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DEPARTMENT OF BUSINESS REGULATION
BUREAU OF CONSUMER PROTECTION
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ADVISORY RULING # 39A
JUNE 11, 1979

June 11, 1979

Dear

This is in response to your letter of May 14, 1979 in which you sought further clarification of Advisory Ruling No. 39 as it relates to the "payment holiday" program offered by your bank. Under your plan, the consumer may elect a "payment holiday" each time five consecutive payments have been made on time, i.e., allowing 2 payment holidays during a 12 month period. Furthermore, the consumer will not be subject to any charge except that credit life insurance premium charges, if any, will continue to accrue and interest will continue to accrue on the amount of the principal still outstanding. The right to skip one payment for every five payments made on time is cumulative. Provided that the consumer is not in default at the time, he or she may take any payment holidays which have been earned in any month or months that is chosen by the consumer.

You contend that the "irregular interval" provision of Section 3-308 is intended to prevent a creditor from forcing a consumer to refinance his obligation in order to avoid the burdens of a schedule of payments which requires payments to be made at substantially irregular intervals. You also submit that even if Section 3-308 is construed to cover optional variations in a schedule of payments, a one month interruption is not "substantial" and therefore not violative of the statute. Consequently you do not agree that a span of 60 days between payments which are otherwise payable in 30 days constitutes a substantial variations within the meaning of the statute.

What constitutes a "substantial" variation between scheduled payments is not an issue insofar as Section 2-308 is concerned. The "substantially" equal language in this Section only applies to the amount of the installments. The statute is precise in its reference to "equal periodic intervals". There seems to be little margin for variation in 2-308.

In contrast however, we are aware that Section 3-308 does recognize the need for flexibility in both the amount of installment and the interval between payments as the word "substantially" is used with respect to the amount of payment and interval between payments.

It is the consensus of this office that your payment holiday plan would run afoul of Section 2-308 and should not be offered on supervised loans subject to that Section.

With respect to consumer loans and supervised loans in excess of \$1,400, however, there is more room for flexibility relative to the issue of what constitutes a substantial variation in the "interval" between any consecutive payments.

The overall intent of 3-308 is to prohibit a creditor from inducing a consumer to enter into a burdensome contract by offering him invitingly small installment payments until the end of the contract when the consumer is confronted with a balloon payment too large to pay. Under your plan, however, there is the element of choice and the consumer is not burdened with making any additional payment over and above the amount of a regular payment the month following the payment holiday.

One of the underlying purposes and policies of the Code that may be relevant to the issue is set forth in Section 1-102, subsection (2)(E) which states "To permit and encourage the development of fair and economically sound consumer credit practices.....".

I conclude, therefore, that your particular payment holiday plan for loans in excess of \$1,400 appears to be a fair and economically sound consumer credit practice and its use will be permitted. This Advisory Opinion should only be construed, however, to extend approval of the payment holiday plan as submitted and described in the first paragraph.

Thank you.

Sincerely,

/s/ Barbara Reid Alexander

BARBARA REID ALEXANDER
Superintendent

BRA/bl