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SUPERINTENDENT



DEPARTMENT OF BUSINESS REGULATION  
BUREAU OF CONSUMER PROTECTION  
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ADVISORY RULING #38  
MARCH 11, 1977

(Formerly Administrative  
Interpretation #38)

March 11, 1977

Dear

During the past few months, this office has observed that a number of insurance agencies are extending credit involving the sale of insurance on an open account basis and periodically imposing a "service charge" on balances not paid within a prescribed time. We are concerned with situations in which the agencies accept partial payments over an extended length of time without considering the accounts truly delinquent, assess a charge, and consider such a charge a late charge.

The question at issue is whether such a charge is a finance charge or a late charge. If in fact an agency is assessing a "finance charge", the transactions would be "consumer credit sales" - open end credit under The Maine Consumer Credit Code - Truth in Lending, requiring the agencies to file notification with our Bureau and comply with all provisions of law.

In reaching a determination in this matter, we have recognized the position of the Office of Consumer Affairs of the Board of Governors of the Federal Reserve System as outlined in Public Information Letter 838, a copy of which is enclosed. The letter is somewhat generalized and does not specifically address itself to the type of credit extended to insurance agencies. The purpose of this letter is to provide a more definitive response to the situation.

Traditionally, some types of insurance policies are written for a specified time period - usually six months or a year, and the full amount of premium must be paid in advance. The agency remits the full amount of the premium, on behalf of the insured, within 30-45 days to the insurance company and then bills the insured for this amount. The agency has the power to request cancellation of the insurance if the insured defaults in reimbursing him for the debt. In view of this, an agency will have to ascertain the time period during which the partial payment will provide actual coverage.

Charges assessed during this period will be construed to be late charges, but further charges assessed beyond that point will be construed as finance charges. The foregoing is based upon our

belief that credit has been extended to an insured after that point when the insured is allowed to defer payment due on the debt, subject to the "charge" while continuing to receive coverage.

It is important to note that if another debt incurred by an insured as a result of the sale of another insurance policy is debited to an existing account during the period in which "late charges" as construed by this letter are imposed, a serious question arises as to whether or not open end credit is automatically created. If an agency is regularly engaged in the practice of permitting an insured to purchase additional insurance, the cost of which is debited to an existing open account subject to "charges", it would be deemed by this office to be engaged in open end credit, and such charges would automatically be deemed finance charges. The Bureau will operate on the presumption that an agency is regularly engaged in the extension of open end credit subject to the Code where more than 10% of the consumer accounts held during the preceding calendar year are treated as open end accounts in the above described manner.

It will be the responsibility of each agency to review its credit practices and to file notification with this office, if finance charges are being assessed. The Code permits a creditor who wishes to enter into open-end credit transactions to contract for and receive a finance charge not exceeding the amounts prescribed in Section 2.202. This provision also requires a creditor to enter into a signed agreement before an open end credit account is established and finance charges are imposed.

Respectfully,

/s/ John E. Quinn

John E. Quinn  
Superintendent

JEQ/nmd