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September 16, 1981

Administrative Interpretation No. 3.201-8111

FINANCE CHARGES FOR OPEN-END LOANS USING THE GRADUATED RATE SCALE FOR SUPERVISED LENDERS ARE NOT "DEEMED NOT TO EXCEED" THE MAXIMUM FINANCE CHARGE PERMISSIBLE IF CALCULATED ON THE AVERAGE DAILY BALANCE.

A licensed supervised lender who wishes to make open-end consumer loans using the graduated rate scale in subsection (2) of Consumer Protection Code Section 37-3-201 (Cum. Supp. 1980) has asked us how to calculate maximum permissible finance charges.

"Open-end credit" is defined in Section 37-1-201(7)(d) (1976) for consumer credit transactions in general. Open-end consumer loans are made pursuant to a "revolving loan account" defined in Section 37-3-108 (1976). The type of loan giving rise to the question is a consumer loan made pursuant to a revolving loan account which is not also a "lender credit card or similar arrangement" defined in Section 37-1-301(9) (1976). Although a lender credit card arrangement is a type of revolving loan account [see Administrative Interpretation No. 3.303-7617 of December 3, 1976], unlike other revolving loans, lender credit card consumer loans made by a supervised lender are subject to maximum finance charges not exceeding those specified in Section 37-2-207 (Cum. Supp. 1980) for revolving charge accounts until July 1, 1982. CPC §37-3-201(2)(b) (Cum. Supp. 1980). For other revolving loans, a supervised lender has the option of choosing as a maximum either the graduated rate scale set out in subsection (2)(a) of Section 37-3-201 (Cum. Supp. 1980) or the flat rate of 18% annual percentage rate in subsection (2)(b) until July 1, 1982. Subsection (2)(a) provides:

With respect to a consumer loan, including a loan pursuant to open-end credit, a supervised lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding the equivalent of the greater of either of the following:

(a) the total of:

(i) 36% per year on that part of the unpaid balances of the amount financed which is [\$390.00] or less;

(ii) 21% per year on that part of the unpaid balances of the amount financed which exceeds [\$390.00] but does not exceed [\$1,300.00]; and

(iii) 15% per year on that part of the unpaid balances of the amount financed which exceeds [\$1,300.00]. ... (Emphasis added) [Amounts adjusted pursuant to §37-1-109 (Cum. Supp. 1980)]

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Section 37-3-201 was amended as of July 1, 1980 by Section 2 of Act No. 433 of 1980 until July 1, 1982 when it will revert back to its original language if the section as amended is not extended or made permanent. Your question arises because of language in subsection (1) of Section 37-3-201 concerning consumer loans made by a lender who is not a supervised lender which says:

....With respect to a consumer loan made pursuant to open-end credit, the finance charge shall be deemed not to exceed 18% per year if the finance charge contracted for and received does not exceed a charge for each monthly billing cycle which is $1\frac{1}{2}\%$ of the average daily balance of the open-end account in the billing cycle for which the charge is made.
...(Emphasis added)

Section 37-3-201 as it is now in effect is Section 2.401 of the Official 1974 Text of the Uniform Consumer Credit Code ("UCCC") with one exception concerning lender credit card loans which is not relevant to your question. Official Comment 1 to 1974 UCCC Section 2.401 says:

...Subsection (1) sets the ceilings for all consumer loans not made by supervised lenders at 18% per annum, and this ceiling applies to open-end credit as well as to closed-end credit. The operation of open-end credit is such that a creditor cannot know whether he is exceeding a rate ceiling stated in terms of a rate calculated according to the actuarial method unless he calculates the rate on daily balances. In "deeming" that $1\frac{1}{2}\%$ per month on the average daily balance is the equivalent of 18% per year, this subsection allows the creditor to use a somewhat simplified method of calculation. (Emphasis added)

Your question is thus whether a supervised lender who wishes to use the graduated rate scale for open-end loans may also "deem" the rate not to exceed the maximum if an average daily balance calculation is used. The answer in our opinion is no.

It is our interpretation of Section 37-3-201 that while a non-supervised lender may use the simplified average daily balance method in calculating finance charges that will be deemed not to be in excess of the maximum for open-end loans, a supervised lender making higher rate loans under an open-end arrangement may not use such a simplified method to determine the maximum rate applicable to his loans. The intent of the drafters was apparently to permit simplified calculations for lower rate loans because non-supervised lenders would not be as likely to have sophisticated calculation tools such as computers and also because use of the simplified method would not be detrimental to consumers due to the maximum 18% annual percentage rate. On the other hand, supervised lenders may take advantage of a maximum rate as high as 36% and should be able to calculate a more exact rate by daily calculations such as those that can be made by a computer.

The difference between the two methods was illustrated in the original question presented to us as follows:

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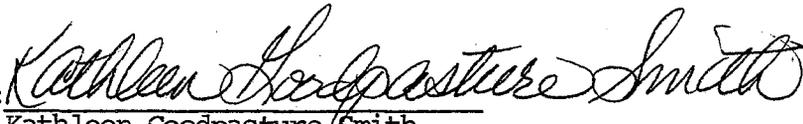
Assume that for a 30 day period, a borrower owes \$500 for 10 days and \$100 for 20 days. He either borrowed an additional \$400 after 20 days or made a \$400 payment after 10 days. At any rate, [the] average balance method would simply say that the average balance is \$233.33 on which the charge is \$6.90 ($\$233.33 \times 36\% \times 30 \div 365$).

I am afraid that Section 37-3-201(2) restricts us to a charge of \$6.45. That calculation takes into account that only 21% can be charged for 10 days on \$110 (the excess of \$500 over \$390).

The questioner pointed out that an average daily balance calculation would never work in the consumer's favor. Additionally, allowing the average daily balance method for open-end loans would result in a supervised lender's being able to charge more for open-end loans than for closed-end loans when the maximum permissible rate is calculated according to the graduated rate scale. We do not believe that such a result was intended. Also, we cannot ignore the difference between the language in subsection (1) governing maximum rates for non-supervised lenders and subsection (2) governing the higher maximum rates permitted for supervised lenders. Full effect must be given to each section of a statute, giving words their plain meaning, and words must not be added or taken away in the absence of ambiguity. *Hartford Accident and Indemnity Co. v. Lindsay*, 273 S.C. 79, 254 S.E.2d 301, 304 (1979).

In summary, it is the opinion of this Department that the average daily balance method is not a proper method to calculate the maximum permissible finance charge for open-end loans made by supervised lenders using the graduated rate scale (36% -- 21% -- 15%) in Section 37-3-201(2)(a).

Roy C. Harms
Acting Administrator

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