

November 9, 1967

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 7(1967)

To All Companies Authorized to Write Credit Life or Credit Accident and Health Insurance in New York State:

This Department's Regulation 27-A (11 NYCRR), promulgated on August 28, 1958 and last amended on September 27, 1963, limits the premium rates and identifiable charges for credit life insurance and credit accident and health insurance. The limitations contained in Regulation 27-A apply (i) to the premiums paid by the lender, who is the policyholder under a group policy, and (ii) to the amounts that the lender may charge the borrower who is covered by the group policy.

The primary purpose of Regulation 27-A is to protect borrowers from excessive charges for credit insurance, whether levied by insurance companies or by lenders, and whether or not the excessive charge is remitted by the lender to the insurer.

Recently it has come to the attention of the State Banking Department and this Department that some lenders, providing credit insurance for borrowers in this State, may be charging such borrowers a higher rate of interest on their loans than they would charge if credit insurance were not included, in situations where no other difference in collateral or credit risk can be found to justify the higher interest rate.

In response to an inquiry as to the status of such a transaction under Regulation 27-A, this Department's Deputy Superintendent and General Counsel Theodore R. Ayervais rendered the following opinion on November 1, 1967:

"You have requested my opinion with respect to the applicability of the provisions of Regulation 27-A to the following situation:

"A bank or other lender customarily makes personal loans, whether secured or unsecured, at an interest rate of 5 1/4%. On secured loans without credit insurance, however, the rate is 4 3/4%. A secured loan (e.g. for the purchase of an automobile) with credit insurance coverage would thus carry a rate of interest 1/2% higher than would the same loan without credit insurance.

"Since it appears that the only difference between the transactions -- the one which carries credit insurance and the one which does not -- is the 1/2% difference in the interest rate, such 1/2% is clearly an identifiable charge for such insurance within the meaning of Regulation 27-A. The fact that such charge is described as 'interest' does not alter its true nature. It is the substance and not the label which governs.

"It is my opinion that the transaction involved in the foregoing statement of facts violates Regulation 27-A if the interest differential -- added to any premium or other charge for such insurance -- exceeds the limits prescribed in Section 185.7 of Regulation 27-A for identifiable charges for credit insurance."

Inasmuch as identifiable charges to the borrower may not exceed the limits prescribed in Regulation 27-A, no new or existing policy of credit insurance shall cover any future loans or credit transactions involving interest differentials,

of the type described in the foregoing opinion of Counsel, which (together with premium and other insurance charges, if any) exceed the limits prescribed by Regulation 27-A.

Copies of this circular letter are being furnished to the Superintendent of Banks of the State of New York and to the Comptroller of the Currency of the United States.

Very truly yours,

[SIGNATURE]

Superintendent of Insurance