



STATE OF TEXAS

# OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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June 27, 1983 83-6

Ms. Claudia B. Wilkinson  
Fulbright & Jaworski  
Bank of the Southwest Building  
Houston, Texas 77002

Dear Ms. Wilkinson:

This is to acknowledge receipt of your letter dated June 14, 1983, wherein you pose several questions concerning recently enacted Senate Bill 405, the relevant portions of which will be codified as various sections of Article 5069, V.T.C.S. I will first quote a portion of your letter and the questions you pose and then set out my response. Your letter reads as follows:

"The interpretations requested in this letter are based upon the following fact situation. A state or national bank (the 'Bank') issues debit cards ('debit cards') to customers ('Depositors'), upon request, pursuant to an agreement (the 'Agreement') which provides that the debit card may be used at certain automated teller machines to withdraw money from designated deposit accounts, to transfer money between deposit accounts, to transfer money from a deposit account to make a payment to the Bank, to make deposits to deposit accounts and to inquire as to the balance in the deposit accounts. Not all transactions may be performed at all automated teller machines which may be used by the Depositors.

"The impact of H. B. 1091 68th Tex. Leg. dealing with point of sale terminals is uncertain at this time. However, after the effective date of H. B. 1091, it is likely that it will also be possible for a Depositor to use a debit card at a point of sale terminal to transfer funds from a deposit account to make a payment to a seller of goods or services. This type of electronic transaction by the Depositor will be basically equivalent to a check written by the Depositor to the seller.



"The Agreement does not provide for any extension of credit to the Depositor. The Agreement provides that any withdrawal from a deposit account at an automated teller machine will be handled by the Bank as other transactions, such as checks, are handled by the Bank. Pursuant to the Agreement, the Depositor agrees not to enter or permit a transaction which will result in an overdraft on any account unless arrangements, other than the Agreement, have been made with the Bank. As discussed below, even if other arrangements have been made, the Depositor cannot withdraw money from an online automated teller machine in an amount which is more than he has in his account regardless of any credit line. If an overdraft somehow occurs on the account, the Depositor agrees to repay on demand the full amount of the overdraft together with any charges customarily imposed by the Bank for overdraft items.

"As a completely separate product, the Bank has an open-end line of credit agreement (the 'Credit Agreement'). Under the terms of the Credit Agreement, a customer (the 'Borrower') has several options. The credit line may be accessed by a special draft drawn by the Borrower. If the Borrower elects, the credit line may be used as the credit line which must exist in connection with an American Express Gold Card, as described below. The Credit Agreement also allows the Borrower to elect to use the credit line for 'Optional Balance Protection' which may operate as an overdraft line for a designated deposit account. If the Borrower has requested Optional Balance Protection and the designated checking or NOW account reaches the minimum balance designated by the Borrower, the Bank will loan to the Borrower sufficient funds in \$100 increments by transfer of funds to the account to maintain the balance in the account above the designated level.

"The Credit Agreement may be used with a Borrower's American Express Gold Card if the Borrower so elects. Under the Gold Card program, a Borrower applies for and receives a Gold Card from American Express and obtains an open-end line of credit from a lender such as Bank. Bank does not arrange to have merchants honor a Gold Card or receive a merchant discount in connection with a Gold Card transaction. Bank does not provide authorization services in connection with Gold Card transactions or arrange for payment of sales drafts to merchants. American Express receives an annual fee, but does not charge interest on the outstanding balance of an account. The balance must be paid in full to American Express each month. Each month, the Borrower must pay the full amount to American Express directly or, if the Borrower wants to defer payment of all or part of the balance, the Borrower may draft upon available funds under the Credit Agreement to pay American Express. The Bank may refuse to pay such a draft if, for example, the amount of the draft would cause the outstanding credit to exceed the Borrower's credit limit under the Credit Agreement. Gold Card charges are not automatically debited against the credit line.

"The Credit Agreement is structured under Chapter 4 now and was structured under Chapter 4 before H. B. 1228. Interest is charged at a fixed rate which does not exceed the annualized ceiling.

"The facts set forth above apply to many banks. Only two of those banks issue credit cards such as Visa or MasterCard. The Credit Agreement is a separate program from the debit card Agreement. Both the Credit Agreement and the debit card Agreement are separate from any credit cards issued by those banks which issue credit cards. Borrowers are not required to have a debit card or a credit card from Bank or an affiliate. Depositors are not required to have a Credit Agreement or credit card with Bank or an affiliate. Indeed, a research report prepared in September, 1982 dealing with several banks in the Houston area showed that out of all of the Credit Agreement customers at those banks, less than half of those Borrowers also had debit cards.

"Even if a Depositor has made arrangements with Bank for a Credit Agreement and has elected Optional Balance Protection, the Depositor cannot withdraw more money from his account than the records show as the balance. At an online automated teller machine, a debit card will not access any credit line which is available under a Credit Agreement by causing an overdraft in the deposit account. Assume, that a Depositor has entered into a Credit Agreement with Bank and has requested Optional Balance Protection for a zero balance in connection with a checking account accessible by the Depositor's debit card. If that Depositor uses his debit card at an online automated teller machine to request a withdrawal which exceeds the posted balance of the checking account, the withdrawal will be refused, no overdraft will be created and no funds will be advanced under the Credit Agreement. If an automated teller machine is "down" or offline, an overdraft may inadvertently be created by a withdrawal by any Depositor using a debit card whether or not the Depositor has entered into a Credit Agreement in connection with the deposit account.

"Based upon the foregoing, we ask your interpretation of the following:

"1. Is any use of a debit card or an American Express Gold Card a "Credit Card Transaction" as that term is defined in Article 1.01(g) added by S. B. 405?

"2. Is the Credit Agreement or the debit Agreement a "Lender Credit Card Agreement" as that term is defined in Article 1.01(i) added by S. B. 405?

"3. May the Credit Agreement continue to be structured under Chapter 4?"

Before responding to your specific questions I would like to outline what I believe to be the legislative intent of the relevant sections of S. B. 405.

Sections 29-37 of Senate Bill 405 were enacted to apply to the typical bank and retail credit card extensions of credit. Throughout the various relevant provisions will be found the repeated use of the phrase "credit card transaction(s)." There were a number of other bills introduced during the 68th Legislative Session which would have been applicable to many other types of extensions of credit, none of which bills were enacted. I believe it accurate to state that Sections 29-37 represented a compromise of most of the interested parties and it was the understanding of those involved that the final product (S. B. 405) would be applicable only to "credit card transactions." With that as the objective, Article 1.01(g) (Sec. 29) was written so as to define a "credit card transaction" as a transaction in which a card is or may be used to debit an open-end account when the card is or may be used for personal, family or household use.

Clearly there was legislative intent to exclude transactions that were not for personal, family or household use. Also, there can be no doubt that other types of open-end credit, even though for personal, family or household use, were intended to be excluded if no card was used to debit an open-end account in connection with the credit.

The definition of "Lender Credit Card Agreement" in Article 1.01(i) (S. B. 405 - Sec. 29) includes all agreements for open-end accounts authorized or defined in various loan chapters of Article 5069 if "credit card transactions" may be made in connection with such agreements. Here again is found legislative intent not to include all types of open-end accounts which are authorized by Chapters 3, 4 or 15 but only those pursuant to which "credit card transactions" may be made. Also, transactions which are due and payable in full each month and on which no interest is charged when the obligor pays in accordance with the terms are excluded.

Following the definitions of "Credit Card Transaction" (Art. 1.01(g)) and "Lender Credit Card Agreement" (Art. 1.01(i)), Articles 1.04(b)(6) (S. B. 405 - Sec. 30) and 15.02(d) (S. B. 405 - Sec. 34) provide that open-end accounts authorized by Chapters 3, 4 or 15 pursuant to which credit card transactions may be made are subject to Article 15.02(d).

To summarize at this point, there is a common thread throughout the various pertinent provisions of Senate Bill 405 with regard to what types of transactions will be subject thereto. I believe those transactions can be described as revolving open-end accounts which open-end accounts are or may be debited by using a credit card for loans or purchases which are for personal, family or household use. I might add that we feel the Legislature did not intend to apply S. B. 405 to transactions in which some sort of special checks or drafts might be used to draw on previously established open-end lines of credit but only those types of credit in connection with which the cardholder is issued a typical credit card.

The debit card agreement, by itself, described in your inquiry does not provide for any extension of credit, but rather prohibits same. If an overdraft somehow occurs, the obligor has agreed to repay on demand the full amount of the overdraft. Article 15.02(d) would not be applicable to this agreement standing alone. But in the situation described, a customer who has a debit card may be able to enter into another agreement which the bank makes available to customers. This agreement, which is utilized by many customers who do not have debit cards, has a feature called Optional Balance Protection. However, if a debit card holder has this feature of the credit agreement, the cardholder cannot withdraw money from an online automated teller machine in an amount which is more than he has in his account regardless of any credit line.

With regard to the American Express Gold Card Plan described in your letter, when the cardholder uses the Gold Card to make a transaction, no extension of credit is made by the bank under the Credit Agreement. So long as the cardholder pays American Express the full amount each month, the cardholder may use the Gold Card without ever triggering any extension of credit by the bank. Credit is only extended under the Credit Agreement in connection with the Gold Card program if the cardholder goes beyond the use of the card and drafts on the line of credit. Also, in the case of the Gold Card program, the card issuer (American Express) is not the creditor which extends the open-end credit.

Therefore, based upon the facts outlined in your letter it is the position of this office that:

1. The use of the described debit card or the described American Express Gold Card is not a "Credit Card Transaction" as that term is defined in Article 1.01(g);

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2. The described Credit Agreement and the described Debit Agreement are not "Lender Credit Card Agreements" as that term is defined in Article 1.01(i); and

3. The Credit Agreement may continue to be structured under Chapter 4.

It should be emphasized that the above conclusions apply only to the described fact situations. It may well be that our views would be different with regard to other programs, particularly any dual purpose cards which you mentioned.

Sincerely,

  
Sam Kelley  
Consumer Credit Commissioner

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