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ADMINISTRATOR
AND
CONSUMER ADVOCATE

The State of South Carolina

Department of Consumer Affairs

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August 3, 1979

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Administrative Interpretation No. 3.301-7915

DISCLOSURE OF APPRAISAL FEE IN CONNECTION WITH CONSUMER LOAN IS GOVERNED BY FEDERAL TRUTH IN LENDING ACT

You have asked for a clarification of how to disclose an appraisal fee charged in connection with a consumer loan. Your question was prompted by two previous administrative interpretations (No. 3.202-7613 issued November 23, 1976 and No. 3.202-7708 issued July 11, 1977), both of which state that an appraisal fee is part of the finance charge and not a permissible additional charge under the Consumer Protection Code. Apparently some confusion has arisen due to the different treatment of an appraisal fee (and a credit report charge) for disclosure purposes under the Federal Truth in Lending Act as opposed to maximum charge purposes under the South Carolina Consumer Protection Code.

Consumer Protection Code Section 3.301, S.C. Code Ann. §37-3-301 (1976), provides:

A person upon whom the Federal Truth in Lending Act imposes duties or obligations shall make or give to the consumer the disclosures, information and notices required of him by that act and in all respects comply with that act. (Emphasis added)

Consumer Protection Code Section 6.104(2), S.C. Code Ann. §37-6-104 (1976), provides that "the Administrator shall enforce the Federal Truth in Lending Act to the fullest extent provided by law."

It is our opinion that the effect of these two sections is that the Consumer Protection Code requires a person extending consumer credit to comply with the Federal Truth in Lending Act and Regulation Z when making disclosures to consumers and, in effect, incorporates the federal law by reference.

Federal Reserve Board Regulation Z Section 226.4(e), 12 C.F.R. §226.4, which implements Truth in Lending Act Section 106(e), 15 U.S.C. §1605, provides:

The following charges in connection with any real property transaction, provided they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this Part, shall not be included in the finance charge with respect to that transaction:

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
758-5864

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(5) appraisal fees. (Emphasis added)

Under the Truth in Lending Act, Regulation Z, and thus the Consumer Protection Code, an appraisal fee is not part of the finance charge for disclosure purposes in connection with a real property transaction so long as it is bona fide, reasonable, and not made to circumvent or evade the disclosure requirements. If an appraisal fee meets these conditions, it is not to be included in the disclosed finance charge, and if it is financed in an other than open end transaction, it is to be itemized and disclosed as an element of the amount financed under Federal Reserve Board Regulation Z §226.8(d)(1), 12 C.F.R. §226.8. However, if it is paid separately in cash, the Truth in Lending Act does not require that it be itemized and disclosed. Federal Reserve Board letters No. 431 of December 17, 1970, and No. 699 of July 19, 1973, [1969-1974 Transfer Binder] Cons. Cred. Guide (CCH) ¶¶30,625 and 30,996.

An appraisal fee is treated differently for purposes of maximum allowable charges under the Consumer Protection Code. As we have stated before in administrative interpretations numbered 3.202-7613 and 3.202-7708, the Consumer Protection Code includes appraisal fees (as well as credit report charges) in the definition of loan finance charge in Section 3.109, S.C. Code Ann. §37-3-109 (1976). Consistently with the definition of loan finance charge, Consumer Protection Code Section 3.202 does not list appraisal fees among the closing costs which are permissible charges in addition to and separate from the loan finance charge. Thus in calculating the loan finance charge for purposes of maximum allowable charges under the appropriate sections of the Consumer Protection Code (Sections 3.201, 3.508) the appraisal fee must be included as an element of the finance charge which will be translated to and reflected in the annual percentage rate in determining whether the creditor is charging a legal rate.

You outlined a procedure your bank proposes to follow which you believe would provide for disclosure of the finance charge and annual percentage rate in accordance with the Truth in Lending Act while staying within the Consumer Protection Code's maximum charge limitations. Computation of the annual percentage rate for disclosure purposes would be made strictly in compliance with the Truth in Lending Act and Regulation Z. However, a second computation of the annual percentage rate would be made including the appraisal fee in the finance charge to determine whether the rate exceeds the ceiling applicable to that loan. Although this recomputed rate would not be disclosed to the consumer, such a procedure would alert you to those loans whose finance charges could exceed South Carolina's maximum charge limitations while the disclosed annual percentage rate would appear to be within the legal maximum. If the recomputed rate exceeded the maximum allowable rate, the finance charge would be lowered to a legally permissible amount and disclosures of both the finance charge and annual percentage rate would reflect the change in accordance with the Truth in Lending Act.

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It is the opinion of this Department that disclosure of an appraisal fee in accordance with the Truth in Lending Act complies with the Consumer Protection Code and that the outlined procedure is appropriate to permit compliance with both disclosure and maximum charge requirements.

Irvin D. Parker
Administrator

By 
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