

July 7, 1980

Dear

You have asked whether a creditor may incorporate language into a pre-computed interest contract that would automatically adjust the amount imposed for late charges to correspond with the amount specified in the Bureau's Official Rules on Adjustment of Dollar Amounts prescribed by Section 1-106 of the Maine Consumer Credit Code. You note that Section 2-502(5) of the Code provides that the maximum delinquency charge prescribed by Section 2-502(1) may increase according to Section 1-106.

For two reasons, the Bureau finds that this proposed contract term is not allowable.

First, Section 2-502(1) specifically states "...the parties may contract for a delinquency charge...in an amount not exceeding the greater of: A. An amount, not exceeding \$5, which is 5% of the unpaid amount of the installment; or..." While Subsection 5 provides that the \$5 amount is subject to change, the Bureau interprets this to allow the creditor to alter the contracts to reflect this increase as well. It is reasonable to assume that the change in dollar amounts was not intended to affect existing contracts and that the bargain between the parties as to a specific sum should control during the life of the contract.

Truth in Lending policies dictate this result as well. Section 128(a)(9) of the Federal Truth in Lending Act and Sections 7-102(I) and 7-121(G)* of the Maine Code require the disclosure of the "default, delinquency or similar charges payable in the event of late payment." Regulation Z §226.8(b)(4) requires the disclosure of: "The amount, or method of computing the amount, of any default, delinquency, or similar charges payable in the event of late payments."

The policy of the Truth in Lending Act is to "...assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him..." (Section 7-102). Specific disclosures are required to carry out this goal. In Smith v. Chapman, 614 F. 2d 968 (1980) a creditor was held to violate the delinquency charge disclosure requirement because it was not sufficiently "clear" as required by §226.6(a) of Regulation Z. The creditor had disclosed a delinquency charge equal to the post-maturity interest rate: "not to exceed the highest lawful contract rate." This reference was held to be "meaningless to most consumers" by the Court. At 975. The Court also rejected the contention that the disclosure complied with the allowable "method of computing the amount."

That the disclosure of a specific sum is required is further buttressed by Official Staff Interpretation FC-0054 which refers to the disclosure as "...specific sums assessed against a borrower solely because of failure to make payments when due." (emphasis in original).

I hope this responds to your request.

Sincerely,

/s/ Barbara R. Alexander

Barbara R. Alexander
Superintendent

BA:as

* AR #88 AMENDMENT

This Ruling is modified to incorporate the correct statutory reference. Because Article VII was replaced by Article VIII, the references to §§7-120(I) and 7-121(G) should now be to §8-206(1)(K).

7/14/86