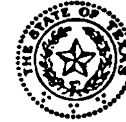


STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

POST OFFICE BOX 2107
AUSTIN, TEXAS 78768

1011 SAN JACINTO BOULEVARD
512/475-2111

September 1, 1981 No. 81-18

Mr. J. Scott Sheehan
Butler, Binion, Rice, Cook & Knapp
Esperson Buildings
Houston, Texas 77002

Dear Mr. Sheehan:

This is to acknowledge receipt of your letter dated July 22, 1981 concerning Article 5069-1.04(h)(1), V.T.C.S. I have decided to quote a portion of your letter in order to precisely set out your inquiry.

> "The questions we have are similar to the questions addressed in your interpretation letter number 81-7, which deals with Section (h)(2) of Article 1.04 as compared to Section (h)(1).
>
> "Our questions relate to the following hypothetical: a bank operating an overdraft check credit plan under Chapter 15 wants to implement rate changes under Article 1.04 commencing in, for example, August, 1981, with proper prior notice of such changes having been furnished to customers. The bank has elected the annualized rate ceiling and would therefore anticipate a rate adjustment, if any, twelve months after the rate changes become applicable to the accounts, for example, August, 1982. The bank anticipates new customers obtaining check credit accounts during the period from August, 1981, through August, 1982.
>
> "Our question is whether rate adjustments that may be made in August, 1982, may be applied to all check credit customers, including the new customers, as to whom the rate has not been in effect for twelve months.
>
> "In this connection, we believe that Section (j) of Article 1.04 would allow, and possibly even require, that the new accounts be adjusted during August, 1982, along with the other accounts. Please confirm whether this interpretation is correct.

> "We would also ask that the same questions be answered in connection with quarterly rate ceilings. If a lender implements the quarterly rate ceiling as to existing customers, with anticipated quarterly adjustments, should new accounts opened thereafter likewise be adjusted on a quarterly basis at the same time as existing accounts."

As you point out in your letter, in our letter interpretation 81-7 we discussed some similar questions dealing with Article 1.04(h)(2). On page 3 of that letter, we stated that in our opinion the ceilings on variable rate contracts subject to Article 1.04(h)(2) should be adjusted on the appropriate calendar dates set out in Article 1.04(d). I do not believe that the same adjustment of ceilings requirement is necessarily applicable to fixed rate contracts which are subject to the provisions of Article 1.04(h)(1).

Article 1.04(h)(1) is worded somewhat differently on this point than Article 1.04(h)(2), and I believe the difference is important. In Article 1.04(h)(1) is found the following sentence:

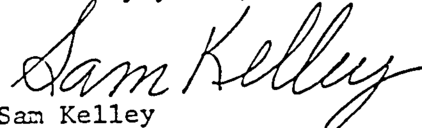
> ". . . . The creditor may implement a rate, not exceeding the annualized ceiling, for a 12-month period from the date it becomes effective <u>as to an account</u>, or the creditor may implement a rate not exceeding the quarterly ceiling for a three-month period from the date it becomes effective <u>as to an account</u> . . . ." (Underlining added.)

The above-underlined words are not found in Article 1.04(h)(2). It is my opinion that a creditor who implements an Article 1.04 fixed rate program such as is described in your letter should keep that rate in effect as to each account for either a three-month period or a twelve-month period, depending on which ceiling is being used. Conversely, there is no requirement that the ceiling be changed on one of the calendar dates set out in the statute unless one of those dates has been selected by the creditor as the date that the selected ceiling will be applicable to all the agreements under a particular plan. For example, in a hypothetical case, the creditor proposes to implement the Article 1.04 interest rates as to all customers under a particular program in October, 1981, using the annualized ceiling applicable at that time and a fixed rate subject to Article 1.04(h)(1). That rate should remain in effect for each of the accounts under that program for a full twelve months until October, 1982. If the rate is made effective as to all accounts as of October 1, 1981, then the rate should be changed, if required, on October 1, 1982. This could present some "split rate" billing cycles unless all billing cycles occur on October 1. To avoid this problem, if it is one, the creditor could make the rate effective for each account as of the October, 1981 billing cycle date for each account. The rate then could be kept in effect until the billing cycle date for each account one year later. The same procedure would be applicable to programs using the quarterly ceiling but of course the rate changes, if required, would occur every three months.

September 1, 1981

I am of the opinion that Article 1.04(j) is applicable to the type of program outlined in your letter, using either the quarterly or annualized ceiling. If the creditor is using the annualized ceiling and anticipating adjustments each October, all new customers coming into the program during the months between each October would, because of Article 1.04(j), be treated in the same manner as all other customers, and the "new customer" accounts would be subject to adjustment each October, even though initially the "new customer" would not have been subject to the annualized ceiling for a full twelve-month period. The same principle concerning "new customers" would be applicable if the creditor were utilizing the quarterly ceiling. Each "new customer" would be treated as the others, and those types of accounts would be subject to adjustment at the designated three month time even though the new customer had not been subject to the rate for a full three-month period. Under either an annualized or a quarterly ceiling program, after a short "first period" for new customers entering the program between adjustment dates, they would thereafter be subject to adjustment at the same time as everyone else, as in the example, each October, if the program is using the annualized ceiling.

Sincerely yours,



Sam Kelley
Consumer Credit Commissioner