

advisory



RICHARD L. CLELAND
 ASSISTANT ATTORNEY GENERAL IN CHARGE
CONSUMER PROTECTION DIVISION

LINDA THOMAS LOWE
 ASSISTANT ATTORNEY GENERAL

JAMES M. PETERS
 ASSISTANT ATTORNEY GENERAL

DEAN A. LERNER
 ASSISTANT ATTORNEY GENERAL

TERRENCE M. TOBIN
 ASSISTANT ATTORNEY GENERAL

SUSAN BARNES BRAMMER
 ASSISTANT ATTORNEY GENERAL

ADDRESS REPLY TO:
 CONSUMER PROTECTION DIVISION
 HOOVER BLDG., SECOND FLOOR
 1300 EAST WALNUT
 DES MOINES, IOWA 50319
 515/281-5926

Department of Justice
THOMAS J. MILLER
 ATTORNEY GENERAL

February 18, 1985

RE: Whether a service contract on consumer goods which is financed in connection with a consumer credit sale is a permissible additional charge under ICCC § 537.2501(1)(f)

Dear :

In your recent inquiry to this office, you raised the above referenced question in connection with a retail installment contract of a used car by a licensed Iowa dealer. You also stated that at some date after the credit sale, the contract was sold to a financial institution.

Certainly a retailer may sell service contracts or extended warranty coverage to consumers. The federal Truth-In-Lending Act (TILA) recognizes that such services are sold to consumers and excludes them from the finance charge so long as the service contract is "offered to or required of both cash and credit customers for the same price." If the service contract is "required" and is imposed only in credit transactions, then it must be included in the finance charge. (See: TILA, Reg. Z, 12 CFR 226[4][a], Comment 1 [1984].)

Our response to your inquiry will assume that service contracts or extended warranty coverage are offered in the same manner and for the same price to both cash and credit customers. The ICCC definition of finance charge, unlike the TILA, makes no reference to service contracts or extended warranty coverage. (See: § 537.1301[19].) Such items are clearly not part of the finance charge so long as they are not imposed as an incident to, or a condition of, the extension of credit. These charges may then only be made in connection with the transaction as "additional charges" under § 537.2501. The ICCC requires that all charges made in connection with a consumer credit transaction be either finance charges (§ 537.1301[19]) or "additional charges"

CPAD-22

(§ 537.2501). There is no language in § 537.2501 that permits charges for service contracts. In order for a creditor to make such a charge in connection with the credit transaction, there would have to be a rule of the ICCA administrator which authorized such charges as permissible additional charges pursuant to § 537.2501(1)(f) which provides that a creditor may contract for and receive:

f. Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are authorized as permissible additional charges by rule adopted by the administrator.

If the service contract were to be sold and/or financed in an entirely separate transaction, then the provisions of § 537.2501 would not apply. Certainly, however, one would have to look carefully at such a transaction to determine whether or not it was truly separate from the extension of credit.

Sincerely,



LINDA THOMAS LOWE
Assistant Attorney General

cf