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UNIFORM CONSUMER CREDIT CODE

DEPARTMENT OF LAW

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Administrative Interpretation No. 3.508-7902

UNDER CERTAIN CIRCUMSTANCES A MORTGAGE LENDER WHOSE LOANS ARE SUBJECT TO THE PROVISIONS OF THE UNIFORM CONSUMER CREDIT CODE MAY UTILIZE A MONTHLY AMORTIZATION FOR THOSE LOANS.

Questions have arisen in regard to the practice of certain mortgage lenders whose loans have become subject to the provisions of the Uniform Consumer Credit Code of charging interest on those loans on the assumption that each payment is made on the payment due date irrespective of the time when the payment is actually received by the mortgage lender. Typically, these mortgage lenders have contracted for payments to be due on the first day of the month. The lenders then charge interest on the outstanding balance from due date to due date regardless of the date when the payment is actually received, whether it is received prior to the due date or within a contractual grace period ranging up to fifteen days following the due date. The official interpretation which follows presumes that the promissory note between these mortgage lenders and the debtor provides for the charging of interest in this fashion.

At the request of the Administrator, two mortgage lenders reviewed the payment history of a specified sample of that lender's mortgage loans. Each lender was requested to determine the frequency with which mortgage loan payments were made prior to their contractual due date. Different techniques were used by each lender for making this determination.

Mortgage lender #1 surveyed its entire portfolio of loans with respect to payments due on November 1, 1979. It determined which of those loans had the scheduled November payment paid during the two weeks prior to its scheduled due date. Mortgage lender #1 then took a 10% sample of those accounts which paid prior to the due date and checked to see how many of those accounts had paid the scheduled monthly payment prior to the due date during an earlier six month period. The sampling technique thus described indicated that approximately one half of 1% of debtors on mortgage loans held by mortgage lender #1 were consistently paid prior to the contractual due date.

Mortgage lender #2 utilized a preselected sample of 200 "prime" loans from its total portfolio of mortgage loans. Mortgage lender

#2 then reviewed the payment history on those loans to determine the number that consistently paid prior to the due date of the scheduled installment. The payment history which was reviewed by mortgage lender #2, was a 24 month period. The experience of mortgage lender #2 showed that with this sample of prime loans, which, it should be noted, was not a random sample of all loans held by that lender, 4% of borrowers consistently paid the scheduled installment prior to the scheduled due date.

Two different statutory provisions are relevant to the inquiry whether the practice of computing interest from scheduled due date to scheduled due date is permissible under the Uniform Consumer Credit Code. Section 5-3-209 grants to the borrower a privilege of prepayment of any obligation, in whole or in part, in an amount not less than five dollars, at any time, without penalty. Section 5-3-508(5) provides, in part, as follows: "Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted."

Accordingly, if a mortgage lender establishes a contractual agreement with its borrower which contains a provision that a payment made a certain number of days prior to the due date will be treated the same as a payment made the same number of days following a due date for the purpose of interest calculation, that provision does not violate the Uniform Consumer Credit Code, so long as the number of days utilized, both for the purpose of charging interest and for the length of the grace period within which no additional interest charge may be assessed, does not exceed fifteen. This conclusion is bolstered by the equitable maxim "de minimus non curat lex," which is applicable by virtue of the relatively small number of borrowers who pay prior to the due date of the scheduled installments on a regular basis.

By Frederick T. Berhenke
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This is an official interpretation of the Colorado Uniform Consumer Credit Code as contemplated in Section 5-6-104(4), C.R.S. 1973, as amended.