



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

July 16, 1987

RE: Request for Advice on Variable Rate Open-End
Consumer Credit Retail Accounts

Dear :

This letter responds to your request for advice under the Iowa Consumer Credit Code (ICCC). Your request was forwarded to this office from the Iowa Division of Banking on June 17, 1987. You asked specifically whether Iowa law:

- 1) imposes disclosure requirements which are inconsistent with the use of a variable rate;
- 2) restricts the index to which the rate is tied;
- 3) restricts the frequency of changes in the rate or requires that rate changes be made only at certain intervals;
- 4) restricts the amount of changes in the rate;
- 5) imposes variable rate disclosure requirements beyond those mandated by the federal Truth-In-Lending Act (TILA);
- 6) requires prior written notice of any change in the rates or the terms of payment; and
- 7) prohibits imposing the new rate of finance charge on existing balances.

This advice letter assumes that the accounts in question are open-end consumer credit (retail) sales accounts as defined in Iowa Code §§ 537.1301(12) and 537.1301(28) and as regulated by

§§ 537.2202 and 537.3205. Since you declined to identify your client in your correspondence and again in your July 1, 1987, phone conversation with this office if there are relevant facts about the identity of your client and the nature of their accounts that have not been disclosed to us, then this advice would not necessarily apply to them.

The ICCC does not impose disclosure requirements which are inconsistent with the use of a variable rate nor does it restrict the index to which the rate is tied. The disclosures required of the creditor and the rate index restrictions under the ICCC are therefore essentially those required by the federal TILA (see: §537.3201). If the open-end variable rate plan of the creditor complies with:

- 1) Reg. Z, 12 C.F.R. § 226.6(a), f.n. 12 (1987) concerning the use of an acceptable index or formula and Part 226, Supp. 1, Comments 226.6(a)2-2 through 226.6(a)(2)-10 (1987);
- 2) Reg. Z, 12 C.F.R. § 226.9(c)(1) concerning change in terms and Part 226, Supp. 1, Comment 226.9(c)-1; and
- 3) Reg. Z, § 226.7(d), f.n. 15 (1987) concerning periodic disclosures that the rate may vary;

then the creditor has complied with the ICCC disclosure provisions. In addition, for each consumer who has an open-end account, a creditor who offers more than one type of credit arrangement must provide the notice of alternative methods of financing and rates as provided in § 537.3212.

The ICCC does not restrict the frequency of changes in the rate nor does it require that changes in the rate be made only at certain intervals so long as the variable rate plan complies with the TILA as set out above and so long as the methods used to calculate the finance charge comply with § 537.2202. In addition, there is no restriction on the amount of changes in the rate so long as the rate never exceeds the ceiling of 1.65% per month (19.8% A.P.R.) provided in § 537.2202.

As the administrator has stated in our May 21, 1987, letter on variable rate credit cards (copy sent to you on July 1, 1987), the change in terms notices required by the ICCC § 537.3205 do not apply to a variable rate open-end account which fully complies with the TILA. (See: Consumer Credit Guide, Comment 1 and 2, 1974 U.C.C.C. § 3.205, par. 6155.)

Finally, you also asked whether the ICCC prohibits imposing the new rate of finance charge on existing balances. The change in terms provision of the ICCC does indeed prohibit imposition of a new rate on the consumer unless the consumer has "agreed" to

the new rate either in writing or by use of the card after the effective date of the rate change. This § 537.3205(2) restriction on previous balances, while not part of the 1974 U.C.C.C., is nevertheless clearly tied to the policy reasons behind U.C.C.C. § 3.205 which are to prevent unfair or unanticipated changes; accordingly, the restriction concerning existing balances would also not apply to an open-end variable rate account where the creditor had complied with all the disclosure provisions of the TILA.

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. In addition, you should be aware that if in the future, the ICCC is amended to explicitly deal with variable rates or if a rule concerning variable rates is adopted by the administrator, the advice contained in this letter might no longer apply.

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

Sincerely,

LINDA THOMAS LOWE
Assistant Attorney General
Dep. Consumer Credit Code Admin.

cf

Enclosures:

ICCC § 537.2202
§ 537.3205
§ 537.1301(12)
§ 537.1301(28)
§ 537.3212

12 C.F.R. § 226.6(a)(2)
§ 226.7(d), f.n. 15
§ 226.9(c)

Reg. Z sections