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# The State of South Carolina

## Department of Consumer Affairs

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### ADMINISTRATIVE INTERPRETATION NO. 3.202-8901

A SUPERVISED LICENSED LENDER MAY NOT CHARGE AN ANNUAL FEE IN A REVOLVING CONSUMER LOAN TRANSACTION UNLESS THE LOAN AGREEMENT CONSTITUTES A LENDER CREDIT CARD OR SIMILAR ARRANGEMENT. TO SO QUALIFY, THE CARD, THE LETTER OF CREDIT OR OTHER CREDIT CONFIRMATION SHOULD BE IDENTIFIABLE AS A CREDIT CARD OR SIMILAR ARRANGEMENT.

A supervised lender has inquired whether it is proper to charge annual fees under the authority of S.C. Code Ann. §37-3-202(1)(c). That provision reads as follows:

- (1) In addition to the loan finance charges permitted by this part, a lender may contract for and receive the following additional charges in connection with a consumer loan:

\* \* \* \*

- (c) annual charges, payable in advance, for the privilege of using a lender credit card or similar arrangement which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the issuer of the lender credit card or similar arrangement, under an arrangement pursuant to which the debts resulting from such transactions are payable to the issuer....

"Lender credit card or similar arrangement" is defined in Section 37-1-301(16) as:

- (16) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transaction out of which debt arises-
- (a) by the lender's honoring a draft or similar order for payment of money drawn or accepted by the debtor;
- (b) by the lender's payment or agreement to pay the debtor's obligations; or
- (c) by the lender's purchase from the obligee of the debtor's obligations.

The lender indicates that it wishes to offer, through affiliated companies, one credit line account secured by first or second mortgages on real property\* and one credit line account unsecured or secured by personal property other than household goods. It seeks to charge an annual fee of fifteen (\$15.00) dollars under Section 37-3-202(1)(c) because it believes such accounts constitute "lender credit cards or similar arrangements" as defined in Section 37-1-301 (16). The consumer would access the credit line by the use of "credit line account checks" which would be honored by an affiliated national bank in Delaware. The checks themselves contain the logo and the name of the national bank.

The lender argues that the checks themselves constitute a credit confirmation as contemplated by Section 37-1-301(16) and that the debt arises out of the "lender's honoring a draft or similar order for payment of money drawn . . . by the debtor." Further, the lender argues, since the checks may be used with any merchant or creditor who accepts checks as payment, it has met the requirement of Section 37-3-202(1)(c) that the lender credit card or similar arrangement entitle the holder to purchase goods or services from at least one hundred persons not related to the issuer.

Clearly Section 37-1-301(16) does not require that the issuer issue a plastic card to the debtor for the transaction to constitute a "lender credit card or similar arrangement." Exactly what other devices might be used is not clear. Clearly, a "similar arrangement" can take the form of a draft or similar order for the payment of money drawn or accepted by the debtor. The question appears to be whether such a check constitutes a "credit confirmation or identification."

Section 37-1-301(16) derives from the Uniform Consumer Credit Code (1968 Draft) Section 1.301(9). The Comment to that section does not specify what the credit confirmation might constitute. In the 1974 Draft, the Uniform Commissioners combined the terms "seller credit card or similar arrangement" and "lender credit card or similar arrangement" into one term--"credit card" at Section 1.301(17). Although it is not necessarily determinative, that section may clarify what the Uniform Commissioners considered to be a credit card. It reads in pertinent part:

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\*While such first mortgage transactions would not ordinarily be considered consumer loans, we note that the lender has expressly made the transaction subject to the Consumer Protection Code by terms of the agreement.

- (17) "Credit card" means a card or device issued under an arrangement pursuant to which a card issuer gives to a cardholder the privilege of obtaining credit from the card issuer or other person in purchasing or leasing property or services, obtaining loans, or otherwise. A transaction is "pursuant to a credit card" only if credit is obtained according to the terms of the arrangement by transmitting information contained on the card or device orally, in writing, by mechanical or electronic methods, or in any other manner.... Uniform Consumer Credit Code §1.301(17), 7A U.L.A. 44 (1985).

The Commentary to that section likewise reads as follows:

The meanings of "credit card" and "pursuant to a credit card" are broadly defined to allow for continuing technological developments in this area. The term "credit card" is defined to encompass the varied arrangements under which creditors equip consumers with some form of "card or device" that enables them to obtain credit from the issuing creditor or others. A "credit card" may be conceived of in its broadest sense as a repository of information, and a transaction is "pursuant to a credit card" when credit is obtained in accordance with the arrangement under which the card was issued by the transmission of some information on the card. Hence, a cardholder who telephones an airline and buys a ticket by giving the agent his credit card number or a cardholder who communicates the requisite information to a seller by using a device which gives off an electronic impulse is each engaging in a transaction "pursuant to a credit card" so long as they are acting within the terms of the arrangement. However, a creditor who himself extends credit to a consumer relying on the consumer's credit card issued by another creditor merely as an identification or verification of credit-worthiness of the consumer has not extended credit "pursuant to a credit card."

Moreover, use of a credit card to obtain a guarantee of payment or to effect an immediate transfer from the cardholder's deposit account is not "pursuant to a credit card" whether or not the payment or transfer results in a credit extension to the cardholder by the card issuer. Id. at 52, 53.

The essence of a credit card is that it requires three parties to be in agreement. The lender agrees to issue the device to the holder for the return of interest rates or other fees and to honor the drafts of, to pay the obligations of or to purchase the obligation of the holder made pursuant to the card. The holder, on the other hand, wishes to be able to make purchases of goods and services by presenting the device to persons honoring the card.

April 29, 1989

Page Four

The merchant honoring the card, through agreement with a lender/issuer agrees to allow such purchases to be made because it has agreed that the identifying device signals to it that the holder has credit with a lender/issuer. Often, the merchant agrees to make sales at certain dollar amounts merely by presentation of the device, or at other dollar amounts, through oral or electronic confirmation of the credit available. Often, the merchant posts the credit card logo at or near its entrance to indicate that it accepts the card.

From the interpretation requests by the supervised lender the merchant would appear to be a stranger to the credit aspect of the transaction. Apparently the checks issued do not indicate that the maker has credit with the lender. The lender says "these Checks (sic) are drawn on (the affiliate bank), and are indistinguishable from checks drawn on any commercial bank or savings and loan association." This appears to be the precise reason the arrangement cannot be considered a lender credit card or similar arrangement. Whether the sale is made will depend on whether the merchant takes checks, in this case, out of town checks, and not whether the device itself indicates the existence of a credit account. If no further credit confirmation were required, ordinary checking accounts with an overdraft protection features could be considered a "lender credit cards or similar arrangements."

The same reasoning applies to the requirements of Section 37-3-202(1)(c). While doubtless over one hundred persons exist which would accept such checks, they are strangers to the credit transaction and as yet unidentified. In addition, the check does not entitle the cardholder to purchase goods in any dollar amount from any merchant. The merchant is merely invited to accept the check, if at all, in accordance with its ordinary check acceptance policy.


We wish to point out that lender credit sales or similar arrangements may, in other circumstances, take the form of checks or other drafts. A credit account might also be accessed by the consumer alternatively by a credit card and by checks and the annual fee would be properly assessible so long as the account was equally accessible by either method and the terms by either means of access were the same.

#### CONCLUSION

A supervised lender's ability to assess an annual fee on a revolving account as a permissible additional charge depends on whether the account can be considered: 1.) a lender credit card or similar arrangement that 2.) entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the issuer of the card. A "lender credit card or similar arrangement" must provide a credit confirmation or identification recognizable as such by the card honoring merchant

or seller, and the confirmation or identification must be honored by one hundred or more persons. A revolving account accessed by checks or drafts does not, without more, meet either of these prerequisites.

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