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September 20, 2001

Joint Advisory Ruling #109

Re: PL 2001, Chapter 82, amending 9-A MRSA, section 3-308

Dear

This is in response to your recent correspondence in which you asked the Bureau of Banking and the Office of Consumer Credit Regulation for guidance on how the agencies will interpret 9-A M.R.S.A. § 3-308(3), as amended by P.L. 2001, ch. 82, "An Act to Amend the Maine Consumer Credit Code," effective September 21, 2001.

9-A M.R.S.A. § 3-308(3) permitted the deferral of the first periodic payment for no more than 90 days. Interest could be charged during the deferral period. P.L. 2001, c. 82, proposed by the automobile finance industry and automobile dealers, was intended to permit the offering of "No Payments, No Interest for a Year" type automobile credit sale products in the State of Maine. The original proposal was amended to ensure that consumers would not be charged interest or other costs retroactively during such extended deferral periods.

You have noted that the P.L. 2001, c. 82 could be construed as prohibiting the collection of interest during a brief period prior to the consumer's initial payment. It is a common practice, benefiting both the consumer and the creditor, for the parties to agree that an initial payment will become due on a date that is more than 30 days from the date of the transaction, but less than 60 days from that date. This additional time may permit the necessary paperwork to be delivered to an assignee of the contract, may allow a consumer time to structure his or her finances to prepare for the new payment schedule, or may accommodate a consumer's preferred payment schedule.

You have asked that we determine that a delay in the initial payment of less than 90 days to accommodate consumer preference or processing issues resulting from the transaction would not be in contravention with the new law. In support of this request, you reference Advisory Ruling 39-A, dated June 11, 1979, which provides precedence for treating a deferral of a payment for up to 60 days as an interval that does not differ substantially from the remaining payments.

Advisory Ruling #39A gave approval to a program of "payment holidays," in which a consumer was "rewarded" for a certain number of on-time payments, by being permitted to skip a payment. Interest continued to accrue during the "skip" period, which did not exceed a single payment interval in duration.

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As you indicated in your request, the Advisory Ruling held that such a term did not constitute a schedule of payments “under which the intervals between any consecutive payments differ substantially.” The ruling cited the voluntary nature of the payment holiday arrangement, and the fact that the consumer in that case was not required to make a larger payment the following month.

The structure of Title 9-A §3-308 is such that paragraph 1 can be viewed as establishing the overall standard, while paragraphs 2 through 5 modify, explain or provide remedies for violations of that initial paragraph. Some have argued that if a particular program or credit term is found not to be covered by paragraph 1, then the remaining provisions (including both the existing language of paragraph 3, and the new language modifying that same paragraph) likewise should be inapplicable. While we believe the structure of the entire section is not unambiguous and offers us the flexibility to permit a limited initial deferral, we feel that because paragraph 3 specifically addresses this circumstance (i.e., a deferral in the initial payment) and, therefore, its plain language cannot be completely disregarded.

Consistent with Advisory Ruling 39-A, we believe that a delay of less than 30 days for an initial payment does not constitute a “deferral”. In addition, a separate 30-day “deferral,” if occurring between consecutive payments under an existing plan, would not trigger the prohibition against substantially different intervals, and we view a short delay in the initial payment as the equivalent to a “holiday” between payments. Cumulatively, this establishes a potential permissible deferral period of a period up to, but not including, 60 days.

Therefore, based on the legislative history of the new law, and the precedent set by the holding and the reasoning of Advisory Ruling 39-A, we are of the opinion that a delay of less than 60 days in the initial payment under a credit plan is not equivalent to an extended deferral of up to 12 months and, therefore, should not be subject to the accompanying prohibition against accruing interest and costs.

It is our understanding that legislation will be submitted to clarify this issue. Therefore, we have adopted this position pending the outcome of additional legislative review of this issue.

We hope this is responsive to your request for our opinion on this matter.

Sincerely,

Howard R. Gray, Jr., Superintendent
Bureau of Banking

Sincerely,

William N. Lund, Director
Office of Consumer Credit Regulation