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Administrative Interpretation No. 3.109-8010

CHARGE FOR "ORIGINATION FEE" OR "DISCOUNT POINTS" IN CONNECTION
WITH CONSUMER LOAN SECURED BY REAL ESTATE IS PART OF LOAN
FINANCE CHARGE AND SUBJECT TO REFUND UPON PREPAYMENT

You have asked for an administrative interpretation concerning a proposal by a finance company for making second mortgage loans. You said that the finance company, which is a supervised lender, wishes to charge what you called an "origination fee" or "discount points" on consumer loans to be secured by real estate and you asked whether it is permissible to make such a charge so long as the disclosed annual percentage rate is less than 18%.

Consumer Protection Code Section 3.109 [S.C. Code Ann. §37-3-109 (Cum. Supp. 1979)] defines "loan finance charge" as:

The sum of ... all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: interest or any amount payable under a point, discount, or other system of charges, however denominated ... (Emphasis added)

Whether labelled an origination fee or discount points, such a charge is calculated as a percentage of the amount of the loan and made at the inception of the loan as "an incident to the extension of credit." Regardless of its label, the charge is a part of the finance charge.

Consumer Protection Code Section 3.201 [S.C. Code Ann. §37-3-201 (Cum. Supp. 1979 as amended by §2 of Act No. 433 of 1980 (R504, H3703))] provides in subsections (2) and (3):

With respect to a consumer loan ... a supervised lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding ...

- (a) [graduated rate scale] or
- (b) 18% per year on the unpaid balances of the amount financed ...

This section does not limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount, single annual percentage rate, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section. (Emphasis added)

TELEPHONES (AREA CODE 803)

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758-8587

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There is no prohibition in the Consumer Protection Code against any particular type or component of finance charge. However, all components must be taken into consideration in figuring the finance charge and computing the annual percentage rate in the manner prescribed by Section 3.201. The answer to part of your first question is that a supervised lender may charge a fee which it labels an "origination fee" or "discount points" as part of the finance charge so long as the rate actually charged to the consumer does not exceed the maximum permissible rate for that loan.

Although not prohibited, using a label such as "origination fee" in connection with a loan governed by the Consumer Protection Code may result in confusion. As you know, subsection (1) of South Carolina Code Section 34-31-90 (1976) permits mortgage lenders to charge origination fees not to exceed a given percentage of a loan. That subsection is inapplicable to loans made under the Consumer Protection Code. CPC §1.108(1), S. C. Code Ann. §37-1-108 (Cum. Supp. 1979). However, use of a term that has been identified with loans that are not governed by the Consumer Protection Code may raise an unnecessary question about which law governs the loan.

While your first question specifically was whether a finance charge including an origination fee or discount points disclosed as 18% or less would be legally permissible, your question essentially is one of maximum permissible charges rather than disclosure. In Administrative Interpretation No. 3.301-7915 issued August 3, 1979 headed "Disclosure of appraisal fee in connection with consumer loan is governed by federal Truth in Lending Act," we pointed out that disclosure provisions for closing costs in real estate transactions may vary slightly from the corresponding rate and charge sections in the Consumer Protection Code. Thus it is possible that a disclosed annual percentage rate of 17.99% as used in your hypothetical transaction could actually be an annual percentage rate slightly over 18% for purposes of the maximum charge sections of the Consumer Protection Code. If a disclosed annual percentage rate for a consumer loan secured by real estate involving an appraisal fee and/or a credit report charge as closing costs is near the maximum permitted for that loan, the rate should be recomputed by the creditor including one or both charges as applicable as part of the finance charge to assure that the actual rate charged is not more than that permitted. Id. at 2.

Your final question was whether an origination fee or discount points would be subject to refund in the event of prepayment in full of a consumer loan. Subsection (3) of amended Section 3.201 says, "if the loan is a precomputed consumer credit transaction ... the effect of prepayment is governed by the provisions on rebate upon prepayment

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(Section 37-3-210)." In your hypothetical transaction, not only is the charge for the origination fee or discount points precomputed, the entire transaction is precomputed. Consumer Protection Code Section 3.210 does require a rebate of unearned finance charge upon prepayment of such a loan calculated according to one of two methods depending upon the length of the transaction and whether or not any deferrals have been made. (A rebate of less than \$1.00 need not be made.)

In summary, it is the opinion of this Department that a supervised lender may charge a percentage of the loan amount as part of the finance charge at the time of closing the loan so long as the total finance charge does not exceed the maximum permissible annual percentage rate for the loan in question. If such a charge is made in a precomputed consumer loan, it is subject to rebate upon prepayment in accordance with Section 3.210.

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KGS/sad