



DEPARTMENT OF BUSINESS, OCCUPATIONAL AND PROFESSIONAL REGULATION
BUREAU OF CONSUMER CREDIT PROTECTION
(207)289-3731

ADVISORY RULING #88
July 14, 1986

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Re: Revisions in Advisory Rulings # 1 - # 87

Because of changes in statute and case law, the Bureau takes this opportunity to revise ARs # 1 through # 87 to conform them to the current state of the law. Sixteen ARs are modified and fourteen are repealed. Each AR affected is listed below. In the case of ARs being modified, only the sections affected are noted, with the reader being directed to the original AR, to which amendatory language has been added. Those ARs being repealed have the reasons for such repeal set forth in this Ruling.

AR #2 - Retroactive Credit Insurance Plans, §4-104(3). See Revised AR # 2.

AR #3 - Right to Cure Subsequent Defaults, §§5-110, 5-111. See Revised AR #3.

AR #4 - Cure of Default, §5-111; Scope of Code-Exemption for Supervised Financial Organizations Making First Lien Mortgage Loans, §1-202(8). See Revised AR #4.

AR #9 - Refinancing of Single Payment Notes, §2-504. This Advisory Ruling is repealed because a later AR (#45) and statutory changes, have made it irrelevant under the current version of §2-504. Specifically, P.L. 1975, c. 173, §2 amended §2-504 to exempt the refinancing of single payment notes with rates of 12¼% or less. AR #45 addressed the interplay of §2-504 and variable rate transactions. Finally, all remaining issues between §2-504 and variable rate transactions were resolved with the enactment of §3-310, by P.L. 1981, c. 138.

AR #23 - Disclosure of Variable Rate Transactions; Disclosure of the Right to Set-Off. This Ruling is repealed. Both of the issues with which AR #23 dealt have been affected by subsequent legislation. Specifically, the first part of AR #23 addressed the method of disclosure of variable rate transactions, referencing Federal Reserve Board Formal interpretation 226.810. The issue of disclosure of adjustable rate instruments has been more recently addressed by the enactment of §3-310 (P.L. 1981, c. 138) and revisions to Regulation Z, 226.18(f).

The second part of AR #23, concerning disclosure of the right to set off in the notice of right to cure, was formally addressed by enactment of P.L. 1979, c. 402, which added subsection 4 to §5-110. That subsection requires the right to set off to be formally noted as something that the creditor can exercise if a transaction is not cured.

AR #25 - Discounts for Cash, §§8-303(3), 1-301(19). See Revised AR #25.

AR #33 - Restitution Formula. This Advisory Ruling is repealed. It has been superseded by Rule 02-030-190, Enforcement Policy Guidelines.

AR #34 - Rebate of Unearned Finance Charges in Precomputed Transactions. See revised AR #34.

AR #36 - Disclosure under pre-Truth-in-Lending Simplification and Reform Act Period. This Advisory Ruling is repealed. It deals with issues which have been altered by the Truth-in-Lending Simplification and Reform Act and subsequent interpretation (See, e.g., Regulation Z, §226.4(c)(5).)

AR #40 - Cure of Default Period, §5-111. See Revised AR #40.

AR #41 - This Advisory Ruling had previously been repealed by AR #52.

AR #42 - This Advisory Ruling has been modified by changing a statutory reference. See Revised AR #42.

AR #43 - This Advisory Ruling had previously been repealed by AR #52.

AR #43-A - This Advisory Ruling had previously been repealed by AR #52.

AR #45 - Variable Rate Loan Products and Disclosure. See Revised AR #45.

AR #46 - Disclosure of Late Payment or Delinquency Charge. This Advisory Ruling has been modified by changing a statutory reference. See Revised AR #46.

ARs #49 and #49-A - These Rulings, which dealt with irregular repayment plans and disclosure of set off as a security interest are repealed. Subsequent statutory change has made these Rulings purposeless. Specifically, P.L. 1985, c. 113, §2 repealed and replaced §3-308, and now permits extended first payment plans of up to 90 days, as well as balloon payments. This same public law also amended §2-308(1) to make it clear that the flexibility allowed in §3-308 extended to the design of repayment plans for loans under §2-308.

Regarding set off, it is clear that that right exists only in closed-end loans: §3-301 prohibits it in credit sales and leases, and §8-303(5) prohibits it in credit card transactions. Section 8-206(1)(J)(ii) and Regulation Z, §226.18(m) continue to require the description of any non-purchase money security interest in the consumer's property to be disclosed and identified by item or type. The provisions regarding the treatment of the right to set off in the notice of right to cure setting also remain as they were described in AR # 49, namely, §5-110(4) requires specific warning that if default is not cured, funds on deposit with the lender can be used to pay the obligation.

AR #55 - Disclosure of "Worst Case" Hypothetical in Variable Open-End Plans, §3-310. This Advisory Ruling is repealed. The issue raised was legislatively addressed through P.L. 1981, c. 579, which amended §3-310(1)(H).

AR #60 - Code coverage of future advances made pursuant to an Exciting First Lien Mortgage, §1-202(8). This Advisory Ruling had previously been repealed by AR #60-A.

AR #62 - Student Loan Exemption, §1-202(7). This Advisory Ruling is repealed. Significant changes were made to §1-202(7) in 1982 with the enactment of P.L. 1981, c. 638, §1, in part eliminating the restriction that the loan be made to finance the "borrower's" attendance at an institution of post-secondary education. The amendment allowed loans to parents to now be made for these purposes and have those loans be Code-exempt, provided they met the other criteria as to lender or guarantor, and rate. This subsection was again rewritten in 1984 by P.L. 1983, c. 641, §1. (See AR #78.)

AR #64 - Assignment of Supervised Loans to Out-of-State Assignees, §2-301(2). See Revised AR #64.

AR #66 - Rates on Sales and Loans of Mobile Homes Without Land, §§2-201, 2-401. This Advisory Ruling is repealed due to further legislative change. P.L. 1983, c. 87, §§1 and 2 repealed and replaced §§2-201(10) and 2-401(8), allowing the rate on mobile home credit sales and loans without land to be the greater of either the FHA or VA rates plus 2%, or 18%.

AR #68 - Numerical Test for being "Regularly Engaged" in Extending Consumer Credit. See Revised AR #68.

AR #70 - Residential Mortgage Transactions by Supervised Lenders not Supervised Financial Organizations, §1-202(8). See Revised AR #70.

AR #71 - Insurance Premium Financing - See Revised AR #71.

AR #72 - Annual Fees on Lender Credit Cards, §2-501. See Revised AR #72.

AR #73 - Graduated Payment Adjustable Mortgage Loans. See Revised AR #73.

AR #74 - Disclosure Procedures for Variable Rate Transactions when No Caps Exist on Rate Change, §3-310. This Ruling is repealed since the subject matter of the AR has been addressed by amendment to §3-310(1), accomplished by P.L. 1983, c. 720, §§14, 15 and 17.

AR #76 - Adjustable Rate Mortgage Instruments, §3-310. See Revised AR #76.

/s/ Robert A. Burgess

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