



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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October 27, 1981 No. 81-25

Mr. John M. Joseph
Attorney at Law
United Bank Tower, Suite 805
400 West Fifteenth
Austin, Texas 78701

Dear Mr. Joseph:

In your letter of September 10, 1981, you presented a fact situation and then asked four questions relative to the effects of the provisions of Article 1A.01 of Article 5069, V.T.C.S. on open-end accounts subsequent to the implementation of the provisions of Article 5069-1.04. The fact situation and your questions are restated verbatim below.

- "1. The Debtor presently holds a valid revolving charge agreement, entered into in June of 1975. (Account No. A)
- "2. Account No. A provides for interest under the rates applicable prior to the effective date of H.B. 1228 and allows minimum payment as follows:

\$ 0.00 - \$ 20.00	Balance
\$ 20.01 - \$150.00	\$ 20.00
\$150.01 - \$200.00	\$ 25.00
\$200.01 - \$250.00	\$ 30.00
\$250.01 - \$300.00	\$ 35.00
\$300.01 - \$350.00	\$ 40.00
\$350.01 - \$400.00	\$ 45.00
\$400.01 - \$450.00	\$ 50.00
\$450.01 - \$500.00	\$ 55.00
over \$500.00	15% of balance

- "3. Account A has a balance on the date of conversion of \$250.00.
- "4. Finance Charge is computed on the Average Daily Balance method.
- "5. The Annual Percentage Rate on this balance is 18% (1 1/2% per month).

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"6. The debtor's minimum payment on Account A prior to conversion date would be \$30.00 per month.

"The debtor agrees to the change in terms and makes purchases in the amount of \$250.00 under a variable interest rate computation method, so that the debtor's "New Balance" is \$500.00 with a minimum payment of \$55.00. The creditor's monthly billing statement will provide a break-out reflecting the status of Account A prior to the date of conversion and after date of conversion.

"Question No. 1: Can the creditor aggregate the balance of Account A prior to date of conversion with the balance of Account A after the date of conversion for the purpose of minimum payment, Average Daily Balance, defaults, and New Balance, i.e., for all purposes?

"Question No. 2: Assuming that your letter No. 81-12 allows the crediting of payments at the discretion of Creditor, if the debtor makes a payment in the amount of \$55.00, and the Creditor chooses (by prior notification) to apply, and applies, the entire payment to the balance of Account A prior to date of conversion, is the debtor in default in the payment of the balance of Account A after the date of conversion?

"Question No. 3: If the debtor makes a payment in the amount of \$30.00, which would be the minimum payment amount under the balance of Account A prior to conversion, and the Creditor applies that payment to the balance of Account A prior to conversion, is the debtor in default for failure to make the minimum payment under the Balance of Account A after the date of conversion?

"Question No. 4: If the minimum payment under the New Balance is a sum greater than the total of the two minimum payments if the balances were separately calculated, would requiring payment under a single new balance level violate customer's right to pay under the old term's bracket level?

In your letter of September 29, 1981, you submitted two additional questions relative to the same fact situation presented in your letter of September 10. Those questions are:

- "1. What if a debtor requests that payments on an account be applied and credited in a specific manner?
- "2. What if the debtor demands, either orally or in writing, that payments be applied and credited in a specific manner?"

Answers to your questions are as follows: (Your reference to a "variable interest rate computation method" is not considered relevant to the answers given.)

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Response No. 1: The \$250 balance on the date of conversion can be added to the new purchases totaling \$250 which sum equals \$500 and is identified as the debtor's "New Balance." The minimum payment requirement remains unchanged so a minimum payment of \$55 is due under the agreement when the "new balance" is greater than \$450 but not in excess of \$500.

The method of calculating the finance charge remains unchanged; the Average Daily Balance method is the calculation method that should be utilized to determine the finance charge for both the "old" balance and the balance representing purchases made on and after the date of conversion.

I presume your reference to "defaults" refers only to the instance of the debtor being in default under the terms of the agreement which will permit the creditor to exercise certain rights described in the agreement. If the agreement between the debtor and creditor provides that the failure to pay the minimum required payment constitutes a "default," the debtor, in the above described situation, would be in default if he/she failed to pay \$55 within the required period of time in which payments are to be received by the debtor.

The "New Balance" appropriately describes the total balance owed by the debtor as of a given date. For calculation purposes, the "New Balance" will consist of different amounts subject to different rates of finance charge until such time that the "old" balance is liquidated.

Response No. 2: No

Response No. 3: In such an instance the debtor would be, in our opinion, in default under the terms of the agreement since a minimum payment of \$55 is required. For purposes of Article 1A.01, the creditor is required to allow the debtor to repay the "old" portion of a prevailing balance at the "old" rate and minimum payment terms. The requirement does not imply that the separate amounts subject to different finance charge rates should be considered as separate accounts.

Response No. 4: No. As stated in my answer to question number 1, the minimum payment requirement under the agreement as stated in the fact situation remains unchanged and is applicable to the entire agreement.

Response to Supplementary Question 1: As stated in Interpretation Letter No. 81-8, it is my opinion that the provision of the last sentence of Article 1A.01 is optional and does not mandate anything, but is available to a creditor if desired. Therefore, it is my view that a creditor is not in violation of the Article if the creditor unilaterally elects to first apply all payments received to the balance existing on an account as of the date of implementation of the provisions of Article 1.04. My opinion is based solely on my interpretation of the law and some creditors may not consider this to be a prudent approach since the attitudes and sentiments of their customers would be a consideration in their decision as to how payments should be allocated.

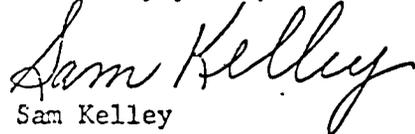
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Response to Supplementary Question 2: I see no logical distinction in a debtor's "demand" as opposed to a "request." The preceding reply is applicable to both situations. In either instance, in our view, the creditor still has the right to apply payments first to the "old" balance.

I hope this reply is adequate for your purposes.

Sincerely yours,

A handwritten signature in cursive script that reads "Sam Kelley". The signature is written in dark ink and is positioned above the typed name and title.

Sam Kelley
Consumer Credit Commissioner