



THOMAS J. MILLER
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Department of Justice

CONSUMER PROTECTION DIVISION

ADDRESS REPLY TO:
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515/281-5926

September 23, 1986

RE: Iowa Consumer Credit Code Advice to
(Your Client) on Whether Issuance of Lender
Credit Cards to Iowans Requires a License

Dear

You have requested the advice of the Administrator of the Iowa Consumer Credit Code on behalf of your client, hereinafter as to whether must obtain a license from an Iowa "licensing authority" (see: Iowa Code § 537.2301(1)) in order to make supervised loans to Iowans by means of issuing lender credit cards.

In your letter requesting advice on behalf of you make essentially two arguments to support your recommendation that the administrator should find that is not subject to any Iowa licensing requirement in order for it to make supervised loans to Iowans.

You argue that: (1) should be permitted to do business in Iowa on the same basis as any other "supervised financial organization" either (a) because it is a "supervised financial organization," or (b) because requiring a license of serves none of the purposes of the Iowa Consumer Credit Code (ICCC) or any other public purpose and in addition licensing unfairly discriminates against as a non-Iowa state chartered bank.

In the alternative, you argue that: (2) the licensing question need not be reached, since federal law, specifically the Depository Institutions Deregulation and Monetary Control Act, 12 U.S.C. § 1831d, et seq. (hereinafter DIDMCA) exempts state

chartered banks such as "from any procedural requirements of other states related to interest rate restrictions, including licensing, otherwise applicable to lenders imposing such rates." Recognizing that Iowa has exercised its right to "opt-out" of the DIDMCA of 1980, you dispute the effect of opting-out of the DIDMCA and assert that Iowa still may not regulate the interest rate or "provisions material to determining the interest rate" with respect to loans made by financial institutions covered by DIDMCA.

Based on the reasons discussed below, the administrator rejects both of these arguments. It is the advice of the Administrator that the ICCB, Iowa Code ch. 537 (1985), requires an "out-of-state" or non-Iowa state chartered bank to be licensed by a "licensing authority" as defined in Iowa Code § 537.2301(1) (1985) before the bank may make supervised loans to Iowans.

A "supervised loan" is a "consumer loan" in which the finance charge exceeds the rate established monthly by the Iowa Superintendent of Banking pursuant to Iowa Code § 535.2(3)(a) (1985). Issuance of a "lender credit card" such as the card creates an open-end consumer loan account. See: Iowa Code § 537.1301(25)(a) and C.C.H. Consumer Credit Guide, Vol. 1, 1974 U.C.C.C. - Comment Section 1.301(25).

In order to make supervised loans, section 537.2301 requires that the lender must be either a "supervised financial organization" as defined in Iowa Code § 537.1301(41), or licensed pursuant to Iowa Code ch. 536, Regulated Loan Act, or Iowa Code ch. 536A, Industrial Loan Act.

"Supervised financial organization" . . . [is one] which is organized, chartered, or holding an authorization certificate pursuant to chapter 524 [Banks], 533 [Credit Unions], or 534 [Savings and Loans], 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 supervision by an official or agency of this state or of the United States. [Emphasis Added.]

Iowa Code § 537.1301(41)

is a New York state chartered bank which is neither chartered as a national bank nor as an Iowa bank. You argue, without further explanation, that "because of the nature of 's business and regulatory structure," it should be "treated as any other supervised financial organization." The plain language of section 537.1301(41) does not allow the administrator to treat . as any other supervised financial organization.

The definition of "supervised financial organization" creates a two-part test. Even if there was statutory authority to interpret section 537.1301(41) such that _____ was deemed to be a supervised financial organization, _____ has not shown that it meets the second part of the test which requires that it be "subject to supervision by an official or agency of this state or of the United States." While you assert that _____ is "subject to close scrutiny by regulatory agencies of both the State of New York and the federal government," you do not demonstrate that any federal agency which has direct oversight over _____ subjects _____ to supervision, which is equivalent to that which would be exercised by the federal government over a federally chartered financial institution or by Iowa over a state chartered financial institution. (See: Iowa Code ch. 524, especially the prohibition against out-of-state banking, sections 524.107 and 524.1805, and the provision requiring cooperative enforcement of the ICCC by the Superintendent of Banking and the Administrator, section 524.227.)

Once it is established that _____ is not a "supervised financial organization" and that the ICCC does not permit the administrator to treat a financial institution "as though it was a" supervised financial institution, then it must be concluded that _____ must be licensed under either Iowa Code chapters 536 or 536A (1985) before _____ can make supervised loans to Iowans.

You argue that such licensing of _____ would serve no important ICCC or public purpose and that it would be wholly inadequate to effectively regulate _____ transactions with Iowans. If _____ was to operate as either a Chapter 536A licensee (industrial loan company) or a Chapter 536 licensee (regulated loan company), it would be subject to examination pursuant to Iowa Code §§ 536.16, or 536A.15 (1985) as well as to the powers of the ICCC Administrator pursuant to Iowa Code § 537.6105 (i) (1985). Licensing and examination of all companies regulated under Chapters 536 and 536A is conducted under the authority of the Division of Banking, (formerly the Department of Banking), of the newly created Iowa Department of Commerce. Senate File 2175, 71st G.A., 2d Sess. § 703 (Iowa 1986). Previously the two types of licensees were separately regulated by the Auditor and the Superintendent of Banking.

It is clear that licensing and its attendant examinations¹ of Iowa accounts by Iowa regulators who are obligated to

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1. A nonresident loan company licensee who does no face-to-face solicitation in Iowa, if authorized by another state to make loans in excess of the Chapter 535 interest rate (supervised loans) is still subject to licensing and examination, but exams are not required to be done "at least yearly." See Iowa Code §§ 536.16 and 536A.30 (1985).

enforce the ICCC jointly with the Administrator (see: section 536A.29) provides the supervising agency (the Iowa Division of Banking) and the ICCC Administrator far greater oversight than would information collected by either the F.R.B., the F.D.I.C. or New York banking authorities on all accounts. Neither the F.R.B., the F.D.I.C. nor the New York Department of Banking has any reason to monitor compliance with the ICCC.

Finally, you argue on behalf of that the regulatory and licensing scheme of the ICCC has been pre-empted by the DIDMCA as codified at 12 U.S.C. § 1831(d) which provides that:

In order to prevent discrimination against State-chartered insured banks, including insured savings banks and insured mutual savings banks or insured branches of foreign banks with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rates such State bank or insured branch of a foreign bank would be permitted to charge in the absence of this subsection, such State or such insured branch of a foreign bank may, notwithstanding any State constitution or statute which is hereby pre-empted for the purposes of this section, take, receive, reserve and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than one per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district where such State bank or such insured branch of a foreign bank is located or at the rate allowed by the laws of the State, territory or district where the bank is located, whichever may be greater. [Emphasis Added.]

12 U.S.C. § 1831d.

As you note, Iowa has exercised its right legislatively to "opt-out" of the pre-emptive effect of 12 U.S.C. § 1831(d) for all "loans made in this state." (See: 1980 Iowa Acts, ch. 1156, § 32.) However, you dispute that Iowa's opt-out legislation has the effect of avoiding pre-emption. Rather you argue that only the state in which the state bank is "located" (New York in this case) may do so. You further conclude that "Congress has pre-empted any state law, including the ICCC, that attempts to restrict or otherwise burden the right of non-Iowa state chartered banks to impose interest charges at a rate permitted by the state where the bank is located." We do not agree with your construction of the Iowa opt-out legislation. However, even assuming for the sake of argument that your construction is

correct and is supported by adequate authority, there is little or no support for your ultimate conclusion that a pre-emption of state interest rates leads to an exemption from state licensing merely because some federal agencies have said that licensing may be a provision which is "material to determining the interest rate."

The licensing or authorization requirements imposed on supervised lenders by the ICCC have never served solely or primarily to regulate interest rates. This is still true even though there is no ICCC interest rate ceiling on the type of credit card issued by . (see: Iowa Code § 537.2402(5) (1985).) When the Legislature recently changed the previous section 537.2402 ceiling from 18% per year to a rate "without limitation," it did not weaken any of the other procedural or substantive protections of the ICCC. Certainly in a deregulated climate, licensing of financial institutions who make supervised loans becomes more important, not less important.

Finally, as you note in your analysis, the jurisdictional provisions of the ICCC are quite expansive. While 's mailed solicitations for its credit cards would not fall under the jurisdiction of many state consumer credit statutes, the ICCC covers all consumer credit transactions "entered into in this state" (see: section 537.1201(1)). An open-end credit transaction is "entered into in this state:"

If the buyer, lessee or debtor is a resident of this state either at the time the buyer, lessee or debtor forwards or otherwise gives to the person extending credit a written or oral communication of the intention to establish the open end transaction, or at the time the person extending credit forwards or otherwise gives to the buyer, lessee or debtor a written or oral communication giving notice to the buyer, lessee or debtor of the right to enter into open end transactions with such person, unless the parties have agreed that the law of the residence of the buyer, lessee or debtor applies in which case that law shall apply.

Clearly . is subject to the ICCC even if they have no Iowa offices and their only contact with Iowans is by mail. You previously have expressed some concern to the Administrator that 1) Iowa should take the same position as have some other states which have not required licensing of and 2) that if Iowa requires to be licensed, many other states may follow our example. As we have agreed in our discussions, the Administrator's position that must be licensed is based primarily on the relatively unique language of sections 537.1301(41) and 537.1201(2)(b)(1). . would not be faced with similar

requirements in their efforts to expand into other states which do not have the same or similar statutory provisions discussed herein.

CONCLUSION

The credit card program of _____ constitutes an open-end consumer credit transaction entered into in Iowa. _____ a New York state chartered bank, is not a supervised financial organization under the ICC and therefore may not make supervised loans to Iowans by means of offering and issuing lender credit cards by mail from New York state. In order for _____ to make supervised loans to Iowans, they must be licensed under either Iowa Code ch. 536 or 536A (1985).

Sincerely,

LINDA THOMAS LOWE
Assistant Attorney General
Deputy ICC Administrator

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