



DEPARTMENT OF BUSINESS, OCCUPATIONAL AND PROFESSIONAL REGULATION
BUREAU OF CONSUMER CREDIT PROTECTION
(207)289-3731

ADVISORY RULING #82
OCTOBER 1, 1985

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Re: Disclosure of Additional Payments in Variable Rate Transactions

An association of creditors has inquired as to the appropriate way to disclose additional payments that may result from a change in rates in a variable rate transaction, particularly where the model disclosures published in Regulation Z-2, Appendix H-4, do not appear to address all possible payment contingencies.

State law requires that in variable rate transactions the effect of a change of rates be disclosed. Specifically, 9-A, M.R.S.A., §3-310(1)(G) requires a disclosure of the effect a change in rate will have on the transaction's "other terms and schedule of payments." Similarly, Regulation Z-2, §226.19(f) requires "an example of the payment terms that would result" from an increase in rate in a variable rate transaction.

Section 8-104(2) of the Code directs the Administrator to adopt model forms to facilitate the comprehensibility of disclosed terms by consumers, and grants creditors using such forms an exemption from liability for violations of the Act (§8-104(A)). Such model forms have been adopted by virtue of the Bureau's promulgation of Regulation Z-2, which essentially made Regulation Z, including Appendix H, part of State law.

Current provisions of Appendix H-4 do not adequately address the circumstances of repayment that could result from a change in interest rate in a variable rate transaction that was implemented through an increase in the number of payments rather than payment amount, particularly where a fractional payment may be required. The model clauses imply whole additional payments and not fractional parts thereof. It is conceivable that a change in rate could require "two and one-half additional payments."

The inquirer has specifically questioned whether it would be appropriate to disclose in such a situation: "you will have to make two and one-half additional payments," or: "you will have to make two additional payments plus a final payment of \$___," inserting the dollar amount of the half payment. In the Bureau's view, either alternative is acceptable.

The Bureau takes this opportunity to point out that such relatively simple questions need not be made to it, and in fact, requests that such inquiries not be made, since both Article VIII and Regulation Z-2 permit creditors the flexibility to modify the model disclosures to fit a particular circumstances of a transaction. Section 8-104(2)(A)(ii) allows creditors to modify model forms by deleting extraneous information or rearranging the format, provided such changes do not affect the

substance, clarity or meaningful sequence of the disclosures, without losing their exemption from liability. Further Regulation Z-2, §226.17(a)(1) and the Commentary thereto (§226.17(a)(1)-5) allow creditors considerable latitude in including with disclosures other information that is "directly related" to those disclosures to make them more meaningful or understandable. (Discretion must be used in adding material, even if directly related, so as not to detract from the policy of concise, succinct disclosure of important terms.) Consequently, reasonable changes can be made without the necessity of seeking prior approval of the Bureau or without risk of losing the exemption from liability.

As a final matter the Bureau notes that it does not regard its ruling in this case as being an "interpretation [of a regulation]...requiring... [a] disclosure which differs from the disclosures previously required by this Article..." (emphasis added) (§8-104(3)). Model disclosures are not required to be used. Additionally, in light of the flexibility available to creditors to add to, or modify, disclosures, this ruling is not an "interpretation" which "differs" from previously required disclosures. To have ruled to the contrary would have delayed the effective date of this Advisory Ruling until October 1, 1986, a result that serves no purpose and is not warranted.

/s/ Robert A. Burgess
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Superintendent

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