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August 25, 1978

Administrative Interpretation No. 3.104-7804

A "SHARE LOAN" WHICH IS ALSO A CONSUMER LOAN IS SUBJECT TO THE MAXIMUM FINANCE CHARGE PROVISIONS OF §3.508.

You have asked what maximum allowable finance charges may be made by a state chartered savings and loan association on a loan secured by a savings account or savings certificate, sometimes referred to as a "share loan." You pointed out that §34-31-30 of the 1977 Cumulative Supplement to the Code of Laws of South Carolina appears to limit the interest which may be charged on such loans. The term "share loan" when used in this opinion is the type of loan described in South Carolina Code §34-31-30, as indicated by underlining in the following paragraph.

Act Number 659 of 1976 amended §34-31-30 of the South Carolina Code by adding a final proviso effective June 29, 1976 which provides in pertinent part:

...[A]ny...savings and loan association may make loans to its depositors or holders of time or savings deposits, savings accounts or savings certificates and charge interest on such loans which are secured by such deposits or accounts provided that such interest charged shall be restricted to that permitted by this section unless a higher rate of interest is required by any applicable regulation of ... the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation or of any other agency of the United States, in which event the interest charged shall not be greater than that specified by such Federal regulation.... (Emphasis added)

In some instances, a share loan will come within the definition of "consumer loan" in Consumer Protection Code §3.104 [S.C. Code Ann. §37-3-104(Cum. Supp. 1977)] which provides in part:

- (1) ..."consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:
 - (a) the debtor is a person other than an organization;

TELEPHONES (AREA CODE 803)

ADMINISTRATION	CONSUMER COMPLAINTS	CONSUMER EDUCATION	NOTIFICATION	ENFORCEMENT
758-3017	758-2040	758-7546	758-8587	758-5864
WATTS 1-800-922-1594				

- (b) the debt is incurred primarily for a personal, family or household purpose;
- (c) either the debt is payable in installments or a loan finance charge is made; and
- (d) either the principal does not exceed \$25,000 or the debt is secured by an interest in land.

That definition is subject to the exception of a loan primarily secured by a first lien which is a purchase money security interest in land, an exception that does not apply to a share loan. Otherwise, unless a transaction is excluded by Consumer Protection Code §1.202 [S.C. Code Ann. §37-1-202(Cum. Supp. 1977)], it is governed by the Consumer Protection Code as long as it has the elements in the definition of consumer loan. Share loans are not excluded from the Consumer Protection Code.

Consumer Protection Code §1.108(1) [S.C. Code Ann. §37-1-108 (Cum. Supp. 1977)] provides in pertinent part:

This Act prescribes maximum charges for all creditors, except...those excluded (§1.202), extending consumer credit including...consumer loans (§3.104), and displaces existing limitations on the powers of those creditors based on maximum charges. (Emphasis added)

The proviso in South Carolina Code §34-31-30, as amended, quoted in part above, was an existing limitation on the powers of savings and loan associations based on maximum charges which was displaced by the Consumer Protection Code.

A state chartered savings and loan association is a supervised financial organization as defined by Consumer Protection Code §1.301(17) [S.C. Code Ann. §37-1-301(1976)] which provides in part:

"Supervised financial organization" means a person...

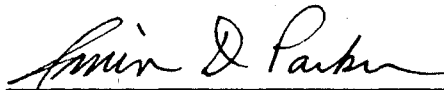
- (a) organized, chartered or holding an authorization certificate under the laws of this State or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate of deposit account, ...and
- (b) subject to supervision by an official or agency of South Carolina or of the United States.

Consumer Protection Code §3.502 [S.C. Code Ann. §37-3-502(Cum. Supp. 1977)] authorizes a supervised financial organization to make supervised loans. Consumer Protection Code §3.508 [S.C.

Code Ann. §37-3-508(Cum. Supp. 1977)] sets forth the maximum loan finance charges which may be made for supervised loans (other than a loan pursuant to a lender credit card or similar arrangement).

Based upon the foregoing, it is the opinion of this Department that a state chartered savings and loan association which makes a share loan having the elements of a consumer loan as defined by the Consumer Protection Code may charge a loan finance charge not exceeding that permitted in §3.508 of the Consumer Protection Code.

Even when a share loan does not fall within the definition of consumer loan, it may be made subject to the Consumer Protection Code if the parties so agree under §3.601 of the Consumer Protection Code [S.C. Code Ann. §37-3-601(Cum. Supp. 1977)]. If the parties enter into such a written agreement, the loan is a consumer loan for all purposes except that the maximum loan finance charge which may be made is governed by Consumer Protection Code §3.201 [S.C. Code Ann. §37-3-201(Cum. Supp. 1977)]. That section provides a ceiling of 12% per year, calculated according to the actuarial method, on the unpaid balance of the principal. Again, a share loan by definition is secured by a savings account, savings certificate, or other deposit and thus does not fall within the exception to §3.601 concerning a loan primarily secured by a first lien which is a purchase money security interest in land. It is thus the further opinion of this Department that a share loan which is not a consumer loan may be made subject to the Consumer Protection Code including the maximum finance charge provision in §3.201 if the parties so agree in writing.



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