



April 28, 2017

Kelly Rainsford  
Deputy for Regulatory Enforcement  
South Carolina Department of Consumer Affairs  
P.O. Box 5757  
Columbia, SC 29250

**Re: Declaratory Ruling 3.202-7608 review**

Dear Ms. Rainsford:

On behalf of the American Financial Services Association (AFSA),<sup>1</sup> thank you for the opportunity to provide comments regarding the Department of Consumer Affairs' ("Department") intent to formally reconsider Declaratory Ruling 3.202-7608 ("1976 Ruling"). We write to register our serious concerns with the proposed review. We urge you not to upend a state rule that has been in place for more than 40 years by withdrawing the 1976 Ruling, as the Department attempted to do in 2008, and by declaring that certain ancillary products sold in a loan office meet the definition of a "loan finance charge," as the Department unsuccessfully attempted to do in 2010. Withdrawing the 1976 Ruling will result in South Carolina law being inconsistent with the federal Truth in Lending Act (TILA) and make South Carolina an outlier with its neighboring states.

For nearly 50 years, TILA has provided a standard of how to calculate annual percentage rate (APR) so that all references to APR mean the same thing. All creditors calculate APR the same way to allow the cost of similar loan products to be compared using the TILA APR. The text of the 1976 Ruling is consistent with TILA and Regulation Z, as the cost of such voluntary ancillary products are not finance charges subject to inclusion in the disclosed APR. Both TILA and South Carolina law define a finance charge as a cost *imposed* directly or indirectly as an incident to the extension of credit, but the ancillary products in question are voluntary and never imposed on a consumer. The underlying statute defining "loan finance charge" has not been amended by the General Assembly since 1988. The Department has provided no explanation for why certain ancillary products sold in the state for decades—and not deemed to be part of the "loan finance charge"—would suddenly be considered a "loan finance charge" with no statutory change to the relevant definition.

In addition to stating that finance charges are *imposed*, Regulation Z also clarifies that the finance charge does not include any charge of a type payable in a comparable cash transaction. As many of the ancillary products permissible under the 1976 Ruling are also available to consumers paying cash, deeming the cost of such voluntary ancillary products to be a "loan finance charge" would conflict with the TILA definition of finance charge and distort the meaning of APR. We are concerned that such a distortion could confuse consumers if they are presented with both a TILA APR, as required by federal law, and a rate that includes certain ancillary products in the finance charge. This situation would not provide the consumer with a clear understanding of the loan contract and cost of credit, which undermines the central purpose of TILA.

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<sup>1</sup> Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

Five decades of TILA jurisprudence and regulatory guidance have led to confidence in the term “APR”— what it means, what is included, and what is not included— and withdrawing the Department’s 1976 Ruling and deeming the cost of certain ancillary products to be “loan finance charges” would undermine that confidence and distort the meaning of APR.

Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact us at 202-469-3181 or [mkownacki@afsamail.org](mailto:mkownacki@afsamail.org).

Sincerely,



Danielle Fagre Arlowe  
Senior Vice President, State Government Affairs  
American Financial Services Association



Matthew Kownacki  
Manager, State Research and Policy  
American Financial Services Association