Administrative Interpretation No. 2.405-7403

A BALLOON PAYMENT SALES CONTRACT IN THE HANDS OF AN ASSIGNEE-LENDER MUST BE REFINANCED AT SALE CREDIT RATES NOT TO EXCEED THE ORIGINAL CONTRACT RATE.

Section 2.405 of the South Carolina Consumer Protection Code (Act 1241 of 1974) provides that:

With respect to a consumer credit sale, other than one primarily for an agricultural purpose or one pursuant to a revolving charge account, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the buyer has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the buyer than the terms of the original sale. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the buyer.

The question has arisen as to whether a credit sale contract balloon payment when it must be refinanced by an assignee-lender, is to be refinanced at loan rates or sale rates.

Section 2.205 provides that upon refinancing a consumer credit sale a "seller" may contract for and receive a credit service charge pursuant to Section 2.201.

Section 2.207 provides that the term "seller" includes an assignee of the seller's right to payment.

Section 2.405 further limits the credit service charge upon refinancing to the credit service charge originally agreed to.

It should be noted that Section 2.205 applies only to refinancing the unpaid balance of a sale. Any new cash advanced is a "loan" (Section 3.106) and not a "refinancing." As such, an additional cash advance may be made only at rates provided for consumer loans.
Based upon the foregoing, it is the opinion of this office that balloon payments in consumer credit sale contracts may be refinanced by a lender-assignee at credit sale rates not in excess of the rates originally agreed to by the buyer.

Irvin D. Parker  
Administrator