

IRVIN D. PARKER  
ADMINISTRATOR  
AND  
CONSUMER ADVOCATE

The State of South Carolina  
Department of Consumer Affairs

2221 DEVINE STREET  
P.O. BOX 5757  
COLUMBIA, S.C. 29250

August 19, 1980

COMMISSIONERS  
JOHN T. CAMPBELL  
CHAIRMAN  
EMIL W. WALD  
ROCK HILL  
ELLEN H. SMITH  
SPARTANBURG  
LEHMAN A. MOSELEY, JR.  
GREENVILLE  
T. DEWEY WISE  
CHARLESTON  
THOMAS N. McLEAN  
COLUMBIA  
NELL STEWART  
GREENVILLE  
HUGH LEATHERMAN  
FLORENCE  
LONNIE RANDOLPH, JR.  
COLUMBIA  
VIRGINIA L. CROCKER  
CLINTON

Administrative Interpretation No. 3.203-7906 (Reconsideration)

"CURRENT INSTALMENT" MEANS AN UNPAID INSTALMENT WHICH HAS OR WILL BECOME DUE WITHIN THE LENGTH OF ONE COMPUTATIONAL PERIOD BUT WHICH IS NOT DELINQUENT.

We have reconsidered Administrative Interpretation No. 3.203-7906 issued May 7, 1979 in response to your request of June 12, 1979 and conclude that the interpretation should be reaffirmed and reissued. We reach this conclusion only after extensive analysis and consultation with knowledgeable persons both inside and outside the Department. The following is the official opinion of the Department.

Section 3.203(3) [and §2.203(3)] of the South Carolina Consumer Protection Code provides that:

No delinquency charge may be collected on an instalment which is paid in full within ten days after its scheduled due date eventhough an earlier maturing instalment or a delinquency charge on an earlier instalment may not have been paid in full. For purposes of this subsection payments are applied first to current instalments and then to delinquent instalments.

The subsection is taken from and is identical to the same subsection in the 1968 Official Text of the Uniform Consumer Credit Code.

A question has arisen as to what is a "current instalment." The term is not defined in the statute. We have found no court decision on the point. The Uniform Consumer Credit Code State Administrators whose states adopted this version of the Uniform Consumer Credit Code have reached no consensus as to the meaning of the term. Thus the term must be construed with reference to the purpose of the enactment.

The provision was intended to rectify the abusive practice of some creditors of collecting a yield of up to 60% per annum on missed instalment amounts through the device of letting such instalments remain delinquent (instead of deferring) and applying each succeeding payment retroactively to the preceding instalment period and collecting a "delinquency" charge on each such instalment although

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

August 19, 1980

Page Two

they were all made on or about the payment date established in the contract. (Compounding delinquency charges)

The second sentence of the subsection is an attempt to buttress and clarify the first sentence. Thus the meaning of "current instalments" must be determined by reference to the first sentence.

The first sentence prohibits collecting a delinquency charge on an instalment which is "paid... within ten days after its scheduled instalment due date."

The emphasized language is somewhat ambiguous. It can be read as prohibiting a delinquency charge on an instalment which is paid between the scheduled due date and the tenth day thereafter. Such a reading however would produce the absurd result of permitting a delinquency charge on an instalment which is paid before its scheduled due date while prohibiting delinquency charges on the same instalment if paid one to ten days late.

In the event that an earlier maturing instalment has not been paid, this construction would reinstate the abuse described above when consumers pay their bills a day or so ahead of schedule instead of on or after the due date.

A more logical and reasonable interpretation of the sentence is that it prohibits collection of a delinquency charge on an instalment which is paid in full at any time before it becomes more than ten days past due. Stated another way a delinquency charge can be collected only when an instalment is more than ten days past due.

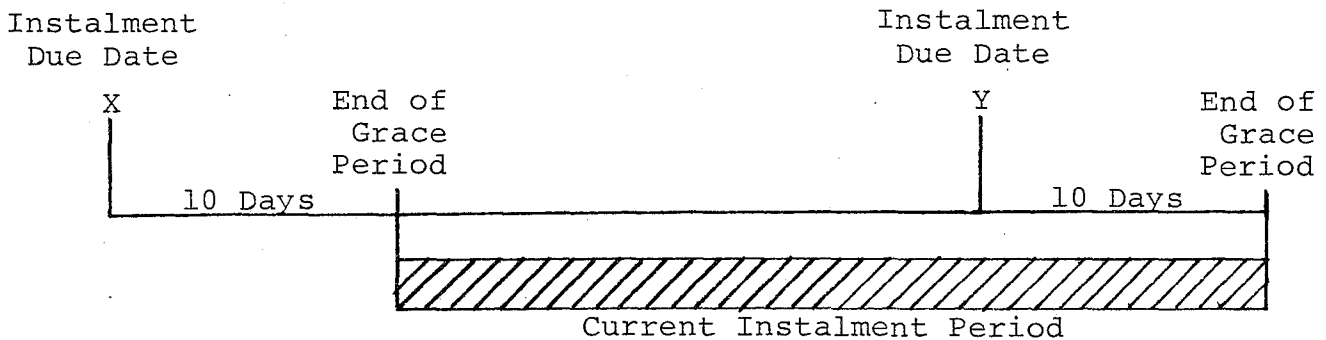
An instalment paid a day or so before its due date is clearly not an event which the legislature intended to give rise to a delinquency charge, whether or not an earlier maturing instalment remains unpaid.

The second sentence was intended to buttress that policy and purpose. It names two types of instalments: "current instalments" and "delinquent instalments." There is a third kind of instalment not mentioned -- a "future instalment." It seems reasonably clear that a "delinquent instalment" is one that is more than ten days past due so that a delinquency charge can be collected. Conversely, then, a "current instalment" must be one which is not more than ten days past due. But since this definition would apply to "current" as well as all "future" instalments, a further delineation is necessary.

Based upon the foregoing it is the opinion of this office that the subsection permits collecting a delinquency charge only in the event that a payment is received more than ten days after the due date of the most recent scheduled instalment, whether or not an earlier maturing instalment remains unpaid. For these purposes payments

received by a creditor are to be applied first to an unpaid instalment which has been due not more than ten days or will become due within thirty days if the computational period is one month, or within seven days if the computational period is one week. If such "current instalment" has been paid the payment may then be applied to any instalment which is more than ten days past due.

The following diagram illustrates the application of payments in accordance with the preceding paragraph.



If one or more prior instalments are delinquent:

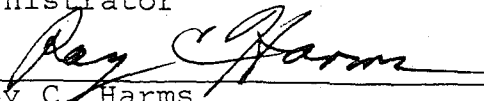
- a. A full or partial payment received during the "Current Instalment Period" will be applied to "Due Date 'Y'."
- b. If "Y" is paid in full, a payment received during the "Current Instalment Period" shall be applied to any prior unpaid instalment.

We have considered the argument that restricting creditors to a one-time charge for instalments which remain delinquent is unfair in that it forces a creditor to make an interest-free loan of the delinquent instalment as long as the debtor chooses not to pay it.

The argument has no merit for the reason that the creditor is restricted to a "one-time" charge only where he opts to charge the flat charge of 5% or \$5.00. He may, in lieu of that charge, contract for and receive a delinquency charge not exceeding the deferral charge that would be permitted to defer the unpaid amount of the instalment for the period that it is delinquent pursuant to Subsection (1) (b) of Consumer Protection Code Section 3.203.

Irvin D. Parker  
Administrator

By

  
Roy C. Harms  
Deputy Administrator