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**STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
FINANCIAL INSTITUTIONS DIVISION**

1179 Fairview Drive, Ste. 201  
Carson City, Nevada 89701  
(775) 687-5522

In Re: )  
LIGHTHOUSE FINANCIAL GROUP OF )  
NEVADA, INC., )  
Petitioner. )

**DECLARATORY ORDER AND  
ADVISORY OPINION REGARDING THE  
INTEREST THAT CAN BE COLLECTED  
DURING REPAYMENT PLAN PERIOD  
PURSUANT TO NRS CHAPTER 604A**

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CAN BE COLLECTED DURING REPAYMENT PLAN PERIOD  
PURSUANT TO NRS CHAPTER 604A**

Nevada, Department of Business and Industry, Financial Institutions Division (hereinafter "Division") hereby issues its Declaratory Order and Advisory Opinion regarding LIGHTHOUSE FINANCIAL GROUP OF NEVADA, INC.'s Petition for Advisory Opinion Pursuant to NRS 233B.120 and NAC 232.040.

**JURISDICTION**

1. Deferred deposit loan services, high interest loan services, title loan services and check cashing services in the State of Nevada are governed by chapter 604A of the Nevada Revised Statutes (NRS) and chapter 604A of the Nevada Administrative Code (NAC). The Division has primary jurisdiction for the licensing and regulation of persons operating and/or engaging in deferred deposit loan service, high interest loan service, title loan service and check cashing service activities or persons seeking to evade the application of NRS chapter 604A. See generally NRS 604A.020-.030, 604A.050-.060, 604A.080, 604A.095-.110, 604A.200, 604A.300, 604A.400, 604A.600 and 604A.710.

2. The Division also has primary jurisdiction for the licensing and regulation of persons engaging in the business of lending in the State of Nevada where such lending is

1 not governed by NRS chapter 604A. NRS 675.060. Pursuant to the authority vested by  
2 NRS chapters 604A, the Division hereby makes the following Findings of Fact, Conclusions  
3 of Law, and Order.

4 **STATEMENT OF FACT**

5 3. Petitioner LIGHTHOUSE FINANCIAL is incorporated under the laws of the  
6 State of Nevada and has submitted this Petition by and through its attorney, Matthew T.  
7 Dushoff, Esq., of Kolesar & Leatham, Chtd.

8 4. Petitioner is a company engaged in the business of lending pursuant to NRS  
9 Chapter 604A.

10 5. On November 4, 2009, Petitioner filed its Petition for an Advisory Opinion with  
11 the Division.

12 6. The Petitioner presents the following question for an advisory opinion: What  
13 interest can be charged by a title loan company under a repayment plan pursuant to NRS  
14 604A.475?

15 7. Petitioner requests this advisory opinion to address concerns related to its  
16 ongoing bankruptcy case.

17 **STATEMENT OF LAW**

18 8. The rule regarding the issuing of Advisory Opinions by this agency is governed  
19 by NRS 233B.120, which reads as follows:

20 Each agency shall provide by regulation for the filing and prompt  
21 disposition of petitions for declaratory orders and advisory  
22 opinions as to the applicability of any statutory provision, agency  
23 regulation or decision of the agency. Declaratory orders disposing  
24 of petitions in such cases shall have the same status as agency  
25 decisions. A copy of the declaratory order or advisory opinion  
26 shall be mailed to the petitioner.

27 9. The Nevada Administrative Code (NAC) 323.040(1) establishes the procedure  
28 for filing a petition for declaratory order or advisory opinions as follows:

1 Except as otherwise provided in subsection 4, an interested  
2 person may petition the Director to issue a declaratory order or  
3 advisory opinion concerning the applicability of a statute,  
4 regulation or decision of the Department or any of its divisions.

5 10. Upon receipt by the Director, the petition is then referred to the Commissioner  
6 for the Financial Institutions Division for determination. NAC 232.045.

### 7 STATUTORY BACKGROUND

8 11. The term "default" under NRS 604A.045 is defined as follows:

9 1. "Default" means the failure of a customer to:

10 (a) Make a scheduled payment on a loan on or before the due  
11 date for the payment under the terms of a lawful loan agreement  
12 and any grace period that complies with the provisions of NRS  
13 604A.210 or under the terms of any lawful extension or repayment  
14 plan relating to the loan and any grace period that complies with  
15 the provisions of NRS 604A.210; or

16 (b) Pay a loan in full on or before:

17 (1) The expiration of the initial loan period as set forth in a  
18 lawful loan agreement and any grace period that complies with the  
19 provisions of NRS 604A.210; or

20 (2) The due date of any lawful extension or repayment  
21 plan relating to the loan and any grace period that complies with  
22 the provisions of NRS 604A.210, provided that the due date of the  
23 extension or repayment plan does not violate the provisions of this  
24 chapter.

25 2. A default occurs on the day immediately following the date  
26 of the customer's failure to perform as described in subsection 1.

27 12. Prior to the institution of any collection practices, a licensee is required to offer  
28 the borrower in default a repayment plan which meets the requirements of NRS 604A.475.

NRS 604A.475 Repayment plan.

1. Before a licensee attempts to collect the outstanding  
balance on a loan in default by commencing any civil action or  
process of alternative dispute resolution or repossessing a  
vehicle, the licensee shall offer the customer an opportunity to  
enter into a repayment plan. The licensee:

(a) Is required to make the offer available to the customer for a  
period of at least 30 days after the date of default; and

(b) Is not required to make such an offer more than once for  
each loan.

1           2. If the licensee intends to commence any civil action or  
2 process of alternative dispute resolution or repossess a vehicle in  
3 an effort to collect a defaulted loan, the licensee shall deliver to  
4 the customer, not later than 15 days after the date of default, or  
5 not later than 5 days after a check is not paid upon presentment or  
6 an electronic transfer of money fails, whichever is later, written  
7 notice of the opportunity to enter into a repayment plan. The  
8 written notice must:

9           (a) Be in English, if the initial transaction was conducted in  
10 English, or in Spanish, if the initial transaction was conducted in  
11 Spanish;

12           (b) State the date by which the customer must act to enter into  
13 a repayment plan;

14           (c) Explain the procedures the customer must follow to enter  
15 into a repayment plan;

16           (d) If the licensee requires the customer to make an initial  
17 payment to enter into a repayment plan, explain the requirement  
18 and state the amount of the initial payment and the date the initial  
19 payment must be made;

20           (e) State that the customer has the opportunity to enter into a  
21 repayment plan with a term of at least 90 days after the date of  
22 default; and

23           (f) Include the following amounts:

24           (1) The total of payments or the remaining balance on the  
25 original loan;

26           (2) Any payments made on the loan;

27           (3) Any charges added to the loan amount allowed  
28 pursuant to the provisions of this chapter; and

          (4) The total amount due if the customer enters into a  
repayment plan.

3. Under the terms of any repayment plan pursuant to this  
section:

          (a) The customer must enter into the repayment plan not later  
than 30 days after the date of default, unless the licensee allows a  
longer period;

          (b) The licensee must allow the period for repayment to extend  
at least 90 days after the date of default, unless the customer  
agrees to a shorter term;

          (c) The licensee may require the customer to make an initial  
payment of not more than 20 percent of the total amount due  
under the terms of the repayment plan;

          (d) For a deferred deposit loan:

          (1) The licensee may require a customer to provide, as  
security, one or more checks or written authorizations for an  
electronic transfer of money which equal the total amount due  
under the terms of the repayment plan;

1 (2) The licensee shall, if the customer makes a payment in  
2 the amount of a check or written authorization taken as security for  
3 that payment, return to the customer the check or written  
4 authorization stamped "void" or destroy the check or written  
5 authorization; and

6 (3) The licensee shall not charge any fee to the customer  
7 pursuant to NRS 604A.490 for a check which is provided as  
8 security during the repayment plan and which is not paid upon  
9 presentment if, in connection with that loan, the licensee has  
10 previously charged at least one such fee.

11 4. If the licensee and customer enter into a repayment plan  
12 pursuant to this section, the licensee shall honor the terms of the  
13 repayment plan, and the licensee shall not:

14 (a) Except as otherwise provided by this chapter, charge any  
15 other amount to a customer, including, without limitation, any  
16 amount or charge payable directly or indirectly by the customer  
17 and imposed directly or indirectly by the licensee as an incident to  
18 or as a condition of entering into a repayment plan. Such an  
19 amount includes, without limitation:

20 (1) Any interest, regardless of the name given to the  
21 interest, other than the interest charged pursuant to the original  
22 loan agreement at a rate which does not exceed the annual  
23 percentage rate charged during the term of the original loan  
24 agreement; or

25 (2) Any origination fees, set-up fees, collection fees,  
26 transaction fees, negotiation fees, handling fees, processing fees,  
27 late fees, default fees or any other fees, regardless of the name  
28 given to the fee;

(b) Except as otherwise provided in this section, accept any  
additional security or collateral from the customer to enter into the  
repayment plan;

(c) Sell to the customer any insurance or require the customer  
to purchase insurance or any other goods or services to enter into  
the repayment plan;

(d) Make any other loan to the customer, unless the customer  
is seeking multiple loans that do not exceed the limit set forth in  
NRS 604A.425;

(e) During the term of the repayment plan, attempt to collect  
the outstanding balance by commencing any civil action or  
process of alternative dispute resolution or by repossessing a  
vehicle, unless the customer defaults on the repayment plan; or

(f) Attempt to collect an amount that is greater than the amount  
owed under the terms of the repayment plan.

5. If the licensee and customer enter into a repayment plan  
pursuant to this section, the licensee shall:

1 (a) Prepare a written agreement establishing the repayment  
plan; and

2 (b) Give the customer a copy of the written agreement. The  
written agreement must:

3 (1) Be signed by the licensee and customer; and

4 (2) Contain all of the terms of the repayment plan,  
including, without limitation, the total amount due under the terms  
of the repayment plan.

5 6. Each time a customer makes a payment pursuant to a  
6 repayment plan, the licensee shall give to the customer a receipt  
with the following information:

7 (a) The name and address of the licensee;

8 (b) The identification number assigned to the loan agreement  
or other information that identifies the loan;

9 (c) The date of the payment;

10 (d) The amount paid;

11 (e) The balance due on the loan or, when the customer makes  
the final payment, a statement that the loan is paid in full; and

12 (f) If more than one loan made by the licensee to the customer  
was outstanding at the time the payment was made, a statement  
indicating to which loan the payment was applied.

13 7. If the customer defaults on the repayment plan, the  
licensee may, to collect the outstanding balance, commence any  
14 civil action or process of alternative dispute resolution or  
repossess a vehicle as otherwise authorized pursuant to this  
15 chapter.

16  
17 13. Further, NRS 604A.485 details the amount that a licensee can charge after  
18 default on a loan.

19 NRS 604A.485 Limitations on amounts licensee may collect after  
default.

20 1. If a customer defaults on a loan or on any extension or  
21 repayment plan relating to the loan, whichever is later, the  
licensee may collect only the following amounts from the  
22 customer, less all payments made before and after default:

23 (a) The unpaid principal amount of the loan.

24 (b) The unpaid interest, if any, accrued before the default at  
the annual percentage rate set forth in the disclosure statement  
required by the Truth in Lending Act and Regulation Z that is  
25 provided to the customer. If there is an extension, in writing and  
signed by the customer, relating to the loan, the licensee may  
26 charge and collect interest pursuant to this paragraph for a period  
not to exceed 60 days after the expiration of the initial loan period,  
27 unless otherwise allowed by NRS 604A.480.

1 (c) The interest accrued after the expiration of the initial loan  
2 period or after any extension or repayment plan that is allowed  
3 pursuant to this chapter, whichever is later, at an annual  
4 percentage rate not to exceed the prime rate at the largest bank in  
5 Nevada, as ascertained by the Commissioner, on January 1 or  
6 July 1, as the case may be, immediately preceding the expiration  
7 of the initial loan period, plus 10 percent. The licensee may  
8 charge and collect interest pursuant to this paragraph for a period  
9 not to exceed 90 days. After that period, the licensee shall not  
10 charge or collect any interest on the loan.

11 (d) Any fees allowed pursuant to NRS 604A.490 for a check  
12 that is not paid upon presentment or an electronic transfer of  
13 money that fails because the account of the customer contains  
14 insufficient funds or has been closed.

15 – The sum of all amounts collected pursuant to paragraphs (b), (c)  
16 and (d) must not exceed the principal amount of the loan.

17 2. Except for the interest and fees permitted pursuant to  
18 subsection 1 and any other charges expressly permitted pursuant  
19 to NRS 604A.430, 604A.445 and 604A.475, the licensee shall not  
20 charge any other amount to a customer, including, without  
21 limitation, any amount or charge payable directly or indirectly by  
22 the customer and imposed directly or indirectly by the licensee as  
23 an incident to or as a condition of the extension of the period for  
24 the payment of the loan or the extension of credit. Such prohibited  
25 amounts include, without limitation:

26 (a) Any interest, other than the interest charged pursuant to  
27 subsection 1, regardless of the name given to the interest; or

28 (b) Any origination fees, set-up fees, collection fees,  
transaction fees, negotiation fees, handling fees, processing fees,  
late fees, default fees or any other fees, regardless of the name  
given to the fee.

### QUESTION PRESENTED

14. The Petitioner presents the following question for an advisory opinion: What  
interest can be charged by a title loan company under a repayment plan pursuant to NRS  
604A.475.

15. As part of the request, Petitioner argues that the amount of interest should be  
the contract rate of interest to accrue throughout the repayment plan period.

16. As support for this argument, Petitioner states that NRS 604A.475(4)(a)(1)  
permits that the charging of the rate of interest in the original loan contract and that the

1 restrictions on the amount to be collected after default under NRS 604A.485 are only  
2 applicable after the borrower has defaulted on the repayment plan and is not part of the  
3 repayment plan itself.

4 17.

### 5 LEGAL ANALYSIS

6 18. While this issue has been the source of ongoing confusion and dispute, this is  
7 the first time the Division has had an opportunity to address it as an Advisory Opinion or  
8 Declaratory Order.

9 19. The answer to this question requires a review of the rules of statutory  
10 construction.

11 20. The statutory scheme for the interest on repayment plans relies upon the  
12 interpretation of the three statutes stated above.

13 21. NRS Chapter 604A is a statute which regulates deferred deposit loan services,  
14 high interest loan services, title loan services and check cashing services. These loans,  
15 often referred to as "payday loans" are generally for short periods of time at high rates of  
16 interest.

17 22. As stated above, the term default means the failure to make any scheduled  
18 payment or payment in full by the due date on the initial loan or any extension or repayment  
19 plan on that loan. NRS 604A.045.

20 23. Before a licensee can make any attempt to collect on a loan which is in default,  
21 the licensee must offer a repayment plan pursuant to NRS 604A.675.

22 24. The repayment plan was established to give the borrower an opportunity to  
23 repay the loan and avoid having the loan go into collection. (Hearing on A.B. 384 Before the  
24 Senate Committee on Commerce and Labor, 2005 Legis., 73<sup>rd</sup> Sess. 20-21 (May 6, 2005)).

25 25. The terms of the repayment plan require that the time period for repayment of  
26 the loan be at least 90 days but there is no maximum time limit. NRS 604A.475(3)(b).

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1           26.     NRS 604A.475(4)(a)(1) excludes the charging of interest during the repayment  
2 plan period "other than the interest **charged** pursuant to the original loan agreement at a  
3 rate which does not exceed the annual percentage rate charged during the term of the  
4 original loan agreement..." (*Id.*)(Emphasis added).

5           27.     While this statute addresses the issue, the meaning is unclear. As Petitioner  
6 argues, the statute can be interpreted to mean that the repayment plan may include interest  
7 at the contract rate through the repayment plan period.

8           28.     However, the statute is susceptible to another interpretation. Because the  
9 statute specifically limits the time period to "during the term of the original loan agreement,"  
10 the statute can be read to only permit the charging of the contract interest rate for that period  
11 specified in the original contract and for no longer.

12           29.     As a further factor to consider, if the borrower defaults on the original loan or  
13 the repayment plan, the licensee's remedies are limited to those stated in NRS 604A.485. If  
14 the borrower defaults, the licensee is only entitled to collect the unpaid principle of the initial  
15 loan, the unpaid interest prior to default, and interest for 90 days after default in an amount  
16 not to exceed the prime rate of interest of the largest bank in the State of Nevada plus ten  
17 percent. NRS 604A.485(1).

18           30.     The total amount of fees and interest a licensee can collect after default is  
19 capped and cannot exceed the total amount of the principle of the initial loan. (*Id.*)

20           31.     Petitioner argues that because this provision is only effective after "a customer  
21 defaults on a loan or on any extension or repayment plan relating to the loan, whichever is  
22 later," that the restrictions only apply after the customer has defaulted on the repayment plan  
23 and not during the repayment plan period. For the purposes of this Advisory Opinion, the  
24 Division will not dispute that assertion.

25           32.     Petitioner requests that the Division impose an interpretation that a licensee  
26 may collect the contract rate of interest throughout the repayment plan period.

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1           33.     However, such an interpretation would lead to a result which is both  
2     contradictory to the stated intent of the legislature in enacting NRS Chapter 604A and would  
3     lead to an absurd result.

4           34.     For instance, a borrower unable to fulfill his contract would have the choice  
5     between paying substantially less by remaining in default or continue to be obligated to pay  
6     the contracted interest rate in a repayment plan, after it is evident that the borrower cannot  
7     meet the obligations of the original contract.

8           35.     As the Nevada Supreme Court stated in *Sheriff, Clark County v. Burcham*, 198  
9     P.3d 326, 329 (Nev.,2008), “[W]e only look beyond the plain language of the statute if that  
10    language is ambiguous or its plain meaning clearly was not intended. Therefore, where the  
11    legislative intent is clear, we must effectuate that intent. Additionally, statutory construction  
12    should always avoid an absurd result.” (Footnotes and quotations omitted).

13          36.     Further, the Court stated in *V and S Ry. LLC v. White Pine County*, 211 P.3d  
14    879, 882 (Nev.,2009), “In Nevada, “words in a statute should be given their plain meaning  
15    unless this violates the spirit of the act.” (*Id citing McKay v. Bd. of Supervisors*, 102 Nev.  
16    644, 648, 730 P.2d 438, 441 (1986)).

17          37.     In the present case, the Division is presented with both an ambiguous statute  
18    and a potentially absurd result. Consequently, the Division will look to the legislative history  
19    of NRS 604A.475.

20          38.     Originally enacted in 2005, this provision was part of Assembly Bill 384. The  
21    issue of interest during the repayment plan period was specifically addressed before the  
22    Senate Committee on Commerce and Labor. Assemblywoman Barbara E. Buckley, the  
23    sponsor of the bill, stated, “It was our intention that the original contract be in effect and  
24    unchanged during the repayment period. If the customer defaults on the repayment plan,  
25    the lender may go to court.” (Hearing on A.B. 384 before the Senate Committee on  
26    Commerce and Labor, 2005 Leg., 73<sup>rd</sup> Sess. 5 (May 9, 2005)). When asked specifically if  
27    “the originally-contracted interest continues to accrue during the repayment period,”  
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1 Assemblywoman Buckley stated, "*The intention was that it would not.*" (*Id.*)(Emphasis  
2 added).

3 39. While NRS 604A.475(4)(a)(1) may appear to permit the exact opposite of the  
4 intent expressed at the hearing, a close reading of the statute indicates otherwise.

5 40. As the Court stated in *V and S Ry. LLC v. White Pine County, supra*, the  
6 interpretation of the statute must give meaning to each word and phrase.

7 A statute must be construed as to " 'give meaning to all of [its]  
8 parts and language, and this court will read each sentence,  
9 phrase, and word to render it meaningful within the context of the  
10 purpose of the legislation.' " Further, a statute should not be read  
11 in a manner that renders a part of a statute meaningless or  
12 produces an absurd or unreasonable result. (*Id.*) (Citations  
13 omitted)(quotations included).

14 41. NRS 604A.475(4)(a)(1) states two requirements regarding the interest to be  
15 charged during the repayment period. First, it permits the amount of interest "**charged**  
16 pursuant to the original loan agreement." (Emphasis added).

17 42. Second, the interest amount charged must be "at a rate which does not exceed  
18 the annual percentage rate charged during the term of the original loan agreement."

19 43. The Legislature specifically limited the total amount of interest which the  
20 licensee may collect during the repayment plan period only to the amount that it "charged"  
21 during the original loan agreement.

22 44. Thus, the statute only permits the licensee to collect that amount of interest  
23 which it could have collected during the time period of the original loan agreement.

24 45. Because the time frame for the repayment period may be longer or shorter,  
25 depending on the contract, the Legislature capped the rate at which that interest could be  
26 collected so that it would not exceed the annual percentage rate stated in the original loan  
27 agreement.  
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1           46.    The Petitioner's interpretation of the statute would give meaning to the second  
2 part of the sentence which only states that a licensee could charge the contract rate of  
3 interest during the repayment period. But this interpretation would render meaningless the  
4 remaining provisions regarding the amount of interest "charged" and the time period of the  
5 original contract.

6           47.    In reviewing the legislative history regarding the enactment of NRS Chapter  
7 604A, it is clear the spirit of the legislation was to prevent the "debt treadmill, " where  
8 borrowers are caught in an endless cycle of increasing debt. Assemblywoman Buckley  
9 described the debt treadmill problem:

10                   The debt treadmill begins when a customer takes out their first  
11                   payday loan. A loan interest rate can range from 150 to 1,100  
12                   percent annually. It is not uncommon among those who seek  
13                   assistance from credit counseling agencies and legal aid agencies  
14                   to take out a second loan to pay the first and a third one to pay the  
                    second. I have met a dozen consumers who have taken out a  
                    dozen loans just to pay the interest on the other loans.

15                   (Hearing on A.B. 384 Before the Senate Committee on Commerce and Labor, 2005 Legis.,  
16                   73<sup>rd</sup> Sess. 7 (May 6, 2005)).

17           48.    Also, the law was enacted to prevent egregious penalties if a borrower  
18 defaults. As Assemblywoman Buckley explained:

19                   It is not uncommon for consumers to eventually fall off the debt  
20                   treadmill and into the wage-garnishment machine where their  
21                   meager earnings are quickly siphoned off by judgments that can  
22                   double and triple the amount of the loan and which completely  
23                   ignore any and all payments made. Because of the volume of  
                    lawsuits in small claims courts and justice courts, many judgments  
                    are by default and are rubber-stamped by the courts which are  
                    unable to keep up regardless of the legality or amount sought.

24           (*Id.*)

25           49.    Consequently, if a repayment plan were to accrue interest at the contract rate,  
26 the borrower may be caught in a further cycle of debt which would create a substantially  
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1 greater burden than simply defaulting on the loan itself. This result is evident in neither the  
2 letter nor the spirit of the law.

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4  
5 **CONCLUSION**

6 50. Therefore, the Division's opinion is that a repayment plan can only collect that  
7 amount of interest that it could have collected during the term of the original loan agreement  
8 at a rate not to exceed the rate stated in the original loan agreement.

9 51. No interest accrues during the time the borrower is under a repayment plan.

10 52. If the borrower defaults on the repayment plan, the licensee may pursue legal  
11 collection practices and the borrower's remaining principle may accrue interest at the rate  
12 stated in NRS 604A.485(1)(c).

13 53. The Division is aware that licensees are permitted to extend the loans for  
14 additional periods. However, the interest which can be obtained is only that which could  
15 have been received from the original loan under the terms and time frame of the original  
16 loan agreement without any extensions.

17 54. As an example from a loan issued by Petitioner, Petitioner made a title loan in  
18 the principle amount of \$15,000.00. The finance charge for the loan is listed as \$1,935.00 to  
19 be paid in full at the end of 30 days, which equates to an annual percentage rate of  
20 156.95%. Therefore, the total amount of payment for the loan was \$16,935.00

21 55. If the borrower defaulted on the loan and Petitioner offers a repayment plan,  
22 the most interest that Petitioner may charge is the amount of finance charges listed in the  
23 contract, or \$1,935.00.

24 56. This is true even if the borrower has made payments toward the interest prior  
25 to default. Of course, payments made toward the principle must be reduced accordingly.

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