1978 WL 35121 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
September 20, 1978

***1** Mr. Emory Hilton
Chief Examiner
Consumer Finance Division
Board of Financial Institutions
Post Office Box 11905
Columbia, South Carolina 29211

Dear Emory:
I have gone over the Report of Examination and ledger cards which you supplied on Capitol Credit Plan of Aiken. As I recall our discussion, the question on these cards was whether or not deferral charges which had been made in a number of cases were accurately calculated and authorized.

I have discussed the question of authorization with Mr. Parker and Mrs. Smith. They concur with my opinion that Section 3,204(2) allows the deferral of all or part of one or more unpaid installments either before or after default in payment of a scheduled installment. If a delinquency charge has been made on an installment, that installment may still be deferred if the delinquency charge is deducted from the deferral charge or otherwise re-credited to the account. This has been our continuing interpretation of the law which is, of course, subject to correction by the courts.

In examining the ledger cards, I made some presumptions in the absence of a complete and detailed explanation of the method used by Capitol Credit Plan for maintaining those cards. I presumed that the figures in the 'Paid To' column on the card indicated the installment number to which the payment had been applied. Because the contracts call for a Rule of 78's rebate, it was presumed that all deferrals were standard deferrals and the calculations to check them were made in accordance with that formula.

I examined seven of the ledger cards which you supplied that were listed on the examination form. The first one was No. 5537 which recorded the account of James G. and Jessie Carr. On the 29th of July 1977, the Carrs made a payment of $55. Four dollars and thirty-six cents ($4.36) of that payment was applied to principal and a two months deferral charge of $50.64 was taken from the payment. The previous entry on the card was made on May 26, 1977, and in the 'Paid To' column shows that it was paid to '04.' I take this to mean that that payment was applied to the payment due in April. The payment made on July 29 shows an entry in the 'Paid To' column of '06' which seems to indicate that the payment was applied to the payment due in June. Based on this information, it appears that any deferral would have been of the payment due in May and that deferral could only have been for one month since there was a payment made in June. As a consequence, I would be of the opinion that a standard deferral would have been calculated on the computational period that immediately preceded the May installment and the deferral period would have been for one month. This means that the authorized deferral charge would have been $21.76 and the actual deferral charge of $50.64 represents an excess charge of $28.87.

The next account that I looked at was No. 7410 in the name of Cummings. On April 21, 1978, a payment was made and a deferral charge of $16.89 was collected. The previous payment on the ledger card was made on March 6, 1978, and was apparently applied to the payment due in February. This left the March payment unpaid and it apparently is the one on which the deferment was calculated. A standard deferral calculation indicates that the authorized deferral charge would be $16.89 which is the amount that was charged.

***2** Account No. 5762, in the name of Reddish, indicates on the examination report that a deferral charge was assessed on 7/27/78. I was unable to find such a date on the ledger card furnished me and assumed that the transaction took place on 7/27/77. On July 22, 1977, a payment was made and a deferral charge of $28.54 was assessed. That payment was applied to '08' which I presume means it was applied to the payment due in August. No previous payment was made on the account, and the first due date that is shown on the ledger card was May 27, 1977, which apparently was later changed to the 10th of June. Since the payment made on the 22nd of July was applied to the August payment, the payments due in June and July were apparently considered to be in default. The deferral charge was calculated on the computational period preceding the first due installment and the period deferred was for two months. The authorized deferral charge on that standard deferral would be $28.54 which was the amount that was recorded on the card.

I will not go through the details on each of the other ledger cards but simply indicate whether I agree with the deferral charge which was made or not. On Account 5618, in the name of Hemphill, the report made reference to a deferral charge that was assessed on 1/12/78, in the amount of $19.02. The deferral period was two months. The authorized deferral charge according to my calculations would be $15.85. The overcharge in this case would be $3.17.

Account No. 7273, in the name of Coleman, indicated an error in the deficiency charge which was assessed on 2-3-78, in the amount of $18.67. I agree with the charge.

Account No. 5745, in the name of Jackson, indicated an error in the deferral charge which was made on March 17, 1978. The original ledger card and the continuation of the ledger card do not agree. On the original card it shows a payment being made as of February 17, 1978, and the assessment of a deferral charge at that time and on the continuation it shows a payment being made as of March 17, 1978, and the assessment of two deferral charges at that time. Since the balances being shown for the two entrys are the same, it is presumed that they represent the same payment, but it cannot be determined as to which was the actual date of payment.

The last account was No. 5457 in the name of Bentley. Deferral in question was noted on the Report of Examination as being on 6/24/78. There is no such date on the ledger card and it is presumed the transaction of 6/24/77 is the one involved. On that date a deferral charge of $41 was collected. I agree with the charge as assessed.

The basic problem appears to be with the manner in which the payments are being applied to the account and not necessarily the manner in which the deferral charges are being calculated. An examination of the Bentley account (5457) indicates that they were charged five deferral charges each of two months length between the 17th of February 1977, and the 9th of August 1978, when their loan was renewed. It appears that the payments were applied in chronological order to the installment due date without any regard to the period that the payment was made. In order to resolve that particular problem, we are going to have to wait upon the finalization of the definition of 'current installment' in order that we may determine precisely how the payments should be applied. A change in the application of payments would obviously make some changes in the delinquency and deferral charges authorized On these accounts.

***3** I hope these comments provide some useful information to you. If you have any problem with the explanations or something doesn't make sense, please give me a call.
Sincerely yours,

Roy C. Harms
Deputy Administrator

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