46A-3-106
46A-1-102
47A-1-1

May 10, 1999

Re: Computation of finance charges for revolving loan accounts

Dear Ms. :

I write in response to your April 29, 1999 letter that inquired whether WV Code 46A-3-106 allowed a creditor to use the daily balance method to compute finance charges for revolving loan accounts.

West Virginia Code 46A-3-106(3) establishes the loan finance charge for revolving loan accounts. It sets a monthly rate of one and one-half percent (1½ %) on the first seven hundred fifty dollars ($750.) of unpaid principal balance and one percent (1%) on the unpaid principal balance exceeding seven hundred fifty dollars ($750.). I point out that the WV Lending and Credit Rate Board, pursuant to its authority under WV Code 47A-1-1(b), has established an alternative rate of one and one-half percent (1½%) on the entire unpaid principal balance of such accounts if the billing cycle is monthly. I enclose a copy of the Board's current Orders on interest rates, in effect since December 1, 1996.

Subsection (2) of WV Code 46A-3-106 establishes the possible methods of calculating the loan finance charge on a revolving loan account:

> (2) A loan finance charge may be made in each billing cycle which is a percentage of an amount not exceeding the greatest of:
>
> (a) The average daily balance of the debt,
>
> (b) The balance of the debt at the beginning of the first day of the billing cycle, less all payments on and credits to such debt during such billing cycle and excluding all additional borrowings during such billing cycle, **or**

> (c) The median amount within a specified range within which the average daily balance of the debt or the balance of the debt at the beginning of the first day of the billing cycle, less all payments on and credits to such debt during such billing cycle and excluding all additional borrowings during such billing cycle, is included. A charge may be made pursuant to this subdivision only if the lender, subject to classifications and differentiations he may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than eight percent of the charge on the median amount. (emphasis added)

I recognize that there are numerous methods of calculating interest on open-end credit, such as “actuarial average daily balance”, “straight average daily balance”, “modified average daily balance”, “ending balance”, “previous balance”, and “adjusted balance”. Some versions are more favorable to consumers while others are more favorable to creditors since each version results in a different amount of interest charges on an account when applied to the same payment and charge activities over the same period of time.

You indicate that offers two computation methods of “average daily balance.” This term is one of the allowed methods for computing finance charges in revolving loan accounts (WV Code 46A-3-106(2)(a), *supra*). However the West Virginia Consumer Credit and Protection Act, at WV Code 46A-1-102(5), provides a specific definition of that term which must be used to compute finance charges under that method:

> (5) "Average daily balance" in a billing cycle for which a sales finance charge or loan finance charge is made is the sum of the amount unpaid each day during that cycle divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day.

A standard aid to statutory construction is *“expressio unius est exclusio alterius.”* In other words, the mention of a specific item or items in a statute implies that omitted items were not intended to be included within the scope of the statute. We believe that the Legislature made a specific policy decision when choosing, out of the many options available, three possible methods of computing finance charges on revolving loan accounts. This is further supported by the fact that the Legislature took care to provide a specific definition for one of those methods, the "average daily balance." Therefore we cannot agree that using a "daily balance" method of calculating finance charges for revolving loan accounts is acceptable under WV Code 46A-3-106.

I hope this letter answers your question. If you need further information, please feel free to contact me.

Sincerely,

Robert J. Lamont
General Counsel