OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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September 14, 1982   82-21

Mr. Bill Quinn
Vice President
National Bank of Commerce
   of San Antonio
P. O. Drawer 121
San Antonio, Texas 78291

Dear Mr. Quinn:

This is to acknowledge receipt of your letter dated June 15, 1982,
and to confirm our conversations concerning the questions presented
therein. Your inquiry concerns the interpretation which this office
will give to the last sentence of Article 5069-4.01(5) V.T.C.S.

Without quoting the entire Article 4.01(5) I would point out that the
great majority of the article (which is somewhat lengthy) relates to
precomputed "regular" installment loans, and specifies in detail the
default and deferment charges which may be assessed on such "regular"
loans, and in the case of deferment charges in particular, the method
to be used for their calculation. After Article 4.01(5) has gone
into detail in these two areas with regard to precomputed "regular"
repayment loans the last sentence of the Article states:

> "On any loan contract which includes precomputed interest but
> which is not payable in substantially equal successive monthly
> installments, the loan contract may provide for interest from
> the maturity date of any installment until paid at a rate not
> exceeding the highest lawful contract rate."

As is obvious there is no mention made whether the above sentence
applies to either default or deferment charges or both. It has been
our view that the above referenced sentence could be used to autho-
rize default interest in precomputed "irregular" loans made pursuant
to Chapter 4. However, because the sentence contains no procedure
for the treatment of the contract in the event a deferment of a pay-
ment was made, we have been of the view that there was no authoriza-
tion for a deferment charge on a precomputed "irregular" Chapter 4 loan.
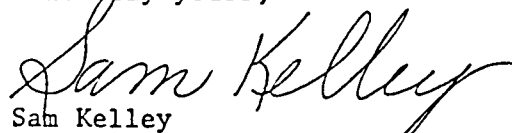We are now changing that position.

As you have pointed out, it does not seem equitable to allow some borrowers to defer payments while other borrowers are not allowed to defer payments on other loans which are made under the authority of the same Chapter of the Code. The result is that a borrower obligated on the latter type of loan who is unable to pay a scheduled installment and is not permitted to pay additional interest to defer the installment will either (a) cause the lender to carry the loan in a delinquent status; (b) necessitate a refinancing of the entire indebtedness; or (c) place the lender in a position to accelerate because the borrower is in default.

It is the position of this office that the last sentence of Article 4.01(5) authorizes a lender on a precomputed irregular loan made pursuant to Chapter 4 to contract for additional interest for deferment under the authority of the above quoted provision if the concept of the collection and retention of deferment interest as otherwise described in the Article is adhered to by the lender. That concept includes (a) the extension of the scheduled maturity date of the contract for a period of time equal to the deferment period, which period must consist of one or more whole months; (b) the assessment of an interest charge for deferment no greater than the amount of interest that would accrue during the deferment period under the original loan agreement, i.e. the amount of interest that would be produced by the application of the simple annual interest rate under the loan contract when applied to the unpaid principal amount determined to be outstanding as of the date of the deferment; (c) a pro-rata refund of any unexpired full month or months of deferment interest in addition to the refund required by Article 4.01(6)(b); and (d) the restriction that deferment interest may only be collected in connection with a payment date of a wholly unpaid installment on which no interest for default has been collected.

The preceding opinion is applicable only to the statutory provision quoted herein.

Sincerely yours,

Sam Kelley
Consumer Credit Commissioner

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