



IRVIN D. PARKER
ADMINISTRATOR
AND
CONSUMER ADVOCATE

The State of South Carolina
Department of Consumer Affairs

2221 DEVINE STREET
P.O. BOX 5757
COLUMBIA, S.C. 29250

July 30, 1980

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Administrative Interpretation No. 3.605-8007

\$25,000 BENCHMARK REFERS TO AMOUNT OF LOAN AND THEREFORE DEBT
ACTUALLY INCURRED OR TO BE INCURRED RATHER THAN MERELY LINE OF
CREDIT IN A REVOLVING LOAN TYPE OF ARRANGEMENT

You have asked for an administrative interpretation involving Section
3.605 of the Consumer Protection Code [S.C. Code Ann. §37-3-605 (Cum.
Supp. 1979 as amended by §3 of Act No. 433 of 1980 (R504, H3703)] which
provides effective July 1, 1980 until July 1, 1982:

With respect to a loan other than a consumer loan, in excess
of \$25,000, the parties may contract for the payment by the
debtor of any finance or other charge except such loans that
are primarily secured by a first lien which is a purchase
money security interest in land or such loans made primarily
for agricultural purposes. (Emphasis added)

Your question concerns a lender's floorplanning a dealer in such items
as mobile homes, automobiles, or boats. Specifically you asked what is
the maximum rate of finance charge a lender may charge a dealer in this
type of arrangement, assuming the dealer is not a corporation meeting
the \$40,000 capital stock requirement in South Carolina Code Section
34-31-80 (1976).

The maximum rate that may be charged depends on the amount of the loans
involved in a particular floorplanning arrangement. If the loans are
for more than \$25,000, Consumer Protection Code Section 3.605 governs
which has no rate ceiling; if the loans are for \$25,000 or less, state
or federal law outside the Consumer Protection Code governs the maximum
rate unless the parties bring the loan under the Consumer Protection
Code.

Although we were not provided with a copy of a particular floorplanning
agreement, the facts as we understand them are as follows. A dealer is
granted a line of credit in an amount over \$25,000. The dealer uses the
line of credit by purchasing items for his inventory and thus might use
\$15,000 or some other amount less than the line of credit at any one
time. The dealer is not required to become obligated for any specific
amount. When the lender receives notice from the dealer that a certain
amount of credit has been used, the lender pays the seller of the items
directly on behalf of the dealer, deducting that amount from the dealer's

TELEPHONES (AREA CODE 803)

ADMINISTRATION
758-3017

CONSUMER COMPLAINTS
758-2040
WATS 1-800-922-1594

PUBLIC INFORMATION
758-7546

NOTIFICATION
758-8587

CONSUMER ADVOCACY
758-8996

line of credit. The dealer agrees to pay interest or finance charges once a month on the unpaid balance of his account as well as to pay off a certain percentage of the purchase price of the items periodically which may be, but is not necessarily, monthly. The unpaid balance and the amount of available credit vary according to the dealer's payments on the account.

Only loans that are for more than \$25,000 and not primarily secured by a first lien purchase money security interest in land or made primarily for agricultural purposes are governed by Consumer Protection Code Section 3.605. Because the loans in issue are neither secured by land nor for agricultural purposes, the only question is whether a line of credit of more than \$25,000 meets the requirement of a loan in excess of \$25,000.

Section 3.106 of the Consumer Protection Code [S.C. Code Ann. §37-3-106 (1976)] defines "loan" as including:

- (1) The creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;
- (2) The creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately;
- (3) The creation of debt pursuant to a lender credit card or similar arrangement; and
- (4) The forbearance [sic] of debt arising from a loan. (Emphasis added)

The floorplanning arrangement as we understand it falls within subsection (1) of that definition which is taken from the Official 1968 Text of the Uniform Consumer Credit Code. The official comment for that section states in pertinent part: "A loan is made when a creditor creates debt by advancing money to the debtor or to a person in his behalf..." (Emphasis added) Although the term "debt" is not defined in the Consumer Protection Code, it is generally defined in Black's Law Dictionary (Revised 4th Edition 1968) as "a sum of money due by certain and express agreement...where the amount is fixed and specific and does not depend upon any subsequent valuation to settle it." It is our opinion that no debt is created until the dealer is required to pay the lender according to the agreed terms as a result of his making purchases which are charged against his line of credit.

The floorplanning arrangement you described appears to be analogous to a "revolving loan account" defined in Consumer Protection Code Section 3.108 [S.C. Code Ann. 37-3-108 (1976)] which says such an account is:

...an arrangement between a lender and a debtor pursuant to which (1) the lender may permit the debtor to obtain loans from time to time, (2) the unpaid balances of principal and the loan finance and other appropriate charges are debited to an account, (3) a loan finance charge if made is not precomputed but is computed on the outstanding unpaid balances of the debtor's account from time to time, and (4) the debtor has the privilege of paying the balances in installments. (Emphasis added)

It is clear from the language of this definition that a "revolving loan account" itself does not constitute a loan but instead individual loans are made as the borrower uses the account.

It is the opinion of this Department that a line of credit of over \$25,000 does not in itself constitute a loan in excess of \$25,000 for purposes of Section 3.605. However, if all advances under the line of credit were to be for more than \$25,000, Section 3.605 permits the parties to agree to any rate of finance charge. If none or only some of the advances were over \$25,000, other possibilities under South Carolina law include the following.

The parties may agree in a signed writing to bring the loan under the Consumer Protection Code under the authority of Section 3.601 [S.C. Code §37-3-601 (Cum. Supp. 1979 as amended by §6 of Act No. 433 of 1980)] in which case 18% annual percentage rate is the maximum permissible rate for loans in such large amounts. If the loan is not brought under the Consumer Protection Code, another South Carolina law that may apply is South Carolina Code Section 34-13-120 (1976) which permits 1½% per month on the unpaid balance for revolving credit plans of banks, banking institutions and other lending agencies. This assumes that the described arrangement would meet the definition of "revolving credit plan" under that section just as we concluded it would meet the definition of "revolving loan account" under the Consumer Protection Code if it were a consumer credit transaction.

It should be noted that a distinction can be drawn between loans pursuant to a revolving loan type of arrangement and an express written commitment by the lender to loan in excess of \$25,000 in several increments. The latter results in one loan of more than \$25,000 governed by Section 3.605. See, e.g., 1971 Op. Atty. Gen. No. 3184, p. 156; Federal Reserve Board Regulation Z §226.3(c) [12 C.F.R. §226]; and Federal Reserve Board letter no. 338 of June 1, 1970, [1969-1974 Transfer Binder] Cons. Cred. Guide (CCH) ¶30,393.

This interpretation should be read in light of recent federal legislation, specifically Public Law 96-221 effective April 1, 1980 through

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April 1, 1983 unless the General Assembly acts before that date to override it. Section 511(a) of that law permits business loans of at least \$25,000 to be made at a rate of no more than 5% above the discount rate on 90-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the lender is located if state law provides a lower rate ceiling.

Irvin D. Parker
Administrator

By 
Kathleen Goodpasture Smith
Counsel to the Administrator

KGS/ams