



THOMAS J. MILLER
ATTORNEY GENERAL

ADDRESS REPLY TO
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Department of Justice

CONSUMER PROTECTION DIVISION

February 10, 1989

Dear

In your letter of February 3, 1989 you indicate that your client, bank, issues credit cards to Iowa residents as a non-resident licensee under Chapter 536A of the Iowa Code. bank currently charges an introductory interest rate scheduled to expire on March 31, 1989. The bank had previously announced to its cardholders that the new A.P.R. effective April 1, 1989, would be set at 10 points above the 26-week treasury bill rate.

bank would now like to decrease this rate by establishing the interest rate effective in April at 3 points below the average A.P.R. of the ten largest credit card issuers. Your question is whether bank must comply with the three month change of terms provision set out in Section 537.3205 of the Iowa Consumer Credit Code (ICCC):

Section 537.3205(1) states:

Whether or not a change is authorized by prior agreement, a creditor may make a change in the terms of an open end credit account applying to any balance incurred after the effective date of the change only if either the consumer after receiving the disclosure of the change agrees to it in writing or the creditor delivers or mails to the consumer two written disclosures of the change, the first at least three months before the effective date of the change and the second at a later time before the effective date of the change.

Regardless of whether the proposed change in the credit card agreement is to the benefit of the consumer, Section 537.3205 requires two notices, the first sent three months before the date of change. Therefore Section 537.3205 applies to the changes in the annual percentage rate proposed by Bank.

You have also requested a waiver from Section 537.3205 for the purpose of implementing the lower interest rate on April 1, 1989. The ICCC does not grant the Administrator of the Code the power to grant individual waivers to institutions covered by the Credit Code. Your client, therefore, should comply with the formal procedural requirements of Section 537.3205 and mail out the required two notices of change as soon as possible.

However, so long as the new interest rate remains below the rate initially disclosed to consumers as taking effect on April 1, 1989, our Office will not take any statutory or administrative action against bank when the bank changes its A.P.R. on April 1, 1989 without having waited the required three months as specified in Section 537.3205. That is, for the required three month period from the first change of terms notice, the new interest rate, which is indexed to the A.P.R. of the top ten credit card issuers, must be lower than an interest rate equivalent to 10 points above the 26-week treasury bill rate.

Please also note that the bank's change of terms notices should make it clear to consumers that the finance charge assessed on balances outstanding as of April 1, 1989, will be the new finance charge rather than the expired introductory rate.

By basing its finance charge on the average A.P.R. of the ten largest credit card issuers, your client will be using a variable rate method to determine the finance charge assessed on its cardholders. Regulation Z, the implementing regulation of the federal Truth-In-Lending Act (15 U.S.C. § 1601, et. seq.), and its official Staff Commentary addresses disclosures for variable rate transactions. When announcing the change in finance rates, the bank should provide 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. § 226.6(a), f.n. 12, and Staff Commentary). In addition, the creditor must also disclose in each periodic statement the fact that the rates may vary (see: 12 C.F.R. § 226.7(d), f.n. 15). Compliance with these sections would eliminate the need to send out change of terms notices each time the finance charge increases or decreases.

In your letter you also question whether the requirements under Section 537.3205 are inconsistent with the federal Truth-In-Lending Act which only requires 15 days advance notice. As the Administrator of the Code, it is our view that these provisions are compatible as a creditor who conforms to the three month change of terms requirements in the ICCC is in complete compliance with the federal Act. The ICCC does not contradict any portion of the Truth-In-Lending Act, rather it affords consumers greater protection in certain areas.

In summary, although the interest rate changes proposed by bank must be properly disclosed to Iowa consumers as provided for in Section 537.3205 (two notices should be sent),

our Office will not institute proceedings for a violation of that section when the bank changes its finance charge on April 1, 1989. However, the effective interest rate must remain below what would have been charged under the old plan for the three months followings the first change in terms notice.

I hope this letter is responsive to your inquiries. Please do not hesitate to call if you have any further questions.

Sincerely,

Richard L. Cleland
Richard L. Cleland
Assistant Attorney General
Administrator, Iowa Consumer
Credit Code