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## Department of Justice

August 16, 2011

R.E.: Origination Fees and Consumer Credit Transactions

This letter is in response to your inquiry regarding the treatment of origination and document fees within the context of consumer lending, which would fall under the Iowa Consumer Credit Code (hereafter the "ICCC"). This is a preliminary review based on the information provided; it is not a formal opinion nor is it legal advice. As always, we recommend you seek your own legal counsel.

### Inquiry

In your letter, you refer to prior informal feedback you received from the Iowa Division of Banking that indicated that the Iowa Code does not allow for the inclusion of origination or documentation fees in the consumer lending or sales context, outside of specifically enumerated sales categories like vehicles or homes. You presented the question of whether such fees can be included in a traditional consumer credit transaction.

### Answer

For consumer credit transactions governed by the ICCC, documentation and origination fees are permissible so long as they are properly disclosed and included as finance charges within the total finance charge amount, staying within the allowable total finance charge cap of the ICCC.<sup>1</sup> Because these types of fees are paid in full up front, if the loan is paid off early then a portion of the fee must be refunded as an unearned finance charge.

As the court has stated, the ICCC "caps finance charges and provides an exception to that cap by listing fees that may be charged in addition to the finance charge without regard to the cap. As to certain other fees, the [ICCC] does not prohibit them but treats them as part of the finance charge,

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<sup>1</sup>The finance charge cap varies depending on the type of transaction and the creditor. Your inquiry seemed to concern consumer sales wherein the seller grants credit to the buyer of consumer goods. These transactions are known as "consumer credit sales." In closed-end consumer credit sales not involving motor vehicles the limit is twenty-one percent per year calculated according to the actuarial method. See Iowa Code section 537.2201. But please consult legal counsel to ascertain the nature of a transaction.

subject to the cap.” *Luttenegger v. Conseco Financial Servicing Corp.*, 671 N.W.2d 425, 433 - 434 (Iowa 2003) (noting error in Iowa Division of Banking chart indicating such fees were not allowed). See also ICCC Informal Advisory Op. 96 (Jan 1, 2007) (advising imposition of debt cancellation product charge permissible if properly disclosed), *available at* [http://www.state.ia.us/government/ag/protecting\\_consumers/ICCC\\_Opinions/96.pdf](http://www.state.ia.us/government/ag/protecting_consumers/ICCC_Opinions/96.pdf).

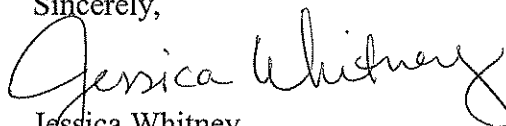
The definition of “finance charge” is found at Iowa Code section 537.1301(21). While the section enumerates various examples of finance charges, the list is non-exhaustive, making finance charges a broadly inclusive term. A finance charge, with certain exceptions not applicable here, is a charge “payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit.” An origination fee would be payable by the consumer as a result of the extension of credit and would be a finance charge. A document fee would also be a finance charge unless it is imposed uniformly across both credit and cash sales. If it would not be imposed in a similar cash transaction, it is a finance charge.

In Iowa Code section 537.2501, the ICCC lists certain “additional charges” that may be excluded from classification, and being listed, as a finance charge. This list is exhaustive, with expansion of permissible charges only allowed through formal rule-making under Iowa Code section 537.2801(h). If a charge fits the definition of a finance charge, the only way to exclude the charge as such is limited to fitting the charge within section 537.2501. Neither an origination nor document fee are listed under 537.2501, and therefore are not excluded as finance charges. Since these charges are not excluded, they remain classified as finance charges as indicated above.

Finally, because the origination and document fees are paid up front, they are initially unearned finance charges. These charges gradually become earned throughout the life of the loan and are fully earned on the last scheduled payment. If the consumer pays off the loan early, pursuant to Iowa Code section 537.2510, the creditor must refund all unearned finance charges. The ICCC provides a formula for determining which portion of the charges are unearned and must be refunded. *See* Iowa Code section 537.2510.

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. It does not replace or provide legal advice as would be provided by legal counsel. We recommend seeking your own legal counsel. If you have any further questions, please contact me at the above phone number or address.

Sincerely,



Jessica Whitney  
Assistant Attorney General  
Deputy Administrator ICCC