



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

March 24, 2015

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Re: Bank Closed- and Open-End Direct Loans for the Purchase of Goods and Services

Dear Redacted :

This responds to your request for confirmation from the Commonwealth of Pennsylvania Department of Banking and Securities (the "Department") that Section 303 of the Banking Code of 1965 (the "Banking Code"), 7 P.S. § 303, and Section 506 of the Department of Banking and Securities Code (the "DOBS Code"), 71 P.S. § 733-506, permit Pennsylvania state-chartered banks and savings banks, federally-chartered banks and savings associations, and banks and savings institutions chartered in states other than Pennsylvania to make closed-end and open-end direct loans, including by means of credit cards, for the purchase of goods and services without regard to the provisions of Chapter 63 of the new consolidated consumer credit code ("CCC") created by Act 98 of 2013, notwithstanding Section 6304(e) of the CCC ("Section 6304(e)"), 12 Pa.C.S. § 6304(e).

Background

Chapter 63 of the CCC repealed and replaced the former Goods and Services Installment Sales Act ("GSISA") on December 1, 2014. Section 6304(e) provides that "[n]otwithstanding any provision of law to the contrary, [Chapter 63 of the CCC] shall exclusively govern and regulate the terms and conditions of all extensions of credit, except cash advances, for the purchase of goods and services within this Commonwealth." 12 Pa.C.S. § 6304(e). Section 6304(e) is based on prior Section 1104 of the GSISA, which provided that "[n]otwithstanding any other act [the GSISA] shall exclusively govern and regulate the terms and conditions of all extensions of credit by the means of credit cards and credit card operations for the purchase of goods and services within this Commonwealth but excluding cash advances."

Section 303 of the Banking Code provides in pertinent part that:

(b) General rule- (i) An institution may, *subject to any applicable restriction under other provisions of this act*, lend money, extend credit and discount or purchase evidences of indebtedness and agreements for the payment of money at such interest, finance charge, rate or terms under this section or at any interest, finance charge, rate or terms permitted for any other financial institution or any other lender regulated by any State or Federal supervisory authority on the specified class of loan.

(ii) *This section shall govern all direct and indirect extensions of credit by an institution for personal, family, household, business or agricultural purposes to an individual, a partnership, limited liability company or an unincorporated association, whether as closed-end credit or open-end credit.*

7 P.S. § 303(b) (emphasis added). An “institution” for purposes of Section 303 of the Banking Code includes banks, bank and trust companies and savings banks.¹ Section 303 of the Banking Code, which was amended as part of Act 170 of 2012 and was effective December 24, 2012, consolidated and simplified the various lending authorities previously found in the Banking Code and is derived from the provisions of former Sections 310, 319 and 322 of the Banking Code.

In both a codified Statement of Policy and numerous interpretive letters over the years, the Department has consistently interpreted the Banking Code’s lending provisions, especially former Sections 319 and 322, as superseding the GSISA’s purported exclusivity to credit card programs, holding that the GSISA is merely an alternative lending authority for banks to use in addition to other lending authorities such as the Consumer Discount Company Act. *See, e.g.,* Statement of Policy at 10 Pa.Code § 13.51(a)(3) (the “Statement of Policy”); Interpretive Letter dated November 19, 2001, at 19.²

Section 506 of the DOBS Code, also effective December 24, 2012, provides that:

I. Consumer financial laws of this Commonwealth not preempted by Federal law pursuant to section 1044 or 1046 of the Consumer Financial Protection Act (12 U.S.C. §§ 256 and 1461) or other provision of Federal law, including statutes, regulations adopted by Commonwealth agencies, orders issued by Commonwealth agencies, ordinances or resolutions enacted by political subdivisions or orders issued by political subdivisions, *shall apply to national banks, Federal savings associations and their subsidiaries, only to the extent those laws apply to State-chartered banks and savings associations and their subsidiaries.*

J. Consumer financial laws of this Commonwealth applicable to the activities of foreign financial institutions and their subsidiaries, including statutes, regulations adopted by Commonwealth agencies, orders issued by Commonwealth agencies, ordinances or resolutions enacted by political subdivisions or orders issued by political subdivisions, *shall apply to foreign financial institutions and their subsidiaries, only to the extent those laws apply to State-chartered banks and savings associations and their subsidiaries.*

71 P.S. § 733-506.I, J (emphasis added). A “foreign financial institution” is defined as “[a] person licensed, registered or regulated by a state other than the Commonwealth or a foreign country that

¹ See 7 P.S. § 301. Pursuant to Section 506 of the Banking Code, 7 P.S. § 506, Section 303 of the Banking Code provides the basic lending authority for Pennsylvania state-chartered savings banks.

² Available at:

<http://www.dobs.pa.gov/Documents/Interpretive%20Letters/Consumer%20Discount%20Company%20Act/CDCA%20Issues%2011901.pdf>

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provides financial services to or for the benefit of persons in this Commonwealth.” 71 P.S. § 733-506.K. This term would include banks and savings institutions chartered in states other than Pennsylvania.

The Department is generally authorized to issue interpretations regarding the Banking Code and DOBS Code because these statutes are under the Department’s jurisdiction.³ While Chapter 63 of the CCC is not under the jurisdiction of the Department, and thus the Department is unable to issue interpretations of Section 6304(e), the Department is able to issue interpretations regarding the effect of other laws on the provisions of the Banking Code and DOBS Code.

Analysis

Applicability of Chapter 63 of the CCC to the Lending Authority Contained in the Banking Code

For the following reasons, it is the position of the Department that Chapter 63 of the CCC operates as an alternative lending authority available to Pennsylvania state-chartered banks and savings banks pursuant to the “most-favored-lender” provision of Section 303(b) of the Banking Code and does not in any way alter or restrict the specific lending authority granted to such banks and savings banks by Section 303 of the Banking Code, notwithstanding the language of Section 6304(e).

As a general matter, both Chapter 63 of the CCC and Section 303 of the Banking Code address the same topic; namely, extensions of credit for the purchase of goods and services. The Statutory Construction Act (“SCA”) provides that “[s]tatutes or parts of statutes are in pari materia *when they relate to the same persons or things* or to the same class of persons or things [and they] shall be construed together, if possible, as one statute.” 1 Pa.C.S. § 1932 (emphasis added). Thus, Chapter 63 of the CCC and Section 303 of the Banking Code must be construed together if possible, since they both ostensibly apply to extensions of credit by banks to purchase goods and services. Additionally, the SCA provides that:

[w]henver a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. *If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest intention of the General Assembly that such general provision shall prevail.*

1 Pa.C.S. § 1933 (emphasis added). While the conflict between Chapter 63 of the CCC and Section 303 of the Banking Code due to Section 6304(e) may seem irreconcilable, Chapter 63 of the CCC is a general statute addressing extensions of credit for goods and services by a wide range of financial services providers, while Section 303 of the Banking Code is a special statutory provision that governs extensions of credit only by Pennsylvania state-chartered banks and savings banks. Thus, despite the recent changes as a result of Act 170 of 2012 and Act 98 of 2013, the Department’s

³ See 71 P.S. § 733-202.D.

position is that the special provisions of Section 303 of the Banking Code supersede Chapter 63 of the CCC's purported general exclusivity to extensions of credit for goods and services by virtue of Section 6304(e), such that Chapter 63 of the CCC operates as an alternative lending authority for banks to use in addition to the lending authorities available to banks under Section 303 of the Banking Code. This position allows both statutes to be construed together, is consistent with the Department's position under the prior statutes as expressed in the Statement of Policy and is supported by the fact that, as addressed below, the General Assembly did not indicate a manifest intent that Section 6304(e)'s purpose was to effectively nullify amended Section 303 of the Banking Code with respect to bank extensions of consumer credit to purchase goods and services. Consistent with 1 Pa.C.S. § 1933, demonstration of such manifest intent by the General Assembly would be necessary in order to conclude that Section 6304(e) was meant to supersede amended Section 303 of the Banking Code.

Support for this position comes from further analysis under other provisions of the SCA. First, the fact that Section 6304(e) was enacted after Section 303 of the Banking Code was amended does not affect the Department's position. The general rule under the SCA is that when two statutes passed by different General Assemblies irreconcilably conflict, the latter of the two statutes controls. *See* 1 Pa.C.S. §§ 1936. However, "[w]henver a statute is repealed and its provisions are at the same time reenacted in the *same or substantially the same terms* by the repealing statute, the earlier statute shall be construed as continued in active operation." 1 Pa.C.S. § 1962 (emphasis added).

In this case, there is no doubt that Chapter 63 of the CCC is a "reenactment" of the GSISA, as indicated by both the January 2014 Joint State Government Commission ("JSGC") report on the CCC (the "2014 Report")⁴ and the JSGC's earlier report regarding the CCC from November, 2006 (the "2006 Report").⁵ Further, it is clear that the CCC is a "substantial" reenactment of GSISA rather than a new statute. While certain sections of the CCC are new, the vast majority of the statute re-states various GSISA provisions in only slightly different form. The substantial reenactment of GSISA as Chapter 63 of the CCC means that GSISA must be viewed as continuing in active operation consistent with 1 Pa.C.S. § 1962.

Moreover, the fact that Section 1104 of GSISA referred only to credit card plans while Section 6304(e) refers to "all extensions of credit" is not a reason to conclude that Section 6304(e) is anything more than a substantial reenactment of Section 1104 of the GSISA for statutory construction purposes. The 2014 Report states only that Section 6304(e) is based on Section 1104 of GSISA. *See* 2014 Joint Report at 83. There is no suggestion in the 2014 Report that Section 6304(e) was intended by the General Assembly to disrupt or alter the lending authority of banks that was updated and modernized only one year earlier as part of Act 170 of 2012.

The 2006 Report contains the same comment concerning consistency with Section 1104 of GSISA. *See* 2006 Report at 26. This is significant, because JSGC reports that are published or otherwise

⁴ *See* 2014 Report at 1, available at: [http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2014-366-consumer%20Credit%20Code%20report%20-%20January%2029%202014%20\(2\).pdf](http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2014-366-consumer%20Credit%20Code%20report%20-%20January%2029%202014%20(2).pdf)

⁵ *See* 2006 Report at 5, available at: <http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2006-34-CCC%20-%20GSISA%20Report.pdf>

generally available prior to consideration of a statute by the General Assembly may be consulted in the construction or application of the original provisions of a statute. *See* 1 Pa.C.S. § 1939. The confirmation in both the 2006 Report and the 2014 Report that Section 6304(e) is based on Section 1104 of GSISA with no substantive change intended supports a conclusion that by enacting Section 6304(e), the General Assembly did not intend to disrupt or alter bank lending authority that was updated and modernized only one year earlier as part of Act 170 of 2012.

Second, there is a presumption that the General Assembly does not intend a result that is absurd or unreasonable. *See* 1 Pa.C.S. § 1922(1). As noted above, one year prior to enactment of Chapter 63 of the CCC, the General Assembly enacted comprehensive legislation in the form of Act 170 of 2012 that amended Section 303 of the Banking Code to provide that it governs all closed-end and open-end direct and indirect extensions of credit made by Pennsylvania state-chartered banks, subject only to the restrictions otherwise contained in the Banking Code. *See* 7 P.S. § 303(b)(i). In light of this statutory provision, it would be manifestly absurd and unreasonable to conclude that the mere reenactment of GSISA Section 1104 as Section 6304(e) would be intended to effectively nullify Section 303 of the Banking Code with respect to bank extensions of consumer credit to purchase goods and services, given that there is no evidence at all that the General Assembly intended such a result.

Based upon the foregoing, it is the Department's position that Chapter 63 of the CCC, like the former GSISA, operates as an alternative lending authority available to Pennsylvania state-chartered banks and savings banks pursuant to the "most-favored-lender" provision of Section 303(b) of the Banking Code and does not in any way alter or restrict the specific lending authority granted to such banks and savings banks by Section 303 of the Banking Code, notwithstanding the language of Section 6304(e). This position allows both statutes to be construed together and is consistent with the Department's interpretations of the applicability of the former Section 1104 of the GSISA to the Banking Code's former lending provisions, especially Sections 319 and 322, as superseding the GSISA's purported exclusivity to credit card programs as expressed in the Statement of Policy. Therefore, Pennsylvania state-chartered banks and savings banks may make closed-end and open-end direct loans, including by means of credit cards, for the purchase of goods and services without regard to the provisions of Chapter 63 of the CCC pursuant to Section 303 of the Banking Code, notwithstanding the language of Section 6304(e).

Applicability of Chapter 63 of the CCC to the Lending Authority of Federally-chartered and Out-of-State State-chartered Institutions by Virtue of Section 506 of the DOBS Code

You are also seeking confirmation that Section 506 of the DOBS Code allows non-Pennsylvania - chartered banks to also originate closed-end and open-end loans, including credit card loans, without regard to Chapter 63 of the CCC, notwithstanding the language of Section 6304(e).

As noted above, Section 506 of the DOBS Code provides that Pennsylvania consumer financial laws that are applicable to the activities of foreign financial institutions and federally-chartered banks and their respective subsidiaries apply to such institutions only to the extent those laws apply to Pennsylvania state-chartered banks. In a November 14, 2012, Secretary's Letter, the Department stated that Section 506 "[p]rovides that financial institutions and their subsidiaries doing business in

Pennsylvania, including national banks and federal savings associations, are subject to state and local laws and regulations *only to the same extent* as such laws and regulations apply to Pennsylvania state-chartered institutions.” See Secretary’s Letter of November 14, 2012, at pg. 4.⁶

For the reasons discussed above that a Pennsylvania state-chartered bank may originate closed-end and open-end direct loans, including by means of credit cards, for the purchase of goods and services under Section 303 of the Banking Code without regard to Chapter 63 of the CCC, it is the Department’s position that, consistent with Section 506 of the DOBS Code, federally-chartered banks and banks chartered in states other than Pennsylvania may originate closed-end and open-end direct loans, including by means of credit cards, for the purchase of goods and services under their respective lending authorities without regard to Chapter 63 of the CCC, notwithstanding the language of Section 6304(e).

The Department’s analysis is based upon the facts as stated in this letter. Any change in the facts could result in an amendment or reversal of the Department’s position. This letter has been authorized by the appropriate Department personnel and constitutes a duly authorized statement of the Department’s position regarding the issues discussed herein. This letter may not be relied upon or construed as constituting legal advice.

Please do not hesitate to contact me if you have any further questions regarding this matter.

For the Commonwealth of Pennsylvania
Department of Banking and Securities:

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Carter D. Frantz
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⁶ Available at:
<http://www.dobs.pa.gov/Documents/Secretary%20Letters/Banks/11.14.12%20Secretary%20Letter%20Re%20Banking%20Law%20Modernization%20Package.pdf>