



§ 941. | § 942. | § 943. | § 944. | § 945. | § 946. | § 947. | § 948. | § 949. | § 950. | § 951.
| § 952. | § 953. | § 954. | § 955. | § 956.

TITLE 5

Banking

Banks and Trust Companies

CHAPTER 9. REGULATIONS GOVERNING BUSINESS OF BANKS AND TRUST COMPANIES

Subchapter II. Bank Revolving Credit

§ 941. Definitions.

As used in this subchapter:

(1) "Bank" means any bank or bank and trust company organized under this title or any other law or laws of this State, any depository institution organized under the authority of the United States and having its principal place of business in this State and any foreign bank agency.

(2) "Borrower" means any corporation, partnership, association, government or governmental subdivision or agency, trust, individual or other entity.

(3) "Individual borrower" means a borrower who is a natural person borrowing for personal, household or family purposes.

(4) "Revolving credit plan" or "plan" means a plan contemplating the extension of credit under an account governed by an agreement between a bank and a borrower pursuant to which:

a. The bank permits the borrower and, if the agreement governing the plan so provides, persons acting on behalf of or with authorization from the borrower, from time to

time to make purchases and/or to obtain loans by use of a credit device;

b. The amounts of such purchases and loans are charged to the borrower's account under the revolving credit plan;

c. The borrower is required to pay the bank the amounts of all purchases and loans charged to such borrower's account under the plan but has the privilege of paying such amounts outstanding from time to time in full or otherwise in accordance with the agreement governing the plan; and

d. Interest may be charged and collected by the bank from time to time on the outstanding unpaid indebtedness under such plan.

(5) "Purchases" mean payments for property of whatever nature, real or personal, tangible or intangible, and payments for services, licenses, taxes, official fees, fines, private or governmental obligations, or any other thing of value.

(6) "Loans" mean cash advances or loans to be paid to or for the account of the borrower.

(7) "Credit device" means any card, check, identification code or other means of identification contemplated by the agreement governing the plan.

(8) "Outstanding unpaid indebtedness" means on any day an amount not in excess of the total amount of purchases and loans charged to the borrower's account under the plan which is outstanding and unpaid at the end of the day, after adding the aggregate amount of any new purchases and loans charged to the account as of that day and deducting the aggregate amount of any payments and credits applied to that indebtedness as of that day and, if the agreement providing the plan so provides, may include the amount of any periodic interest, interest charges and other charges permitted by this subchapter, including late or delinquency charges, which have accrued in the account and which are unpaid at the end of the day. Purchases and loans may be included in outstanding unpaid indebtedness as of such time as may be specified in the agreement governing the plan. (63 Del. Laws, c. 2, § 4; 65 Del.

Laws, c. 444, § 3; 66 Del. Laws, c. 283, § 2; 71 Del. Laws, c. 19, § 44; 72 Del. Laws, c. 15, § 10.)

§ 942. Extension of credit.

Any bank may, subject to any limitations on lending authorities contained in its charter or otherwise imposed by law and subject to the other provisions of this subchapter, offer and extend credit under a revolving credit plan to a borrower and in connection therewith may charge and collect periodic interest, interest charges and other charges permitted by this subchapter and may take such security as collateral in connection therewith as may be acceptable to the bank. Without limitation of the foregoing, credit may be extended under a revolving credit plan by a bank's acquisition of obligations arising out of the honoring by a merchant, a bank or other financial institution (whether chartered or organized under the laws of this or any other state, the District of Columbia, the United States or any district, territory or possession of the United States, or any foreign country), or a government or governmental subdivision or agency of a credit device made available to a borrower under a plan, whether directly or indirectly by means of telephone, point of sale terminal, automated teller machine or other electronic or similar device or through the mails. (63 Del. Laws, c. 2, § 4; 66 Del. Laws, c. 283, § 3.)

§ 943. Periodic interest.

A bank may charge and collect periodic interest under a revolving credit plan on outstanding unpaid indebtedness in the borrower's account under the plan at such daily, weekly, monthly, annual or other periodic percentage rate or rates as the agreement governing the plan provides or as established in the manner provided in the agreement governing the plan. Periodic interest may be calculated using an average daily balance, 2-cycle average daily balance, adjusted balance or previous balance method or using any other balance computation method provided for in the agreement governing the plan. Periodic billing cycles may be established in such manner and shall have such duration as may be specified in the agreement governing the plan. (63 Del. Laws, c. 2, § 4; 66 Del. Laws, c. 283, §§ 4, 5; 71 Del. Laws, c. 19, § 45.)

§ 944. Variable rates.

If the agreement governing the revolving credit plan so provides, the periodic percentage rate or rates of interest under such plan may vary in accordance with a schedule or formula. Such periodic percentage rate or rates may vary from time to time as the rate determined in accordance with such schedule or formula varies and such periodic percentage rate or rates, as so varied, may be made applicable to all or any part of outstanding unpaid indebtedness under the plan on or after the first day of the billing cycle that contains the effective date of such variation including any such indebtedness arising out of purchases made or loans obtained prior to such variation in the periodic percentage rate or rates. Without limitation, a permissible schedule or formula hereunder may include provision in the agreement governing the plan for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid indebtedness, whether by variation of the then applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the happening of any event or circumstance specified in the plan, which event or circumstance may include the failure of the borrower to perform in accordance with the terms of the plan. (63 Del. Laws, c. 2, § 4; 68 Del. Laws, c. 303, § 21; 71 Del. Laws, c. 19, § 46.)

§ 945. Interest charges.

(a) In addition to or in lieu of interest at a periodic percentage rate or rates as provided in §§ 943 and 944 of this title, a bank may, if the agreement governing the revolving credit plan so provides, charge and collect, as interest, in such manner or form as the plan may provide, 1 or more of the following:

(1) A daily, weekly, monthly, annual or other periodic charge in such amount or amounts as the agreement may provide for the privileges made available to the borrower under the plan;

(2) A transaction charge or charges in such amount or amounts as the agreement may provide for each separate purchase or loan under the plan;

(3) A minimum charge for each daily, weekly, monthly, annual or other scheduled billing period under the plan during

any portion of which there is an outstanding unpaid indebtedness under the plan;

(4) Reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the bank or its agents in connection with the plan, or other reasonable fees incident to the application for and the opening, administration and termination of a plan including, without limitation, commitment, application and processing fees, official fees and taxes, costs incurred by reason of examination of title, inspection, appraisal, recording, mortgage satisfaction or other formal acts necessary or appropriate to the security for the plan, and filing fees;

(5) Returned payment charges or charges imposed for the return of a draft drawn on a revolving credit plan evidencing an extension of credit under such plan;

(6) Documentary evidence charges;

(7) Stop payment fees;

(8) Overlimit charges;

(9) Automated teller machine charges or similar electronic or interchange fees or charges;

(10) Prepayment charges authorized under subsection (b) of this section; and

(11) Subject to any limitations contained in this subchapter, such other fees and charges as are set forth in the agreement governing the plan.

(b) An individual borrower may pay the outstanding unpaid indebtedness charged to the borrower's account under a plan in full at any time. Except for a charge imposed to terminate a plan if the agreement governing the plan so provides, a bank may not impose any prepayment charge in connection with the payment of outstanding unpaid indebtedness in full by an individual borrower. A bank may charge and collect any prepayment penalty or charge specified in the agreement governing the plan in connection with the payoff and termination of a plan that is secured by a real estate mortgage.

The terms of prepayment of the outstanding unpaid indebtedness relating to a revolving credit plan involving a borrower other than an individual borrower shall be as the bank and the borrower may agree.

(c) No charges assessed by a bank in accordance with this section shall be deemed void as a penalty or otherwise unenforceable under any statute or the common law. (63 Del. Laws, c. 2, § 4; 66 Del. Laws, c. 283, §§ 6-8; 70 Del. Laws, c. 327, §§ 25, 26; 71 Del. Laws, c. 19, §§ 47, 48.)

§ 946. Terms for indebtedness.

A bank may, if the agreement governing a revolving credit plan so provides, impose different terms (including, without limitation, the terms governing the periodic percentage rate or rates used to calculate interest, the method of computing the outstanding unpaid indebtedness to which such rate or rates are applied, the amounts of other charges and the applicable installment repayment schedule) in respect to indebtedness arising out of purchases and indebtedness arising out of loans made under the plan. (63 Del. Laws, c. 2, § 4.)

§ 947. Overdraft accounts.

If credit under a revolving credit plan is offered and extended in connection with a demand deposit account or other transaction account maintained by the borrower with the bank pursuant to an agreement or arrangement whereby the bank agrees to honor checks, drafts or other debits to such account, which if paid would create or increase a negative balance in such account, by making extensions of credit to such borrower under such revolving credit plan, any charges customarily imposed by the bank under the terms governing such demand deposit or other transaction account in the absence of any associated revolving credit plan (including, without limitation, check charges, monthly maintenance charges, checkbook charges, charges for checks drawn on funds in excess of an available line of credit and other similar charges) may continue to be imposed on such account without specific reference thereto or incorporation thereof by reference in the agreement governing the revolving credit plan and the amount of any such charge, to the extent the balance in such demand deposit or other transaction account is insufficient to pay such a charge,

may be charged to the borrower's account under the plan as a loan thereunder and may be included in outstanding unpaid indebtedness in accordance with the terms of the agreement governing such revolving credit plan. (63 Del. Laws, c. 2, § 4.)

§ 948. Omitted installments.

A bank may at any time and from time to time unilaterally extend to a borrower under a revolving credit plan the option of omitting monthly installments. (63 Del. Laws, c. 2, § 4.)

§ 949. Insurance.

(a) A bank may request but not require an individual borrower to be insured in respect of a revolving credit plan under a life, health, accident, health and accident or other credit or other permissible insurance policy, whether group or individual, and in the event that an individual borrower's outstanding unpaid indebtedness under the plan is secured by an interest in real or personal property, a bank may require the borrower to obtain insurance, from an insurer acceptable to the bank, against loss of or damage to such property, or against the liability arising out of the ownership or use of the property and may finance the premiums for such insurance.

(b) In the case of a borrower borrowing under a revolving credit plan for other than personal, household or family purposes, a bank may require the borrower to obtain insurance, from an insurer acceptable to the bank, under a life, health, accident, health and accident or other credit or other permissible insurance policy, whether group or individual, and in the event that the borrower's outstanding unpaid indebtedness under the plan is secured by an interest in real or personal property, the bank may require the borrower to obtain insurance, from an insurer acceptable to the bank, against loss of or damage to such property, or against the liability arising out of the ownership or use of the property and may finance the premiums for such insurance.

(c) The offer and placement of insurance under this section shall be subject in all respects to the applicable provisions of Title 18. (63 Del. Laws, c. 2, § 4.)

§ 950. Delinquent installments.

(a) If the agreement governing a revolving credit plan so provides, a bank may impose, as interest, a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the plan which are in default; provided however, that no more than 1 such late or delinquency charge may be imposed in respect of any single such installment payment or portion thereof, regardless of the period during which it remains in default; and provided further, however, that for the purpose only of the preceding proviso all payments by the borrower shall be deemed to be applied to satisfaction of installment payments in the order in which they become due. Nothing contained in this section shall limit, restrict or otherwise affect the right of a bank under and pursuant to §§ 943 and 944 of this title to change the periodic percentage rate or rates of interest applicable to the revolving credit plan between the bank and a borrower upon the occurrence of a delinquency or default or other failure of the borrower to perform in accordance with the terms of the plan.

(b) No charges assessed by a bank in accordance with this section shall be deemed void as a penalty or otherwise unenforceable under any statute or the common law. (63 Del. Laws, c. 2, § 4; 66 Del. Laws, c. 283, § 9; 68 Del. Laws, c. 303, § 22; 70 Del. Laws, c. 327, § 27; 71 Del. Laws, c. 19, § 49.)

§ 951. Attorney's fees; costs.

In the event a borrower defaults under the terms of a plan, the bank may, if the borrower's account is referred to an attorney (not a regularly salaried employee of the bank) or to a third party for collection and if the agreement governing the revolving credit plan so provides, charge and collect from the borrower a reasonable attorney's fee. In addition, following a borrower's default, the bank may, if the agreement governing the plan so provides, recover from the borrower all court, alternative dispute resolution or other collection costs (including, without limitation, fees and charges of collection agencies) actually incurred by the bank. (63 Del. Laws, c. 2, § 4; 66 Del. Laws, c. 283, § 10; 72 Del. Laws, c. 15, § 11.)

§ 952. Amendment of agreement.

(a) Unless the agreement governing a revolving credit plan otherwise provides, a bank may at any time and from time to

time amend such agreement in any respect, whether or not the amendment or the subject of the amendment was originally contemplated or addressed by the parties or is integral to the relationship between the parties. Without limiting the foregoing, such amendment may change terms by the addition of new terms or by the deletion or modification of existing terms, whether relating to plan benefits or features, the rate or rates of periodic interest, the manner of calculating periodic interest or outstanding unpaid indebtedness, variable schedules or formulas, interest charges, fees, collateral requirements, methods for obtaining or repaying extensions of credit, attorney's fees, plan termination, the manner for amending the terms of the agreement, arbitration or other alternative dispute resolution mechanisms, or other matters of any kind whatsoever. Unless the agreement governing a revolving credit plan otherwise expressly provides, any amendment may, on and after the date upon which it becomes effective as to a particular borrower, apply to all then outstanding unpaid indebtedness in the borrower's account under the plan, including any such indebtedness that arose prior to the effective date of the amendment. An agreement governing a revolving credit plan may be amended pursuant to this section regardless of whether the plan is active or inactive or whether additional borrowings are available thereunder. Any amendment that does not increase the rate or rates of periodic interest charged by a bank to a borrower under § 943 or § 944 of this title may become effective as determined by the bank, subject to compliance by the bank with any applicable notice requirements under the Truth in Lending Act (15 U.S.C. §§ 1601 et seq.), and the regulations promulgated thereunder, as in effect from time to time. Any notice of an amendment sent by the bank may be included in the same envelope with a periodic statement or as part of the periodic statement or in other materials sent to the borrower.

(b)(1) If an amendment increases the rate or rates of periodic interest charged by a bank to a borrower under § 943 or § 944 of this title, the bank shall mail or deliver to the borrower, at least 15 days before the effective date of the amendment, a clear and conspicuous written notice that shall describe the amendment and shall also set forth the effective date thereof and any applicable information required to be disclosed pursuant to the following provisions of this section.

(2) Any amendment that increases the rate or rates of periodic interest charged by a bank to a borrower under § 943 or § 944 of this title may become effective as to a particular borrower if the borrower does not, within 15 days of the earlier of the mailing or delivery of the written notice of the amendment (or such longer period as may be established by the bank), furnish written notice to the bank that the borrower does not agree to accept such amendment. The notice from the bank shall set forth the address to which a borrower may send notice of the borrower's election not to accept the amendment and shall include a statement that, absent the furnishing of notice to the bank of nonacceptance within the referenced 15 day (or longer) time period, the amendment will become effective and apply to such borrower. As a condition to the effectiveness of any notice that a borrower does not accept such amendment, the bank may require the borrower to return to it all credit devices. If, after 15 days from the mailing or delivery by the bank of a notice of an amendment (or such longer period as may have been established by the bank as referenced above), a borrower uses a plan by making a purchase or obtaining a loan, notwithstanding that the borrower has prior to such use furnished the bank notice that the borrower does not accept an amendment, the amendment may be deemed by the bank to have been accepted and may become effective as to the borrower as of the date that such amendment would have become effective but for the furnishing of notice by the borrower (or as of any later date selected by the bank).

(3) Any amendment that increases the rate or rates of periodic interest charged by a bank to a borrower under § 943 or § 944 of this title may, in lieu of the procedure referenced in paragraph (2) of this subsection, become effective as to a particular borrower if the borrower uses the plan after a date specified in the written notice of the amendment that is at least 15 days after the mailing or delivery of the notice (but that need not be the date the amendment becomes effective) by making a purchase or obtaining a loan; provided, that the notice from the bank includes a statement that the described usage after the referenced date will constitute the borrower's acceptance of the amendment.

(4) Any borrower who furnishes timely notice electing not to accept an amendment in accordance with the procedures referenced in paragraph (2) of this subsection and who does not

subsequently use the plan, or who fails to use such borrower's plan as referenced in paragraph (3) of this subsection, shall be permitted to pay the outstanding unpaid indebtedness in such borrower's account under the plan in accordance with the rate or rates of periodic interest charged by a bank to a borrower under § 943 or § 944 of this title without giving effect to the amendment; provided however, that the bank may convert the borrower's account to a closed end credit account as governed by subchapter III of this chapter, on credit terms substantially similar to those set forth in the then-existing agreement governing the borrower's plan.

(5) Notwithstanding the other provisions of this subsection, no notice required by this subsection of an amendment of an agreement governing a revolving credit plan shall be required, and any amendment may become effective as of any date agreed upon between a bank and a borrower, with respect to any amendment that is agreed upon between the bank and the borrower, either orally or in writing.

(c) For purposes of this section, the following are examples of amendments that shall not be deemed to increase the rate or rates of periodic interest charged by a bank to a borrower under § 943 or § 944 of this title:

(1) A decrease or increase in the required number or amount of periodic installment payments;

(2) Any change to a plan that increases the rate or rates in effect immediately prior to the change by less than 1/4 of 1 percentage point per annum; provided that a bank may not make more than one such change in reliance on this paragraph with respect to a plan within any 12-month period;

(3)a. A change in the schedule or formula used under a variable rate plan under § 944 of this title that varies the determination date of the applicable rate, the time period for which the applicable rate will apply or the effective date of any variation of the rate, or any other similar change, or

b. Any other change in the schedule or formula used under a variable rate plan under § 944 of this title; provided, that the initial interest rate that would result from any such change under this paragraph (3), as determined on the effective

date of the change or, if notice of the change is mailed or delivered to the borrower prior to the effective date, as of any date within 60 days before mailing or delivery of such notice, will not be an increase from the rate in effect on such date under the existing schedule or formula;

(4) A change from a variable rate plan to a fixed rate, or from a fixed rate to a variable rate plan so long as the initial rate that would result from such a change, as determined on the effective date of the change, or if the notice of the change is mailed or delivered to the borrower prior to the effective date, as of any date within 60 days before mailing or delivery of such notice, will not be an increase from the rate in effect on such date under the existing plan;

(5) A change from a daily periodic rate to a periodic rate other than daily or from a periodic rate other than daily to a daily periodic rate; and

(6) A change in the method of determining the outstanding unpaid indebtedness upon which periodic interest is calculated (including, without limitation, a change with respect to the date by which or the time period within which a new balance or any portion thereof must be paid to avoid additional periodic interest).

(d) The procedures for amendment by a bank of the terms of a plan to which a borrower other than an individual borrower is a party may, in lieu of the foregoing provisions of this section, be as the agreement governing the plan may otherwise provide. (63 Del. Laws, c. 2, § 4; 66 Del. Laws, c.283 § 11; 66 Del. Laws, c. 403, § 1; 70 Del. Laws, c. 217, § 1; 71 Del. Laws, c. 19, § 50; 72 Del. Laws, c. 15, §§ 12, 13.)

§ 953. Application of other state laws.

Any other law of this State limiting the rate or amount of interest, discount, points, finance charges, service charges or other charges which may be charged, taken, collected, received or reserved shall not apply to extensions of credit under a revolving credit plan operated in accordance with this subchapter. (63 Del. Laws, c. 2, § 4.)

§ 954. Nonexclusivity; captions.

(a) The provisions of this subchapter are not exclusive and a bank may at its option elect to extend credit either pursuant to this subchapter or as otherwise permitted by applicable law.

(b) Section headings and captions contained in this subchapter are inserted only as a matter of convenience and for reference and do not, and shall not be construed to, define, limit, extend or describe the scope of this subchapter or the meaning or intent of any section hereof. (63 Del. Laws, c. 2, § 4.)

§ 955. Materiality of terms.

All terms, conditions and other provisions of and relating to a plan as contained in this subchapter or in the agreement governing the plan (other than those which are interest under this subchapter), including, without limitation, provisions relating to the method of determining the outstanding unpaid indebtedness on which interest is applied, time periods within which interest charges may be avoided, reasons for default and the right to cure any default, rights to accelerate, account cancellation, choice of law, change in terms requirements, rights to charge and collect attorney's fees, court and collection costs and the compounding of periodic interest or interest charges, shall be and hereby are deemed to be material to the determination of interest applicable to a plan under Delaware law, under the most favored lender doctrine, and under § 85 of the National Bank Act (12 U.S.C. § 85) or § 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. § 1831d). (66 Del. Laws, c. 283, § 21.)

§ 956. Governing law.

A revolving credit plan between a bank and an individual borrower shall be governed by the laws of this State. (66 Del. Laws, c. 283, § 22.)

NOTICE: The Delaware Code appearing on this site was prepared by the Division of Research of Legislative Council of the General Assembly with the assistance of the Government Information Center, under the supervision of the Delaware Code Revisors and the editorial staff of LexisNexis, includes all acts up to and including 76 Del. Laws, c. 312, effective July 3, 2008.

DISCLAIMER: Please Note: With respect to the Delaware Code documents available from this site or server, neither the State of Delaware nor any of its employees, makes any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately-owned

rights. This information is provided for informational purposes only. Please seek legal counsel for help on interpretation of individual statutes.