CAUTIONARY NOTE TO INFORMAL ADVISORY # 91:
July 23, 2004

The analysis of Section II of this advisory regarding Iowa Code § 537.2502(3) would have been superceded by the passage of 2003 Acts, 1st Ex., ch 1, § 125, [H.F. 692] to have been effective July 1, 2003. (That amendment would have limited the application of the allocation of payments rule to pre-computed transactions.)

That amendment was part of a larger bill upon which the Governor exercised item veto of other provisions. The legislature challenged the governors right to use item veto on this legislation. In *Rants v. Vilsack*, 2004 WL 1344996 (June 16, 2004), the Iowa Supreme Court held that the governor did not have authority to use item veto on this legislation. "The result of this case is to render things as though no provision of HF 692 passed into law." (Slip op 16). (Emphasis added.)

Therefore the analysis remains law, although a) a good faith defense would be applicable to violations between July 1, 2003, the putative effective date of HF 692), and June 16, 2004, the date the Supreme Court rendered its opinion, and b) it is likely that there will be an effort to re-enact HF 692, section 125.

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Department of Justice

February 18, 2000

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RE: **ICCC Informal Advisory # 91**

1999 Acts, Chap. 15:

I. Calculation of late charge for closed-end, simple interest loans, § 537.2502(1)(b);
II. Allocation of payments with late charges on closed-end, simple interest loans, § 537.2502(3);
III. Crediting non-conforming payments over long holiday weekends, § 537.3206(4)(b)

Dear Mr. ****:

You have asked about three issues, two of which arise as a matter of interpretation of Section 3 of 1999 Acts, Chap. 15, (H.F. 433), which, *inter alia,* amends Iowa Code § 537.2502 to permit late charges to be added to interest-bearing closed end transactions. The third issue relates to Sections 2 and 4 of 1999 Acts, Chap. 15, amending Iowa Code §§ 535.14 and 537.3206 to require prompt crediting of payments on accounts.

SUMMARY

I. The late charge which may be charged on interest-bearing, closed-end loans is 5% of the installment, up to a maximum of $15. In other words, the maximum is the lesser of 5% of the installment, or $15. This is consistent with the interpretation of the parallel language as it relates to precomputed transactions. See Informal Advisory # 55.

II. The UCCC prescribes the method of allocating payments in order to avoid pyramiding late charges, by requiring that payments be applied first to current installments. The policy reasons behind the UCCC approach apply equally to precomputed and interest-bearing accounts.

III. Creditors who accept non-conforming payments over a long-holiday weekend may credit the account within two business days.

I. CALCULATION OF MAXIMUM LATE CHARGE

You note that your association has received questions about whether the following language in Iowa Code § 537.2502(1)(b), as amended, authorizes a flat $15 late charge in any case, based on the use of the conjunction "or."

> *For an interest-bearing transaction, an amount not exceeding five percent of the unpaid amount of the installment, or a maximum of fifteen dollars.*

Considering the articulated reason for the amendment, legislative history, and prior interpretations of the statutory provision which the 1999 amendment parallels, we interpret the provision to authorize 5% of the late charge, up to a maximum of fifteen dollars. In other words, the provision allows a late charge of the lesser of 5% of the unpaid amount of the installment, or $15.

Because the articulated rationale for the amendment was to permit late charges to be charged on closed-end interest-bearing transactions as they were on precomputed transactions, a review of the prior law is helpful background.

A. Interpretation of parallel provision upon which the amendment is based

As it read previously, late charges were permitted on precomputed transactions only, and the late charges on such transactions were calculated as follows:

> *...in an amount not exceeding the greater of either of the following:*
>
> *a. Five percent of the unpaid amount of the installment, <u>or</u> <u>a maximum</u> of twenty dollars. (emphasis added)*
>
> *b. The deferral charge that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.*

Iowa Code § 537.2502(1) (1998).

The predicate provision, §537.2502(1)(a), as it related to late charges on precomputed transactions, also used the term "or" in the same way as does new Iowa Code § 537.2502(1)(b). This same usage has carried through from the original 1975 version. The original version provided that a late charge could be imposed on a precomputed transaction *in an amount not exceeding the greater of the following:*

a) One and one-half percent of the unpaid amount of the installment, <u>or a maximum</u> of $5. (emphasis added)[[1]]

b) The deferral charge that would be permitted to defer the unpaid amount of the installment for the period that is delinquent.

Iowa Code § 537.2502(1) (1975).

Informal Advisory # 55 (Cleland to Livingston, January 17, 1989)[2] has previously addressed the very issue you raise:

"...Section 537.2502(1)(a) only permits the creditor to charge the lesser of [the specified dollar amount, then $5] or [the percentage amount, then 1 1/2%]; therefore, if 1 1/2% of the unpaid installment totals less than $5, <u>the bank would be restricted to charging 1 1/2% of the unpaid installment, rather than the $5."</u>

The question prompting Informal Advisory # 55 also posed the converse question, whether a late charge in excess of $5 could be charged if 1 1/2% of the payment were greater than $5. The advisory sums up the rule articulated by the provision:

*The statutory language in 537.2502(1)(a) allows a creditor to contract for a late or delinquent charge of 1 1/2% of the unpaid installment **up to a maximum of $5."***

We believe that the language as it applies to closed-end, interest-bearing transactions should be interpreted in the same way that our office has previously interpreted the same language as it applies to closed-end, precomputed transactions. This is particularly true given the primary reason articulated for the 1999 amendment.

B. The Articulated Purpose of the 1999 Amendment

1. The policy reason behind the prior differential treatment of precomputed and interest-bearing loans.

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[1] The percentage changed from 1 1/2% of the payment to 5% and the dollar amount changed from $5 to $20 in 1993.

[2] Copy attached as Attachment A.

Prior to the 1999 amendment, the ICCC permitted delinquency charges only on precomputed transactions (which, by definition, can only be closed-end). Without statutory authorization for delinquency charges in a precomputed transaction, the creditor would not be compensated for the delay, and the effective rate on late payers would be lower than on prompt payers. UCCC § 2.502, Comment 1 [1974]. In contrast, the UCCC did not authorize delinquency charges on interest-bearing transactions (then, in the consumer credit context, primarily open-end), because the finance charge "continues to accrue through any period of delay thus compensating the creditor for this period." UCCC § 2.502, Comment-1 [1974].[3]

To illustrate the distinction, compare two $5000 loans, both at 15%, both with 60 month terms and $118.95 payments. Loan A is precomputed, and loan B is interest-bearing. Both borrowers make the 10th payment 15 days late.

[3] The UCCC is not the only credit regulation to have adopted this policy approach. *See, e.g.* 24 C.F.R. § 201.15(d), allowing daily interest to accrue in lieu of late charges in FHA Title I loans.

Table 1 -- Pre-1999 Amendment:
Lender Compensation for 15-day delay

	Lender A (precomputed)	Lender B (interest-bearing)
Compensation to lender/borrower penalty for 15 day delay	$5.95 statutory late charge[4]	$ 27.53 extra interest charge inherent in the accounting[5]

The compensation for delayed payment inherent in interest-bearing transactions is even more transparent when the situation in which the payment in these two parallel loans is 8 days late. The statute authorizes no late fee unless the payment is 10 days late.

Table 2 -- Pre- and Post-1999 Amendment
Lender Compensation for 8-day delay

	Lender A (precomputed)	Lender B (interest-bearing)
Compensation to lender/borrower penalty for 8 day delay	$0 (no statutory late charge allowed)	$14.68 extra interest charge inherent in the accounting[6]

The prior law, then, made the distinction on the basis of the economic reality that interest-bearing lenders were automatically compensated for the delay, and conversely, late-payers were penalized for the delay, by the inherent nature of interest-bearing accounting. Statutory delinquency charges were unnecessary, and would, in fact, represent double compensation to the creditor and a double penalty to the consumer. See generally National Consumer Law Center, *The Cost of Credit: Regulation and Legal Challenges,* § 7.2.4.2.1 (1995 and supp.)

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[4] 5% of $118.95

[5] Outstanding balance after 9 prompt payments as scheduled, $4465.78. ($4465.78)(15%/365)(15 extra days' interest) = $27.53

[6] ($4465.78)(15%/365)(8 days) = $14.68 extra interest

2. *The impetus for the 1999 amendment*

The Iowa Bankers' Association placed on its legislative agenda an effort to "introduce legislation allowing for late payment fees on closed-end consumer loans and home equity lines of credit." *Disclosure*, p. 15 (January, 1999) (*Disclosure* is the Iowa Bankers Association monthly compliance review magazine.) The article described the impetus as eliminating the distinction between interest-bearing and precomputed loans for purposes of imposing a delinquency charge: "[M]any lenders believe delinquency charges should be allowed on all types of loans, whether calculated on a pre-computed or simple interest basis." *Id.*[7] (The article did not discuss the economic and accounting differences in interest-bearing and precomputed transactions that underlay the distinction recognized by the UCCC.)

The relevant language as to the calculation of the late charge, taken from existing law, was part of House Study Bill 112, which ultimately become 1999 Acts, Chap. 15, Section 3. The explanation given with HSB 112 was that "such" delinquency charge currently only applies to precomputed consumer credit transactions. This "level playing field" rationale is consistent with the explanation for the IBA's placing the item on their legislative agenda, and with the oral discussions with the relevant legislative committees. Of course, interest-bearing lenders in fact will now receive greater compensation than lenders making precomputed loans. Changing the law does not change the economic reality.

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[7] The article also noted that "some lenders" argue that delinquency fees should be viewed as a penalty. However, under traditional analysis of late charges, those which are too penal in nature and too disassociated from the actual cost to the lender caused by payment delay run the risk of being invalidated. See discussion in *In re* Jordan, 91 B.R. 673, 679-680 (Bankr. E.D. Pa. 1988), Annot., Validity of Construction of Provision Imposing Late Charge or Similar Exaction for Delay in Making Periodic Payment on Note, Mortgage, or Instalment Sale Contract, 63 A.L.R. 3d 50, 57-65 (1975). See also Beasley v. Wells Fargo Bank, N.A., 1 Cal. Rptr.2d 446 (Ct. App 1991).

With respect to the deterrent value of extra charges, it may be that creditors could be most effective by educating their customers about the impact of delayed payment on interest-bearing transactions. There appears to be considerable misunderstanding about this point, even among sophisticated consumers. One nationally syndicated personal finance columnist, in fact, in asking our office about accounting on one of her reader's mortgage, was surprised to learn that the interim between the due date and the "late charge" date was not truly a grace period, but in fact accrued extra interest, thus making it possible to increase the pay-off balance considerably at the end of a loan, even when every payment had been made without incurring a late charge. Some attorneys working routinely with credit have expressed similar surprised at the impact of daily basis accounting. If professionals in the field are unaware of the extra cost incurred by interest-bearing accounting, it should not be a surprise if consumers are not aware that this interim is not a "grace period," such as may exist on their credit card accounts. Better education by lenders to their customers on this point may be an effective means of encouraging payment on or before the due date.

Table 3 -- Post 1999 Amendment
Lender Compensation for 15-day delay

	Lender A (precomputed transaction)	Lender B (interest-bearing transaction)
Compensation to lender/penalty to consumer for 15-day delay	$5.95 statutory late charge	$ 27.53 extra days' interest $ 5.95 late charge $33.48[8]

(It should be noted that, in this example, should the section be interpreted to allow a flat $15 fee, the interest-bearing creditor would receive as compensation, and the consumer would pay as penalty, $42.53, or 36% of the payment amount.)

In sum, an examination of prior interpretation of the parallel language upon which the amendment is based, the articulated purpose of the amendment, and the balancing of economic and policy considerations underlying statutory late charges in an interest-bearing transaction all warrant continuing to read the language in question as allowing the lesser of 5% of the unpaid amount of the payment or $15 as the maximum late charge.

II. ALLOCATION OF PAYMENTS WHEN LATE CHARGES ARE IMPOSED IN INTEREST-BEARING TRANSACTIONS

Your next question is an accounting question, relating to the allocation of payments when a late charge is imposed on closed-end transactions, as required by Iowa Code § 537.2502(3). That section, aimed at prohibiting the pyramiding of late charges, provides that:

> A delinquency charge shall not be collected under subsection 1 on an installment which is paid in full within ten days after its scheduled or deferred installment due date even though an earlier maturing installment or a delinquency or deferral charge on an earlier installment may not have been paid in full. *For purposes of this*

[8] We understand that some mortgage lenders and servicers may not do daily basis accounting on interest-bearing contracts, in effect treating the monthly installments as if they were precomputed. In such cases, the simple-interest and precomputed transactions then would be on a par. However, some high-rate home equity and home improvement lenders do daily basis accounting, and those results would definitely not be on a par. We hope that you appreciate that the law which enables an 7.5% mortgage lender to charge both daily interest (whether it chooses to or not) and a late fee also would allow an 18% mortgage lender to do the same.

subsection payments are applied first to current installments and then to delinquent installments. (emphasis added.)

Your letter indicates you have two concerns about the provision as it relates to an hypothesized chronic 31-39 day late payer problem.

You describe the scenario by comparing two borrowers: Consumer A chronically pays 15 days late each month. Consumer B "always pays" between 31 - 39 days late each month. You elaborate on Consumer B's situation by reference to his or her making the November 1 payment on December 3. You indicate that creditors' practice is to apply that payment to the November payment. Under that hypothetical, until and unless Consumer B thinks to double up a payment, that missed payment has a domino effect, and he or she would remain chronically one month late as a result. You are concerned that the last sentence of § 537.2502(3) requires creditors to apply that December 3 payment to the December payment due. The result would be only one late charge could be imposed (for November), but no late charges for the subsequent months.

You compare this situation to Consumer A, chronically paying each month's payment 15 days late, but not missing one entire payment. Consumer A will pay a late charge each month. You describe this as "inequitable" because Consumer A is "less delinquent" than Consumer B. You also cite operational difficulties with requiring payment to current month's account, because creditors' practice in fact is to apply payments to the most delinquent payment first. (The letter does not mention whether the accounting practice is also to allocate payments first to accrued late charges, then to accrued interest, then to principal. If so, this section has relevance to that aspect of the payment allocation system, as well. See § II-B, below.)

The ICCC to be interpreted to promote its underlying purposes and policies, among which are protecting consumers against unfair practices, while having due regard for the interest of legitimate and scrupulous creditors, and encouraging the development of fair and economically sound consumer credit practices. Iowa Code § 537.1102(1), (2)(d),(e).

Before examining the purpose and policy behind § 537.2502(3), two observations are in order. First, accounting operations at financial institutions are largely computerized, and the computer performs the functions in the manner in which their human programmers tell them. Financial institutions have latitude in choosing their accounting programs, except to the extent that there are legal or regulatory specifications to which the program must conform. That programming adjustments may need to be made if practice is not consistent with legal requirements is not, in and of itself, a reason for overturning policy judgments reflected in legislation.

Your second point was that the interpretation seemingly resulted in "inequitable situations for consumers," and your letter characterizes Consumer B as "more delinquent" than Consumer A. That value judgment does not necessarily follow. For example, if Consumer B missed the November payment due to a hospitalization (as happens), but makes every subsequent payment for the remainder of the loan term promptly, is he really paying 31-39 day late "every month", and is therefore "more delinquent" than Consumer A who makes every payment throughout the loan term (as you hypothesize) 15 days late? Though he missed one payment, Consumer B may as plausibly be viewed as having been in fact late only once, and prompt the rest of the time, while Consumer A was late all the time.[9] The stories behind the real-life cousins to your hypothetical vary widely today, as they did when this statutory provision and related laws elsewhere were enacted. The enactment, and other regulation related to this problem, were the result of thorough examinations of the problem and weighing of the competing policy concerns. The UCCC addressed it one way; other regulations addressed it with other variations.

A. Pyramiding Late Payments

The section about which you ask was prompted by the problem of pyramiding late charges, described in the Comments to the UCCC provision which parallels Iowa Code § 537.2502(3).

> The principal consumer abuse at which the section is aimed is that of precluding multiple delinquency charges stemming from a single delayed payment. Under law before this Act if the consumer's payments were due of the first of the month and the January payment of $100 was not made until the 15th, the creditor could assess a late payment of $5 (assuming that to be the correct figure under state law) and allocate the $100 payment received on February 1st, $95 to the February payment and $5 to the unpaid delinquency charge, thus causing the consumer to be delinquent in February, as well. If the consumer made his $100 payment on time for each of the remaining months of the contract, he would incur a delinquency charge for each month remaining on the contract because of the rule allowing the creditor to allocate current payments to unpaid charges incurred in past periods. *Subsection (3) meets this problem by compelling the creditor to apply the full $100 payment received on February 1 to the payment due that month. Hence, the creditor could collect the delinquency charge only for January if all other payments were made on time.* (emphasis added)

[9] Though your letter does not explicitly characterize the difference as that between the missed payment and the chronic late payments within a single payment cycle, that appears to be the hypothetical you constructed, with Borrower B paying between 31 and 39 days late. As is discussed below, that scenario is one which was expressly considered and addressed by the ICCC's enacting legislature.

UCCC § 2.502, Comment 2 [1974]. See generally National Consumer Law Center, *Cost of Credit: Regulation and Legal Challenges* § 7.2.4.3 (1995 and supp.)

The primary drafters of the ICCC elaborated on this Official Comment:

> Only one delinquency charge may be made per installment. If more than one installment is delinquent, and payment is received, it must be applied first to the current due installment and then to any delinquent installments. ***This application of payments rule is designed to prevent the consumer who has missed one payment and is unable to "make-up" that payment from being hit with a series of delinquency charges.*** (emphasis added).

Nathaniel E. Butler and George J. Wallace, *A Compliance Guide to the Iowa Consumer Credit Code* p. 4.4 (Iowa Bankers Association, 1974).[10] They go on to refer to an interpretation from the Colorado Consumer Credit Code for guidance in determining which is the "current due" installment.[11] That interpretation, reprinted in the *Compliance Guide,* states

> It is our opinion that the intent of the legislature in drafting the sections relating to delinquency charges was to prohibit certain practices which have been particularly subject to abuse of the past years. In particular, we feel the intent was to prohibit the compounding of delinquency charges as well as excessive delinquency charges while providing a deterrent against late payments being made by the debtor.
>
> Keeping the above in mind, a debtor should be considered as making the current installment if the payment is made on or after the current due date up to and including the last day of the grace period. *Therefore, if a debtor were to miss the first installment on a 12 month contract and then paid each subsequent installment on the due date, only one delinquency charge ... could be collected up to the maturity date of the contract. The one remaining payment which would be made one month from the originally scheduled maturity date would be subject to charges after maturity as set forth in the contract.* (emphasis added)

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[10] National Butler, then with the National Commission on Uniform State Laws, and George Wallance, then on the law faculty of the University of Iowa, were the primary drafters and legislative advisors when the ICCC was adopted. While not official legislative history, their key role in the enactment of the ICCC makes their contemporaneous Compliance Guide useful in understanding the policy considerations which were before the legislature.

[11] They warn that in other respects, there were differences between the Colorado and Iowa provisions on delinquency charges. The 1968 version of the UCCC, adopted in Colorado, also requires that, for purposes of delinquency charges, payments are applied first to current payments and then to delinquent payments. See 1968 UCCC §§ 2.203(3), 3.203(3).

Id., Appendix II.

Thus the factual scenario you posit was explicitly considered and addressed by the drafters of both versions of the UCCC, and the ICCC. The language in the statute is unambiguous that payments are to be applied first to current installments and then to delinquent installments, and the UCCC comment and the Iowa drafters' explanation both support the plain meaning of the sentence. In the situation you hypothesize, the payment received on December 3 must be allocated to the December payment.[12]

B. Accounting methods and UCCC anti-pyramiding rules

Pyramided late charges creates the same problem irrespective of whether the transaction is precomputed or interest-bearing, so that distinction is not relevant for purposes of the allocation rules. Indeed, the pyramiding problem can be exacerbated in the interest-bearing context, as actuarial accounting which does not carve-out late charges results not only in pyramiding the late charges, but also results in compounding interest on late charges.[13] Thus it is all the more important that the anti-pyramiding rule be followed in the interest-bearing context.

Example

On December 1, 1998, Consumer took out a $2500 loan for 6 months at 12%, with a monthly payment of $431.37. Payments are due on the first of the month, beginning January 1, 1999. The final payment of $431.38, due June 1, 1999, should pay off the loan. The total finance charge to be paid, if all payments are timely made, would be $87.98.

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[12] The UCCC approach differs in this respect from the FTC's anti-pyramiding rule. The UCCC approach prohibits all types of pyramiding, while the FTC approach prohibits only one type of pyramiding. The FTC rule, 16 C.F.R. § 444.4, prohibits pyramiding when "the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s)." This has been interpreted to permit the pyramiding which results from a missed payment, thus allowing the domino effect by which each subsequent payment may be consistently treated as late. See Statement of Bases and Purposes, 49 Fed. Reg. at 7770-7771 (March 1, 1984), and FTC Advisory Letters June 21, 1985 (CCH Cons. Credit Guide Para. 96,257); May 31, 1985 (CCH Cons. Credit Guide Para. 96,309).

[13] Thus, to prevent the pyramiding abuse in the interest-bearing context requires, in effect, that the U.S. Rule be used to account for late charges. (For a discussion of the actuarial and U.S. Rules, see generally Truth in Lending Regulation Z, Appx. J(a)(1); National Consumer Law Center, *The Cost of Credit: Regulation and Legal Challenges,* § 4.6.1.1 (1995 and supp.)) While the ICCC, for *finance charges*, permits the use of actuarial accounting instead of the U.S. Rule, to allow late charges to be treated in the same way would have a result directly contrary to the policy goal and explicit language regarding late charges.

Consumer misses the February payment due to a hospitalization, but all subsequent payments through 6/1 are made timely. Finally realizing that he had missed a payment when he learned there was a balance remaining after his June 1 payment, he comes in on June 20 to pay off the loan.

The account is interest-bearing, not precomputed. The following tables compare the difference in compensation to the lender and penalty to the borrower between accounting for the late payment under the UCCC rules, (Table 4) and a system which pyramids the late charges and permits one missed payment to create a "domino" effect. (Table 5)

Table 4 -- UCCC Application of Payment Rule
(not pyramiding late charges,
& applying payments first to current installment due

Date paid	Unpd balance	Interest Accrued	Payment	New Balance	Late Charge (Carry-forward if necessary)
1/01 (31 days)	$2500.00	$25.48	$431.37	$2094.11	--
3/02 (61 days)	$2094.11	$42.00	$431.37	$1704.74	$15.00 (Feb)
4/01 (30 days)	$1704.74	$16.81	$431.37	$1290.18	--
5/01 (30 days)	$1290.18	$12.73	$431.37	$871.54	--
6/01 (31 days)	$871.54	$ 8.88	$431.37	$449.05	--
6/20 (20 days)	$449.05	$ 2.95[14]	To Pay in Full: $449.05 + $ 2.95 accrued interest 6/1 - 6/20 + $ 15.00 accrued, unpd late charges $ 467.00		
		$108.85 total finance charge			$15.00 total late charges

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[14] June 1 is the maturity date in this hypothetical. Some notes call for different interest rates following maturity. Provided the post-default rates provided for are not in violation of Iowa Code § 537.3402, nor 15 U.S.C. § 1639(d) in the case of a high-cost mortgage as that term is defined in 15 U.S.C. § 1602(aa), the applicable rate would be the contracted-for post-maturity rate. This example assumes it remained the same.

Table 5
Pyramiding Late Charges from Missed Payment/
Applying payments to most delinquent first (Domino Effect)

Date paid	Unpd balance	Interest Accrued	Late Charge	Payment	New Balance
1/01 (31 days)	$2500.00	$25.48		$431.37	$2094.11
3/02 (61 days)	$2094.11	$42.00	$15.00	$431.37	$1719.74
4/01 (30 days)	$1719.74	$16.96	$15.00	$431.37	$1320.33
5/01 (30 days)	$1320.33	$13.02	$15.00	$431.37	$ 916.98
6/01 (31 days)	$ 916.98	$ 9.35	$15.00	$431.37	$ 509.96
6/20 (20 days)	$ 509.96	$ 3.35	$15.00	To pay in full $528.31	
		$110.16 total finance charge	$75.00 total late charges		

The following comparison of the bottom-line cost to the consumer between the two methods demonstrates that the UCCC approach to payment allocation represents the middle-ground. Creditors are compensated for late payments (especially in interest-bearing transactions), and there is ample incentive for prompt payment, given the extra cost to the consumer in the form of the combined extra interest and late charges.

Table 6
Comparison

	As Scheduled	Not Pyramiding/Applying payment to current payment due first (UCCC mandate)	Pyramiding skipped payment/applying payment to most delinquent first
Finance Charge	$ 87.98	$108.85	$110.16
Late Charges	NA	$ 15.00	$ 75.00
Total lender compensation/consumer penalty" for one missed payment on an interest-bearing transaction	NA	$20.87 extra interest +$15.00 late charges (1) $35.87	$ 22.18 extra interest $ 75.00 late charges (5) $ 97.18

III. PROMPT CREDITING OF NON-CONFORMING PAYMENTS AFTER A THREE-DAY WEEKEND

Your third question asks how the prompt crediting amendment, 1999 Acts, Chap. 15, Section 4, codified at Iowa Code § 537.3206(4), is applied in a very narrow factual circumstance. The factual circumstances are: a) the consumer does not follow instructions in making the payment (e.g. payment at a branch office when it was directed to be sent to headquarters), and b) the payments are taken and applied over a holiday weekend.

When payments are made in conformance with instructions for delivery given by the creditor, then the payments are to be credited as of the date of receipt. (The actual posting need not take place on the same day, but the payment must be credited as of the day of receipt.[15])

[15] This is consistent with the interpretation of similar language in 15 USC § 1666c; Reg. Z, §226.10. See Official Staff Commentary § 226.10(a)-1: "Section 226.10 does not require the creditor to post the payment to the consumer's account on a particular date: the creditor is only required to credit the payment as of the date of receipt." OSC § 226.10(a)-2 also provides guidance on what constitutes the "date of receipt," language which also parallels the new ICCC language.

When payments are not made in accordance with instructions,[16] payments are to be credited within 2 days of receipt. Your question was whether, for example, a payment received after business hours on Friday night of Memorial Day weekend need be credited within 2 days. Our office would not take any enforcement action for creditors who take non-conforming payments in over a holiday weekend if they credit the account within two business days.

This is an informal opinion of the Administrator, and not an official opinion of the Attorney General. If you have further questions, please feel free to call.

Sincerely,

S/

Kathleen E. Keest
Assistant Attorney General
Deputy Administrator, Iowa
Consumer Credit Code

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[16] Creditors may also wish to review Reg. Z, OSC § 226.10(b) for what constitutes "reasonable" limitations in defining "conforming" payments.

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