

717-787-1471

August 9, 1995

Re: Financing Motor Vehicle Purchases with a Credit Card Pursuant to Bank Simplification Act

Dear

This responds to your letter on behalf of [redacted information] to Secretary of Banking Richard C. Rishel regarding the use of credit cards to finance motor vehicle purchases in Pennsylvania. As you know, [redacted information] submitted a legal memorandum from [redacted information] law firm which opined that Act 167 of 1994 (P.L. 1424), entitled the Simplification and Availability of Bank Credit Act ("Bank Simplification Act" or "Act") does not permit the use of a credit card to finance the purchase of a motor vehicle. You are hereby notified that, contrary to the [redacted information] position, the Department of Banking ("Department") finds that the Bank Simplification Act does permit the credit card financing of motor vehicle purchases.

[redacted information] states that "[a] majority of credit cards are issued by entities not falling under the Act, such as bank subsidiaries and major corporations." [redacted information] states that it will be the vehicle dealer's responsibility in connection with each proposed credit card purchase to determine whether the issuer of the credit card is an institution subject to the Act's coverage or an institution not covered by the Act, which [redacted information] asserts is an untenable position for motor vehicle dealers. In an effort to assist vehicle dealers, this letter will discuss the ability of a wide range of depository and non-depository lenders to finance motor vehicle purchases via credit card. This letter states the Department of Banking's legal position regarding institutions that the Department of Banking regulates and/or that are specifically subject to the terms of the Bank Simplification Act. Please consider this letter to be merely advisory regarding all other institutions referenced herein that the Department does not supervise or regulate in the area of lending activities.

Background: In previous correspondence submitted to [redacted information], the Department opined that the Goods and Services Installment Sales Act ("GSISA"), 69 P.S. ' 1101 et seq., and the Motor Vehicle Sales Finance Act ("MVSFA"), 69 P.S. ' 601 et seq., do not permit credit cards to be used to finance motor vehicle purchases because, among other reasons more specifically stated in previous correspondence to [redacted information], the term "goods" as defined in section 201(1) of the GSISA in effect specifically excluded motor vehicles from its definition.

General Analysis of Bank Simplification Act: As you know, the GSISA by its own terms was the exclusive authority for credit card loans in Pennsylvania pursuant to 69 P.S. ' 1104. However, pursuant to the Statutory Construction Act of 1972, 1 Pa.C.S.A. ' 1501 et seq., the later of two conflicting laws is the one that controls. 1 Pa.C.S.A. ' 1936. This means that the Bank Simplification Act's provisions shall supercede the GSISA where the two laws conflict, such as on the subject of credit card loans to finance motor vehicle purchases.

The Department finds that the Bank Simplification Act, by its general terms, permits the use of credit cards to finance motor vehicle purchases. There does not appear to be any legislative history to the contrary on this particular credit card aspect of the Act.

Section 322(b) provides that the Act,

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 or an unincorporated association, whether as closed-end credit or open-end credit,...

subject to certain exceptions not applicable to the issues discussed herein. 7 P.S. ' 322(b). In other words, open-end credit in the form of a credit card is governed by the Bank Simplification Act.

The term "open-end credit plan" is defined as a plan that permits extensions of credit under an account subject to an agreement between a banking institution and a customer, which agreement authorizes "the customer from time to time to make purchases or to obtain loans or both, by use of a credit device[" 7 P.S. ' 322(a) (emphasis added).

The "purchases" that may be made by the customer under the Act are "payments for property of whatever nature, real or personal, tangible or intangible, . . . or any other thing of value." 7 P.S. ' 322(a). The permissible "purchases" under the Act appear to include motor vehicles because the definition of purchases does not exclude motor vehicles from items that may be purchased pursuant to the authorization of the Bank Simplification Act. The "credit device" that may be used to accomplish the purchase of any type of thing of value is defined as including "any card...contemplated by the agreement governing a[n] [open-end credit] plan." 7 P.S. ' 322(a).

Finally, the exclusions from coverage of the Act contained in 7 P.S. ' 322(b) do not include motor vehicle loans, meaning that motor vehicle loans are covered by the Bank Simplification Act. In contrast, the GSISA explicitly excludes motor vehicles from its coverage by removing motor vehicles from the definition of "goods." 69 P.S. ' 1201(1). This contrast demonstrates that the General Assembly intended that motor vehicles not be financed by credit cards under the GSISA, but that motor vehicles may be financed under the newly enacted Bank Simplification Act.

Considering the above matters together, the Act contemplates a consumer using a credit device (i.e., credit card) to finance a purchase of any type of thing of value whatsoever (i.e., including motor vehicles) pursuant to the terms of an open-end credit plan that provides for extensions of credit to the consumer from a Pennsylvania banking institution.

The Pennsylvania banking institutions to which the Bank Simplification Act directly applies consist of Pennsylvania state-chartered banks, bank and trust companies, savings banks and savings associations.

Intermediary Authority for Direct Loans Pursuant to the Bank Simplification Act Does Not Operate to Prohibit Credit Card Financing of Motor Vehicle Purchases: The part of the Act that specifically refers to motor vehicle financing is section 322(i), which states that,

[a]n 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...Motor Vehicle Sales Finance Act, as an intermediary....

7 P.S. ' 322(i) (emphasis added). [redacted information] argues through the [redacted information] law firm that the above underlined language operates to exclude and therefore prohibit credit card financing of motor vehicle purchases.

Contrary to the [redacted information]'s interpretation, the Department finds the terms "other than through an open-end credit plan" as clarifying that the Act's intermediary requirements do not apply to credit card financings of motor vehicle purchases. In other words, the Act does not require a vehicle dealer to act either as an intermediary or to be licensed as an installment seller under the MVSA in order for that vehicle dealer to accept a credit card from a customer for purposes of financing a motor vehicle purchase.

Non-Depository Lenders May Not Make Credit Card Loans to Finance Motor Vehicle Purchases Pursuant to the GSISA or Bank Simplification Act: Section 4 of the Bank Simplification Act provides that the Act "shall only govern transactions between banks or savings banks and their customers and...savings associations and their customers, and shall not affect acts or parts of acts governing other creditors or sellers...." (emphasis added). [redacted information] asserts that section 4 of the Act does not supercede the GSISA's interpreted prohibition on credit card use for the purchase of a motor vehicle because the Act shall not affect other statutes such as the GSISA.

Contrary to the [redacted information]'s opinion, the Department finds that section 4 of the Act merely states to whom the Act is directly applicable (i.e., certain specified Pennsylvania banking institutions) and that other creditors or sellers who cannot access either the Bank Simplification Act or other legal authority to make credit card motor vehicle loans, such as non-depository lenders, shall remain subject to the restrictions of the GSISA and other applicable statutes. Non-depository lenders who may not finance a motor vehicle purchase via credit card include but are not necessarily limited to the following entities under Pennsylvania law: consumer discount companies, first and second mortgage lenders, retailers, motor vehicle installment sellers, home improvement contractors, and sales finance companies.

National Banks and Federal Thrifts Solely Located in Pennsylvania May Make Credit Card Loans to Finance Motor Vehicle Purchases Pursuant to Federal Law: It appears that the following depository institutions solely located in Pennsylvania may engage in financing motor vehicle purchases via credit

card, subject to the developing case law and regulatory interpretations applicable to the corresponding statutory and regulatory legal authority cited below.

National banks pursuant to 12 U.S.C. ' 85 and 12 CFR 7.7310, appear to be able to utilize the interest rate authority of the Bank Simplification Act to make motor vehicle credit card loans.

Federal savings associations and federal savings banks pursuant to 12 U.S.C. ' 1463(g) and 12 CFR 571.22 appear to be able to utilize the interest rate authority of the Bank Simplification Act to make motor vehicle credit card loans.

Depository Institutions Solely Located Outside Pennsylvania May Make Credit Card Loans to Finance Motor Vehicle Purchases Pursuant to Federal Law: Although it appears that the following depository institutions solely located outside Pennsylvania may not access the terms of the Bank Simplification Act, it also appears that such institutions may engage in financing motor vehicle purchases via credit card by exporting their interest rates and terms into Pennsylvania, subject to the developing case law and regulatory interpretations applicable to the corresponding statutory and regulatory legal authority cited below.

National banks located outside Pennsylvania appear to be able to export motor vehicle credit card loans across state lines into Pennsylvania, pursuant to 12 U.S.C. ' 85 and 12 CFR 7.7310, and general lending authority in 12 U.S.C. ' 24(Seventh).

Federal savings associations and federal savings banks appear to be able to export motor vehicle credit card loans across state lines into Pennsylvania, pursuant to 12 U.S.C. ' 1463(g), 12 CFR 571.22, and general lending authority in 12 U.S.C. ' 1464.

State-chartered banks, bank and trust companies and savings banks appear to be able to export motor vehicle credit card loans across state lines into Pennsylvania, pursuant to 12 U.S.C. ' 1831d.

Conclusions:

The general terms of the Bank Simplification Act permit consumers to use credit cards issued by Pennsylvania banking institutions to finance the purchase of motor vehicles. The Pennsylvania banking institutions specifically permitted to use the Act's terms are Pennsylvania state-chartered banks, bank and trust companies, savings banks and savings associations.

Certain depository institutions solely located in Pennsylvania that appear to be able to utilize certain terms of the Bank Simplification Act to make motor vehicle credit card loans are national banks, federal savings associations and federal savings banks.

It appears that depository institutions solely located outside Pennsylvania may not utilize the terms of the Bank Simplification Act to make motor vehicle credit card loans. However, the following out of state entities appear to be able to export such loans across state lines into Pennsylvania: national

banks, federal savings associations and federal savings banks, state-chartered banks, state-chartered bank and trust companies and state-chartered savings banks.

Non-depository lenders including but not necessarily limited to consumer discount companies, first and second mortgage lenders, retailers, motor vehicle installment sellers, home improvement contractors, and sales finance companies are not eligible to use the Bank Simplification Act's terms to finance motor vehicle credit card loans.

Please contact me if you have any remaining questions regarding this matter.

Sincerely,

Reginald S. Evans
Chief Counsel

cc: Honorable Richard C. Rishel
Paul H. Wentzel, Jr.

