



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

August 26, 1981 No. 81-17

Mr. Paul R. Kornfuehrer
Vice President
American Bank of Commerce
1900 North Laurent
Victoria, Texas 77901

Dear Mr. Kornfuehrer:

This is to acknowledge receipt of your letter dated July 9, 1981 in which you pose several questions concerning Articles 1.04(i) and 1A.01, Article 5069, V.T.C.S. Your questions relate to the interpretation and application of the provisions of Article 1A.01 in the event of conversion of open-end accounts to the provisions of Article 1.04.

In my letter of July 13, 1981 to Mr. Daniel W. Sykes, which letter is numbered letter interpretation No. 81-8, I believe I set out the position of this Office concerning the questions you posed except that I probably did not give a specific answer to your last question. A copy of letter No. 81-8 is enclosed herewith and I consider it a part of this response to your questions.

Your question which that earlier letter does not directly deal with, as set out in your letter, is as follows:

"Also, on new open-end accounts opened subsequent to the effective date of H.B. 1228 but prior to the effective date of the bank's rate change, what rate would apply to the balances incurred before the bank's rate change?"

H.B. 1228 became effective May 8, 1981 and as of that date creditors were authorized to provide in their new open-end accounts entered into on or after that date that the provisions of Article 1.04 would be applicable to those agreements. This would have of course included the provisions of Article 1.04(i) which states the procedure for changing the interest rates on open-end accounts. However, as far as I know, creditors entering into agreements subsequent to May 8, 1981 pursuant to their bank card programs have continued to use their existing forms and procedures which did not have the Article 1.04(i) provisions for changing the interest rates. Article 1.04(i)(1) states in part as follows:

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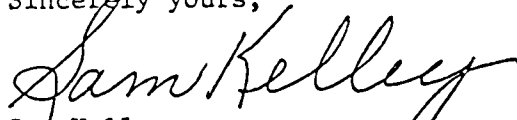
"In any open-end account, the creditor may provide in the agreement covering the open-end account or, pursuant to Article 1A.01 of this Title, amend the agreement to provide that the terms, including the rate, or index, formula, or provision of law used to compute the rate on the open-end account will be subject to revision as to current and future balances, from time to time, by notice from the creditor to the obligor . . ."

Thus, Article 1.04(i)(1) in effect provides that the provisions of 1.04 may be made applicable to open-end accounts by (1) so providing in the agreement, or (2) amending the agreements pursuant to Article 1A.01. Assuming that the new open-end accounts do not contain the provisions of Article 1.04, they must be amended pursuant to Article 1A.01.

I am aware of the fact that Article 1A.01 makes reference only to implementation of Article 1.04 provisions with respect to accounts existing on the effective date of the Act (May 8, 1981). However, if the accounts entered into after May 8 do not contain the Article 1.04(i) provisions providing for amendments, the only way they can be unilaterally converted to Article 1.04 rates is pursuant to Article 1A.01. This of course means that the provisions of Article 1A.01 relating to treatment of "existing balances," would be applicable to those balances existing at the time of the implementation of the new Article 1.04 provisions and that those balances should be retired at the rates previously agreed to.

Therefore, our position as set out in the letter interpretation No. 81-8 with regard to the treatment of "existing balances" is applicable to accounts agreed to after May 8, 1981 as well as to accounts existing on that date. This would not be the case, however, if the open-end accounts entered into after May 8, 1981 had contained the provisions of Article 1.04 authorizing unilateral amendment of the contracts.

Sincerely yours,



Sam Kelley
Consumer Credit Commissioner

Enclosure