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June 5, 1979

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Administrative Interpretation No. 3.508-7911

SUPERVISED LENDER MAKING A CONSUMER LOAN SECURED BY A
RESIDENCE IS SUBJECT TO MAXIMUM SUPERVISED LOAN RATES.

You have asked what maximum rates and charges are applicable to various types of consumer loans secured by a residence when made by a supervised lender. Your questions were prompted by the passage of Act 7 of 1979 which became effective February 8, 1979, and subsequently was amended by Act 19 of 1979, effective March 27, 1979.

Act 7 of 1979, as amended, provides in part:

Section 1. Except as provided in Sections 2, 3 and 4 of this Act, the parties to a loan which is secured by a first mortgage on real estate may until and including June 30, 1981, contract for any rate of interest.

Section 2. A consumer loan not excluded by Section 37-1-202 of the 1976 Code shall be subject to all provisions of the Consumer Protection Code...

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Section 5. (as amended by Section 1 of Act 19 of 1979) Section 37-1-202 of the 1976 Code, as last amended by Act 686 of 1976, is further amended by adding:

[The Consumer Protection Code does not apply to:]

"(11) First mortgage loans made to enable the debtor to build or purchase a residence, when made by a lender whose loans are subject to supervision by an agency of this State or of the United States or made by a Federal Housing Administration approved mortgagee or made by a lender who is a person other than an organization who makes not more than five consumer loans in a single calendar year."
(Emphasis added)

Although Act 7 of 1979 did remove the ceiling on finance charges for certain loans secured by a first mortgage on real estate, a loan meeting the definition of consumer loan is subject to the Consumer Protection Code unless that loan is excluded by amended Section 1.202. A consumer loan secured by a first mortgage may or may not be made to

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enable the consumer to build or purchase a residence. If it is, that loan will be excluded from the Consumer Protection Code only if it meets the requirements of Section 1.202(11), S.C. Code Ann. §37-1-202 (Cum. Supp. 1978 as amended). If it is not made to enable the consumer to build or purchase a residence, it is a consumer loan which is not subject to exclusion and therefore is governed by the Consumer Protection Code.

The first type of loan in your question, a first mortgage loan made to enable a consumer to build or purchase a residence, when made by a supervised lender is a consumer loan as defined by the Consumer Protection Code [Administrative Interpretation No. 3.104-7908 issued May 10, 1979] and is subject to the rates and charges allowed for supervised loans if the loan is not excluded by Section 1.202(11). Administrative Interpretation No. 3.508-7910 issued June 5, 1979.

Next, you asked whether a supervised lender may make a loan which is not for the purpose of building or purchasing a residence but is secured by a first mortgage on a residence and if so, what rates and charges would be applicable. As long as the loan meets the definition of consumer loan in Section 3.104, S.C. Code Ann. §37-3-104 (Cum. Supp. 1978 as amended by Act 7 of 1979), a supervised lender who has obtained a license pursuant to Consumer Protection Code Section 3.503, S.C. Code Ann. §37-3-503 (Cum. Supp. 1978), may make that loan at the rates allowed for supervised loans. Also, charges in addition to the loan finance charge may be made which are permitted for consumer loans by Part 2 of Chapter 3 of the Consumer Protection Code. This assumes that the loan is not one made in violation of Consumer Protection Code §3.510, S.C. Code Ann. §37-3-510 (Cum. Supp. 1978), which prohibits taking a security interest in land in connection with a supervised loan of \$1,000.00 or less.

Likewise, in answer to your final question concerning the purchase money or non-purchase money consumer loan secured by a second or otherwise junior mortgage on a residence, a licensed supervised lender may make such a loan subject to the provisions of the Consumer Protection Code applying to supervised loans.

Based on the foregoing, it is the opinion of this Department that a licensed supervised lender may make both purchase money and non-purchase money consumer loans secured by a first, second, or other mortgage on a residence subject to the provisions of the Consumer Protection Code applicable to supervised loans.

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By

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