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ADMINISTRATOR
AND
CONSUMER ADVOCATE

The State of South Carolina
Department of Consumer Affairs

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September 3, 1980

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Administrative Interpretation No. 3.601-8009

NON-CONSUMER LOAN MADE BY SUPERVISED LENDER AND BROUGHT
UNDER CONSUMER PROTECTION CODE BY WRITTEN AGREEMENT WITH
BORROWER IS SUBJECT TO MAXIMUM SUPERVISED LOAN RATES

You have asked for an administrative interpretation clarifying the effect of a recent amendment to Section 3.601 of the Consumer Protection Code [S.C. Code Ann. §37-3-601 (Cum. Supp. 1979)] on supervised lenders. Act No. 433 of 1980 (R504, H3703) effective July 1, 1980 (and scheduled to expire on July 1, 1982) amended that section to exclude the bracketed language in the following:

Except in the case of a loan primarily secured by a first lien which is a purchase money security interest in land, the parties to a loan other than a consumer loan may agree in [a] writing signed by the parties that the loan is subject to the provisions of this title applying to consumer loans. If the parties so agree, the loan is a consumer loan for all purposes of this title [except for purposes of loan finance charges for supervised loans (§37-3-508) and supervised loans pursuant to a lender credit card (§37-3-515)].

The amendment thus eliminated the exception concerning loan finance charges for supervised loans. You asked if the section as amended now permits supervised lenders to enter into signed written agreements with borrowers in connection with non-consumer loans and charge up to the maximum rates permitted for supervised loans. In our opinion it does.

The amended section explicitly provides that a loan brought under the Consumer Protection Code by a signed written agreement "is a consumer loan for all purposes of [the Consumer Protection Code]." (Emphasis added) The written agreement makes it as though the transaction were a consumer loan by definition (except for purposes of disclosure -- see Administrative Interpretation No. 3.301-7803 issued April 18, 1978) and the supervised lender may treat it as if it were a consumer loan and charge a rate not in excess of that permitted for supervised loans. Act No. 433 of 1980 also consolidated maximum finance charge provisions for all consumer loans into Section 3.201 [S.C. Code Ann. §37-3-201 (Cum. Supp. 1979)] and repealed Sections 3.508 and 3.515 [S.C. Code Ann. §§37-3-508, 37-3-515 (Cum. Supp. 1979)]. As a result, subsection (2) of Section 3.201 therefore provides maximum rates chargeable by supervised lenders for non-consumer loans brought under the Consumer Protection Code by agreement as well as for consumer loans.

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

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In summary, it is the opinion of this Department that a supervised lender may charge not in excess of the maximum loan finance charge permitted for a supervised loan when the supervised lender and a borrower agree in a signed writing that a non-consumer loan be brought under the Consumer Protection Code.

Irvin D. Parker
Administrator

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