



STATE OF TEXA

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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October 27, 1982 82-27

Mr. Dennis Swift
Law, Snakard & Gambill
2600 Fort Worth National Bank
Building
Fort Worth, Texas 76102

Dear Mr. Swift:

This is to acknowledge receipt of your letter dated September 30, 1982 in which you pose several questions concerning a proposed open-end variable rate credit program to be offered by a bank. I have decided to quote from your letter the proposed fact situation and your questions. My responses to your questions follow the quote from your letter which is as follows:

"My client, a national bank, is considering an open-end, variable rate program whereby a customer, from time to time, may obtain loans primarily for personal, family, or household use. The bank will use the quarterly ceiling under Article 1.04 as its interest rate index. However, a customer's contractual interest rate will be based on the bank's commercial prime rate - whatever the prime rate is on the last day of the billing cycle. For example, assume the billing cycle ends on the 25th of the month. Also assume statements will be prepared and forwarded on the 5th day of the following month. The statement will reflect the finance charge which accrued during the subject billing cycle and the annual percentage rate used to compute that finance charge. The statement also will advise the customer of the interest rate in effect for the billing cycle which began on the 26th day of the preceding month.

"Against the backdrop of this program, I have the following questions which involve an interpretation of Article 1.04(h)(2):

"(a) The bank may prefer to employ the indicated (weekly) rate ceiling rather than the quarterly ceiling in this program. However, Article 1.04(h)(2) appears to prohibit a rate change during any billing cycle. Is the weekly ceiling available in the program described above - with the understanding the weekly ceiling may push the contractual rate down during the billing cycle?

"(b) Does the phrase 'any changes,' in the second paragraph of Article 1.04(h)(2), include a decrease as well as an increase in the interest rate? In other words, is it necessary to advise the customer if there will be any adjustment in the interest rate in the succeeding billing cycle?

"(c) The customer would not receive his billing statement (and thus notice of an interest rate adjustment) until a few days after the new billing cycle had begun. Will this satisfy the requirement that notice of a change be given, '...on or with the billing statement for a billing cycle preceding the first cycle as to which the change in the rate is effective...'?

"(d) For purposes of disclosing the interest rate adjustment, is it necessary to identify the actual rate or may the bank tell the customer that his interest rate will increase or decrease by a certain percentage? Recall that the actual interest rate for the previous cycle will be specifically identified. As an alternative, could the bank advise the customer of its prime rate as of the last day of the billing cycle and leave the computation of the contractual rate to the customer (by adding the designated percentage to the prime rate as contracted for in the original agreement and disclosure statement)?

"(e) Assuming that the interest rate never floats above the cap disclosed in the original agreement and disclosure statement, do you consider a rate adjustment from one billing cycle to another as an 'amendment' under Article 15.05?"

Response to question (a).

If a creditor were to make applicable the indicated (weekly) rate ceiling to a variable rate open-end account credit program the ceiling would of course be subject to weekly adjustment. Such a plan is feasible in commercial/business transactions but not in those pursuant to which credit is extended for personal, family or household use because of the notice requirements of Article 1.04(h)(2)(second paragraph). Section 1.04(h)(2) requires that in variable rate open-end account credit programs primarily for personal, family, or household use that the creditor must disclose any changes in the rate which result from the operation of the index, formula or provision of law. This notice must be given on or with the billing statement for the billing cycle preceding the first cycle as to which the change in rate is effective (or by a separate mailing on the same time schedule). As a practical matter this notice requirement would preclude the use of the weekly ceiling in such a program since all such programs which I have seen are on a monthly billing

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cycle basis. If the formula resulted in a rate change during the middle of a monthly billing cycle there would be no way to comply with the notice requirements of Article 1.04(h)(2). Thus, as a practical matter the quarterly and annual ceilings are the only ones which may be effectively utilized in open-end account variable rate credit programs pursuant to which credit is extended for personal, family, or household use.

Response to question (b).

It is our view that the phrase "any changes" in the second paragraph of Article 1.04(h)(2) refers to decreases as well as increases in the rate and therefore the (h)(2) notice must be given if there is any change in the interest rate in the next succeeding billing cycle.

Response to question (c).

Compliance with the notice requirements of Article 1.04(h)(2) will result in the customer's receipt of the notice of the interest rate adjustment a few days after the new billing cycle has begun. We believe the requirements of Article 1.04(h)(2) have been met even though a few days of the new billing cycle have elapsed prior to receipt of the notice of the new rate.

Response to question (d).

It is our position that Article 1.04(h)(2) requires that notice be given of the actual rate which will be charged. We do not believe it sufficient that notice of the percentage of the rate change is given.

Response to question (e).

If the interest rate charged on the account never floats above the maximum disclosed in the original agreement and the disclosure statement, it is our position that a rate adjustment from one billing cycle to another is not an "amendment" to the agreement as that term is used in Article 5069-15.05, V.T.C.S. Thus, that provision is not applicable to the type of interest rate adjustments described above.

Sincerely,


Sam Kelley
Consumer Credit Commissioner

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