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Department of Consumer Affairs

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September 9, 1980

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Administrative Interpretation No. 1.109-8011

FIRST ADJUSTMENT OF DOLLAR AMOUNTS OCCURRED ON JULY 1, 1980 IN
SECTIONS IN EFFECT ON THAT DATE INCLUDING SECTION 2.207

You have asked several questions concerning our rationale for promulgating Emergency Regulation 28-61-1.109 effective June 2, 1980 (and subsequently Emergency Regulation 28-63-1.109 effective September 2, 1980; Proposed Regulation 28-62-1.109 cannot become effective before the next legislative session). Your questions, although specifically concerning adjustments in Consumer Protection Code Section 2.207 [S.C. Code Ann. §37-2-207 (1976 as amended)] which was amended effective July 1, 1980, touched on other aspects of the regulation as well.

Section 37-1-109 was enacted May 19, 1980 by Act No. 411 (R479, H3527) and, contrary to your statement that it became effective July 1, 1980, was effective on the date of enactment. You questioned our authority for changing the dollar amounts in Section 2.207 as amended effective July 1, 1980. You correctly pointed out that the amendment to Section 2.207 was made subsequent to the date of enactment of Section 37-1-109.

Subsections (1) and (2) of Section 37-1-109 provide in pertinent part:

From time to time the dollar amounts in this title shall change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U. S. City Average, All Items, 1967 = 100, compiled by the Bureau of Labor Statistics, United States Department of Labor, and hereafter referred to as the Index. The Index for December of 1976 is the Reference Base Index.

The designated dollar amounts shall change on July first of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index is ten percent or more ... (Emphasis added)

In our opinion, Section 37-1-109 is self-executing. Section 1.106 of the Official 1974 Text of the Uniform Consumer Credit Code [hereinafter "UCCC"] is substantially similar to Section 37-1-109. Official comment (1) says, "Under this section the dollar amounts designated as subject to change will automatically change on July 1 of each even-numbered year if the change in the Consumer Price Index is great enough. ..." (Emphasis added) The law containing Section 37-1-109 was passed and became effective on May 19, 1980. The section clearly states that dollar amounts in the Consumer Protection Code shall change on July 1st of those even-

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758-8996

numbered years when the change is at least 10% according to the formula provided. 1980 is an even-numbered year, and it is our interpretation of this section that dollar amounts in the Consumer Protection Code would have changed on July 1, 1980 by increasing 30% whether or not we promulgated a regulation because there is nothing to indicate that the General Assembly intended to delay adjustments for two years and six weeks after the effective date of the law.

Our interpretation of the section as self-executing is further supported by language in subsection (5) of that section which indicates that a creditor may rely either on the regulation or his own calculations to determine the proper adjustments:

A person shall not be deemed to have violated this title with respect to a transaction otherwise complying with this title if he relies on dollar amounts either determined according to subsection (2) or appearing in the last regulation of the Administrator announcing the then current dollar amounts. (Emphasis added)

Although the law in our opinion is self-executing, it does direct the Administrator to announce changes that will occur prior to any required adjustment by a regulation made on or before April 30 of a year in which amounts are to change. Subsection (4) of §37-1-109. As you correctly point out, the date on which a regulation was to be in place was prior to the effective date of the law. Although we obviously could not meet the deadline for the initial regulation, instead, based on our opinion that the law was self-executing and dollar amounts would change on July 1, 1980 whether or not we acted, we determined that an emergency regulation was the appropriate vehicle to announce changes as far in advance as was feasible under the circumstances.

Drafting of the regulation was begun when Section 37-1-109 was enacted. One week later, before the emergency regulation was promulgated, the Consumer Protection Code was amended in several respects in Act No. 433 (R504, H3703) of May 26, 1980 which was to become effective July 1, 1980, the same date dollar amounts were to change. We were presented with the following three alternatives after having determined that a regulation should be made because dollar amounts would change July 1st whether or not we acted.

First, we could have promulgated a regulation changing only dollar amounts in sections of the Consumer Protection Code as they existed on May 19, 1980, the effective date of Section 37-1-109. This alternative was rejected because of its illogical and impractical results. For example, while dollar amounts would have "changed" in Section 2.207 as it existed on May 19, 1980, the change would have had no effect on July 1, 1980 because the section itself was amended effective July 1, 1980. Likewise, dollar amounts which would have "changed" in Section 3.508 as it existed on May 19, 1980 would have had no effect because that section

was to be repealed on July 1, 1980. Because Section 3.201 which now contains maximum supervised loan rates did not contain those maximum rates on May 19, 1980 while Section 3.508 (since repealed) did, the following would have occurred beginning July 1, 1980: graduated rates for consumer credit sales in Section 2.201 [S.C. Code Ann. §37-2-201 (1976 as amended)] would have applied to dollar amounts which increased 30% on July 1, 1980 while corresponding dollar amounts applicable to graduated rates for loans would have stayed the same. In construing statutes, the intention of the legislature is the primary guideline to be used, and in our opinion such an inconsistent result could not have been intended. Adams v. Clarendon Co. School Dist. No. 2, 270 S.C. 266, 241 S.E.2d 897 (1978).

Second, we could have promulgated a regulation that changed dollar amounts in sections other than Section 2.207. This alternative was rejected because it would have meant considering amendments to the Consumer Protection Code in some sections of Act No. 433 (§2 containing graduated supervised loan rates in CPC §3.201; §7 repealing CPC §§3.508 and 3.515; see previous paragraph) for purposes of the regulation while ignoring the amendment to Section 2.207 in Section 1 of that same Act. We could find no authority or persuasive reason to change dollar amounts in some amended sections of Act No. 433 while failing to do so in another. Had we done so, if an additional increase of, for example, 20% were required on July 1, 1982, the dollar amount in Section 2.207 would increase 50% instead of the more gradual increase of 30% in 1980 plus an extra 20% in 1982 in the other sections. In our opinion a more gradual increase, in line with the other increased dollar amounts, was more likely intended.

You said that subsection (2)(b) of Section 37-1-109 read in conjunction with Section 2.207 apparently means that dollar amounts in the latter section should not change on July 1, 1980. However, that subsection is inapplicable to initial changes in dollar amounts. It says, "the dollar amounts shall not change if the amounts required by this section are those currently in effect as a result of earlier application of this section." In our opinion, that language means that if, for instance, in 1982 it is determined that the percentage increase is 37% (rather than the approximately 32% figured for 1980), there would be no further increase on July 1, 1982 because the dollar amounts required by Section 37-1-109 would be those currently in effect due to consideration of increases only in multiples of 10% rounded down. Thus the language has no bearing on the question whether and which amounts should be adjusted initially.

The third alternative, which we chose as the most reasonable one, was to change dollar amounts in sections as they were to be effective on July 1, 1980, the date of change. We chose this alternative as being that most likely intended by the General Assembly to provide consistency and conform to the purposes and policies of the Consumer Protection Code as

expressed in Section 1.102 [S.C. Code Ann. §37-1-102 (1976 as amended)] which says:

This title shall be liberally construed and applied to promote its underlying purposes and policies ... [which] are:

- (a) To simplify, clarify, and modernize the law governing retail installment sales, consumer credit and usury;
- (b) To provide rate ceilings to assure an adequate supply of credit to consumers;
- (c)... [T]o foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;
- ...(g) To make uniform the law, including administrative rules, among the various jurisdictions. (Emphasis added)

In our opinion, the purposes of simplicity and uniformity are met by changing dollar amounts in the sections chosen as effective on July 1, 1980 rather than having the inconsistency and confusion that would have resulted from employing either of the first two alternatives discussed earlier.

To further strengthen the purpose of uniformity among laws and rules in the various Code States, Section 6.104 [S.C. Code Ann. §37-6-104 (1976)] provides:

(3) To keep the Administrator's rules in harmony ... with the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code[,] [t]he Administrator, so far as is consistent with the purposes, policies and provisions of this title, shall

- (a) Before adopting, amending, and repealing rules, advise and consult with administrators in other jurisdictions which enact the Uniform Consumer Credit Code; and
- (b) In adopting, amending, and repealing rules, take into consideration: ...
 - (ii) The rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code.

As directed by the Consumer Protection Code, we consulted with and studied regulations of administrators in other Code States and made our regulation in conformity with other Code States' regulations to the extent they were consistent with the Consumer Protection Code. E.g., regulations in 2, 3, and 4 Cons. Cred. Guide (CCH) Idaho ¶6504, Indiana ¶6531, Maine ¶6710, Oklahoma ¶6716, and Utah ¶6522.

The purposes of providing rate ceilings to insure an adequate supply of consumer credit and to foster competition among suppliers are also furthered by the emergency regulation promulgated in conformity with recent amendments to the Consumer Protection Code. While some may argue

that it is unwarranted to give creditors the double benefit of a higher maximum rate (Act No. 433) and upward adjustment of dollar amounts (Act No. 411) on revolving charge and lender credit card accounts at the same time, in fact the combination has resulted in competition among suppliers of this type of credit for the first time in our experience of administering the Code. Previously, many major creditors charged the maximum rate making shopping for revolving charge and lender credit card rates a generally futile exercise. Now, however, we are observing competition among creditors for credit card customers. Combinations of rate structures and charges are emerging which should alert consumers to the necessity to shop for rates and charges on their revolving charge and lender credit card accounts to obtain the most favorable terms. Such credit shopping, which is facilitated by the Federal Truth in Lending Act, should force rates and charges for most such accounts below the maximum, a result which is intended by the drafters of the UCCC. See 15 U.S.C. §1601 and Prefatory Note to Official 1974 Text of the UCCC.

The timing of enactment of the section dealing with adjustment of dollar amounts in the Consumer Protection Code is unusual. Ordinarily this section would have been enacted along with a State's complete version of the UCCC. E.g., Utah Uniform Consumer Credit Code §70B-1-106 effective July 1, 1969. However, South Carolina's version of the UCCC has been enacted in stages starting with Act No. 1241 of 1974 which was substantially amended by adding many of the loan provisions and consumer protection provisions in Act No. 686 of 1976. Since that time several more acts have amended the Consumer Protection Code including five separate acts in 1980. These acts should not be looked upon as isolated pieces of legislation but rather as a series of steps to enact South Carolina's version of the Uniform Consumer Credit Code. The Consumer Protection Code is an integrated comprehensive law governing consumer credit (and non-consumer credit in some respects) and therefore must be interpreted as interrelated sections of one law regardless of when amendments are made to it. See 2A Sutherland Statutory Construction §46.05 (Sands' 4th ed. 1973), Abell v. Bell, 229 S.C. 1, 91 S.E. 2d 548 (1956) at 551; Cf. CPC §1.104, S.C. Code Ann §37-1-104 (1976) (construction against implicit repeal); [1977] Att'y Gen. Ann. Rep. 114 (subsequent amendments to CPC applicable to earlier transaction).

No one section of the Consumer Protection Code including Section 2.207 can be considered in isolation because each section is part of the overall scheme of regulating consumer credit in South Carolina. In our opinion it is consistent with the overall scheme as well as the stated purposes and policies of the Code to adjust dollar amounts in sections of the Consumer Protection Code which were in effect on the date of the change including Section 2.207.

Finally, you mentioned the protection offered creditors who rely on

September 9, 1980

Page 6 of 6

rules, regulations, and administrative interpretations issued by the Administrator. No doubt because of the complexity of the Consumer Protection Code and the differing interpretations that could be given to sections of it, the General Assembly provided a means by which creditors could comply with official statements and regulations without fear of being penalized. Consumer Protection Code Sections 6.104(4) and 6.506(3) [S.C. Code Ann. §§37-6-104, 37-6-506 (1976)] provide that a creditor has no liability other than refund of an excess charge and cannot be subject to a penalty for any act done or omitted in conformity with any rule, regulation, written order, opinion, interpretation or statement of the Commission or of the Administrator although a regulation or statement should later be amended, rescinded, or determined by judicial authority to be erroneous or invalid. Official actions such as promulgation of the emergency regulation and issuance of this administrative interpretation are the types of actions that are intended to provide guidance and certainty for creditors attempting to comply with the Consumer Protection Code, at least until and unless either is determined to be in error.

In summary, it is the opinion of this Department that Section 2.207 as amended is subject to the 30% adjustment of dollar amounts on July 1, 1980 with the result that the \$500.00 figure in that section increased by 30% to \$650.00 on July 1, 1980. Further, creditors are entitled to rely on the emergency regulation and this interpretation until and unless either is found to be erroneous or invalid.

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Administrator

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