

January 28, 1983

Dear

You have requested an Advisory Ruling on behalf of your client concerning the applicability of §2-501(1)(C) of The Maine Consumer Credit Code (Title 9-A, M.R.S.A.) which prohibits an annual fee as an "additional charge" for the privilege of using a credit card when a card is a "lender credit card."* Your client is an issuer of a travel and entertainment card in which, except for this new program described below, no credit is extended and no finance charges are imposed. Your client has now announced, for the first time, a formal open-end credit program for certain specified purchases by your cardholders. These charges are primarily related to big ticket items, such as airline and cruise tickets. It is estimated that of your total volume of charges incurred by your cardholders, 6% will fall under this formal open-end credit program.

Since your client has not made loans in the past, it has not come under the prohibition of an annual charge because it is not a "lender credit card." You have asked whether the addition of this new open-end credit program service for your cardholders brings you in under the definition of "lender credit card" and thus the prohibition on the annual fee as an additional charge. You have agreed that in all other respects that the provisions of the Maine Consumer Credit Code apply to your client, such as the requirement for licensing, (§2-301), maximum finance charges (§2-402), prohibition on attorneys' fees and collection costs (§2-507), and procedures for change in terms of open-end credit accounts (§3-204).

I have determined that the program you have described does not necessarily result in the application of §2-501(C) for the non-finance charge program. First, the size of your formal credit program is a very minor part of the total volume incurred pursuant to this charge card. Second, those cardholders who elect the deferred or extended payment option will have a separate billing statement for this type of balance. Third, and most important, the annual fee will not be based on a consumer's use or non-use of the extended payment account. In summary, the prohibition on the annual fee applies only to a lender credit card. Your client is in effect operating two programs: one is a non-credit program and for which a fee is charged, and the second, which is clearly an open-end credit program, but is adjunct to and not in any way linked to the annual fee.

I hope this responds to your request. It is my understanding that upon receipt of this Advisory Ruling, you will insure that all Maine residents are charged a maximum of 18% on any formal credit program which you may offer to your cardholders, and that a Supervised Lender's License application will be forthcoming.

Sincerely,

/s/ Barbara R. Alexander

Barbara R. Alexander
Superintendent

BA:as

*AR #88 Amendment

This Ruling is modified because of legislative change. By enactment of P.L. 1983, c. 384, §2, subsection E was added to §2-501(1) granting up to a \$12 annual fee on lender credit cards. No other change is effected in the AR.

7/14/86