



THOMAS J. MILLER  
ATTORNEY GENERAL

## Department of Justice

CONSUMER PROTECTION DIVISION

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

January 28, 1986

RE: Whether Consumer Creditor May Offer Lower A.P.R.  
on Consumer Loans With Credit Insurance

Dear

You recently requested the advice of the administrator of the Iowa Consumer Credit Code (ICCC) on the question of whether it was legal for your bank to offer a lower A.P.R. to consumers who purchase credit life and credit accident and health insurance on a loan. You stated that it would not be required that the loan customer purchase the credit insurance from the bank. Please understand that our reply to your inquiry is advisory only; therefore, this response is neither a rule of the administrator, a declaratory ruling nor an opinion of the attorney general.

The federal Truth-In-Lending Act and the Iowa Consumer Credit Code both require that in order for the cost of consumer credit insurance to be excluded from the finance charge, the credit insurance may not be required by the creditor. Neither the state nor federal consumer credit statutes address the question which you raise; however, federal regulations provide that a

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1. See: C.C.H. - Consumer Credit Guide, Vol. 1, § 6214, 1974 U.C.C.C. - § 4.104, Comment 1 and 2: "Limitations are placed on the making of an additional or separate charge for insurance in section 2.501 . . . . This Act [1974 U.C.C.C.] does not purport to define 'separate charge' for insurance. The question has been raised whether there is a separate charge for insurance when a creditor's finance charge varies depending upon whether or not consumer credit insurance is provided. This Act does not resolve that question."

determination of whether or not credit insurance has been "required" on a particular consumer loan is a factual question and therefore must be made on a case-by-case basis. (See: Official Commentary to Reg. Z [12 C.F.R. Part 226, Supp. 1, Comment 4(d)(5) (1985)]). Of course, under Iowa insurance law, a consumer creditor may not require as a condition precedent to an extension of credit, that the borrower purchase credit insurance from a particular insurer. See: Iowa Code § 507B.5 (1985).

In the situation which you describe, it is difficult to conceive of a consumer who would not believe that the insurance was required since presumably all consumer loan applicants would be interested in receiving a lower A.P.R. We are assuming that the situation is not one in which the consumer may use his existing insurance to obtain a loan with the lower A.P.R. If the consumer could use an insurance policy already owned by him to obtain the loan with the lower A.P.R., then there would be no such questions raised under either the Truth-In-Lending Act or the Iowa Consumer Credit Code. Insurance used in a consumer credit transaction which is already owned by the consumer is not "written in connection with the transaction." (See: 12 C.F.R., Part 226, Supp. 1, Comment 4[b][7] and [8]-1, [1985].)

Assuming that in the transaction, as you describe it, it is found that credit insurance was "required", it would not matter whether the credit insurance was purchased from the creditor (bank). So long as the insurance was "required," even if it was purchased elsewhere, it would still be included in the finance charge. "The premium for a life insurance policy purchased and assigned to satisfy a credit life insurance requirement must be included in the finance charge, but only to the extent of cost of the credit life insurance if purchased from the creditor or the actual cost of the policy (if that is less than the cost of the insurance available from the creditor)." See: 12 C.F.R., Part 226, Supp. 1, Comment 4(b)(7) and (8)-3.

In summary, it is not illegal for a consumer creditor to offer a different A.P.R. to a consumer loan customer who purchases credit insurance in connection with a loan. However, unless the creditor could demonstrate, on a case-by-case basis, that the purchase of the insurance was not "required", the cost of the insurance could not be excluded from the finance charge under Iowa Code §§ 537.1301(19)(b)(2) and 537.2501(2)(b) (1985).

If you wish further clarification of this matter, please call the undersigned.

Sincerely,

LINDA THOMAS LOWE  
Assistant Attorney General

cf

Encl: § 507B.5  
§ 537.1301(19)  
§ 537.2501  
12-26-85 Letter