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ATTORNEY GENERAL

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Department of Justice

CONSUMER PROTECTION DIVISION

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Dear

You recently contacted our office on behalf of a client who wishes to conduct consumer transactions in Iowa. In your letter you state that your client, an out-of-state privately insured credit union, wishes to make personal loans and car loans to Iowa residents, and issue loans secured by a first or junior mortgage on real property located in Iowa. As your client will not have an office in this state, you ask whether the credit union has the authority to make consumer loans in Iowa without having to acquire an Iowa lending license. You also state that your client will comply with all aspects of Iowa law relating to the finance charges and fees assessed on Iowa accounts.

From the information provided in your letter I will assume your client wishes to make more than ten supervised loans to Iowa residents each year. A supervised loan is defined in the Iowa Consumer Credit Code (ICCC) in Iowa Code § 537.1301(42):

"Supervised loan" means a consumer loan, including a loan made pursuant to open end credit, in which the rate of the finance charge, calculated according to the actuarial method, exceeds the rate of finance charge permitted in Chapter 535.

The statutory maximum for non-supervised loans is specified in Section 535.2(3) as "two percentage points above the monthly average ten-year constant maturity interest rate of United States government notes and bonds as published by the board of governors of the federal reserve system . . ." The state Superintendent of Banking publishes the monthly maximum interest rate permitted under this section in the Iowa Administrative Bulletin. On June 30, 1989, the maximum lawful rate under this section was 11.25%.

Under Iowa Code § 537.2301, authority to make loans in excess of this floating rate ("supervised loans") is restricted to "supervised financial organizations" or lenders licensed under either Chapter 536 or 536A. Supervised financial organizations are defined as nationally chartered lending institutions, or Iowa-supervised banks, credit unions or savings and loan associations organized pursuant to Chapters 524, 533 or 534 respectively. Chapter 536 and 536A authorize regulated loan companies and industrial loan companies to make supervised loans. Out-of-state lending institutions can obtain a nonresident license under Iowa Code § 536A.30 authorizing them to make supervised loans in Iowa.

You suggest your client does not have to obtain an independent license as it is a supervised financial organization. However, out-of-state state chartered lending institutions are not considered supervised financial organizations. Iowa Code § 537.1301(41) defines this term:

"Supervised financial organization" means a person . . . which is organized, chartered, or holding an authorization certificate pursuant to chapter 524, 533, or 534, or pursuant to the laws of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate or deposit account, and which is subject to supervision by an official or agency of this state or of the United States. (emphasis added).

Under this definition supervised financial organizations are limited to two type of organizations: (1) federally chartered and supervised lending institutions (such as federal credit unions authorized under the federal Credit Union Act, 12 U.S.C. §§ 1751 et seq.), and (2) Iowa chartered and supervised lending institutions. As an out-of-state credit union chartered by another state, your client does not fit within the ICCA definition of a supervised financial organization.

Iowa Code § 533.51(1) defines the term "credit union":

"Credit union" means a co-operative, nonprofit association, incorporated in accordance with the provisions of this chapter. A credit union is also a supervised financial organization as defined and used in the Iowa consumer credit code.

This definition also does not encompass out-of-state credit unions as they would not be "incorporated in accordance with the provisions of this chapter". Accordingly, Iowa Code § 533.51(1) does not grant out-of-state financial organizations supervised lender status. The ability of out-of-state credit unions to make

supervised loans to Iowa residents therefore does not stem from its designation as a supervised financial organization, but rather from the reciprocity provisions in Iowa Code § 533.39.

In your correspondence you note that Iowa Code § 533.39 grants reciprocity to out-of-state credit unions to operate in this state if similar privileges are granted to Iowa credit unions in the state where the out-of-state institution is chartered. You also state that Illinois, the apparent location of your client, does grant reciprocity to Iowa credit unions. You conclude that the reciprocity provisions of Section 533.39 make it unnecessary for out-of-state credit unions to obtain a separate Iowa license when making supervised loans to Iowa consumers.

This reciprocity provision does not grant supervised lender status to out-of-state credit unions who do not have an office in this state as these credit unions would not be chartered or supervised by Iowa law. However, we do agree with your opinion that Section 533.39 relieves out-of-state credit unions of the obligation to obtain a license to make supervised loans pursuant to the ICCC. To the extent that the Superintendent of credit unions permits out-of-state credit unions to conduct business in Iowa, then as a matter of policy the Administrator of the ICCC will not require these credit unions to obtain an additional license to make supervised loans to Iowa residents.

Please note that all lending institutions, in-state or out, must comply with the ICCC when conducting consumer credit transactions with Iowa residents. Iowa Code § 537.1201(2)(a) provides that if the consumer is a resident of Iowa when solicited to enter into a non-open end consumer credit transaction, or if the consumer is an Iowa resident at the time the creditor receives notification from the consumer of acceptance of the offer, then the transaction is subject to the Iowa Consumer Credit Code. In addition, Chapter 533 authorizes the superintendent to enforce the ICCC with respect to credit unions (Iowa Code § 533.37), and requires all credit unions to comply with the interest rate provisions of the ICCC (Iowa Code § 533.14).

In your correspondence you state your client will not maintain an office in Iowa. However, should they eventually decide to open an office in this state they first must obtain a license from the Superintendent of credit unions pursuant to regulations issued under authority of Iowa Code § 533.39. 189 Iowa Admin. Code § 15 requires out-of-state credit unions to file an application with the Superintendent for permission to establish a branch in Iowa and to receive a certificate of approval before opening. These regulations also require annual reports and provide for licensing fees.

In summary, while your client is not a supervised financial organization under Iowa law, it does not need to obtain a separate Iowa license to make supervised loans to Iowa residents so long as it meets the reciprocity provisions of Iowa Code § 533.39. As stated above, the provisions of the ICCC applies to all lenders making loans to Iowa residents, regardless of whether they are licensed or supervised by Iowa regulatory agencies. Your client must conform to all aspects of Iowa law regarding maximum finance charges, additional charges and fees, and other consumer protection provisions provided in the ICCC.

I hope this letter is responsive to your inquiries. Please note that this letter is merely the advice of the Administrator and neither a formal opinion nor official ruling of the Attorney General or the Administrator.

Sincerely,



Peter Kochenburger
Assistant Attorney General

cc: Joan Bolin
Assistant Attorney General