

INTERPRETIVE LETTER 92-2 (APRIL 17, 1992)

State bank may charge late charges pursuant to Section 4a of Interest Act or may elect to make a loan of less than \$10,000 under the Consumer Installment Loan Act and comply with the provisions of that Act.

This is in response to your letter of * regarding the interaction between Sections 4 and 4a of the Interest Act ("IA"), Ill. Rev. Stat. ch. 17, pars. 6404 and 6410 (1989), and the Consumer Installment Loan Act ("CILA"), Ill. Rev. Stat. ch. 17, par. 5401 et seq. (1989).

Section 4 of the Interest Act provides that "[i]t is lawful to receive and collect interest and charges at any rate or rates agreed upon by the bank and the borrower." Section 4a of the Interest Act imposes various restrictions on delinquency charges for installment loans under \$25,000 if those loans are payable in substantially equal installments over a period of not more than 181 months. Section 4 does not state its intended effect on other sections of the Interest Act. Therefore, the conservative interpretation would be that banks must comply with Section 4a if the loan is under \$25,000 and payable in substantially equal installments over a period of not more than 181 months.

You also asked whether a bank must comply with CILA for loans under \$10,000 if the loan also could be made under Section 4a of IA. Section 21 of CILA states:

This Act does not apply to any person, co-partnership, association, or corporation doing business under and as permitted by any law of this state or the United States relating to trust companies, savings and loan associations, pawn brokers, or credit unions....A bank authorized to transact business by the laws of this state or of the United States may contract for and receive the charges authorized by this Act without being licensed pursuant to this Act, but shall comply with all other provisions of this Act when contracting for or receiving charges on loans regulated by this Act (emphasis added).

In 1963, when CILA was enacted, Section 4 of the Interest Act also was amended to add the following provision:

It is lawful to receive or to contract to receive and collect interest and charges as authorized by this Act and as authorized by the "Consumer Installment Loan Act," approved August 30, 1963....

Since Section 21 of CILA uses permissive language, this contemporaneous amendment to Section 4 of the Interest Act suggests that the legislature intended to permit banks to choose either act under which to make a loan.

You pointed out in your letter that Section 15(e) of CILA does not authorize a late charge on a simple interest loan. Section 15(f)(4), however, allows a late charge of 5% of the installment for

add-on loans. Thus, one interpretation is that the legislature did not intend to permit late charges for simple interest loans under CILA.

Section 4a(e) of the Interest Act, on the other hand, specifically authorizes a late charge of 5% for both simple interest and add-on loans.¹¹ This raises the issue of whether a bank can charge a late fee for a simple interest loan under \$10,000 on the basis of Section 4a(e) of the IA despite the fact that Section 15(e) of CILA does not permit such a charge.

Section 21 of CILA does not require that banks use CILA for loans under \$10,000; rather, we interpret it to permit banks to elect to treat a loan under \$10,000 as being made under either CILA or the IA. This election should be made, however, when the loan is made, and we would suggest that loan documents refer to CILA if the bank elects to make the loan under those provisions.

Finally, please note that the Financial Services Development Act, Ill. Rev. Stat. ch. 17, par. 7001 et seq. (1989), authorizes financial institutions in Illinois to offer revolving credit plans without limits on interest or charges.

Note: Banks may no longer elect to treat loans as having been made under CILA. P.A. 90-437, effective January 1, 1998, amended CILA to exclude banks from its coverage.

¹ House Bill 1911, which passed in the November veto session, amends Section 4a to allow a late charge of 5% on installments in excess of \$100 and of \$5 on installments of \$100 or less.