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## Department of Justice

CONSUMER PROTECTION DIVISION

ADDRESS REPLY TO:  
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515/281-5926

May 21, 1987

RE: Request for Advice on Variable Rate Bankcards

Dear

This letter responds to your request received by this office on April 20, 1987, concerning our opinion of the proper disclosures to be given on a variable rate credit card such as a Mastercard/VISA. The response provided in this letter is advice of the administrator of the Iowa Consumer Credit Code.

As you note in your request, Reg. Z, 12 C.F.R. § 226.6(a), the implementing regulation of the federal Truth-In-Lending Act, hereinafter TILA (15 U.S.C. § 1601, et seq.) addresses disclosures for variable rate transactions. Specifically, Reg. Z § 226.6(a):

...covers open-end credit plans under which rate changes are part of a plan and are tied to an index or formula. A creditor would use variable rate disclosures (and thus be excused from the requirement of giving a change in terms notice when rate increases occur as disclosed) for plans involving rate changes such as the following:

\* rate changes that are tied to the rate the creditor pays on its six month money market certificates;

\* rate changes that are tied to treasury bill rates; and

\* rate changes that are tied to changes in the creditor's commercial lending rate.

In contrast, the creditor's contract reservation to increase the rate without reference to such an index or formula (for example, a plan that simply provides that the creditor reserves the right to raise its rates) would not be considered a variable rate plan for truth in lending purposes.

12 C.F.R., Part 226, Supp. 1, Comment 226.6(a)(2) (1986)

For purposes of TILA disclosures and TILA "change in terms" requirements, the creditor is in compliance so long as, at the time the account is opened, the creditor providing the variable rate open-end credit arrangement makes written disclosures of: (1) the circumstances under which the rate may increase, (2) any limitations on the increase, and (3) the effects of the increase (see: 12 C.F.R. § 226.9(c)(1)). In addition, the creditor must also disclose in each periodic statement, the fact that the periodic rates may vary (see: 12 C.F.R. § 226.7(d), f.n. 15 (1986)).

The TILA is incorporated into the Iowa Consumer Credit Code (hereinafter ICC) (see: Iowa Code § 537.6104(2) (1987)); therefore, for disclosure purposes, compliance with the TILA constitutes compliance with the ICC. Your question also raises, however, the issue of whether a "change in terms notice" is required under ICC § 537.3205 (1987). The change in terms provisions of the ICC clearly provide that in a fixed rate open-end credit account, a creditor must provide two written disclosures of the change with the first being at least three months before the effective rate change. Furthermore, in order for a rate change to apply to balances incurred before the effective date of the change, the change must be agreed to by the consumer. Furthermore:

The use by the consumer of an open-end account after the effective date of the change constitutes the agreement of the consumer if the consumer is notified as provided in subsection (1) that the use will constitute the agreement of the consumer.

Iowa Consumer Credit Code § 537.3205(2) (1987).)

Variable rate consumer credit transactions are not specifically referred to in ICC § 537.3205 (1987). Likewise, the 1974 U.C.C.C. on which the ICC is based does not refer to variable

rate open-end accounts in the comment to § 3.205 (see: Consumer Cred. Guide, Comment 1 and 2, par. 6155 (CCH)).

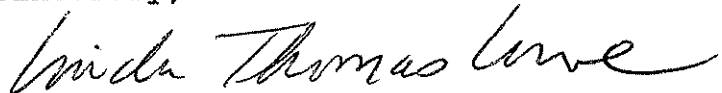
However, the comments to the 1974 U.C.C.C. do note that "...merchants and banks should not be permitted to take advantage of customers by changes which are unfair, unanticipated, or inadequately communicated" (see: Consumer Cred. Guide, Comment 1 and 2, par. 6155 (CCH)).

These comments seem to suggest that an adequately disclosed variable rate plan would not fall under ICCC § 537.3205 (1987). Accordingly, the administrator concludes that in an open-end credit plan where the creditor can demonstrate compliance with the variable rate disclosure provisions of the TILA, there is no need to comply with ICCC § 537.3205 (1987).

Please be advised that this letter is merely advice of the ICCC administrator. It is neither an ICCC rule, a declaratory ruling by the administrator, nor an opinion of the Attorney General.

I hope this letter adequately addresses the question raised by you. If you would like to discuss the matter further, please contact the undersigned.

Sincerely,



LINDA THOMAS LOWE  
Assistant Attorney General

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Enclosures:

ICCC § 537.3205 (1987)  
12 C.F.R. § 226.6(a)(2)  
12 C.F.R. § 226.7(d), f.n. 15  
12 C.F.R. § 226.9(c)  
12 C.F.R. Part 226, Supp. 1, Comments 226.6(a)(2)