STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

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SAM KELLEY, Commissioner

November 18, 1981 No. 81-26

Mr. Hennon Gilbert
Chairman of the Board
Z-Comp
The Landmark Bldg., Suite 616
705 East Houston Street
San Antonio, Texas 78205

Dear Mr. Gilbert:

In your letter of October 9, 1981, you referenced Appendix J of Regulation Z which prescribes a method of measuring the time period in the first payment term for the purpose of calculating the Annual Percentage Rate (APR). You then asked the following question as it relates to credit transactions made pursuant to Subtitle II of the Texas Credit Code, Article 5069, V.T.C.S.

> "May that same method be used by Texas Creditors for calculating interest or time price differential, as applicable?"

As you know, it has consistently been the position of this Office that the number of "odd-days" should be determined by counting the number of days beyond (on the farther side) one month from the contract date to the first scheduled instalment due date. For example, in a transaction that was made on February 25, 1981 with a first instalment due date scheduled for April 1, 1981, the first payment period consists of one (1) month plus seven (7) days based on the method we have advocated for counting the extra ("odd") days in the first payment period. "Month" is defined in Article 2.01(j) of the Credit Code and in part, states that a month ". . . means that period of time from one date in a calendar month to the corresponding date in the following calendar month . . ." In the example given, the period from February 25 to March 25 is one (1) month; the number of actual days from March 25 to April 1 is seven (7).

According to Appendix J of Regulation Z, a first payment period from February 25 to April 1 consists of one (1) month plus four (4) days. The extreme variance in the number of days in this instance is obviously caused by the month of February having only twenty-eight (28) days. As you know, the four (4) odd-days are produced by considering the full month to be the period from April 1 to March 1, and the actual number of days from March 1 to February 25 is four (4).

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In our view the method of counting odd-days as prescribed by this Office is one that is consistent with the definition of a month and other provisions of the Code and its validity should be continued to be recognized even though the procedure prescribed in Regulation Z for disclosure purposes is in conflict with that method.

We have given your question considerable thought and have concluded that the method prescribed in Appendix J of Regulation Z of counting odd-days for APR disclosure purposes is an acceptable alternative method for counting odd-days for interest calculation purposes under the Texas Credit Code under the following conditions.

> Any creditor who adopts the method prescribed by Regulation Z should utilize the method consistently as to all applicable credit transactions initiated by the creditor.
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> When the aforementioned method is utilized by a creditor, the number of odd-days produced will be considered by this Office to be controlling to determine whether an otherwise monthly payment transaction is a "regular" or "irregular" transaction under Chapters 3 and 4 of the Code. If the application of the method produces more than fifteen (15) odd-days, the transaction will be considered "irregular."

The preceding comments relate only to the manner in which the number of odd-days may be ascertained and should not be construed as the authority to otherwise utilize the formulas found in Appendix J of Regulation Z to determine interest or time price differential charges.

I trust this will be sufficient for your purposes.

Sincerely yours,

Sam Kelley

Sam Kelley
Consumer Credit Commissioner