

ADVISORY RULING #15
JUNE 5, 1975

(Formerly Administrative
Interpretation # 18)

June 5, 1975

Dear

You have inquired whether a consumer loan may qualify as a consolidation for the purposes of §2.505 of the Code where a portion of the proceeds are advanced as additional funds to the consumer and the remainder is utilized to pay off a prior loan.

It is our opinion that such a loan would qualify as a consolidation where the additional funds were extended on the basis of a voluntary request by the debtor. If, however, the additional funds are nominal or the need to rewrite the original loan was a controlling factor, then, the new loan would ordinarily be viewed by the Bureau as subject to the restrictions set forth in §2.504.

A good faith extension of additional funds unrelated to an attempt to circumvent the provisions of §2.504 could qualify as a consolidation under §2.505 without the necessity of an entirely separate transaction for the additional funds prior to a "formal" consolidation of the transactions.

You have further inquired whether a consumer loan which was written prior to January 1, 1975 at an annual percentage rate in excess of 18%, which was not subject to §3081 of 9 M.R.S.A., may now be rewritten for the full term permitted by the Code. It must be presumed, initially, that the Legislature fully intended to provide continued restriction of loans subject to §3081, which was repealed effective January 1, 1975. This intention may be perceived by the reference to "original loan" in §2.308 (3) when read in conjunction with the language of Section 14 of Public Law 1973, Chapter 762 which requires that loans, whenever made, become subject to the Code if they are refinanced or consolidated following enactment of the Code.

Since both §2.504 (refinancing) and §2.505 (consolidation) are subject to the restrictions of §2.308, then the refinancing or consolidation of a loan subject to §2.308 (3) must remain within the term restrictions of that section regardless of when the loan was originally made.

The Code fails to distinguish between loans made subject to §3081 of the Banking Law and those which were made at a rate greater than 18% yet not subject to that section. Thus, the Bureau must consider all loans made at an annual percentage rate greater than 18% and refinanced or consolidated after January 1, 1975 subject to the 37-month term, in §2.308 (3), from the date of the original loan, whenever made.

Respectfully,

John E. Quinn
Superintendent

JEQ/jh