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ATTORNEY GENERAL

ADDRESS REPLY TO:
HOOVER BLDG.,
DES MOINES, IOWA 50319
515/281-5926

Department of Justice

CONSUMER PROTECTION DIVISION

April 19, 1988

RE: Variable Rate Retail Installment Financing

Dear

You have requested that the Administrator of the Iowa Consumer Credit Code provide advice to [redacted] as to whether they may offer a variable rate finance program on its retail installment contracts in Iowa. With your request, you enclosed a copy of a [redacted] variable rate contract currently used in another state and noted that an Iowa contract would vary only insofar as Iowa requires different disclosures.

As we discussed in our earlier phone conversation, it has been the position of this office that although the ICCC does not specifically provide for variable rate financing, neither does it contain any language which prohibits this type of finance charge. So long as the rate never exceeds the maximum rate under Iowa law and so long as the creditor follows all the variable rate disclosure requirements of the Federal Truth-in-Lending Act, (which is incorporated by reference into the ICCC) a variable rate program is permissible. (See: Copies enclosed of earlier ICCC advisory letters addressing this issue.)

You also questioned whether it is permissible for [redacted] to apply the finance charge rate each day to the total amount owed as of that day including additional finance charges that accrue because of late payments and rate increases. The finance charge on a closed-end consumer credit sale is governed by Iowa Code § 537.2201. In particular, § 537.2201(3) provides that, "this section does not limit or restrict the manner of calculating the finance charge..."; accordingly the method referred to in your letter would be permissible. However, this does not mean

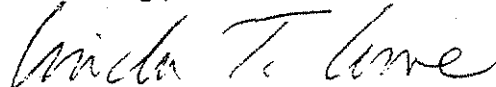
could apply a rate change any sooner than its effective date subject to the restrictions of § 537.2201(4).

As I noted in our phone conversation, the Administrator is also concerned that any advertisements or solicitations for variable rate programs should not be misleading regarding the credit terms of the program. If and when _____ does advertise in Iowa, you may wish to consult with this office again to avoid any problems in this area.

While recognizing that you stated the enclosed contract was not necessarily the "Iowa" contract, I did review it to determine whether any of the terms violate the ICCC. I would draw your attention to three terms which should be treated differently in an Iowa contract. 1) Any refinancing of a Balloon payment must be at terms... "no less favorable to the consumer than the terms of the original transaction." The contract language could perhaps be more clear on this matter. 2) Default is not an immediate event under the ICCC. A late payment does not trigger a default until ten days after the due date. In addition, a consumer may also be entitled to a Notice of Right to Cancel Default. 3) A creditor may not assess attorney fees for collection activity against the consumer.

I hope this letter adequately addresses your question. Please understand that this letter is merely advice of the Administrator and is not a rule or ruling of the Administrator nor is it an opinion of the Attorney General.

Sincerely,



LINDA T. LOWE
Assistant Attorney General &
Deputy Consumer Credit Code
Administrator

/mr

Enclosures