



*Advisory*

THOMAS J. MILLER  
ATTORNEY GENERAL

## Department of Justice

CONSUMER PROTECTION DIVISION

ADDRESS REPLY TO:  
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515/281-5926

April 15, 1985

RE: Co-Signer Notices Required by F.T.C. Credit Practices  
Rule and Iowa Consumer Credit Code § 537.3208

Dear :

You recently requested the advice of the Consumer Credit Code Administrator on whether creditors in consumer credit transactions may, at their discretion, "give either a state notice or the F.T.C.'s notice on credit transactions that are co-signed." In your request, you included a copy of a February 27, 1985, letter received by the counsel to American Financial Services Association (AFSA) and written by the F.T.C. Associate Director for Credit Practices. This letter states the "current enforcement policy" of the F.T.C. on this question. (A copy of the letter is enclosed.)

As you know, the F.T.C. has taken the position that in states such as Iowa which require a specific notice to be given to a co-signer (see: Iowa Code § 537.3208 [1985]), the creditor may not omit the federal co-signer notice contained in the Credit Practices Rule (see: 16 C.F.R. § 443.3). Although the F.T.C. has previously claimed that the states are not pre-empted by the Credit Practices Rule, it is clear that under the current F.T.C. enforcement policy the states are pre-empted until such time as the appropriate state enforcement agency applies for and receives an exemption from part or all of the rule. The F.T.C. apparently will demand an application for exemption even in cases such as Iowa where state law was used as a model for some parts of the F.T.C. Credit Practices Rule.

As administrator of the ICCC, this office would be the state agency to apply for an exemption from the Rule. We have not done so; nor have we decided yet whether or not we will apply to be exempted from all or part of the Rule. Before any such application is made, we would first have to determine whether we

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agree with the F.T.C. that all states are pre-empted unless they are granted an exemption.

This office understands that consumer creditors need immediate guidance on this question and accordingly we would offer the following analysis and advice. As you know, the F.T.C. stated in their February 27, 1985, letter to AFSA that a creditor may use a co-signer notice in which both the federal and state co-signer notices appear. The ICCC, however, requires that the co-signer notice be given as "a separate written notice." A strict interpretation of § 537.3208(1) would mean that the two notices could not appear together.

To provide two notices to a co-signer is an unnecessarily duplicative practice. Such a practice could only serve to confuse persons who are considering acting as a co-signer. This would be true whether the notices were provided on the same form or in two separate forms of notice. We do not recommend giving two notices.

The ICCC allows the creditor to use a co-signer notice which differs from the form of notice included in § 537.3208(2) so long as the notice is in "substantially" the same form. The F.T.C. Credit Practices Rule co-signer notice and the ICCC co-signer notice are substantially the same as far as the basic information which must be provided to a potential co-signer. There are, however, some differences in the content of each notice. These differences are underscored in the enclosed attachment.

According to the statement of current F.T.C. enforcement policy contained in the February 27, 1985, letter to AFSA, creditors may delete or amend parts of the federal notice if the language is "an inaccurate description of state laws." Furthermore, the F.T.C. also stated that "identifying information" may be included so long as it does "not detract from the notice and might assist the consumer."

If the creditor uses the federal notice, we recommend that the federal notice be amended in the following manner:

- 1) Following the statement in paragraph two of the federal notice which makes reference to payment of late fees and collection costs, the creditor should insert language which informs the consumer that such costs may only be collected to the extent that they are permitted by the Iowa Consumer Credit Code.
- 2) The creditor should amend paragraph three of the federal notice to include language that advises consumers that garnishment of wages may occur only after judgment has been obtained.

3) In the fourth paragraph, the creditor should add the language from the ICCC co-signer notice which advises the co-signer to "read the contract for the terms of their obligation."

4) At the end of the federal notice (following the signature line), the creditor must insert the mandatory "identification" provision contained in § 537.3208(2).

In summary, at this time, it is the recommendation of this office that Iowa creditors who are subject to the F.T.C. Credit Practices Rule and to the ICCC co-signer provision provide one notice to co-signers which follows the federal form but which incorporates the above recommendations. We will keep you informed of any decision by this office to either contest pre-emption or apply for an exemption.

I hope this information answers your inquiry. Please be advised that this letter is merely advice. It is neither an opinion of the attorney general nor is it a rulemaking decision or a declaratory judgment by the ICCC administrator. You should feel free to inform Iowa consumer creditors of the recommendations contained herein. When appropriate, we would not object to your distributing the letter to any creditor who requests a copy of it.

Sincerely,

LINDA THOMAS LOWE  
Assistant Attorney General

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Encl.: FTC's 2-27-85 Letter  
Attachment