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CONSUMER PROTECTION DIVISION

Department of Justice

April 15, 2011

R.E. Questions Regarding the Iowa Consumer Credit Code

Dear _____

This letter is in response to your inquiry regarding _____ compliance with the Iowa Consumer Credit Code (hereinafter "ICCC"). After reviewing our correspondence with you and the documents you submitted to our office, we have come to the conclusion that _____ operates open-end accounts receivable rather than consumer credit sales. This is just a preliminary review by our office based on the limited information you have provided; it is not a formal opinion nor is it legal advice. As always, we recommend you consult with your own legal counsel.

It is our understanding that _____ allows consumers to purchase fuel repeatedly throughout the month using a card that provides pump access and transmits charges to the consumer's account. Payment for all of those purchases is due on the twentieth day of the month. If not paid in full on the twentieth, the account is considered past due and a delinquency fee, referred to as a "finance charge," is assessed. If not paid by the first day of the following month, the card no longer works and consumers cannot access pumps.

This is not considered a consumer credit sale because a customer cannot make payments in four or more installments or make a minimum payment, accrue a finance charge and continue using the card. Instead it is an account receivable, governed by Iowa Code section 535.11. An account receivable is defined as "a debt arising from the retail sale of goods or services or both on credit." Iowa Code section 535.11(5). An "open account" is defined as "an account receivable consisting of debt arising from the extension of open-end credit." *Id.* As one of the drafters of the ICCC noted:

Open-account credit is not consumer credit because there is neither a finance charge contracted for, nor is it payable in installments. Open accounts are payable upon receipt and generally are in default if they have not been paid within thirty

days. Although there is no "finance charge" contracted for, merchants commonly want to charge a "delinquency charge" to encourage prompt payment and to compensate themselves for carrying the past due account.

Nathaniel Butler and George Wallace, *A Compliance Guide to the Iowa Consumer Credit Code*, 5.1 (Iowa Bankers Association, 1974). GFG operates open account receivables because consumers are allowed to purchase fuel several times a month on credit, payment is due, in full, on the twentieth day of every month and if consumers are late a "delinquency charge" is assessed. Failure to pay the entire amount due results in consumers being unable to purchase more gas, therefore, credit is not extended to the consumer.

As long as [redacted] operates open account receivables, it is not required to comply with portions of the ICCC. [redacted] is still required to comply with the section of the ICCC concerning debt collection (Iowa Code sections 537.701- 537.7103). [redacted] is allowed to contract with its customers for a delinquency charge, so long as it is agreed to in writing. Iowa Code section 535.11(1). Even though [redacted] is calling this delinquency charge a "finance charge," the facts determine the type of charge, not the name, and in this case it is a delinquency charge or late fee. [redacted] were assessing the charge and then forgiving it each month when the bill is paid on time, then the charge would be a finance charge. See *Landon v. Mapco, Inc.*, 405 N.W. 2d 825. Stated another way, if the "finance charge" that was imposed on a consumer was calculated based upon the date of the credit sale(s) as opposed to the date payment was late, it is an actual "finance charge" and not a "delinquency charge". Additionally, if [redacted] has a consumer that continually pays late and GPG knows and allows this and continues to allow repeated late payment, then "delinquency charges" begin to look like "finance charges". *Id.*

We do have some concern that [redacted] may be engaged in consumer credit sales with some customers because you informed our office that on a case-by-case basis your credit manager may allow a customer to make a minimum payment on an unpaid balance and continue using the card to purchase fuel on credit. If [redacted] regularly engages in this practice, then you are likely engaged in the extension of consumer credit and must comply with the ICCC. The ICCC definition of regularly engaged in the business of lending is not number specific, but requires repeat conduct of extending credit. See *Paglia v. Elliot*, 373 N.W. 2d 121, 125(Iowa 1985). The Truth in Lending Act, which would also apply to these transactions via the ICCC, is more specific and it states that a "creditor" is someone extends consumer credit twenty-five or more times. See 12 C.F.R. 226(a)(17)(v). In the event that [redacted] is regularly extending credit, below is an explanation of what changes must be made to comply with the ICCC. Again, the following only applies if [redacted] regularly engages in consumer credit sales.

Clarify Late Fee Terms: There may not need to be changes made as the facts provided to our office were vague. Pursuant to the ICCC, a late fee can only be assessed 10 days after it is past due. Late fees are limited depending on type of transaction. The late fee limits can be found in Iowa Code section 537.2502.

Provide Proper Right To Cure Time Period and Notice: Once a consumer is ten days late with a payment they must be sent a Notice of Right to Cure pursuant to Iowa Code sections 537.5109-537.5111. The Notice of Right to Cure must give the consumer twenty days to cure their default. A Notice of Right to Cure needs to only be sent once, the first time a consumer defaults, in a 365 day period.

Remove attorney's fees provision: must remove the attorney's fees provisions from the credit application and personal guarantee form. Requiring the consumer to commit to paying attorneys fees and costs associated with collection violates ICCC § 537.2507. This provision of the credit application is unenforceable.

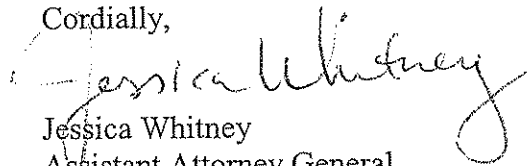
Bring credit applications and periodic statements into compliance with the Federal Truth and Lending Act (TILA): TILA is incorporated into the ICCC by § 537.3201. GPG must ensure that applications, solicitations, and periodic statements comply with the disclosure requirements of 12 C.F.R. 226. For example, the application form must be changed so that the APR and finance charge are disclosed clearly and conspicuously. The APR must be presented in a tabular format.

Register with the Attorney General's Office and pay applicable fees: If GPG is engaged in these consumer credit sales then it must file creditor notification with the Attorney General's Office. See Iowa Code § 537.1301(13). All assignees and other creditors subject to the ICCC are required to file a notification statement with our office and pay a \$10.00 annual fee and a volume fee based on \$10.00 per \$100,000 of the average unpaid balances arising from consumer credit transactions held on the last day of each calendar month. See Iowa Code §§ 537.6201-537.6203.

The forms can be found on our website at:
www.iowaattorneygeneral.org/protecting_consumers/business_registration_info.html

Please note, this is an informal opinion of the Administrator, it is neither an official opinion of the Attorney General, nor a formal ruling of the Administrator. And again, we recommend talking with legal counsel. If you have questions please contact me at the above phone number or address.

Cordially,



Jessica Whitney
Assistant Attorney General
Deputy Administrator ICCC