IRVIN D. PARKER
ADMINISTRATOR

The State of South Carolina
Department of Consumer Affairs

600 COLUMBIA BUILDING
P. O. BOX 11739
COLUMBIA, S. C. 29211
(803) 758-2040

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PARTIES MAY AGREE TO DEFER INSTALMENTS WHICH ARE IN DEFAULT AFTER CONSUMER CREDIT SALE CONTRACT HAS MATURED. "STANDARD DEFERRAL" IS REQUIRED WHERE REBATE METHOD IS RULE OF 78'S.

You have furnished us with a retail instalment sale agreement the final scheduled instalment of which is past due. The contract is now owned by an assignee in bankruptcy who has employed a debt collection agency to collect on this and other similar contracts from former debtors of the bankrupt creditor. All of the contracts arise out of consumer credit sales made in this State and provide for a "Rule of 78's" rebate in the event of prepayment.

You have asked whether the creditor may grant a deferral other than a standard deferral with respect to this and similar contracts.

Section 2.204(2) of the Consumer Protection Code (Act 1241 of 1974, amended by Act 686 of 1976) provides that:

> Before or after default in payment of a scheduled instalment of a transaction, the parties to the transaction may agree in writing to a deferral of all or part of one or more unpaid instalments and the creditor may make at the time of deferral and receive at that time or at any time thereafter a deferral charge not exceeding that provided in this section.

A deferral agreement may be made "before or after default." The section does not set any limitation with respect to the time period in which "after default" a deferral agreement may be made. Accordingly, it would appear that if any instalment is in default a deferment is permissible regardless of how long it has been in default and even though the due date of the final scheduled instalment has past.

The authority to defer "after default," however, appears to be conditioned upon there being a "default." This raises an

ancillary question which is not specifically posed by you and cannot be answered on the facts presented but which should be answered before a deferral is undertaken: Was there a default? Section 5.109 provides that a payment is in default if it is not made "as required by agreement . . . ." If an agreement requires a debtor to make payments to the seller and this cannot be done because the seller's business is closed, such as in bankruptcy, there is, in our opinion, no default until such time as an assignment has occurred and the debtor has failed to pay the assignee after notice of the assignment. Thus, a deferral charge for the period when the debtor was prevented from making payments would not be authorized.

The "parties" to the contract may enter into a deferral agreement and the "creditor" may make a deferral charge. Although a person may ordinarily designate an agent to do for him what he might do himself, this is not universal.

In many regulated trades and professions the authority to engage in certain activities is personal and non-delegable. It is clear that a supervised lender could not authorize an unlicensed lender to make supervised loans for it outside of its licensed office. It is not so clear that an assignee of a retail sale contract could not delegate to another person his right to enter into a deferral agreement with respect to such a contract. Such a prohibition may be reasonably inferred, however, from the fact that the legislature, in other sections of this integrated act, utilized the language "creditor or a person acting in his behalf" instead of merely "creditor," where it was intended to apply to such other persons. See Section 6.108(1) and 6.113(2) for example. See also Section 1.201(7)(c) defining "creditor" as the "person who grants credit in a consumer credit transaction or except as otherwise provided, an assignee of the creditor's right to payment . . . ."

A creditor who makes a deferral other than a standard deferral may not make a rebate under the "Rule of 78's" method. See Section 2.210(5)(a). The contract furnished by you provides for a "Rule of 78's" rebate in all cases. In order for that to be a correct statement in compliance with the Truth in Lending Act there must be either no deferral or a standard deferral. Thus, although Section 2.204 gives a creditor an option in all cases to make either a standard deferral or a non-standard deferral the creditor made his election for a standard deferral when he provided for a "Rule of 78's" rebate in the contract.

The requirement that a "standard deferral" must be used in these cases has reference to a method of computation. The method prescribes a ceiling on deferral charges which may be made. This ceiling will permit a higher deferral charge than would the non-standard method if the deferral occurs in the first months of

the contract, but it mandates a lower charge if the deferral occurs in the latter months. It should be noted, however, in neither case does the section set a rate of charge. It sets a ceiling only so that any amount at or lower than the maximum is permissible.

It is the opinion of this office that a creditor and debtor may agree, after the scheduled maturity of a consumer credit sale contract, to defer one or more instalments for the period that such instalments were in default. Such deferral must be a standard deferral if the rebate method is the rule of 78's or sum of digits.

Irvin D. Parker
Administrator