



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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January 31, 1984 84-2

Mr. J. Scott Sheehan
Taylor, Hays, Price, McConn &
Pickering
400 Citicorp Center
1200 Smith Street
Houston, Texas 77002

Dear Mr. Sheehan:

This is to acknowledge receipt of your letter dated January 16, 1984. You request an interpretation by this office of the propriety of a proposed procedure whereby a bank which currently operates an overdraft checking account plan under Article 5069-Chapter 15, V.T.C.S. proposes to amend the plan so as to implement a fixed rate of interest of 18% per annum on all balances as authorized by Article 5069-1.04. As you point out in your letter any such change in the program must comply with Article 5069-Article 1A.01. (It is noted that the plan does not involve the use of a credit card.) To describe the proposed change in the plan I will quote a portion of your letter as follows:

"The overdraft checking plan currently employs the three-tiered rates authorized by Chapter 15. Finance charges are based upon an annual percentage rate of 18% on the portion of the average daily balance not above \$1,500, 12% on the portion above \$1,500 and not above \$2,500, and 10% on the portion above \$2,500, pursuant to Article 5069-15.02(a)(1).

"The bank wishes to change the applicable rate to 18% per annum pursuant to Articles 5069-1.04, as amended, by following the amendment procedures authorized under Article 5069-1.04(i), and, since the rates authorized by Article 5069-1.04 have not been previously implemented regarding the accounts, by complying with Article 5069-1A.01.

"The bank does not have data processing equipment that can accommodate two balances, i.e., one balance for pre-implementation balances at old rate and terms and another balance for post-implementation advances at the new rate. Similar problems regarding a different proposal for complying with Article 5069-1A.01 were addressed in your interpretation letter 82-8, dated February 24, 1982.



"The bank proposes to implement the change as follows: Advance notices required by Article 5069-1.04(i) will be sent to all customers. On the effective date of the change, the customer will receive a cash credit to the customer's regular, demand deposit, checking account equal in amount to the difference between the finance charges that would accrue on the pre-implementation balance at the old rate and payment terms (assuming payments are made at the agreed minimum payments) until the balance reaches \$1,500 (at which point the rate of 18% applies anyway) and the finance charges that would accrue for the same amortization period at the new rate of 18% per annum. The credit will be made to the checking account and is available to the customer for general purposes in the same manner as other amounts on deposit in the checking account. The credit will not be applied against the loan balance of the overdraft credit and the loan balance will thereafter bear interest at the new rate of 18% per annum.

"The account agreements require a monthly payment of 5% of the new balance, but not less than \$25. In computing the amount of the credit, the bank will assume that payments would have been made at the required minimum payments, which you indicated is proper in your interpretation letter 82-8. Because the amount of the cash credit is dependent upon the current balance, the minimum payments and the resulting period necessary to amortize the current balance down to a balance of \$1,500, the amount of the credit will vary for each account, and the bank will separately compute the credit for each account".

As you know the intent of Article 1A.01 was to allow debtors to pay off at the old rates and terms the balances in existence prior to creditor implementation of the new higher rates authorized by Article 1.04. Although the plan outlined in your letter is somewhat novel it is our view that it is in compliance with the requirements of Article 1A.01. If the debtor pays as agreed, the fact that all customers, if they accept the change, will receive an immediate cash payment of an amount which would equal any increase in the rate would result in the debtor paying no more in interest charges than he/she would have had the old plan continued in existence. As stated earlier, in the opinion of this office, the proposed method of amendment is in compliance with the relevant provisions of Article 5069.

Sincerely,


Sam Kelley
Consumer Credit Commissioner