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CONSUMER PROTECTION DIVISION

Department of Justice

June 05, 2007

VIA FACSIMILE

Dear

This letter is a follow-up to our May 9, 2007 correspondence and addresses the issue of the finance charge on future advances on accounts open as of July 1, 2007. Based on Iowa law, it is the informal opinion of this office that any advances made on any open car title account on or after July 1, 2007 shall be subject to the finance charge limits of the new law.

Contrary to the assertions in your May 2, 2007 letter, Iowa Code section 535.2(3)(b) does not apply to the new maximum finance charge permissible on loans secured by a motor vehicle signed into law this year as part of House File 5. Reading subsection 535.2(3)(b) in context demonstrates that it addresses loans subject to the cap established in the preceding subsection (a) and not loans covered by a completely different chapter of the Iowa Code. The interest rate cap in section 535.2(3)(a) is subject to monthly change, and it is logical that the legislature added section 535.2(3)(b) to address these potentially volatile rates. The new finance charge cap does not change on a monthly basis and therefore, once enacted, will not require the clarification provided by section 535.2(3)(b). Indeed, Iowa Code section 535.2(3)(a) does not apply to any outstanding car title loans. Rather, Iowa Code section 537.2402 currently governs car title loans and, notably, section 537.2402 makes no reference to Iowa Code section 535.2.

The terminology used in the relevant statutes also supports our conclusion that future advances are subject to the new finance charge cap. Iowa Code section 535.2(3)(a) addresses maximum *interest* rates. The new law, Iowa Code section 537.2403, addresses *finance charge* limits. As the Iowa Supreme Court noted in *Lutteneger v. Conseco*, 671 N.W.2d 425, 432-31 (Iowa 2003), the Iowa Consumer Credit Code ("ICCC") does not use the term "interest," but rather uses "finance charge." The deliberately different language of each statute is a clear indication that the two statutes address different issues.

Even if section 535.2(3)(b) were somehow relevant, several basic tenets of statutory construction favor applying the provisions of HF 5 to future advances. As a matter of statutory construction, we “proceed upon the premise our General Assembly intended its enactments be accorded a practical application leading to a reasonable result which will accomplish, not defeat, their purpose.” *Matter of Bliven’s Estate*, 236 N.W.2d 366, 369 (Iowa 1975). The legislature clearly intended to address the rates charged on loans secured by a motor vehicle. In addition, as you acknowledge in your May 2 letter, the legislature intended to remedy the loophole created by Iowa Code section 537.2402 that did not subject open ended consumer loans secured by a motor vehicle to any limitation. If _____ were permitted to continue charging triple digit finance charges on future advances as long as an open account remains open, the new law would never have its intended effect. Furthermore, in conflicts between general and specific statutes, the specific statutory provision prevails. *See* Iowa Code § 4.7. Additionally, in matters of statutory conflict, the most recently enacted provision prevails. *See* Iowa Code § 4.8. Not only is section 537.2403 the most specific, addressing the entire range of finance charges on consumer loans secured by a motor vehicle, but the changes in HF 5 are also the most recent.

The legislature chose to impose the new cap by amending the ICCC. That fact, together with the language actually used in HF 5, further demonstrates the legislature’s intention that the new cap apply to all future advances. Iowa Code section 537.1102, provides the ICCC should be construed liberally to promote its underlying purposes and policies, which includes policies enumerated in HF 5. Plus HF 5 states, “[a] lender *shall not contract for or receive* a finance charge exceeding twenty-one percent.” (emphasis added). Under section 537.2403, a consumer who is charged a finance charge in excess of that which is legally allowed can seek a remedy pursuant to the chapter. If the legislature intended ongoing contracts to permit rates in excess of the cap, it would not have added the phrase “or receive” but would merely have left the language as “shall not contract for.” So, the language used in HF 5 and the ICCC’s interpretive guidance, shows the legislature intended that the law be construed to promote its purpose of capping finance charges and protecting consumers.

Finally, the general savings provision of Iowa Code subsection 4.13(2) does not preclude application of HF 5 to future advances that were not funded as of June 30, 2007. For future advances, _____ does not acquire a right to receive interest on the advance, and the borrower does not incur an obligation to pay interest on that advance, until _____ actually advances the funds. The contractual provisions we have reviewed in _____ loan agreements make it clear that although future advances are a possibility, they are not guaranteed.¹ In addition, it is

¹ For example, a loan agreement _____ provided this office contains the following provisions:

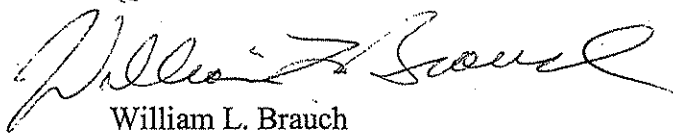
“8. . . . You agree we have the right to reappraise the Collateral and/or demand proof of your current income from time to time upon reasonable notice. You further agree we have the right to increase or lower your credit limit based upon the condition of the Collateral and/or your current income. . . .”

“14. . . . We may suspend making future cash advances on your Account at any time and in our sole discretion if we in good faith believe that we are in jeopardy of not being repaid as agreed by giving written notice to you, provided that if such suspension is made pursuant to this paragraph, you will be allowed to repay any remaining balance over time pursuant to this agreement.”

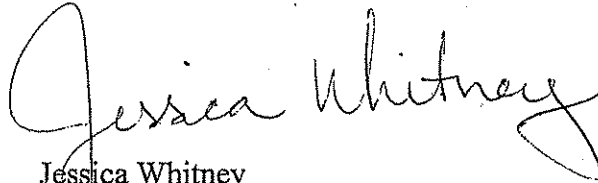
our understanding that _____ generally will not make any future advances unless the borrower brings in the motor vehicle for reappraisal. As a result, neither LoanMax nor the borrower has incurred a right, remedy, or obligation as of June 30, 2007 sufficient to trigger application of Iowa Code subsection 4.13(2) to future advances made on or after July 1, 2007. Cf. *Janda v. Iowa Indus. Hydraulics, Inc.*, 326 N.W.2d 339, 345 (Iowa 1982) (holding savings clause did not prevent application of new, higher interest rate to judgment entered in case that was pending at time legislature raised the statutory interest rate applicable to judgments because the defendant did not incur an obligation to pay interest and the plaintiff did not acquire a right to receive interest until judgment was actually rendered).

Our office thanks you for asking these important questions before HF 5 takes effect. If you have any questions feel free to directly contact either Ms. Whitney or Mr. Brauch.

Sincerely,



William L. Brauch
Special Assistant Attorney General
Director-Consumer Protection Division



Jessica Whitney
Assistant Attorney General
Deputy Administrator of the
Iowa Consumer Credit Code

cc: