WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

Form #3

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: West Virginia Division of Banking TITLE NUMBER: 106

CITE AUTORITY W. Va. Code §§46A-3-109(a)(4) and 31A-2-4(c)(12).

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NIMBER OF RULE BEING AMENDED: 11

TITLE OF RULE BEING AMENDED: Permissible Additional Charges in Connection with a Consumer Credit Sale

IF NO, SERIES OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Sharon L Kiss
Authorized Signature

7.00

CECIL H. UNDERWOOD
GOVERNOR

STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE
Charleston, West Virginia
P. O. Box 963
Charleston, WV 25324-0963
Ph. (304) 558-0211 - Fax (304) 558-2324

ROBIN C. CAPEHART
SECRETARY

August 1, 1997

The Honorable Mike Ross
Co-Chair
Legislative Rule-Making Review Committee
Building 1, Room 152
1900 Kanawha Boulevard East
Charleston, West Virginia 25305-0470

The Honorable Mark Hunt
Co-Chair
Legislative Rule-Making Review Committee
Building 1, Room 152
1900 Kanawha Boulevard East
Charleston, West Virginia 25305

Dear Senator Ross and Delegate Hunt:

Enclosed please find a copy of the final agency approved proposed legislative rule of the Banking Commission identified as follows:

Title of Rule:	Permissible Additional Charges in Connection with a Consumer Credit Sale
Title No.:	106
Series No.:	Series 11

Along with this document are the documents and other information required by W. Va. Code § 29A-3-11.

Please let me know when this rule will be considered by your committee. If you or committee staff have any questions about this proposed rule or need any additional information, please contact me. You may also contact Sharon Bias, Commissioner of Banking, at 558-2294, or Dale Steager at 558-3356.

Very truly yours,

Robin C. Capehart
Secretary of Tax and Revenue

DATE: August 1, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WV Division of Banking

LEGISLATIVE RULE TITLE: Permissible Additional Charges in Connection with a Consumer Credit Sale

1. Authorizing statute(s) citation W. Va. Code §§ 46A-3-109(a)(4) and 31A-2-4(c)(12).

2. a. Date filed in the State Register with Notice of ~~Hearing~~/ Comment Period.

June 30, 1997

b. What other notice, including advertising, did you give of the hearing?

Sent to each person/business on the WV Division of Banking's "Official Notification" list.

c. Date of ~~Hearing(s)~~/ Comment Period June 30, 1997 to July 31, 1997.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached x No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 1, 1996

f. Name and phone number(s) of agency person(s) to contact for additional information:

Timothy Winslow 558-2294

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

   a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

      N/A

      N/A

   b. Date of hearing: N/A

   c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

      N/A

   d. Attach findings and determinations and reasons:

      Attached N/A

DIVISION OF BANKING

(304) 558-2294
Building #3, Room 311 • State Capitol Complex • 1900 Kanawha Blvd., East • Charleston, WV 25305-0240 • FAX: (304) 558-0442

COMMISSIONER OF BANKING
RULE PERTAINING TO
PERMISSIBLE ADDITIONAL CHARGES
IN CONNECTION WITH A CONSUMER CREDIT SALE
106 CSR 11

Summary of Proposed Rules

The proposed rule amendments set forth the regulations governing the treatment and permissibility of certain debt cancellation contracts and insurance in lieu of credit insurance. It allows consumers to purchase GAP insurance to avoid liability for the amount remaining due on a car loan where the car has been totaled, as well as the option at the end of a car loan having a balloon note, to satisfy the remaining indebtedness by returning the vehicle and making an agreed payment.

The amendments also extend the rule's treatment of required flood mapping fees as an additional charge to apply to second mortgage transactions. The current rule refers only to first lien residential transactions. However, notwithstanding the rule, such flood mapping charges on second mortgage transactions generally already qualify as additional charges since they would be considered reasonable closing costs under W. Va. Code § 46A-3-109(a)(5). This rule change thus merely clarifies and confirms this interpretation.

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106 CSR 11

Statement of Circumstances

The proposed rule amendments are needed to address the issue of debt cancellation and similar insurance which are presently being offered by lenders in other states, and to conform the treatment of such fees as additional charges and not finance charges in a manner conforming to their treatment under the federal Truth-in-Lending Act and Regulation Z thereof as recently amended.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Permissible Additional Charges in Connection with a Consumer Credit Sale [106 CSR 11]

Type of Rule: X **Legislative** ____ **Interpretive** ____ **Procedural**

Agency: West Virginia Division of Banking

Address: State Capitol Complex

Building 3, Room 311

Charleston, West Virginia 25305-0240

1. Effect of Proposed Rule:

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$ 0	$ 0	$ 0	$ 0	$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSES	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

The rule merely adds language which allows lenders to offer and charge for certain types of debt cancellation contracts and similar insurance products as a permissible additional charge, and thus contains no additional costs.

3. Objectives of these rules:

To permit lenders to offer certain debt cancellation contracts and insurance in lieu of credit insurance, and to allow consumers to purchase GAP insurance to avoid liability on paying the amount remaining due on a car loan where the car has been totaled, or returned in connection with payment of a balloon loan or note. Conforms treatment of such fees with federal law.

Rule Title: Permissible Additional Charges in Connection with a Consumer Credit Sale [106 CSR 11]

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government:

None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

No significant impact. Will allow lenders to offer certain debt cancellation contracts in lieu of and in competition with other credit insurance products.

C. Economic Impact on Citizens / Public at Large:

None. The additional charges permitted cannot be required but rather are optional to the consumer.

Date: Aug 1, 1997

Signature of Agency Head or Authorized Representative:

Sharon S. Bird

TITLE 106
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF BANKING

SERIES 11
PERMISSIBLE ADDITIONAL CHARGES IN CONNECTION WITH A CONSUMER CREDIT SALE OR LOAN

§106-11-1. General.

1.1. Scope. -- This rule establishes certain other "Permissible Additional Charges", for benefits conferred on the consumer in a consumer credit sale or loan, pursuant to W. Va. Code §46A-3-109(a)(4).

1.2. Authority. -- W. Va. Code §§46A-3-109(a)(4) and 31A-2-4(c)(12).

1.3. Filing Date. -- ~~April 4, 1996~~

1.4. Effective Date. -- ~~May 1, 1996~~

§106-11-2. Documentary Fee or Documentary Charge.

2.1. Benefit to Consumer. -- The "Documentary Fee" or "Documentary Charge" provided for in West Virginia Code §46A-3-109(a)(6) applies to a documentary service. The documentary service is limited to securing a title and services related to securing a title actually provided to the consumer in a consumer credit sale. (Except as authorized under W. Va. Code § 17A-4A-4, documentary services do not include services that the seller is required by law to perform. It is not mandatory under this rule for the seller to provide documentary services for which a "Documentary Fee" or "Documentary Charge" apply, and the consumer, unless otherwise precluded by law, has the option to accept the documentary service for which the "Documentary Fee" or "Documentary Charges" apply. The "Documentary Fee" or "Documentary Charge" must represent a benefit of value to the consumer and there must be a reasonable relationship between the fee or charge and the benefit conferred on the consumer. The seller in a consumer credit sale must demonstrate that there was a documentary service actually performed, that the documentary service was of value to the consumer, and that there was a reasonable relationship between the fee or charge and the benefit conferred upon the consumer.

§106-11-3. Flood Mapping Service Fee for Residential Property.

3.1. Third Party Providers. -- A lender in making a consumer loan secured by a first or subsequent lien on residential property, including a loan for mobile home purchase or refinancing where the home is to be placed on a certain parcel of real estate known to the lender, may charge the consumer and recover the reasonable fee incurred by the lender in obtaining information from a non-affiliated third party on the flood map location of the property; Provided that this flood map location information is required by federal law or regulation to be ascertained by the lender. The flood mapping service fee must be reasonable in relation to the actual service provided.

§106-11-4. Over-the-limit Fees.

4.1. Revolving Credit. -- A lender may assess, as a permissible additional charge in connection with a revolving line of credit, a charge to the consumer for exceeding his or her credit limit. The charge may not in any billing period exceed two percent (2%) of the consumer's established credit limit or ten dollars ($10), whichever is less. This charge is also subject to the monthly periodic finance charge if not paid upon initial billing.

§106-11-5. Cash Advance Charges.

5.1. Lender Credit Cards. -- A lender may impose charges for a cash advance obtained by a consumer in connection with use of a lender credit card as a permissible additional charge. The charge may not, per occurrence, exceed one and one-half percent (1.5%) of the amount of the cash advance, or five dollars ($5), whichever is less. These charges are also subject to the monthly periodic finance charge if not paid upon initial billing.

§106-11-6. Debt Cancellation Contracts and Insurance.

6.1. Fee for Cancellation of Debt. -- A lender or creditor may charge and collect a fee in connection with a contract to cancel (i) all of the debtor's liability for non-delinquent amounts which exceed the value received by the creditor or its assignee for the collateral securing the obligation, or (ii) the remaining liability in the event of the loss of life, health, or income or in case of an accident. The fee shall be a permissible additional charge: Provided, That,

6.1.a. The debt cancellation agreement is not required by the lender or the creditor, and this fact is disclosed in writing;

6.1.b. The fee is disclosed in writing and the term of the agreement is equal to the term of the loan or credit transaction;

6.1.c. The borrower signs or initials an affirmative written request for the plan after receiving the above-required disclosures;

6.1.d. In the case of a debt cancellation plan for collateral, the amount of the debt at the time of the contract, excluding any insurance or additional charges, exceeds $2,000;

6.1.e. In the case of a debt cancellation plan for loss of life, health, or income or in case of an accident, such contract is sold in lieu of corresponding credit life, health, loss of income or accident insurance; and

6.1.f. The debt cancellation fee is one which is not treated as a finance charge for purposes of the federal Truth-in-Lending Act.

6.2. Fee for GAP Insurance for Cancellation of Debt-- A lender or creditor may impose and collect a fee in connection with an insurance contract for Guaranteed Automobile Protection ("GAP") to cancel all of the debtor's liability for non-delinquent amounts which exceed the value received by the creditor or its assignee for the collateral securing the obligation: Provided, That,

6.2.a. The loan or credit sale is secured by a motor vehicle and the amount of the debt at the time of the contract, excluding any insurance or additional charges, exceeds $2,000;

6.2.b. The GAP insurance agreement canceling the debt is not required by the lender or the creditor, and this fact is disclosed in writing;

6.2.c. The premium fee is disclosed in writing and the term of the policy coverage is equal to the term of the loan or credit transaction;

6.2.d. The borrower signs or initials an affirmative written request for coverage after receiving the above-required disclosures; and

6.2.e. The GAP insurance policy fee is one which is not treated as a finance charge for purposes of the federal Truth-in-Lending Act.

6.3. Determination of Insurance-- The Commissioner of Insurance retains the authority to determine whether any

debt cancellation agreement constitutes an insurance product.

§106-11-7. Optional End Term Debt Cancellation Fee.

7.1. Balloon Note Secured by Motor Vehicle-- A lender or creditor may, at the end of the term of a balloon loan or note secured by a motor vehicle, offer, as an option, to accept return of the vehicle and charge and collect a fee to cancel all of the debtor's liability for amounts exceeding the value of the collateral securing the obligation. The fee may include or be in addition to excess mileage fees and payments for damages to the vehicle. The fee shall be a permissible additional charge: Provided, That,

7.1.a. The borrower is provided the option to pay off the loan or debt, or to refinance the loan or debt without penalty; and

7.1.b. The amount of the initial balloon loan or note exceeded $2,000 and the amount actually owing at the end of that balloon loan or note and at the time the fee is imposed exceeds $1,000.

The Huntington National Bank
Legal Department 10th Floor
41 South High Street
Columbus, Ohio 43287

Fax Number 614 480 5404
Direct Telephone Number
(614) 480-5760

Huntington Banks

July 25, 1997

Timothy C. Winslow
West Virginia Division of Banking
1800 Washington Street East
Building 3, Room 311A
Charleston, West Virginia 25305

Re: Proposed Debt Cancellation Rules

Dear Mr. Winslow:

We have the following comments on proposed §106-11-6 of the West Virginia Division of Banking (the "Division") relating to debt cancellation contracts and insurance:

1. We appreciate that the Division has recognized the difference between debt cancellation products that are not insurance and GAP insurance.

2. In the first paragraph of §6.1, the Division has followed closely the language in the recent revisions to the Federal Reserve Board's Regulation Z, §226.4(d)(3)(ii) in defining debt cancellation coverage. The language in Regulation Z describes debt cancellation coverage "that provides for cancellation of all *or part* of the debtor's liability for amounts exceeding the value of the collateral . . ." (emphasis added). The Division omits the "or part" language. If the debtor has a $10,000 balance on a car loan when the vehicle is stolen, the insurance company may value the vehicle at $8,000, and pay $7,500 to settle the claim after a $500 deductible. Assume also that part of what the debtor owes is a delinquent payment. Typically debt cancellation plans do not cover amounts already due or past due at the time of the loss or damage to the vehicle, but the language requiring the plan to cover *all* of the debtor's liability for amounts exceeding the value of the collateral would appear to require coverage of delinquent amounts. Additionally, there may be issues as to exactly what is the value of the vehicle or who determines that, and a requirement that the plan cover all the debtor's liability for amounts exceeding the value of the collateral requires an exact determination of the value of the vehicle. Furthermore, in the above example, if the insurance proceeds were applied to the loan balance (as is customarily done), the customer's remaining liability would be $2,500, but the amount in excess of the value of the collateral would only be $2,000. A bank that covered the full $2,500 may be considered outside the scope of this section, since the extra $500 was not part of the amount "exceeding the value of the collateral", and on the other hand if the value of the collateral is deemed to be defined by the proceeds actually received, then a bank not covering the deductible would not

have covered all of the debt exceeding the value of the collateral. We believe the Federal Reserve Board's "all or part" language was intended to accommodate these potential problems, and we recommend that the Division take the same approach.

3. In §6.1.b, the Division requires the term of the debt cancellation plan to be equal to the term of the loan. The Regulation Z requirement is that if the term of the debt cancellation plan is less than the term of the loan, the term of the plan must be disclosed. The Division's provision prohibits plans that are less than the term of the loan. We recommend that the Division adopt the Regulation Z approach, which would allow banks to offer plans that did not cover the full term of the loan. The gap between what is owed and what the car is worth is much more likely to be an issue in the earlier part of the loan term rather than later, and if banks want to offer plans that cover only the more critical period, it is not apparent why the Division should be opposed to that, as long as the actual term of the plan in that case is disclosed as required anyway by Regulation Z.

4. In §6.1.c (and elsewhere under §6.1 in general), we recommend that the Division not use the word "coverage" with respect to debt cancellation plans, as "coverage" is more typically an insurance term. Language such as the following might be more appropriate: ". . . an affirmative written request for the plan after receiving . . .".

5. The lead-in phrases to section 6.1.d and 6.1.e suggest that there are debt cancellation plans that cover something other than the remaining liability. Suggested wording to correct this would be, for example in §6.1.d: "In the case of a debt cancellation plan for collateral, the amount of the debt . . .". Section 6.1.e could begin: "In the case of a debt cancellation plan for loss of life, health, or income or in the case of an accident, such contract is sold . . .".

Thank you for your consideration of these comments.

Very truly yours,

Daniel W. Morton
Vice President and Counsel

U:\LGDM799\LETTERS\CMNTWVA.971

cc: Lisa Freberg
Michael J. Hampton
Douglas J. Leech
Nicholas G. Stanutz

West Virginia Bankers Association, Inc.

Huntington Square • 900 Lee St. E, Suite 1212 • Charleston, WV 25301-1770 • (304) 343-8838

July 29, 1997

Sharon G. Bias, Commissioner of Banking
West Virginia Division of Banking
State Capitol Complex
1800 Washington Street, East
Building 3, Room 311A
Charleston, WV 25305

Re: **Proposed Amendment to Title 106**
Regarding Permissible Additional Charges

Dear ~~Commissioner~~ Sharon Bias:

The West Virginia Bankers Association (the "Association") represents the majority of state and national banks and thrift institutions operating within the State of West Virginia and it is a part of its service to its members to monitor proposed regulations and provide input on matters of interest to the industry. We appreciate the proposal referenced above which will clarify certain issues relating to the offering of debt cancellation products by our member institutions. We support the promulgation of the proposed rule. Our comments are to offer certain clarifying proposals and we appreciate your consideration of these.

1. **§ 106-11-6.1**. We propose the addition of the words "or part" after the word "all" in the third line of this § 6.1. This would permit the debt cancellation contract to cover "all or part" of a debtor's liability for amounts exceeding the value of the collateral. By adding the language "or part" confusion will be avoided with regard to debt cancellation arrangements which do not cover insurance deductibles. Also, the addition of this language would eliminate the potential for confusion with regard to delinquent payments. Debt cancellation contracts are not intended to cover delinquent payments though, if the language in the rule is limited to cancellation of "all" of the debtor's liability, confusion could be created as to delinquent payments. Finally, this change makes the language in the West Virginia rule consistent with the Regulation Z language promulgated by the Federal Reserve Board relating to debt cancellation coverage.

2. **§ 106-11-6.1.b**. We request your consideration of a greater flexibility in the term of the debt cancellation contract. The language in § 6.1.b requires that the term of the debt cancellation contract equal the term of the loan or credit transaction. This language could require a customer to buy more coverage than actually desired. For example, towards the end of a loan, a customer is less likely to need the debt cancellation coverage. Lenders may want to offer shorter term products, at a different pricing, covering only the early portions of a loan term, where the need for such coverage is likely greatest. The rule as written would preclude this type of flexibility. Clearly, and as contemplated in Regulation Z, if the term does not equal the term of the loan or credit transaction, this must be made conspicuously disclosed to the consumer.

3. **§ 106-11-6.1.c**. We suggest using the words "debt cancellation contract" in lieu of the word "coverage" as coverage is more typically used as an insurance term.

4. **§ 106-11-6.1.d and e**. It appears that the lead-in phrase to these two sections is intended to differentiate types of debt cancellation contracts, which is important; however, the repetition of some language from prior sections contained in the lead-in phrase could create confusion. We recommend an abbreviated introductory phrase referencing only the type of debt cancellation contract, i.e., one for collateral or one for loss of life, health or income.

Again, we appreciate the generation of the proposed rule and your consideration of our comments.

Very truly yours,

Thomas A. Winner

chs/110099

CECIL H. UNDERWOOD
GOVERNOR

STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE
Charleston, West Virginia
P. O. Box 963
Charleston, WV 25324-0963
Ph. (304) 558-0211 - Fax (304) 558-2324

ROBIN C. CAPEHART
SECRETARY

FAX TRANSMITTAL COVER SHEET

DATE: July 30, 1997

FAX: 558-0442

TO: Sharon G. Bias, Commissioner
Banking Commission

FROM: Dale W. Steager
General Counsel

MESSAGE: We have received the rules you want to submit to the Legislative Rule-Making Review Committee. However, we still need one copy of the other documents required by this memo. Let me know if you have any questions.

NUMBER OF PAGES (INCLUDING THIS SHEET) ____.
FACSIMILE OPERATOR CNK.
THE FAX NUMBER AT THIS LOCATION IS (304) 558-2324.

Should you have difficulty receiving this transmission, please call me or my secretary, Carol, at (304) 558-3356.

CECIL H. UNDERWOOD
GOVERNOR

STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE
Charleston, West Virginia
P. O. Box 963
Charleston, WV 25324-0963
Ph. (304) 558-0211 - Fax (304) 558-2324

ROBIN C. CAPEHART
SECRETARY

MEMORANDUM

TO: Sharon Bias
Banking Commissioner

Hanley C. Clark
Insurance Commissioner

Richard E. Boyle, Jr.
Tax Commissioner

Lois H. Graham
Executive Secretary, Racing Commission

FROM: Dale W. Steager
General Counsel

DATE: July 30, 1997

RE: Legislative Rules -- Filing of legislative rules with Legislative Rule-Making Review Committee and the Secretary of State as provided in W. Va. Code § 29A-3-11 [1995]

As you are aware, August 1, 1997, is the deadline for the Secretary of Tax and Revenue to submit agency adopted final proposed legislative rules to the Legislative Rule-Making Review Committee, if the rules are to be acted upon by the Legislature during the 1998 Regular Session. *See* W. Va. Code § 29A-3-11 (submission of legislative rules to legislative rule-making review committee) [1995].

When the agency adopted final proposed rule is submitted to the Legislative Rule-Making Review Committee, fifteen (15) copies of the following documents must *be filed:*

(1) The full text of the proposed legislative rule as finally adopted by the agency, with new language underscored and with language to be deleted from the existing rule struck through but clearly legible;

(2) a brief summary of the content of the proposed legislative rule and a description and copy of any existing rule which the agency proposes to amend or repeal;

(3) a statement of the circumstances which require the rule;

(4) a fiscal note containing all the information required in a fiscal note for either house of the Legislature and a statement of the economic impact of the rule on the State or its residents;

(5) one copy of any relevant federal statutes or regulations; and

(6) any other information which the Legislative Rule-Making Review Committee may request or require by law. *See* W. Va. Code § 29A-3-11(a).

The action of the Secretary required by § 29A-3-11(a) demonstrates his approval, consent or acquiescence to filing the rule with the Legislative Rule-Making Review Committee.

To assist us, please provide me with the following at your earliest convenience:

(1) One copy of each of the documents required to be filed with the Legislative Rule-Making Review Committee by W. Va. Code § 29A-3-11 for each agency rule to be acted upon by the Legislature during the 1998 Regular Session;

(2) Verification that each proposed legislative rule, whether a new rule or amendments to an existing rule, conforms with the requirements of W. Va. Code § 29A-2-6 (format and numbering of agency rules filed in state register) [1994]; and

(3) A statement indicating, in light of the public comments received on the proposed rule or proposed amendments to an existing rule, or upon other information or belief, whether or not the rule is controversial and, if it is controversial, to identify the areas of controversy and anticipated proponents and opponents;

This office will draft the transmittal letters to the Co-Chairs of the Legislative Rule-Making Review Committee and let you know when they may be picked up for

filing with the Committee. At that time, you should be prepared to file 15 copies of the documents required by W. Va. Code 29§A-3-11.

cc: Robin C. Capehart

DIVISION OF BANKING

(304) 558-2294
Building #3, Room 311 • State Capitol Complex • 1900 Kanawha Blvd., East • Charleston, WV 25305-0240 • FAX: (304) 558-0442

COMMISSIONER OF BANKING
RULE PERTAINING TO
PERMISSIBLE ADDITIONAL CHARGES
IN CONNECTION WITH A CONSUMER CREDIT SALE
106 CSR 11

Comments Received

Only three comments were received regarding the proposed amendments to the above-referenced rule. These comment letters are attached. Language is suggested to avoid the impression that debt cancellation contracts cover more than a debtor's remaining liability, and to avoid the use of terms which imply the contracts are insurance. It is also suggested that the proposed rule be amended to allow debt cancellation contracts to apply to only part of the debtor's remaining liability, and to run for less than the full term of the loan contract. This former change is urged in light of liabilities accrued by the debtor's failure to make full scheduled payments, and the problem of determining the value of the collateral. The one commentator notes that such changes would make the rule better conform to the federal Truth-in-Lending Act's Regulation Z. Further, it is suggested that the rule clearly state that it applies to consumer loans in its title, which presently makes reference only to consumer credit sales, even though the rule has always applied to both. The limitation that the charge be limited to situations where the loan amount was in excess of $2000 was also questioned in one of the comments. It was recommended that the rule also clearly state that the optional end term debt cancellation fee not prevent by implication the charging of other fees for excess mileage or damage to the vehicle in connection with its use. Lastly, the requirement that state-chartered banks and regulated consumer lenders be required to receive authorization from the Commissioner to provide debt cancellation agreements, was noted as resulting in unequal treatment since it would not apply to all other lenders.

Response to Comments

The proposed amended rule was changed to reflect the comments' suggestions as to proposed clarifying language. The suggestion that debt cancellation contracts be permitted to be for less than the term of the loan contract was rejected, while the issue of having the plan apply to all rather than to only part of the remaining debt was addressed to avoid the problems noted in the comments. The federal Truth-in-Lending Act is a disclosure statute, and as such does not deal with issues as to whether certain charges are

reasonable or abusive. In contrast, W. Va. Code § 46A-3-109(a)(4) requires the Commissioner to only permit by rule additional charges which are "reasonable in relation to the benefits" conferred. To permit debt cancellation contracts which applied for periods less than the term of the loan would create confusion and could lead to abusive results. The same is true were the contracts permitted to apply to only part of the remaining debt. Such contracts could be better termed a "partial debt cancellation contract" or "temporary debt cancellation contract." At the same time it needs to be recognized that such contracts do not typically provide for cancellation of unpaid delinquent amounts, since to do so would provide the consumer an incentive to default on his or her loan payments, and in that regard it could be said that the rule's requirement that such plans cancel all the debtor's remaining liability is flawed. In response language has been added to make clear that the cancellation need not apply to such delinquent amounts. Further, language was added to clarify how the value of the collateral is determined, so as to avoid confusion in calculating the remaining amount due which exceed the value of the collateral. Since these comments would also apply to the situation where the plan was an insurance product, similar changes were made to the language on guaranteed automobile protection (GAP) in subsection 6.2.

As also suggested by the comments, the rule was amended to clearly apply to consumer loans as well as to consumer credit sales, in line with how it has always been interpreted. Language was also added to subsection 7.1 to make clear the fee does not preclude connected charges to excess mileage or damage to the vehicle. Lastly, section 6.4 requiring prior authorization from the Commissioner for a state-chartered bank or regulated consumer lender to sell debt cancellation contracts was deleted. To the extent that state-chartered banks engaged in offering debt cancellation contracts created problems to their safety and soundness, the Commissioner would under other code provisions retain authority to intervene. Second, regulated consumer lenders would, notwithstanding the rule and deletion of subsection 6.4 be limited to such charges as were reasonable in relation to their benefits by operation of W. Va. Code § 46A-3-109(a)(4).

No change was made to the requirement that the loan be for more than $2000, since by operation of law in W. Va. Code § 46A-2-119(4) the creditor on a debt of less than $1000 may chose either to accept return of the collateral or to sue on the amount owed, but cannot do both. If the loan is for at least $2000 the consumer will generally receive value for the debt cancellation agreement for at least half the loan term.

DIVISION OF BANKING

(304) 558-2294
Building #3, Room 311 • State Capitol Complex • 1900 Kanawha Blvd., East • Charleston, WV 25305-0240 • FAX: (304) 558-0442

COMMISSIONER OF BANKING
RULE PERTAINING TO
PERMISSIBLE ADDITIONAL CHARGES
IN CONNECTION WITH A CONSUMER CREDIT SALE
106 CSR 11

Amendments Made in Response to Comments

The first sentences to 106 CSR § 11-6.1.d and -6.1.e were changed as suggested to read respectively: *"In the case of a debt cancellation plan for collateral...."* and *"In the case of a debt cancellation plan for loss of life...."* Further, as suggested the word *"coverage"* was replaced with the words *"the plan"* in 106 CSR § 11-6.1.c to avoid the implication that debt cancellation contracts are necessarily insurance products.

Amendments to 106 CSR § 11-6.1 were made by adding the term *"non-delinquent"* before "amounts" and by adding the words *"received by the creditor or its assignee"* after the word "value." Similar amendments were made to 106 CSR § 11-6.2 where such coverage in an auto loan is provided through an insurance product.

The title of the rule and 106 CSR § 11-1.1 was amended by adding the words *"or loan"* to make clear it applies to consumer loans as well as to consumer credit sales.

106 CSR § 11-6.4 of the rule as initially proposed was deleted. Lastly, 106 CSR § 11-7.1 was amended by adding the following sentence: *"The fee may include or be in addition to excess mileage fees and payments for damages to the vehicle."*

Reasons for the Amendments

The amendments to 106 CSR §§ 11-6.1(c), (d) and (e) were made to avoid the implication that such debt cancellation contracts applied to something other than remaining liability, or are an insurance product.

The amendments to 106 CSR § 11-6.1 and 6.2 were made to clarify how the remaining liability to be canceled is calculated and to avoid any incentive for the debtor to fail to make scheduled payments. Thus addressing the concerns of the comments that the word "all" of the remaining liability would lead to such problems.

The amendment to the rule title and 106 CSR § 11-1.1 was made to avoid any contention that the rule did not apply to consumer loans, but rather only to consumer credit sales.

The deletion of subsection 6.4 of the proposed rule amendments was made to avoid unequal treatment of lenders. While the additional language added to 106 CSR § 11-7.1 was intended to avoid the implication that certain other charges in connection with an optional end term debt cancellation fee would become impermissible.