



In addition, the provisions of the ICCC concerning its territorial application make it clear that mail loan program must comply with the requirements of the ICCC. Iowa Code § 537.1201(1)(a) provides that a transaction is subject to the chapter if it is entered into in this state. Since the proposed mail loan program is other than open-end credit, determination of whether the transaction is entered into in this state is made through reference to Iowa Code § 537.1201(2)(a). That subsection provides three scenarios under which a transaction is considered to be entered into in this state. Section 537.1201(2)(a)(1) provides, in part, that if the debtor is a resident of Iowa at the time the person extending credit solicits the transaction, the transaction is entered into in Iowa, unless the parties have agreed that the law of the residence of the debtor applies, in which case that law would apply. (Emphasis added) In Norton v. Local Loan, 251 N.W.2d 520 (Iowa 1977), the Iowa Supreme Court relied on Iowa Code §§ 537.1201(2)(a)(1) and 537.1203(1) in holding an out-of-state debt collector subject to the ICCC based on a single telephone call into the state. The Court noted that section 537.1201(2)(a)(1) claims jurisdiction over a nonresident creditor who solicits a transaction with a resident debtor by phone or mail. (Emphasis added) *Id.* at 522. Thus, the ICCC clearly applies to your client's proposed mail solicitations of Iowa residents.

Further support for our position that the provisions of the ICCC apply to mail loan program is provided by section 537.1201(6)(a)(1), which, among other things, provides that a provision in an agreement made by a debtor that the law of another jurisdiction shall apply to the transaction is invalid if the debtor is a resident of Iowa at the times designated in sections 537.1201(2)(a)(1), 537.1201(2)(a)(2) and 537.1201(2)(b)(1). Thus, pursuant to the ICCC, the debtor may not waive his or her rights under the ICCC.

Therefore, based upon the foregoing, it is our position that the Iowa Consumer Credit Code applies to proposed mail loan program with residents of Iowa.

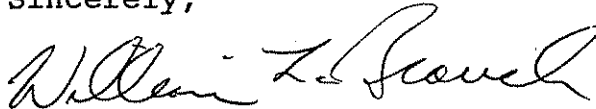
In your letter you stated your view that the loans are arguably being legally entered into in the Commonwealth of Virginia. However, that view is directly contrary to the clear provisions of the ICCC referenced above. Additionally, you stated your view that it is questionable whether Iowa can regulate loans lawfully made by without violating the Commerce Clause of the United States Constitution. However, in Aldens, Inc v. Miller, 610 F.2d 538, 539 (8th Cir. 1979), *cert. denied*, 446 U.S. 919 (1980), the Eighth Circuit held that application of the ICCC to an interstate mail order merchandiser relating to maximum allowable finance charges did not unduly burden interstate commerce in that the ICCC did

not discriminate against out-of-state sellers.<sup>1</sup> Thus, since the ICCC does not discriminate against out-of-state lenders, I believe a commerce clause argument would not succeed.

Finally, you stated your view that it is unclear that the Iowa Legislature intended to regulate out-of-state lending by out-of-state banks under the ICCC. Based on the above references to the provisions of the ICCC relating to its territorial application, it is our position that the Legislature has clearly stated its intent to regulate lending by out-of-state banks to Iowa residents based on solicitations received by Iowans in their homes. In addition, I know of no federal statute or regulation which would in any way preempt Iowa from enforcing its important consumer protection laws relating to loan offers directed to Iowa residents in Iowa.

Thank you for your consideration of our position in this matter.

Sincerely,



WILLIAM L. BRAUCH  
Assistant Attorney General  
Administrator, Iowa Consumer Credit Code  
Director - Consumer Protection Division

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<sup>1</sup> The court also concluded that the ICCC applied to credit sales solicited of Iowa residents in Iowa, notwithstanding that the contract terms declared the contract to be governed by the laws of the state in which the seller was located. *Id.*