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DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF CONSUMER CREDIT PROTECTION

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ADVISORY RULING #95
APRIL 2, 1990

April 2, 1990

Re: Credit Account Returned Check Charges

Dear

You have asked the Bureau to reconsider its prohibition against a creditor seeking reimbursement for a fee assessed by the creditor's bank if a consumer's check "bounces" due to insufficient funds in the consumer's account.

This office's January, 1990 Creditor Update newsletter contained the following statement:

"Consumers cannot be charged for returned checks when making installment or credit payments. Assessing such charges, in the Bureau's historic opinion, impermissibly increases the cost of credit."

This statement was based on Advisory Ruling #51, dated January 6, 1981, which equated assessment of such charges with "collection costs," prohibited in consumer credit plans. The theory justifying this position is that the creditor can treat the account as unpaid, and can charge interest (on simple interest accounts) or can charge contracted-for late fees (on precomputed plans).

You have criticized this position as unfair under certain circumstances: If a merchant deposits a non-sufficient funds (NSF) check, and if the merchant's own bank assesses the statutorily-permitted \$2.00 fee, the merchant currently must pay that fee, without any recourse for the out-of-pocket expense against the consumer who wrote the check.

With respect to this specific situation, the Bureau is convinced that modification of its earlier prohibition against passing this cost on to the consumer, is warranted. Beginning May 1, 1990 a creditor accepting a check for a credit payment may add to the consumer's balance any NSF charge legally assessed by the creditor's bank pursuant to 9-B M.R.S.A. §241(6). (Under the provisions of the Banking Code, no fee whatsoever may be assessed if the check was deposited in the same institution on which it was drawn.)

To maintain the previous position would be to discourage acceptance of checks, which serve an extremely useful purpose for consumers who do not wish to carry either cash or high-interest credit cards.

The amount allowed above is in addition to ongoing finance charges on simple interest accounts, and contracted-for late fees on pre-computed accounts.

Sincerely,

William N. Lund
Superintendent

WNL/bas