

## Insights

### Changes are Coming to the Indiana Consumer Credit Code - Are you Ready?

---

June 15, 2020

By: Brett J. Ashton

Earlier this year the Indiana General Assembly passed, and Indiana Governor Eric Holcomb signed into law, Senate Enrolled Act 395 ("SEA 395") amending several provisions of the Indiana Uniform Consumer Credit Code (the "IUCCC" or the "Code"). For some financial institutions the impact of these changes will be negligible, but for others, particularly those who have historically used precomputed interest to calculate their loans, SEA 395 represents a significant change to their consumer lending operations in Indiana.

SEA 395 becomes effective on July 1, 2020 and makes the following key changes to the IUCCC:

- Prohibits the use of precomputed interest on Consumer Credit Sales, Consumer Loans, and Supervised Loans;
- Allows a Consumer Credit Sale to include a non-refundable prepaid finance charge<sup>[1]</sup> that is excluded from any calculation of maximum permissible credit service charge under the Code of up to \$75 if the amount financed does not exceed \$2,000; up to \$150 if the amount financed is more than \$2,000 but does not exceed \$4,000; or up to \$200 if the amount financed is more than \$4,000. Previously lenders were not permitted to charge any prepaid finance charges on a Consumer Credit Sale without including these fees in the calculation of permissible credit service charge;
  - Allows a depository institution to charge a prepaid finance charge in excess of the limitations contained in the Code provided they include any overage in the calculation of credit service charge at closing for purposes of ensuring compliance with the maximum permissible credit service charges under the IUCCC;
  - Prohibits a non-depository from exceeding the newly created prepaid finance charge limitations, and requires any overage to be refunded to the consumer;
- Allows a Consumer Loan or a Supervised Loan to include a non-refundable prepaid finance charge that is excluded from any calculation of maximum permissible finance charge under the Code of up to \$75 if the principal loan amount does not exceed \$2,000; up to \$150 if the principal loan amount is more than \$2,000 but does not exceed \$4,000; or up to \$200 if the principal loan amount is more than \$4,000. Previously lenders were permitted to charge a prepaid finance charge on a Consumer Loan or a Supervised Loan of up to \$50 without including these fees in the calculation of permissible finance charge;

- Allows a depository institution to continue to charge a prepaid finance charge in excess of the limitations contained in the Code (including these new fees created by SEA 395) provided they include any overage in the calculation of finance charge at closing for purposes of ensuring compliance with the maximum permissible finance charges under the Code;
- Prohibits a non-depository from exceeding the newly created prepaid finance charge limitations, and requires any overage to be refunded to the consumer. Previously, non-depositories could assess any charges they wished on a Consumer Loan or Supervised Loan, provided they did so at closing and included such fees in their calculation of a maximum permissible finance charge; and
- Provides the Director of the Department of Financial Institutions broad latitude to conform any Credit Service Charges or Finance Charges determined to be an attempt to circumvent the limitations of the Code to the permitted charges under the IUCCC, and require a refund to the consumer of any overages.

While the number of changes to the IUCCC contained in SEA 395 are few, the impact will be significant on some lenders, particularly sub-prime non-depositories who until now have historically only offered loans calculated using precomputed interest, and depository lenders engaged in indirect auto finance activities. We have received several questions from clients since the enactment of SEA 395, the more common of which we will share below:

**Common Questions:**

Q.1. Can I still make a Consumer Credit Sale, a Consumer Loan, or a Supervised Loan, using precomputed interest if I don't take advantage of the new higher prepaid finance charges provided by SEA 395?

No. SEA 395 eliminated the use of all precomputed interest in the IUCCC, effective July 1, 2020. This prohibition applies regardless of the fees and charges you may decide to assess.

Q.2. Can I still take a deferral fee even if I am making a Consumer Credit Sale, a Consumer Loan, or a Supervised Loan using simple interest?

No. SEA 395 eliminated all reference to deferral charges in the IUCCC.

Q.3. Can I take a prepaid finance charge on a Consumer Credit Sale, a Consumer Loan, or a Supervised Loan, of more than the amount provided for in SEA 395 if I am a depository?

Yes, but any amount over the permissible amount provided for in SEA 395 will not be considered earned at closing, and may have to be refunded if the borrower pays off early. You must include any amount over the permissible prepaid finance charge in the closing statement as part of the finance charge for purposes of determining compliance with the maximum permissible finance charges under the IUCCC. If a borrower repays early you will need to ensure that you refund any unearned finance charges on a pro-rata basis.

Q.4. Can I still take a prepaid finance charge of more than the permissible amount under the Code on an indirect auto loan if I am a depository institution?

No. If your indirect auto loan program provides that the auto dealer originates the loan, and then subsequently assign that loan to your depository institution, the auto dealer will be considered the originating institution, and as such subject to the prohibition against exceeding the permitted prepaid finance limitations in the Code.

Q.5. Are the higher prepaid finance charges allowed by SEA 395 included, or excluded for purposes of calculating compliance with the criminal loan sharking provisions of the Indiana criminal code?

The prepaid finance charges are included. SEA 395 did not amend the application of Indiana's criminal loan sharking provisions<sup>[2]</sup> which provide, *"A person who, in exchange for the loan of any property, knowingly or intentionally receives or contracts to receive from another person any consideration, at a rate greater than two (2) times the rate specified in IC 24-4.5-3-508(2)(a)(i), commits loansharking, a Level 6 felony. However, loansharking is a Level 5 felony if force or the threat of force is used to collect or to attempt to collect any of the property loaned or any of the consideration for the loan."*<sup>[3]</sup>

Q.6. If I refinance a loan on July 1<sup>st</sup> that was made prior to the new law becoming effective, can I charge the higher prepaid finance charges created by SEA 395?

Yes, provided the loan you are refinancing was not originated within the past three months, or you have not already refinanced the loan more than twice in the past 12 months, you can charge the new higher fee.

The Indiana Department of Financial Institutions provided further guidance for lender's implementing SEA 395 with their June 15, 2020 *Advisory Letter 2020-01* and a *"Questions and Answers re: SEA 395"* that are available by clicking [here](#).

Krieg DeVault's Financial Institutions team has extensive experience in counseling clients on issues surrounding the IUCCC, and is available to provide assistance to lenders seeking further guidance.

[1] The IUCCC refers to a what is often called a loan origination fee in other jurisdictions as a "prepaid finance charge."

[2] Ind. Code § 35-45-7

[3] However, SEA 395 did clarify an earlier DFI position that for purposes of calculating compliance with the Indiana loan sharking statute, any prepaid finance charges that are excluded for purposes of calculation of maximum rate under the IUCCC, are included in the calculation of finance charge.