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**CONSUMER CREDIT DIVISION
ADVISORY LETTER 2019-01
June 27, 2019**

TO: Indiana state-chartered banks, Indiana state-chartered credit unions, and creditors who engage in consumer credit/leases under chapter 2, or consumer loans under chapter 3 of the IUCCC (collectively, "Creditors")

FROM: Lyndsay H. Miller, General Counsel & Acting Deputy Director of Consumer Credit

RE: New legislation updating permitted delinquency charges

This Advisory is being issued by the Consumer Credit Division of the Indiana Department of Financial Institutions. Certain legislative changes have prompted questions from Creditors regarding the new delinquency charges permitted to be contracted for after July 1, 2019. The following is an overview regarding the Department's expectations concerning treatment of delinquency charges.

2019 legislative change and laws affected

Currently, and until June 30, 2019, Indiana Code § 24-4.5-2-203.5 and Indiana Code § 24-4.5-3-203.5 permit a \$5 delinquency charge to be contracted for; this dollar amount is subject to change, and is currently indexed to permit a maximum delinquency charge of \$19. These statutes also provide that, if the parties provide by contract for a delinquency charge that is subject to change, the seller shall disclose in the contract that the amount of the delinquency charge is subject to change under Indiana Code § 24-4.5-1-106, the referenced indexing statute.

HB 1136 makes changes to the authorized delinquency charges for consumer credit sales (IC 24-4.5-2) and consumer loans (IC 24-4.5-3), as of July 1, 2019. The new law *replaces* the authorized \$5 delinquency charge that is currently indexed to \$19, for consumer credit sales and consumer loans with a *non-indexed "flat" delinquency charge* permitted to be contracted for after July 1, 2019 of:

- (A) \$5, if installments or minimum payments are due every 14 days or less;
- (B) \$25, if installments or minimum payments are due every 15 days or more; or
- (C) \$25, in the case of a single installment due at least 30 days after the sale or loan is made.

These statutory changes have two significant results. First, the new maximum delinquency charge is no longer subject to indexing; the new, "flat rate" charge will therefore no longer be subject to adjustment based on the department's obligation to evaluate changes every few years under Indiana Code 24-4.5-1-106.

Second, the maximum permitted delinquency charge will now be the flat fee that is reflected in the updated statute as of July 1. We recognize that the impending legislation left the indexing subsection (under the old statutes, sub. (6), under the new statutes, sub. (5)) of both of the relevant statutes intact that continue to reference a creditor's obligation to provide in the contract for a delinquency charge that is subject to change to disclose and reference the dollar adjustment/indexing permitted by Indiana Code § 24-4.5-1-106.

After July 1, in most instances, Creditors will generally be limited to the maximum amount of the delinquency charge they contracted for with the consumer in a contract entered into before July 1 (with a maximum delinquency charge permitted of \$19). Having reference to Indiana Code § 24-4.5-1-106 in an existing contract does not permit a Creditor to unilaterally increase a delinquency charge from \$19 to \$25, as the new delinquency charge "flat" rate is not a dollar adjustment that was increased through an indexed rate adjustment. A lender is expected to continue to honor the contractual delinquency charge.

If a contract is an open end agreement that permits the lender to notify the customer of delinquency charge increases, or for Creditors that believe another contractual basis exists to increase the delinquency charge based on the new statutory maximums permitted after July 1, the terms should be carefully reviewed to confirm a legal basis exists for the lender to increase the delinquency charge. Creditors are encouraged to seek an opinion from legal counsel prior to increasing such charge.

Creditors with weekly or biweekly payments with active contracts in place before July 1 will continue to be able to collect a delinquency charge contracted for, provided it does not exceed \$19, for the life of the agreement.

After July 1, new contracts entered into may contract for the new delinquency charges permitted by the statutes.