contents of this report are compiled from the previous year's report, with relevant information updated to reflect recent changes.

1. Consumer Complaints

Iowa Code section 537.6104 allows the Administrator of the ICCC to handle consumer complaints and encourage voluntary compliance with Code requirements. The Administrator engages in a conscious effort to combine those two responsibilities. When handling consumer complaints, the Administrator generally seeks voluntary compliance first and takes legal action second or as needed.

The processing, assignment, and handling of ICCC complaints are a part of the daily activity of the CPD. The CPD received approximately 2,800 written consumer complaints during the 2016 calendar year, at least 540 of which were filed directly pursuant to the ICCC. Though complaints whose main focus was credit concerned about 19% of the total received by the CPD, hundreds of other complaints also involved credit although not classified as such, like complaints about home improvements, new car buying, and increasingly 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. Used Auto Sales Practices (includes credit) 207

3. Home Mortgages	149
7. Debt Collection	92
16. Motor Vehicle Credit/Collection	35
19. Credit Cards	30
20. Student Loans	27

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 used car sales practices, including the extension of credit, topped the list of complaints this year, and motor vehicle credit/collection complaints also appeared in the top twenty. Used car financing was an area the office focused on this year. A great deal of 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 2016 the office entered into three Assurances of Discontinuance with “Buy Here, Pay Here,” dealers. The three cases all arose from the investigation of complaints.

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 practices held steady at number seven. 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. The CPD continues to be involved in multistate investigations involving mortgage servicing. 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. In 2016, the office published an informal advisory opinion concerning deferred payment fees in interest bearing transactions. As always, the office responded to numerous phone and email requests concerning 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. Throughout the year CPD staff members and Attorney General Miller himself joined the Iowa Insurance Division as part of Fraud Fighters, a traveling fraud awareness program. Fraud Fighters traveled the state and gave five presentations regarding all types of fraud, including consumer credit. Our office also joined Representative David Young's Fraud Forums to raise awareness of current consumer frauds. Consumer credit was a hot topic at the Fraud Forums. In May, Administrator Jessica Whitney gave a presentation on student loans at the National Association of Attorneys General Consumer Fraud Spring Meeting. Administrator Whitney also spoke at the annual meeting of the Iowa Association of Legal Assistants and Paralegals. Her focus was on consumer fraud in general, but she spent a portion of her talk devoted to the Consumer Credit Code. In October, Administrator Jessica Whitney discussed debt collection law at the Iowa Credit Union League's Collections and Bankruptcy Seminar. Administrator Whitney was the quarterly guest speaker of the International Association of Special Investigation Units. She discussed fraud generally, but focused on credit and investment issues. Finally, in December, Investigator Al Perales presented at the AARP's fraud forum in Des Moines, where he talked about the latest in consumer scams with an

emphasis on credit issues.

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 2016, 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 2016 topics addressed in these bulletins included credit cards, tax refund loans, credit reports, identity theft, and online buying/payment methods. The bulletins are sent statewide to over 3,000 groups and communities and are free to reprint and redistribute. They are also available on the Attorney General’s website.

In addition, to public speaking, meetings, and publications, staff members also have informal discussions and meetings with industry and affected individuals. It is not uncommon for representatives of various businesses or members of the credit industry to come into the CPD office with their attorneys to ascertain what they must do to comply with the ICCC. Staff members regularly respond to questions posed by other state agencies, as well. The many ICCC-related questions posed to staff members during 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 *Legg v. West Bank*, 873 N.W. 2d 763, 769–71 (Iowa 2016) (“*Legg I*”), the Iowa Supreme Court, overruling the district court, held that the payment of overdraft amounts on a consumer’s checking account was not an “extension of credit” under the ICCC. Because there was no extension of credit, the court did not have to decide whether or not the nonsufficient funds fees charged to customers for such overdraft payments were “finance charges” subject to usury restrictions under the ICCC. Note that a 2015 amendment of the ICCC excluded

nonsufficient funds fees from the definition of “finance charge.” ICCC § 537.1301(21)(b)(5). However, the conduct in question in this case predated the amendment.

The defendant in *Legg v. West Bank* also appealed the district court’s class certification under the ICCC in *Legg v. West Bank*, 873 N.W. 2d 756 (Iowa 2016) (“*Legg II*”). Because the defendant’s motion for summary judgment was granted with respect to the ICCC claims in *Legg I*, the Iowa Supreme Court declined to review the district court’s ruling with respect to class certification under the ICCC. *Id.* at 759.

In *Mountain States Adjustment v. Bradley*, 15–1005, 2016 WL 5408323, slip op. at 8–9 (Iowa Ct. App. 2016), the Court of Appeals found that the district court had made an error of law in applying the ICCC to the parties’ home equity loan transaction. The ICCC only applies to consumer transactions, including consumer loans under the “threshold amount.” ICCC §§ 537.1301(12), 537.1301(15). The principle amount borrowed by the defendants in 2007 exceeded the then-applicable “threshold amount,” and thus the transaction was not subject to the ICCC. *Bradley*, 2016 WL 5408323, slip op. at 8–9. A 2014 amendment of the ICCC subsequently changed the definition of “threshold amount.” See the 2014 Annual Report of the Iowa Consumer Credit Code for a discussion of the amendments.

One trial court faced a potentially notable question concerning the application of the ICCC to a security interest agreement between a Nebraska car dealership and an Iowa resident. However, the court avoided resolving the conflict of law question because the outcome would be the same whether Nebraska law or Iowa law applied. *Van Guard Consulting, Inc. v. Myers, III*, No. LACV039428, 2016 WL 3211713 (Iowa Dist. May 25, 2016) (trial order granting plaintiff’s petition for replevin).

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 93 credit unions, examines each credit union every twelve to fourteen months. The Credit Union Division received one ICCC-related complaint in 2016. The Banking Division oversees licensing for 280 state-chartered banks and 799 loan companies, including delayed deposit locations, mortgage bankers, industrial lenders, and regulated lenders. State-chartered banks are examined every 12 to 18 months, alternating with the federal regulator. The various loan companies are examined every 12 to 24 months depending on the type of company. Delayed deposit companies, industrial

lenders, and regulated lenders are examined annually. Mortgage bankers, nonresident industrial lenders, and nonresident regulated lenders are examined every 24 months. In 2016, the Banking Division received 6 complaints relating to the ICCC .

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 2016 ACUCCCS meeting was held in Portland, Maine. All credit code states, except Oklahoma, attended the meeting. The Iowa Administrator was elected Vice President of ACUCCS. The hottest topic for discussion was the potential for the Office of the Comptroller of the Currency to issue a FinTech (financial technology) charter. Members 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. Internet lending in general was a popular topic for discussion. In particular, internet lending controlled or facilitated by Native American Tribes continued to be a very relevant topic, and the states updated each other on the ongoing litigation involving the legality of this type of lending. Other important topics concerned private student loans, the reemergence of peer-to-peer lending, subprime auto lending, mortgage servicing, and high interest 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, 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 to some is suspect. Thanks to the proliferation of direct deposit services (also known as payday loans) and hard-to-police internet loans, much of the credit available to some consumers is only available at a very high cost. Higher interest open-end credit, in the form of credit cards,

also appears to be widely available. With a strong housing market and fairly low interest rate, home mortgages, also appear easily obtainable to consumers with decent credit scores. Additionally, student loan debt continues to rise, and is of a real concern in the future as the debt becomes due and is particularly difficult to discharge in bankruptcy. Subprime auto financing continues to be a concern with many auto loans now being packaged and sold as securities. There is a fear that subprime auto loans might follow the same path that subprime mortgages did and lead to more global issues.

7. Changes to the ICCC

Finally, the Office of the Attorney General reviews the ICCC to suggest to the legislature amendments and improvements. In 2016, while the Attorney General worked with the legislature, the Iowa Division of Banking, the Iowa Division of Credit Unions, and other groups to ensure coherency of the provisions of the ICCC, no changes were made to the ICCC. The Administrator does recommend a comprehensive review of the fees and penalties in the ICCC with an eye toward increasing the maximum allowable amounts as these have not increased since the passage of the ICCC in 1976.