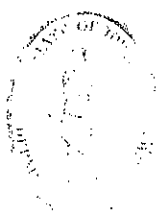


Advisory



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

January 25, 1985

RE: Whether Out-Of-State State Chartered Savings & Loan is
a Supervised Lender under Iowa Consumer Credit Code

Dear

This letter is in response to your written inquiry on
behalf of an unnamed Wisconsin state chartered savings and loan.
You asked:

1) Whether the Iowa Consumer Credit Code
(hereinafter ICCC) requires that an out-of-
state, state chartered financial institution
become a supervised financial organization in
order to issue bank credit cards to Iowa
consumers if the Wisconsin savings and loan
does not maintain an office, agency or agent
in Iowa.

2) Whether it would be necessary for the
Wisconsin savings and loan to obtain a
Certificate of Authority under Chapter 534,
Iowa Code, 1983, in order to qualify as a
"supervised financial organization."

Under the terms of the ICCC, so long as the credit
cards in question are for personal use and have credit limits
under \$25,000, the Wisconsin savings and loan is a "creditor" (§
537.1301[17]) and is the "card issuer" (§ 537.1301[6]) of a
"lender credit card" (§ 537.1301[24]). Extensions of credit by
means of lender credit cards are treated by the ICCC as consumer
loans. "Use of a lender credit card whether for purchases or
cash advances results in a loan." (See: Vol. 1 - Consumer
Credit Guide (CCH), § 6031, 1974 U.C.C.C. Comment to § 1.301
subsection 25.)

CPAD-24

If the Wisconsin savings and loan wishes to make such consumer loans to Iowans at the rates permitted by the ICCC (for rate ceilings, see: § 537.2402 as amended, 1984 Iowa Acts, Ch. 1237 § 2), they must be a "supervised financial organization" as defined in § 537.1301(41):

... a person, ..., which is organized, chartered or holding an authorization certificate pursuant to chapter 524, 533 or 534 or pursuant to the laws of the United States which authorizes the person to make loans and to receive deposits, ... and which is subject to the supervision by an official or agency of this state or the United States.
(Emphasis added)

"Although all persons making consumer loans are regulated by this Act, those making high rate loans must either be licensed by the administrator" (or other Iowa regulatory agency) "or be supervised financial organizations." (See: Vol. 1 - Consumer Credit Guide (CCH), § 6031, 1974 U.C.C.C. Comment to § 1.301 subsection 43.)

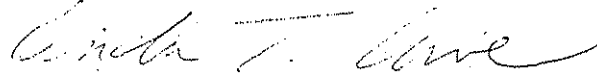
You should be aware that if the Wisconsin savings and loan did not make "supervised loans" to consumers, it would not be required to obtain a Chapter 534 certificate of authority. It would, of course, be subject to the ICCC for all other purposes. Consumer loans which exceed the rate set monthly by the Iowa Department of Banking pursuant to § 535.2(3)(a) of the Iowa Code are "supervised loans." (See: definition at § 537.1301[42].) Any consumer creditor who wishes to make "supervised loans" must be a supervised financial organization or licensed under Chapter 536 (Small Loan Act) or Chapter 536A (Industrial Loan Act) of the Iowa Code.

Finally, you also requested that this reply consider the "interstate commerce implications" of your question. There is no commerce clause issue involved in the application of the ICCC to such a transaction. The Wisconsin savings and loan is not excluded from this type of activity since it may offer bank cards to Iowans if the finance charge does not exceed the "floating" rate established by the Iowa Department of Banking. "The regulation of finance charges and interest rates by a state which has adopted the (UCC) Code with regard to sales (or loans) to its residents by an out-of-state mail order house (or other by-mail creditor) does not violate either the due process clause or the commerce clause of the federal Constitution." (See: New Topic Service, Am.Jur.2d, Consumer Protection, § 241, citing Aldens, Inc. v. Ryan, (W.D. Okla.) 454 F.Supp. 465.)

If you have any questions concerning this response, please contact the undersigned. You should advise your client that this letter is merely an informal response to your inquiry.

It is not an opinion of the Attorney General, nor is it a ruling of the ICCA administrator. In addition, please note that in any future inquiries to this office, prior to receiving our written response, you should identify the financial institution which you represent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda T. Lowe".

LINDA THOMAS LOWE
Assistant Attorney General

cf