



IRVIN D. PARKER
ADMINISTRATOR

The State of South Carolina

Department of Consumer Affairs

2221 DEVINE STREET
P. O. BOX 5757
COLUMBIA, S. C. 29250
(803) 758-2040

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August 9, 1977

Administrative Interpretation No. 3.107-7710

A LOAN IS "PRECOMPUTED" IF THE DEBT IS EXPRESSED AS A NUMBER OF INSTALLMENTS OF A FIXED AMOUNT, THE PRODUCT OF WHICH IS A SUM COMPRISING THE PRINCIPAL AND THE AMOUNT OF THE LOAN FINANCE CHARGE COMPUTED IN ADVANCE.

You have asked whether a bank may contract for and receive a delinquency charge with respect to an "amortized" consumer loan in which the obligation of the debtor is expressed simply as a number of installments of a fixed amount of principal and interest; e.g. 60 installments of \$100.00 constituting principal and interest.

Section 3.203 of the Consumer Protection Code provides for delinquency charges in connection with a "precomputed" consumer loan when made by a bank.

The question presented then, is whether the above stated loan is "precomputed".

Section 3.107(2) reads, in pertinent part, as follows:

- (2) a loan... is "precomputed" if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

Sixty installments of \$100.00 expresses an obligation or debt of \$6,000.00. Were this calculation made in the loan contract the debt would clearly be "expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance." But is the debt expressed as "a sum comprising the principal and the amount of the loan finance charge computed in advance" where the total of the installments is not actually stated in the contract.

The delinquency charge provisions of the Consumer Protection Code were taken from the Uniform Consumer Credit Code (1968 Official Text). Comment No.(2) under Section 2.203 (applying equally to Section 3.203) of that Text reads:

- (2) If a buyer is late in making a payment on a precomputed sale, the seller would receive no

income for the period of the delay unless a separate delinquency charge were permitted. The alternative of not permitting delinquency charges... would be to enforce a lower effective ceiling on credit service charge rates for delinquent buyers than for buyers who paid promptly.

In comment (3) delinquency charges are referred to as "adjustments to the precomputed credit service charge" and it is stated that such adjustments are not needed in revolving accounts because in such transactions

...the credit service charge accumulates in direct relation to the size of the unpaid balance and the period for which it has been outstanding. If the buyer is late in making a payment, the credit service charge continues to accumulate, so that the seller is compensated for his forbearance.

These comments make it clear that the drafters intended to provide a delinquency charge to compensate the creditor for forbearance in those transactions where the finance charge is fixed at the inception of the contract, upon an assumption that installments would be paid when due. Conversely, it was not intended that delinquency charges could be made in those transactions where the amount of finance charge is dependent upon actual balances on actual payment dates.

In using the language "expressed as a sum" the drafters appear to have had in mind "add on" or "discount" finance charge computations which characterize most consumer installment credit. In this connection it should be noted that in the official drafts of the Uniform Consumer Credit Code most real estate loans would have been excluded from coverage of the Code. Accordingly "amortized" loans or "direct reduction" loans were probably not contemplated by the drafters of that provision.

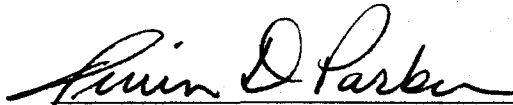
The South Carolina General Assembly deviated from the Uniform Code by making our Code applicable to many real estate loans which are amortized. In making this amendment there is nothing to suggest that they intended to alter the purpose or effect of the delinquency charge provisions as stated in the above quoted comments.

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It is the opinion of this office that a loan contract in which the finance charge amount is calculated and fixed at the inception of the contract, and thus is not dependent upon actual balances on actual payment dates, is "precomputed" within the meaning of Section 3.107(2) of the Consumer Protection Code.

A handwritten signature in cursive script, reading "Irvin D. Parker".

Irvin D. Parker
Administrator

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