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April 18, 1978

Administrative Interpretation 3.301-7803

LOANS OTHER THAN CONSUMER LOANS MADE SUBJECT TO THE SOUTH CAROLINA CONSUMER PROTECTION CODE UNDER §37-3-601 REQUIRE FEDERAL TRUTH IN LENDING DISCLOSURES UNDER §37-3-301 ONLY WHEN AN INDEPENDENT REVIEW OF THE FEDERAL ACT REVEALS THAT SUCH DISCLOSURES MUST BE MADE.

The question has been asked whether the Federal Truth in Lending Act disclosures required under §37-3-301 of the South Carolina Consumer Protection Code (Code) must be made when a loan other than a consumer loan is made subject to the Code under §37-3-601. Section 37-3-601 allows a lender and a borrower to make a loan other than a consumer loan and make that loan subject to the Code by agreement. If the parties to the transaction so agree, "the loan is a consumer loan for all purposes of this Act except for purposes of loan finance charges for supervised loans (§37-3-508) and supervised loans pursuant to a lender credit card (§37-3-515)."

Section 37-3-301 states:

A person upon whom the Federal Truth in Lending Act imposes duties or obligations shall make or give to the consumer the disclosures, information and notices required of him by that Act and in all respects comply with that Act.

The above wording was taken from §3.201 of the 1974 Text of the Uniform Consumer Credit Code. However, the South Carolina Code version of that section omitted the second sentence of subsection (1) and the entire subsection (2) of §3.201. The official comments to §3.201 of the 1974 text state that the portions of the section omitted by our Legislature "impose on creditors in all transactions covered by this Act the duty to disclose as though the federal Truth in Lending Act applied even though the latter Act might not actually apply to the transaction."

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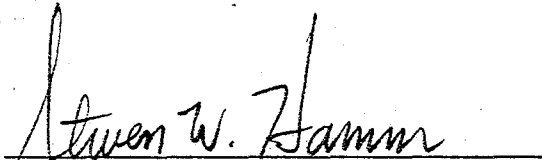
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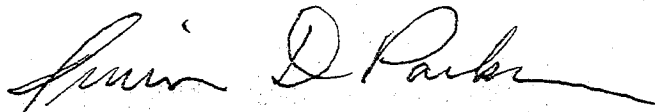
Since our Legislature chose to omit that portion of the 1974 Text of the Uniform Consumer Credit Code that would have required Truth in Lending disclosures on all agreements brought under the South Carolina Consumer Protection Code through the use of §37-3-601, it must be concluded that the Legislature intended for creditors to make an independent inspection of the Federal Truth in Lending Act to determine if disclosures are required under that Act. If the Legislature had intended that all agreements made subject to the South Carolina Consumer Protection Code be subject to disclosure, it most likely would have enacted the language present in §3.201 of the 1974 text of the Uniform Consumer Credit Code that specifically directs that disclosures not required by the federal Act be made.

Considering all the above factors, it is the opinion of this office that agreements made subject to the South Carolina Consumer Protection Code under §37-3-601 require Federal Truth in Lending disclosures under §37-3-301 only when an independent review of that Act show that such disclosures are required by federal law.

By:



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