



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING
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TO: All Pennsylvania State-Chartered Banks, Bank and Trust Companies, and Savings Banks

RE: Direct Motor Vehicle Loans under the Simplification and Availability of Bank Credit Act which is Section 322 of the Pennsylvania Banking Code of 1965 (7 P.S. § 322)

This letter is to set forth in writing the Pennsylvania Department of Banking (the "Department") position on issues related to the ability of a Pennsylvania state-chartered bank, bank and trust company, or savings bank ("PA Bank") under Section 322 of the Banking Code of 1965¹ ("Section 322"), 7 P.S. § 322:

- (1) to originate a direct motor vehicle loan without being subject to the terms, conditions, or limitations of the Motor Vehicle Sales Finance Act² ("MVSFA"), with one limited exception involving a loan intermediary;
- (2) to retain a motor vehicle dealer licensed as an installment seller under the MVSFA as an intermediary to arrange for the PA Bank to make a direct loan to the dealer's customer to finance the purchase of a motor vehicle sold by the motor vehicle dealer; and
- (3) to finance the purchase of third party add-on products, such as extended warranties, service contracts, credit insurance, and GAP insurance coverage, to be sold through the motor vehicle dealer or lender in connection with the sale of the motor vehicle, even if the purchase price of such products includes a motor vehicle dealer or lender commission or markup, and even if such products are financed by the same direct loan as the motor vehicle.

Please be advised that the Department position on the foregoing issues is as follows, subject to the caveats that: (1) the statements made herein are applicable to PA Banks which are subject to the Department's regulatory jurisdiction, except as indicated otherwise;³ and (2) Pennsylvania insurance law requirements, including forms and rates, remain fully applicable to any insurance product referenced herein, notwithstanding any direct or indirect reference in Section 322 to the contrary; and (3) any reference herein to a "dealer markup" does not authorize any violation of rate restrictions that may exist on the insurance product under Pennsylvania insurance law.

First, it is the Department's position that Section 322, including subsections (b) and (i), clearly and unambiguously authorizes direct motor vehicle loans to be originated by PA Banks, without compliance with any term, condition, or provision of the MVSFA with one exception. That exception is that if the PA Bank retains the motor vehicle dealer to act as an intermediary to arrange for the Bank to make a direct loan to its customer to finance the purchase of a motor vehicle sold by the motor vehicle dealer, then that motor vehicle dealer must be licensed as an installment seller under the MVSFA in order to act as such an intermediary regarding that loan. 7 P.S. § 322(i). Additional support for the Department's position that direct motor vehicle loans may be originated by PA Banks under authority of Section 322, without compliance with the MVSFA except for the referenced motor vehicle dealer license requirement (which applies only when the PA Bank retains the lender to act as an intermediary) includes but is not necessarily limited to the following: section 4 of Act 167 of 1994⁴, 10 Pa.Code § 13.51(a)(2),⁵ 10 Pa.Code § 13.51(a)(3),⁶ and letter dated March 12, 1999, from Department of Banking Legal Office.⁷

Second, it is the Department's position that Section 322(i) of the Banking Code of 1965, 7 P.S. § 322(i)⁸, provides that a direct extension of credit to finance a sale of a motor vehicle, other than through an open-end credit plan, may be made by a PA Bank under Section 322 through a motor vehicle dealer licensed as an installment seller under the MVSFA. Additional support for this Department position includes but is not necessarily limited to the Department's statement of policy regarding Section 322 at 10 Pa.Code § 13.51(b)(4).⁹

Third, it is the Department's position that Section 322 authorizes PA Banks to finance as part of the amount financed on a direct motor vehicle loan the purchase of third party add-on products, such as extended warranties, service contracts, credit insurance, and GAP insurance coverage, sold by or through the motor vehicle dealer or lender in connection with the sale of the motor vehicle, and allows for such financing even if the purchase price of such add-on products includes a motor vehicle dealer or lender commission or markup. These add-on products may be directly financed by PA Banks separately or as part of the Section 322 motor vehicle loan, whether or not the motor vehicle dealer serves as an intermediary for the loan. Support for this Department position includes but is not necessarily limited to Section 322(b), (d)(v), and (h) of the Banking Code of 1965, 7 P.S. § 322(b), (d)(v), and (h), as well as 10 Pa.Code § 13.51(b)(4)¹⁰. Section 322(b) provides that Section 322 governs "all direct and indirect extensions of credit by an institution for personal, family, household, business or agricultural purposes to an individual, a partnership or an unincorporated association," with specified exceptions, none of which restrict the financing of add-on products under Section 322 or are otherwise applicable. Section 322(h) provides for the financing of credit insurance premiums along with a direct motor vehicle loan.

It is noted that the written agreement to extend credit under Section 322 must be fully completed prior to signature by the customer, with a copy of such agreement, including related statements, notices and documents, given to the customer, and the agreement shall have the form and contents required by the Federal Truth in Lending Act. 7 P.S. § 322(d). Disclosures required by the Federal Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, are required to be made by the PA Bank in a loan originated under Section 322. 7 P.S. § 322(c).

Conclusion: In conclusion, a Pennsylvania state-chartered bank, bank and trust company, or savings bank may use the lending authority in Section 322 to retain a motor vehicle dealer as an intermediary to arrange for the PA Bank to make a direct loan to its customer to finance not only the purchase of a motor vehicle sold by the dealer but also the third party add-on products sold by or through the dealer or lender in connection with the sale of the motor vehicle, such as extended warranties, service contracts, credit insurance, and GAP insurance coverage. This direct loan may be originated even if the purchase price of such add-on products includes a dealer or lender commission or markup, provided the PA Bank complies with the requirements set forth in Section 322. This power to finance as a direct loan the purchase of the motor vehicle and add-on products applies whether or not the dealer acted as an intermediary for the Section 322 loan.

Sincerely,

A handwritten signature in black ink, appearing to read "James B. K..." followed by a stylized, cursive flourish.

Endnotes

1. Section 322 was enacted by the General Assembly as the Simplification and Availability of Bank Credit Act, Act 167 of 1994. Section 322 applies to Pennsylvania state-chartered banks and bank and trust companies. 7 P.S. §§ 301, 322. Pennsylvania state-chartered savings banks have authority to make loans under Section 322 pursuant to 7 P.S. §§ 506(a)(ix), 322.
2. 69 P.S. § 601 *et seq.*
3. It is noted that the Department's Statement of Policy at 10 Pa.Code § 13.51(a)(3) provides in relevant part that, "[s]ection 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C.A. § 1831d) and section 85 of the National Bank Act (12 U.S.C.A. § 85) authorize Pennsylvania-chartered institutions and National banks to "borrow" the periodic interest rates and other interest charges permitted by Pennsylvania law to other borrowers, such as licensees under the Consumer Discount Company Act (7 P.S. §§ 6201 - 6219) and the Secondary Mortgage Loan Act (7 P.S. §§ 6601 - 6626)."
4. Section 4 of Act 167 of 1994 reads as follows: "The provisions of this act shall only govern transactions between banks or savings banks and their customers and, by reason of the references to 'interest, finance charge, rate, and/or terms' in section 701(a)(26) of the act of December 14, 1967 (P.L. 746, No. 345), known as the Savings Association Code of 1967, transactions between savings associations and their customers, and shall not affect acts and parts of acts governing other creditors or sellers or contractors for goods or services, or acts or parts of acts governing such other creditors or sellers as to installment sales or contracts for goods or services, including, but not limited to, the act of June 28, 1947 (P.L. 1110, No. 476), known as the Motor Vehicle Sales Finance Act, the act of August 14, 1963 (P.L. 1082, No.464), known as the Home Improvement Finance Act and the act of October 28, 1966 (Sp.Sess., P.L. 55, No. 7), known as the Goods and Services Installment Sales Act, or acts and parts of acts governing rights, remedies, duties and procedures for enforcement of obligations upon default on an extension of credit, including, but not limited to, acts governing repossession and foreclosure, or acts and parts of acts governing credit life insurance, the Fair Debt Collection Practices Act (Public Law 95-109, 15 U.S.C. § 1692 et seq.), or the act of December 17, 1968 (P.L. 1224, No. 387), known as the Unfair Trade Practices and Consumer Protection Law, or 13 Pa.C.S. (relating to commercial code)." (Emphasis added).
5. "Individual sections of Chapter 3 of the act [Banking Code of 1965] which deal with lending powers and charges are alternative bases for extensions of credit and have been consistently interpreted as such by the Department. Section 322 is an optional basis for lending authority since section 322(d) is explicitly permissive with respect to an institutions's extension of credit under section 322." Department Statement of Policy at 10 Pa. Code § 13.51(a)(2).
6. "...section 322(b) confirms that courts are not to apply Pennsylvania installment sales laws (such as the Goods and Services Installment Sales Act (69 P.S. §§ 1101-2303) or the Home Improvement Finance Act (73 P.S. §§ 500-101--500-602)) to invalidate seller-assisted loans made under the authority of [S]ection 322 (See subsection (c)(2))." Department Statement of Policy at 10 Pa.Code § 13.51(a)(3). It is the Department's position that the MVSFA is another such Pennsylvania installment sales law that courts are not to apply to invalidate (where the sellers hold installment seller licenses under the MVSFA) seller-assisted loans made under the authority of Section 322.
7. The Department Legal Office letter dated March 12, 1999 provides as follows: "it is the position of the Department that a contract which evidences a direct loan extended to a Pennsylvania consumer by a Pennsylvania state-chartered institution, which is secured by a purchase money security interest in a motor vehicle, is not covered under the definition of an "installment sale contract," as that term is defined under the provisions of the MVSFA. [Footnote number "2" then appears in the referenced letter but is not reproduced here.] 69 P.S. § 603."

8. Section 322(i) provides:

“(i) **Extensions of credit through intermediaries** -An extension of credit to finance a sale of a motor vehicle, other than through an open-end credit plan, may be made by an institution through a seller licensed as an installment seller under the act of June 28, 1947 (P.L. 1110, No. 476), known as the “Motor Vehicle Sales Finance Act,” as an intermediary if:

(i) the agreement governing the extension of credit conspicuously provides that the extension of credit is made by the institution to the buyer and is subject to the provisions of this section, and

(ii) either the institution has made a commitment to make the extension of credit or the agreement is subject to acceptance by the institution within two business days after the date of the agreement and the institution upon such acceptance sends written notice thereof to the buyer. The terms and conditions under which the seller acts as an intermediary between the institution and the buyer shall be determined by written agreement between the institution and the seller.

An extension of credit made through an intermediary pursuant to this section shall be subject to this act and other acts governing transactions between banks and their customers and shall not be subject to the provisions or requirements of any other regulatory statute, rule or regulation, and neither a seller who acts as an intermediary for an institution with respect to such an extension of credit nor an institution which makes such an extension of credit through a seller as an intermediary shall be deemed to be in violation of licensing or other requirements of any other regulatory statute, rule or regulation that would be applicable to extensions of credits by such a seller or contractor to its customers.”

9. The Department Statement of Policy at 10 Pa.Code 13.51(b)(4)(i) and (ii) provides as follows:

(i) In addition to the normal requirements of section 322, section 322(i) imposes specific requirements on closed end motor vehicle loans made through intermediaries. It does not restrict lenders from making other types of loans through intermediaries.

(ii) The SABCA [Simplification and Availability of Bank Credit Act] does not preclude an institution licensed as a sales finance company from purchasing from a dealer an installment sale contract (when the contract finances a motor vehicle and other related goods or services) so long as the contract is pursuant to the Motor Vehicle Sales Finance Act. Essentially, an institution financing the purchase of goods or services through the seller may elect, at its option, to structure the credit extension as a direct loan under the SABCA (or any other applicable provision of law) or as the purchase of an installment sale contract under the Motor Vehicle Sales Finance Act (69 P.S. §§ 601-637), Goods and Services Installment Sales Act or the Home Improvement Finance Act.” This Section 322 lending authority applies both to financing customer purchases of motor vehicles and other goods and to extended warranties, service contracts, credit insurance, and GAP insurance coverage, as well as to other services.

10. In comparing the financing options available to a lender, the Department specifically noted that a lender could make a closed end loan through an intermediary to finance the purchase of a motor vehicle and other related goods and services or could purchase from a dealer “an installment sale contract (when a contract finances [the purchase of] a motor vehicle and other related goods or services, so long as the contract is pursuant to the Motor Vehicle Sales Finance Act.” Department Statement of Policy at 10 Pa.Code § 13.51(b)(4)(ii).