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Car Title Loans + H.F.5

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Department of Justice

May 9, 2007

VIA FACSIMILE

Dear

The office is in receipt of your May 2, 2007 correspondence. Your letter raises two concerns: (1) the interest rate on loan funds advanced prior to July 1, 2007; and (2) the interest rate on future advances of accounts open as of July 1, 2007. With respect to the first point, it is the informal opinion of this office that based on Iowa law as well as federal law, any loan funds advanced pursuant to a written agreement entered into prior to July 1, 2007, shall not be effected by the legislation insofar as the contract is honored. The office is still looking into the second concern raised in your letter and will get back to you and your client as soon as possible.

Our office would also like to raise our own concerns about a mailing your client, is sending out to consumers. This mailing is entitled "Change in Terms Notice." A copy of the mailing with the consumer's name redacted is attached for your reference. The mailing proposes to make two unilateral changes to the Motor Vehicle Equity Line of Credit Agreement. The first change is a potential rate cap and monthly payment change/acceleration. The second is an arbitration agreement. These unilateral changes in the existing contract raise great alarm, even more so since they are automatically imposed upon the consumer unless the consumer affirmatively opts out.

The attempt to change and accelerate the monthly payment if a rate cap is imposed contravenes Iowa Code Section 537.3205(2), which provides (emphasis added):

Unless authorized by this chapter or unless agreed to by the consumer, a creditor shall not change the terms of an open-end credit account, with respect to a balance incurred before the effective date of the change, which results in an increase of the rate of the finance charge or other charge or *an increase in the amount of a periodic payment due, or which otherwise adversely affects the interest of the consumer with respect to balance.*

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Clearly, increasing the minimum monthly payment (or in terms of the statute, the periodic payment due) and accelerating the contract so that the balance is paid off within three months, adversely affects the interest of the consumer with respect to balance. Furthermore, the negative option clause does not constitute agreement by the consumer to this adverse clause and raises unfair deceptive acts and practices concerns. Pursuant to Iowa Code Section 537.3205(5), a violation of Iowa Code Section 537.3205(2) is subject to the remedies available to the consumer under Iowa Code Section 537.5201 and the administrator under Iowa code section 537.6113.

The attempt to unilaterally change the arbitration provisions raises similar concerns. The Iowa Consumer Credit Code does not contemplate such a change, and the negative option does not constitute consumer agreement.

Please inform this office of your client's future plans with respect to the mailing in question. Meanwhile, this office will continue to look into the second point of your letter and inform you once a determination has been made.

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: