209 CMR 26.00: SMALL LOANS REGULATORY BOARD

Section

The Small Loans Regulatory Board, pursuant to the authority of M.G.L, c. 140, § 100, as amended, and upon the Petition of the Massachusetts Consumer Finance Association, and after notice, held public hearings on eleven days commencing on March 10, 1980 and terminating on July 23, 1980, in the course of which it received evidence and exhibits and the conclusion of the formal hearing briefs were submitted by interested parties.

The Board has investigated the economic conditions and other factors relating to and affecting the business of making loans under M.G.L. c. 140, §§ 96 through 113, as amended, inclusive, and has ascertained the pertinent facts necessary to determine what maximum rates of charge for interest should be permitted on regulated loans of ~~$3,000~~ $6,000 or less.

~~The Board ascertains the following to be the pertinent facts:~~

~~26.01: The Business to be Regulated~~

~~As of December 31, 1979, the licensed lenders engaged in making loans of $3,000 or less held 172 licenses as opposed to 266 in 1975. The chains wrote 97% of the loans receivable and single office companies wrote the remaining 3%.~~

~~We find that the 1979 composite figures for all licensed lenders which have been compiled by the Division of Banks and Loan Agencies from Annual Reports filed by all licensed lenders is the latest statistical description of the industry.~~

~~On December 31, 1979, there were 144,395 regulated loans outstanding with a face value of $192,044,511.20 which includes unearned charges of $34,703,639.06. During the calendar year 1979, 107,835 loans were made amounting to $135,453,323.85 which is less unearned charges. This compares with figures for 1975 of 128,453 loans made for $150,621,276.99.~~

~~26.02: Earnings of Presently Regulated Business~~

~~Public Document No. 95 prepared by the Division of Banks and Loan Agencies as of December 31, 1979 discloses that earnings of the presently regulated business of making loans of $3,000 or less continues to decline. The trend has been noted previous to the Rate Order of 1976 and has continued. One or two large chains have shown small profits. We find that no companies engaged in the small loan business in Massachusetts are receiving sufficient earnings on their assets. We comment that no overall rate increase has been granted since 1960.~~

~~26.03: Expansion of the Business~~

~~Consumer lending both nationally and in Massachusetts has shown continued growth. Federal Reserve Bank reports disclose the trend nationally and reports of Massachusetts banks disclose the same trend locally. While consumer lending reports include other than regulated loans, we are convinced that adequate credit facilities for $3,000 and under loans are available to consumers. Increased use of credit cards, continued expansion of credit unions and other banking facilities and services coupled with the complete lack of consumer testimony to the contrary lead us to this conclusion.~~

~~26.03: continued~~

~~Consumer lending reports gathered by the Division of Banks and Loan Agencies and published periodically in newspapers throughout the Commonwealth disclose that on $2,000 loans, unsecured, banks and credit unions have consistently offered them at rates substantially under the 18% rate while finance companies have consistently offered the same loans at or near the 18% limit. This leads us to conclude that consumer fiance companies are affected by competition from alternate lenders and will continue to lose their share of the market.~~

~~26.04: Statutory Standards~~

~~(1) Assets. The assets as shown in Exhibit A of P.D. 95 consist of net receivables, cash, real estate, furniture and fixtures, deferred charges and other assets plus a home office allocation, less compensating balances equaling $157,981,987. We believe for purposes of rate setting the asset basis of Professor Campen as set forth in Table 4 of Exhibit 36 of $157,079,000 is more realistic and we do adopt that basis.~~

~~(2) Fair and Reasonable Rate of Return. We have determined from testimony offered and considered that to induce efficiently managed capital to be invested a five to one debt to equity ratio should be encouraged and that an opportunity for a 13% return on equity should be provided. We have further determined that borrowed funds will cost 9.65% and that taxes will be 46% of net income. Operating expenses and bad debts were taken from P.D. 95.~~

~~26.05: Conclusions - Maximum Rate of Charge~~

~~An analysis of the model described above with the data supplied in P.D. 95 as of December 31, 1979 reveals sufficient income has not been earned by licensed lenders. A total gross revenue of $37,762,962 is needed. With deductions of other income, delinquency charges and credit insurance of $1,488,490 a total of $36,274,472 should be raised from a rate of charge and the administrative fees. We find that a maximum rate of return of 23% plus a $20 administrative fee could result in income of $36,448,988.~~

~~We reject the petitioner's request for step or graduated rates. We find the borrower can better understand one rate. We have determined that we have no authority to tie the rate to an index.~~

~~Having granted a substantial increase in maximum rate the Board is concerned with encouraging refinancing at the higher rate. Refinancing will not be allowed at the higher rate unless the borrowers are advised of alternatives available to them.~~

26.0~~6~~1: Rate Order

We hereby promulgate the following order:

(1) All persons subject, in whole or in part, to the provisions of M.G.L. c. 140, §§ 96 through 113, may charge, contract for, and receive the following maximum interest charges for loans not in excess of ~~$3,000~~$6,000:

(a) 23% per annum of the unpaid balances of the amount financed calculated according to the actuarial method plus an administrative fee of $20 upon the granting of a loan. An administrative fee is not permitted to be assessed to a borrower more than once during any 12 month period.

(b) Outstanding loans contracted at the previous rate may be refinanced at higher rates permitted under this order only after the borrower is furnished with written notice of their legal right to have two separate loans and disclosing the additional finance charge incurred in consolidating the outstanding loan with a new loan. Receipt of this notice must be acknowledged in writing by the borrower.

(2) Such maximum interest charges shall not exceed 6% per annum after the termination of one year after maturity of the loan.

26.06: continued

(3) Interest charges shall be computed on the actual unpaid principal balances for the actual time outstanding or may be pre-computed as authorized by this order. For the purpose of computation, whether at the maximum rate or less, a month shall be that period of time from any date in a month to the corresponding date in the next month and if there is no such corresponding date then to the last day of the said next month, and a day shall be considered 1/30 of a month when computation is made for a fraction of a month.

(4) When the loan contract requires repayment in substantially equal and consecutive monthly installments of principal and interest charges combined, the interest charges may be pre-computed at the agreed monthly rate, which rate shall not be in excess of that established by this Board and in effect at the time the loan is made, on scheduled monthly principal balances and added to the principal of the loan, and every payment may be applied to the combined total of principal and pre-computed interest charges until the contract is fully paid. The portion of the pre-computed interest charge applicable to any particular monthly installment period shall bear the same ratio to the total pre-computed interest charge as the balance scheduled to be outstanding during that monthly period bears to the sum of all monthly balances scheduled by the original contract of loan. Such pre-computed interest charge shall be subject to the following adjustments and such adjustments shall be deemed to be within the limitation on interest charges as established by this Board:

(a) The first installment date may be not more than one month and fifteen days after the date of the loan. If such date is more than one month after the date of the loan, the licensee may charge and collect an extension charge not exceeding 1/30 of the portion of the finance charge applicable to a first installment period of one month for each day that the first installment date is deferred beyond one month. Such extension charge may be collected at the time of payment of the first installment or at any time thereafter. If the first installment date is less than one month after the date of the loan, the licensee shall, on the date of the loan, credit against the finance charge an amount not less than 1/30 of the portion of the finance charge applicable to a first installment period of one month for each day the first installment date is less than one month.

(b) If the loan contract is prepaid in full by cash, a new loan, or refinancing of such loan before the final installment date, the borrower shall receive a refund or credit. Any such refund or credit shall represent at least as great a proportion of the total amount of the pre-computed interest as the sum of the scheduled periodic total of payments after the date of prepayment, as the date of prepayment is fixed below, bears to the sum of the scheduled periodic total of payments under the schedule of installments in the original contract. Such computation of refund or credit shall be made under the so-called sum of the digits method. If the prepayment is made other than on an installment due date it shall be deemed to have been made on the first installment due date if the prepayment is before that date, and in any other case it shall be deemed to have been made on the next preceding or next succeeding installment due date, whichever is nearer to the date of prepayment.

(c) In the event of a default of more than ten days in the payment in full of any scheduled installment, the licensee may charge and collect a default charge in an amount not in excess of 5% of each installment in default or $5.00, whichever is less. Said charge may not be collected more than once for the same default and may be collected at the time of such default or at any time thereafter. Such charge may be taken out of any payment received after a default occurs, provided, that if such deduction results in the default of a subsequent installment, no charge shall be made for such subsequent default.

(d) A licensee may, by agreement with the borrower, defer payment of all wholly unpaid installments one or more full months and may charge and collect a deferment charge which shall not exceed the portion of the finance charge applicable under the original contract of loan to the first month of the deferment period multiplied by the number of months in said period. The deferment period is the month or months in which no scheduled payment has been made or in which no payment is to be required by reason of the deferment. Such deferment charge may be collected at the time of deferment or at any time thereafter. No deferment charge shall be made on any installment for which a default charge has been made unless the default charge on such installment is refunded in full. Except as provided hereinafter a deferment agreement

26.06: continued

1. shall be in writing and signed by the parties;
2. shall incorporate by reference the loan agreement to which the deferment agreement applies;
3. shall state the terms of the agreement;
4. may provide that the borrower shall pay the additional cost, if any, for insurance coverage provided in the deferment; and
5. shall clearly set forth the facts of any deferment charge, the amount deferred, the date to which or the time period for which payment is deferred, the amount of the charge for the deferment, and the amount for the additional cost of insurance, if any, resulting from the deferment. If the deferment agreement extends the due date of less than three installments, it need not be in writing, but it must have the specific authorization of the borrower. If a loan is prepaid in full during a deferment period, the borrower shall receive, in addition to the refund required under 209 CMR 26.0~~6~~1(4)(b) a refund of that portion of the deferment charge applicable to any unexpired months of the deferment period. In computing any required refund or credit, the portion of the finance charge applicable to each installment period following the deferment period and prior to the extended maturity shall remain the same as that applicable to such periods under the original contract of loan.

REGULATORY AUTHORITY

209 CMR 26.00: M.G.L. c. 140, §§ 96 through 113.