ADMINISTRATIVE INTERPRETATIONS

In 2024, the following administrative interpretations issued under K.S.A. 16a-6-104(1)(f) remain in effect.

Current Administrative Interpretations

Administrative Interpretation No. 1001
Call or Demand Notes
December 1, 1992

A request has been made to the Consumer Credit Commissioner for an Administrative Interpretation concerning the inclusion of a demand feature in a non-real estate consumer installment loan agreement.

A demand or call provision is an acceleration clause which allows a lender to call monies due under the instrument at the will of the creditor.

The Kansas Uniform Consumer Credit Code section 16a-5-109 permits creditors to accelerate an agreement if:

(1) the consumer fails to make a payment as required by the agreement; or

(2) the prospect of payment, performance, or realization of collateral is significantly impaired; the burden of establishing the prospect of significant impairment is on the creditor.

Notwithstanding subsection (1) a creditor may not accelerate an agreement only for failure to make a required payment unless the consumer has been given the notice of right to cure as provided by 16a-5-110 and 16a-5-111.

The calling or demanding of payment in full following 24 months of a 48 month contract, for example, would trigger the consumer's right to finance the balloon payment at the same rate and terms as the original installment note (16a-3-308).

Demand notes will be allowed only when the agreements are ``interest only'' in which the consumer is required only to pay interest and not pay principal. Demand provisions in these types of transactions is entirely understandable, given the need of the creditor eventually to recover its principal.

Wm. F. Caton
Commissioner

Administrative Interpretation No. 1002
Refund of Credit Insurance Premiums
January 27, 1993; amended October 13, 1999

The purpose of this Administrative Interpretation is to clarify the requirements of K.S.A. 16a-4-108(3) in regard to the notices to be provided to consumers who may be eligible for a refund of credit insurance premiums.

Section 16a-4-108(3) states ". . . (3) Except as provided in subsection (2), the creditor shall promptly make or cause to be made an appropriate refund or credit to the consumer with respect to any separate charge made to him for insurance if (a) the insurance is not provided or is provided for a shorter term than that for which the charge to the consumer for insurance was computed; or (b) the insurance terminate prior to the end of the term for which it was written because of prepayment in full or otherwise . . ."

The phrase "promptly make or cause to be made" does not have a definition in the code and apparently has been misunderstood by creditors. For purposes of K.S.A. 16a-4-108(3), 30 days shall be considered a reasonable time within which to promptly make or cause to be made" a refund or credit to the consumer.

This interpretation outlines the Administrator's opinion of the appropriate format for notices to be sent to consumers in order to comply with the above quoted statute. The notices are required of creditors who have become an assignee of a consumer credit transaction which has separate prepaid charges for credit insurance which have been retained by the original creditor.

A creditor who accepts such a consumer credit transaction from an original creditor should notify the consumer within ten calendar days that they have been assigned the consumer credit transaction. If credit insurance was purchased, a notice in the following form will be deemed by the Administrator to satisfy the requirements of K.S.A. 16a-4-108:

> **"YOU HAVE PURCHASED CREDIT LIFE AND/OR DISABILITY INSURANCE IN CONNECTION WITH THE ABOVE-STATED CONSUMER CREDIT TRANSACTION."**
>
> **"PLEASE BE ADVISED THAT IF YOU PAY THE CONSUMER CREDIT TRANSACTION IN FULL BEFORE THE END OF THE TERM FOR WHICH IT WAS WRITTEN, YOU MAY BE ENTITLED TO A REFUND OR CREDIT FOR CREDIT INSURANCE PREMIUMS PAID."**
>
> **"TO OBTAIN YOUR REFUND, YOU MUST CONTACT THE ORIGINAL CREDITOR."**
>
> **"IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE OFFICE OF THE STATE BANK COMMISSIONER, DIVISION OF**

CONSUMER AND MORTGAGE LENDING AT 700 SW JACKSON, SUITE 300, TOPEKA, KANSAS 66603."

Upon prepayment of any consumer credit transaction described above, an additional notice must be made to the consumer with a copy sent to the original creditor. The notice should include the following:

1. DATE OF CONSUMER CREDIT TRANSACTION REPAYMENT.

2. NAME OF CONSUMER AND CONSUMER CREDIT TRANSACTION NUMBER.

3. A STATEMENT INDICATING THAT A POTENTIAL REFUND MAY BE DUE TO THE CONSUMER.

4. THE ORIGINAL CREDITOR'S NAME AND CURRENT ADDRESS.

5. A STATEMENT THAT THE ORIGINAL CREDITOR IS INITIALLY RESPONSIBLE FOR MAKING THE REFUND OF THE UNEARNED PREMIUM.

6. A STATEMENT INDICATING THE ORIGINAL CREDITOR MUST RETAIN WRITTEN PROOF OF THE REFUND.

7. A STATEMENT DIRECTING THE CONSUMER TO CONTACT THE OFFICE OF THE STATE BANK COMMISSIONER DIVISION OF CONSUMER AND MORTGAGE LENDING WITHIN THIRTY (30) DAYS IF THEY HAVE FAILED TO RECEIVE THEIR REFUND.

A sample notice is available upon request.

Creditors will be considered to have substantially complied with K.S.A. 16a-4-108 by providing to consumers the information outlined above. Failure by a creditor to comply with K.S.A. 16a-4-108(3) may result in action by the Administrator, including the possible imposition of a fine.

Kevin C. Glendening
Acting Deputy Commissioner
Division of Consumer and Mortgage Lending
Office of the State Bank Commissioner

SAMPLE NOTICES

A. INITIAL NOTICE

DATE OF NOTICE
RE: Loan Number
You have purchased credit life insurance in connection with the above stated loan.

Please be advised that if you pay the loan in full before the end of the term for which it was written, you may be entitled to a refund or credit for credit insurance premiums paid.

To obtain your refund, you must contact the original creditor.

If you have any questions, please contact the Office of the State Bank Commissioner, Division of Consumer and Mortgage Lending at 700 SW Jackson, Suite 300, Topeka, Kansas 66603.

B. NOTIFICATION OF POTENTIAL REFUND ON CREDIT INSURANCE DUE TO PREPAYMENT

DATE OF NOTICE
TO: BORROWER
RE: Loan Number
Date of Loan Prepayment

This is notification that there may be a refund or credit due to the above-named consumer for credit insurance premiums paid.

Because the loan identified above has been prepaid in full, there may be a refund due for credit insurance premiums that have already been paid for the full term of the loan.

According to Kansas law, a consumer shall receive a refund or a credit for any insurance premiums paid when the insurance terminates prior to the end of the term for which it was written because of prepayment of the loan. (See K.S.A. 16a-4-108)

Upon prepayment in full, the consumer must contact the dealer/originator of the loan and request payment of any funds due for credit insurance premiums paid. The dealer/originator of the loan may be contacted at the following address:

For examination purposes, the originator of the credit insurance must keep written proof that a refund has been properly made, and thus all obligations under law regarding this matter have been satisfied.

If the consumer does not receive a refund or credit due within thirty (30) days of their request, please contact the Office of the State Bank Commissioner, Division of Consumer and Mortgage Lending, at 700 SW Jackson, Suite 300, Topeka, Kansas 66603.

Administrative Interpretation No. 1003
Clarification of Charges on Discretionary Overdrafts by Financial Institutions
July 14, 1994; Amended October 13, 1999

This administrative interpretation is given to clarify whether overdraft charges imposed by financial institutions constitute a finance charge and subsequently are subject to the Kansas Uniform Consumer Credit Code (Code). This interpretation applies only to discretionary overdrafts allowed by the financial institution where there is not a prearranged agreement to extend credit by paying checks drawn on a customer's checking account where the checking account contains less funds than the amount of the check or checks presented for payment.

The definition of an overdraft does not clearly come under the definition of consumer loan as defined in 16a-1-301(17). Comments included in the Code on that section indicate that a consumer loan usually includes ". . .all loans under $25,000 made by professional lenders to individuals for personal, family or household purposes as long as they are payable in installments or a finance charge is imposed". Overdrafts could better be defined as "sale of services" as defined in 16a-1-301(40). Again, the Kansas Comments of the Code relating to the definition of "loan" provide a distinction between loans and sales, and state ". . .thus, forbearance of debt arising from sales or leases is not a loan transaction within this act . . ."

Kansas Regulation K.A.R. 75-6-26 requires creditors to disclose to consumers the information required by Truth-in-Lending Regulation Z, 12 CFR 226 *et seq*., including all appendices thereto as amended and in effect on September 1, 1999 (Reg Z) (authorized by and implementing K.S.A. 16a-1-301 and 16a-6-117). Reg Z, 226.4 (c) (3) ("charges excluded from the finance charge") states, "charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items an the imposition of the charge were previously agreed upon in writing". Official Staff Commentary on Reg Z further expresses the following opinion on 226.4 (c) (3), "a charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items".

Conclusions:

1. Discretionary overdrafts by a financial institution without a prearranged agreement to create an overdraft, although generally considered as extensions of credit, do not constitute a consumer loan as defined by the Code in K.S.A. 16a-1-301 (17).

2. Charges on overdrafts without a prearranged agreement, however calculated, do not constitute a finance charge as defined by the Code in K.S.A. 16a-1-301(22).

3. The Code is silent in regard to charges imposed on discretionary overdrafts by a financial institution. When the Code is silent, Reg Z is used for reference. Reg Z in paragraph 226.4(c) (3) specifically excludes charges on discretionary overdrafts from the definition of "Finance Charge".

Therefore, it is the interpretation of this office, based on the facts, interpretations and conclusions stated above, that transactions involving financial institutions' imposition of charges on discretionary overdrafts are not subject to the Kansas Uniform Consumer Credit Code.

Kevin C. Glendening
Acting Deputy Commissioner
Division of Consumer and Mortgage Lending
Office of the State Bank Commissioner

Amended Administrative Interpretation No. 1004
Guaranteed Asset Protection ("GAP")
April 30, 2019

(Note regarding April 2019 amendment: The OSBC's intent is to allow companies to phase in new forms and not require immediate compliance with the latest amendment to this AI. The OSBC expects those affected by the amendment to come into compliance as soon as possible, but the OSBC has set a definite time of January 1, 2020, for full compliance with AI 1004. Until that date, old forms that are otherwise compliant now, but do not include the new language, will be considered compliant and therefore the cost of GAP may continue to be excluded from the finance charge using such forms until January 1, 2020.)

Administrative Interpretation No. 1004 was issued October 20, 1994 and first amended August 7, 1997.
This Administrative Interpretation was further amended December 19, 2012, and again on April 30, 2019.

This Administrative Interpretation provides guidelines that must be followed for creditors to exclude the cost of Guaranteed Asset Protection ("GAP") waiver agreements from the calculation of the finance charge with consumer credit sales and closed-end consumer loans pursuant to the Uniform Consumer Credit Code. A GAP waiver agreement cancels or waives all or part of the outstanding balance due on a consumer's finance agreement in the event physical damage insurance does not pay the consumer's debt in full following a total loss or unrecovered theft of the vehicle. This Amended Administrative Interpretation is limited to GAP waiver products offered in connection with the finance agreement on a consumer vehicle. For purposes of this Amended Administrative Interpretation, "vehicle" means self-propelled or towed vehicles designed for personal use, including but not limited to automobiles, trucks, motorcycles, recreational vehicles, travel trailers, all-terrain vehicles, snowmobiles, and personal watercraft.

GAP waiver products may be offered to consumers and the charges for GAP products may continue to be excluded from the finance charge in Kansas provided the following conditions are met:

1. There must be a reasonable expectation that the condition will exist where the loan balance will exceed the fair market value of the vehicle at some point in time during the life of the loan in order for a creditor to offer GAP to the consumer. The price charged for GAP shall be subject to the principles of unconscionability expressed in K.S.A. 16a-5-108.

2. In accordance with the Truth in Lending Act and implementing regulations, as they may be amended from time to time, all GAP waiver agreements must:

    a. contain a written statement that GAP coverage is not required by the creditor;

    b. disclose the cost of the GAP product; and

c. have the consumer affirmatively sign a written request for GAP coverage after receiving the required disclosures.

3. In addition to the requirements of the Truth in Lending Act, all GAP waiver agreements shall contain the following provisions:

   a. The GAP waiver agreement must identify the name of the dealership or financial institution selling the GAP product and the GAP Administrator;

   b. The GAP waiver agreement remains a part of the finance agreement upon the assignment, sale, or transfer of such finance agreement by the creditor;

   c. The consumer must have no less than a 30-day unconditional right to cancel with a full refund of the purchase price of the GAP waiver agreement, provided no amounts have been waived pursuant to the agreement;

   d. The GAP waiver agreement must include, at a minimum, coverage of the physical damage insurance deductible up to $500; however, the GAP waiver agreement may cover deductibles in excess of $500;

   e. The GAP waiver agreement must include a warning in bold type that the GAP coverage may not cancel or waive the entire amount owing at the time of loss;

   f. The procedure the consumer must follow to obtain GAP waiver benefits under the terms and conditions of the GAP waiver agreement, including a telephone number and address where the consumer may apply for waiver benefits; and

   g. The GAP waiver agreement must contain a statement advising Kansas consumers how to contact the GAP provider with claims for GAP coverage, and that information shall be printed in bold font. The word "claims" shall be bolded and underlined. The form must also advise Kansas consumers that they may contact the Kansas Office of the State Bank Commissioner with complaints about their GAP waiver agreement at 700 S.W. Jackson, Suite300, Topeka, KS 66603, www.osbckansas.org/. The word "complaints" should be bolded and underlined.

4. The GAP waiver agreement must provide coverage, subject to conditions and exclusions identified in the agreement, for all physical damage claims or unrecovered theft that constitute a total loss. All conditions and exclusions to GAP coverage must be clearly and conspicuously disclosed in the GAP waiver agreement in easy to read language. A creditor or such other entity acting on the creditor's behalf shall not sell GAP coverage on a vehicle that does not meet the eligibility requirements of the GAP waiver agreement.

5. The amount waived or cancelled pursuant to the GAP waiver agreement shall be computed as the difference between the outstanding balance on the date of loss and the primary insurance carrier's determination of the Actual Cash Value of the vehicle. The GAP waiver agreement must clearly define the method used to determine the outstanding balance on the date of loss in a manner in which a consumer may reasonably be expected to understand, including disclosure of all items that will be excluded from the outstanding balance on the date of loss. (For example: delinquent or deferred payments, late payment charges, refundable items, etc.)

   The GAP waiver agreement must uniformly define the term "Actual Cash Value" as the value established by the primary insurance carrier. If there is no primary insurance coverage at the time of the loss, the market value of the vehicle will be determined by the National Automobile Dealers Association ("NADA") Official Used Car Guide or equivalent. Terms such as "Payable Loss" and "Constructive Total Loss" must be consistent with this method of calculating the GAP waiver benefit.

6. The initial creditor that offers a GAP waiver agreement must report the sale of, and forward funds received on all such waivers to the designated GAP Administrator identified in the GAP waiver agreement.

7. Each creditor must insure its GAP waiver obligations under a contractual liability insurance policy issued by an insurer licensed in this state. Additionally, each creditor must maintain copies, in paper or electronic form, of all GAP waiver agreements for a period of not less than three years following the termination of the agreement. GAP administrators must also be prepared to provide records as requested by the Administrator of the Uniform Consumer Credit Code.

Failure to meet the requirements of this Administrative Interpretation will require that the cost of the GAP product to be included in the finance charge and disclosed accordingly.

This Amended Administrative Interpretation applies to all GAP waiver agreements executed on and after May 15, 2019.

Tim Kemp
Acting Bank Commissioner & Administrator
Kansas Uniform Consumer Credit Code

Letter Regarding 2019 Amendment to Administrative Interpretation No. 1004

700 S. W. Jackson
Suite 300
Topeka, KS 66603-3796

Kansas
Office of the State
Bank Commissioner

Phone: (785) 296-2266
Fax: (785) 296-6037
www.osbckansas.org

Tim Kemp, Acting Bank Commissioner

Laura Kelly, Governor

April 16, 2019

Ms. Athena E. Andaya
Deputy Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66612

Re: OSBC Administrative Interpretation 1004

Dear Athena:

Please find enclosed an amended Administrative Interpretation (AI) proposed by the Office of the State Bank Commissioner (OSBC). The OSBC is authorized to issue AIs pursuant to the Uniform Consumer Credit Code, K.S.A. 16a-6-104(1)(f), and our AIs must be approved by the Attorney General.

The proposed amendment is intended to address the influx of phone calls our office receives from all over the United States on GAP complaints. Because the current language of the AI requires GAP waiver agreements to include our phone number and GAP forms are mass produced throughout the country, our phone number is advertised to consumers throughout the United States as the resource for a consumer complaint relating to GAP. However, our jurisdiction is limited to addressing only Kansas consumers who have a GAP complaint.

The amendment removes the OSBC phone numbers from the form and instead directs the consumer to our website, which outlines the complaint process for consumers. We believe this method of informing the public will apprise them of our limited jurisdiction to actions arising in Kansas and reduce the number of phone calls we receive from individuals who we cannot help.

If you have any questions, please contact me at 296-1545 or Melissa.Wangemann@osbckansas.org. Thank you, Athena.

Sincerely,

Melissa A. Wangemann
General Counsel

Encl: Amended AI 1004

Administrative Interpretation No. 1005
The Sale of Credit Insurance After the Consummation of a Closed-End Consumer Credit Transaction or Open-End Consumer Line of Credit
December 13, 1994

The question has arisen whether written authorization by the consumer is required on the post-loan sale of credit insurance on consumer credit transactions. The requirement to obtain specific affirmative written indication of the consumer's desire to purchase such insurance as required in K.S.A. 16a-2-501(2)(b) is intended if the insurance is written in connection with the extension of credit. The term "extension of credit" is not a defined term in the Kansas Uniform Consumer Credit Code, so it is the interpretation by the Commissioner that is specifically relates to the period of time when the loan is contemplated and approved by the creditor and ends upon the consummation or opening of a consumer credit transaction. The Official Staff Commentary on Regulation Z, Truth-in-Lending in section 226.4(b)(7) and (8) 2. states, "Insurance written in connection with a transaction. Insurance sold after consummation in closed-end credit transactions or after the opening of a plan in open-end credit transactions is not 'written in connection with' the credit transaction if the insurance is written because of the consumer's default (for example, by failing to obtain or maintain required property insurance) or because the consumer requests insurance after consummation or the opening of a plan (although credit-sale disclosures may be required for the insurance sold after consummation if it is financed)".

Although disclosures are required by Regulation Z if the premium is financed in an open end credit transaction by adding the monthly premium to the balance on which a finance charge is assessed, the written authorization by the consumer is a separate action from disclosure by the creditor and not required in this instance.

Conclusion: Written authorization by the consumer on the sale of credit insurance after consummation of a closed-end or opening of an open-end consumer credit transaction is not required if it fits the circumstances set forth above. Disclosure of finance charges in connection with the financing of the credit insurance premium is required.

Wm. F. Caton
Commissioner

Administrative Interpretation No. 1006
Mortgage Broker Fees
August 7, 1997

REVOKED OCTOBER 13, 1999

Administrative Interpretation No. 1007
Interest Rates on Mortgage Loans
September 1, 1998; Amended October 13, 1999

This administrative interpretation will modify the previous policy of this agency regarding the Kansas Uniform Consumer Credit Code (the "Code"), specifically K.S.A. 16a-2-401(7) and (8), and the maximum permissible interest rate for first mortgage loans made subject to the Code and subordinate mortgage loans

A first mortgage loan is only subject to the Code if the parties so agree in writing pursuant to K.S.A. 16a-1-109. K.S.A. 16a-2-401(7) provides that the interest rate of these first mortgage loans is governed by K.S.A. 16-207(b) ***unless made subject hereto by agreement.***

It is the opinion of the Acting Consumer Credit Commissioner that for purposes of K.S.A. 16a-2-401(7) and (8), a promissory note or other loan document signed by a borrower, in connection with a first or subordinate mortgage loan as described above, which discloses an interest rate not exceeding the interest rate ceilings established by K.S.A. 16a-2-401(1) or (2), constitutes an "agreement" by the parties that the loan is made subject to the provisions of K.S.A. 16a-2-401, including the interest rate ceilings.

This administrative interpretation applies to mortgage loans made before July 1, 1999, the effective date of 1999 Substitute Senate Bill 301. Code references in this interpretation refer to the Code prior to the effective date of 1999 Substitute Senate Bill 301.

Kevin C. Glendening
Acting Deputy Commissioner
Division of Consumer and Mortgage Lending
Office of the State Bank Commissioner

Administrative Interpretation No. 1008
Notice for high loan-to-value mortgages
October 13, 1999, Amended November 30, 2000

A notice in substantially the following form should be used in order to satisfy the notice requirement set forth in K.S.A. 16a-3-207, as amended, regarding high loan-to-value mortgage loans:

[date]

[name of consumer(s)]
[address of consumer(s)]

Dear [name of consumer(s)]

You have applied for a loan which will be secured by a mortgage on your home. ***We are required by the Kansas Uniform Consumer Credit Code to provide you with the following information not less than three days prior to the time you receive the loan funds.***

An appraisal is attached (or will be provided to you as soon as available) which estimates that the value of your home may be less than the amount of the loan for which you have been approved (plus any existing mortgage loans you have). If the value of your home is less than the combined amount of all mortgage loans on your home, then you don't have any "equity" in your home. This means, if you were to sell your home, that the sale proceeds may not be enough to repay your mortgage loans. The amount of equity you have in your home depends on how much you pay down your mortgage loans, and whether the value of your home increases or decreases.

Under Kansas law, most "unsecured" creditors, such as a credit card lender, cannot obtain a court-ordered lien on your home if you default, which would allow them to foreclose. However, if you give a creditor a mortgage on your home, then the creditor can foreclose on your home if you do not repay the loan. For example, if you refinance unsecured credit card debt with a second mortgage loan, then the second mortgage lender could foreclose on your home if you default. Foreclosure would force you to move, and your home would be sold. The sale proceeds would be paid to the lender

You may want to consider credit counseling, which could help you in budgeting and developing a plan to pay off your current debts. Credit counseling is available at little or no cost from non-profit and for-profit entities. Consumer Credit Counseling Service is a nationwide non-profit provider with locations across Kansas. You can call 1-800-388-2227 for a referral to a Kansas office which can assist you in person or by phone.

If you have additional questions regarding consumer credit matters, contact the Deputy Commissioner of Consumer and Mortgage Lending for Kansas at 1-877-387-8523 (toll free) to obtain additional information

If, within three days after receipt of this notice, you decide not to take the mortgage loan you have applied for, then you are entitled to a refund of any application fee or other amounts you have paid to the lender. However, you are not entitled to a refund of any out-of-pocket costs that the lender pays to a third party to process your loan application.

[name of lender]

The undersigned consumer(s) was provided this notice at least three days prior to receiving the loan funds

[signature of consumer(s)]

The three-day time period in K.S.A. 16a-3-207, as amended, must be calculated in accordance with K.S.A. 60-206.

For the purpose of K.S.A. 16a-3-207, as amended, a loan is determined to be made at the time the loan proceeds are disbursed.

Kevin C. Glendening
Acting Deputy Commissioner
Division of Consumer and Mortgage Lending
Office of the State Bank Commissioner

Administrative Interpretation No. 1009
Calculation of the 8% Cap on Prepaid Finance Charges in K.S.A. 16a-2-401(6)
October 13, 1999; Amended November 30, 2000

This interpretation is given in order to clarify K.S.A. 16a-2-401 regarding charges to be included when calculating the 8% cap on prepaid finance charges for consumer loans secured by an interest in real estate. The listed examples contained in this interpretation should not be strictly construed. They are not all-exclusive nor all-inclusive, as the type of charge being levied depends on the factors described below.

For consumer loans secured by real estate, state law imposes an 8% cap on prepaid finance charges, with a maximum of 5% of those charges allowed to be retained by the lender. A prepaid finance charge is any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time. However, finance charges are not "prepaid" merely because they are precomputed, regardless of whether a portion of the charge will be rebated to the consumer upon prepayment.

K.A.R. 75-6-26 defines "finance charge" to have the same meaning as "finance charge" under Regulation Z, with one major exception. Except for appraisals, which can be payable to the lender or a related party, the Code limits costs in real estate transactions to bona fide and reasonable fees that are paid *to unrelated third parties.* Regulation Z, on the other hand, allows some real estate transaction costs to be paid to the creditor or to a related party and still be excluded from the finance charge.

In calculating the cap on prepaid finance charges, a lender should first determine which charges constitute "finance charges" under Regulation Z. All of those items are included in the 8% cap. Next, the lender must look at the remaining charges which do not constitute finance charges under Regulation Z and determine to whom the fee was paid. Other than appraisal fees, if the fee was paid to the lender or a related party, then pursuant to state law, they also must be included in the cap.

A. Common examples of items that ARE included in the 8% cap, either because they are finance charges under Regulation Z, or because they are finance charges under state law are:

1. Administrative fees
2. Assignment fees
3. Broker's fees/Finder's fees
4. Buyer's points
5. Closing fees, unless paid to a third party
6. Credit investigation fees
7. Credit report review fees, unless secured by real estate and paid to a third party
8. Documentation preparation fees, unless paid to a third party
9. Lender's inspection fees
10. Loan fees

11. Loan guarantee insurance premiums, if such insurance is required by the creditor
12. Processing fees
13. Service fees
14. Underwriting fees
15. Origination fees
16. Flood insurance monitoring fees (ongoing monitoring over the life of the loan)
17. Tax service fees (ongoing monitoring over the life of the loan)

B. Common examples of items that are NOT included in the 8% cap, because they are not finance charges under Regulation Z or under state law include:

Even if retained by the lender or a related party:

1. Application fees, if they are charged to all borrowers
2. Appraisal fees

Only if they are paid to a third party not related to the lender:

3. Closing agent fees, if the lender does not require use of the closing agent or retain a portion of the charge
4. Courier fees
5. Credit report fees
6. Document preparation fees
7. Flood insurance determination fees, if imposed as part of the initial credit decision and performed prior to closing
8. Notary fees
9. Pest inspection fees
10. Recording fees to government entities
11. Survey fees
12. Tax service fees, if imposed as part of the initial credit decision
13. Title examination or title insurance fees

Administrative Interpretation No. 1010
Prompt Crediting of Payments; Date of Receipt
October 13, 1999; Amended November 30, 2000

This interpretation is given in order to clarify the difference between K.S.A. 16a-2-104 and Truth in Lending, Regulation Z, 12 CFR Section 226

The language of K.S.A. 16a-2-104 and Regulation Z, Section 226.10, is substantially similar. However, Section 226.10 of Regulation Z applies only to open-end credit transactions. K.S.A. 16a-2-104 was adopted to apply to all consumer credit transactions. Its application is not limited to open-end credit transactions.

The creditor is to credit the payment as of the date of receipt. The Administrator interprets the "date of receipt" as used in K.S.A. 16a-2-104 to mean the date that the payment instrument or other means of completing the payment reached the creditor. For example:

1. Payment by check is received on the date the creditor receives the check, not when the funds are collected.

2. In a voluntary payroll deduction plan in which funds are deposited in the creditor's asset account, payment is received on the date when it is debited to the asset account, (rather than on the date of the deposit), provided the consumer retains use of the funds until the contractual payment date.

3. If the consumer elects to have payment made by a third-party payor such as a financial institution, through a preauthorized payment or telephone bill-payment arrangement, payment is received when the creditor gets the third-party payor's check or other transfer medium, such as an electronic fund transfer.

4. If the consumer elects to make payment in a type of night deposit or drop box and such payment is made after the creditor's business hours, on a national holiday, or weekend, the payment is considered received the morning of the next business day.

5. Setting a cut-off hour for receipt of payments would be a "reasonable requirement" under the statute. A creditor may specify that payments must be received by a certain cut-off hour in order to be credited as being received that day, so long as the creditor specifies that requirement in writing to the consumer. The statute states that reasonable requirements may be imposed if a creditor specifies the requirements "in a writing delivered to the consumer".

   It is the interpretation of the Administrator that this language requires a written notice to each consumer whose consumer credit transaction would be subject to the requirement. Simply posting a notice in the lobby, for example would not satisfy the statutory requirement.

Franklin Nelson
State Bank Commissioner

Administrative Interpretation No. 1011
Computation of Interest; Prepaid Finance Charges
July 14, 2004

This interpretation concerns K.S.A. 16a-2-103(5) and the computation of interest in consumer loans and consumer credit sales. K.S.A. 16a-2-103(5) was passed as part of a bill containing several revisions to the Kansas Uniform Consumer Credit Code (UCCC) in 1999. That section is designed to address when interest can be charged, from a timing perspective.

Periodic interest may not be charged on a consumer loan until, and may only be charged to the extent that, principal has been disbursed to or for the benefit of the consumer. (An exception is made for loans, other than cash advances, pursuant to lender credit cards.) If principal is disbursed in multiple advances, interest may accrue on each advance only when it has been disbursed as directed by the consumer. Similarly, in a consumer credit sale transaction, interest may not be charged until the related goods, services or interest in land, as the case may be, have been shipped, delivered, furnished or otherwise made available to or for the benefit of the consumer.

K.S.A. 16a-2-103(5) does not prohibit a creditor from charging interest on points or other prepaid finance charges. Consumers sometimes elect to finance closing costs such as these through the creditor deducting and retaining the prepaid finance charges from the loan proceeds. Prepaid finance charges which are not paid separately in cash or by check by the consumer are considered to be part of the principal amount of the loan (see K.S.A. 16a-1-301 (37)). When the consumer elects to pay prepaid finance charges from the proceeds of the loan, rather than paying them separately out of pocket, that portion of the principal has, in effect, been disbursed for the benefit of the consumer, and interest may be charged.

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