



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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January 21, 1982 No. 82-3

Mr. John B. Lederer
Assistant General Counsel
Texas Credit Union League
P. O. Box 225147
Dallas, Texas 75265

Dear Mr. Lederer:

This is to acknowledge receipt of your letter dated December 10, 1981 wherein you request us to state the position of this Office concerning a question you pose pertaining to Article 5069-6A, Sec. 5(4), V.T.C.S. All statutory references herein are to provisions of Chapter 6A, Article 5069 or to Regulation Z.

The 67th Texas Legislature recently enacted an extensively revised Chapter 6A which authorizes financing of manufactured homes either by credit sales contracts or purchase money loans. The new Chapter 6A along with the provisions of H.B. 1228 now codified in Art. 1.04, provide that the time price differential charges on such credit transactions may be on a precomputed or simple interest (time price differential) basis. Your question is whether a portion of the disclosure requirements provided for in Chapter 6A, Sec. 5(4) must be made in a Chapter 6A transaction in which the time price differential charge is computed by the application of a rate from time to time on the unpaid principal balance; i.e. a simple interest (time price differential) calculation.

Chapter 6A, Sec. 5(4) provides in part as follows:

".... The document must contain substantially:

".... Under the law you have the right to pay off in advance the full amount due and obtain a substantial refund of the credit charge."

The wording of the above-quoted provision of the statute obviously appears to make the above set out disclosure mandatory in all Chapter 6A contracts. However, in a 6A transaction wherein the time price differential is computed on a simple interest basis, the time price differential is computed from time to time by applying a rate to the unpaid principal balance and in the event of early full payment

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of one of these types of loans there would never be a refund due the borrower. Simply stated, the above-quoted, required disclosure in Sec. 5(4) just does not fit a contract wherein the time price differential is computed on a simple basis. Also, it can be confusing to the debtor obligated on such a contract.

Regulation Z, Sec. 226.18(k) provides for certain federal disclosures in the event of prepayment telling the consumer whether there will be a prepayment penalty in a simple interest transaction and whether in a transaction other than one where the interest (time price differential) charge is computed on a simple basis whether or not the consumer is entitled to a rebate of any finance charge. Regulation Z does not require a Sec. 5(4) type disclosure in contracts where the time price differential is computed on a simple basis for the obvious and I think valid reason that there will never be a rebate of charges in a simple interest contract. Regulation Z only requires the Sec. 5(4) type disclosure in a precomputed type contract.

Chapter 6A, Sec. 5(1) provides that creditors shall comply with the federal Truth-in-Lending Act and Regulation Z and then states:

"In the event of any inconsistency or conflict between the provisions of this Chapter and federal requirements, disclosures, or interpretations, the federal requirements, disclosures, or interpretations control, and the inconsistent or conflicting provisions of this Chapter do not apply."

Regulation Z requires disclosure only in contracts other than those computed on a simple basis of whether or not the customer is entitled to a rebate of charges in the event of prepayment. Chapter 6A, Sec. 5(4) would apparently require that disclosure in all contracts, even those in which charges are computed by the simple interest method, and even though there would never be a rebate. We do not think that the portion of Sec. 5(4) quoted earlier is an appropriate disclosure in credit transactions computed on a simple interest basis and that if given in such type contracts can be misleading to the obligor. Regulation Z does not require such a disclosure in such contracts but rather requires it to be given in those types of contracts where it is applicable and appropriate. We feel that the Regulation Z type of disclosure requirement is preferable to that of Sec. 5(4) on the rebate of charges question. Since Regulation Z does not require the Sec. 5(4) disclosure in simple interest (time price differential) contracts but does require it in others, and since giving the Sec. 5(4) disclosure in simple interest (time price differential) contracts can be misleading to the consumer, it is our position that the portion of Chapter 6A, 5(4) which provides for disclosure of refund of credit charge in the event of prepayment need not be given in Chapter 6A contracts wherein the time price differential is computed on a simple basis.

Sincerely yours,



Sam Kelley
Consumer Credit Commissioner