STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

2601 NORTH LAMAR
AUSTIN, TEXAS 78705-4207

(512)479-1280
(214)263-2016
(713)461-4074

December 31, 1985 85-19

Mr. William H. Daniel
McGinnis, Lochridge and Kilgore
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701

Dear Mr. Daniel:

This is to acknowledge receipt of your recent letter in which you request interpretations by this office concerning two questions relating to various provisions of Article 5069 - Chapter 6 and Article 5069 - 1.04(h)(1). Your first question is as follows:

> "On retail charge agreements and retail credit card arrangements entered into pursuant to Article 6.03 of Article 5069, would the average daily balance method, the previous balance method, and the adjusted balance method each be alternative permissible methods of calculating the balance on which the finance charge is computed?"

The definition of "Retail charge agreement" in Article 6.01(g) includes the term "Retail credit card arrangement" as defined in Article 6.01(p). Thus, the allowable charges which may be assessed on a retail charge agreement may also be assessed on a retail credit card arrangement. Articles 6.03(3) and 6.03(5) provide for the allowable time price differential charges which may be assessed in connection with a retail charge agreement. Article 6.03(3) authorizes the allowable charges to be assessed on unpaid balances. It does not mandate which unpaid balances or at which stage in the account cycle such unpaid balances shall be determined. Article 6.03(4) provides in part as follows:

> "The time price differential under this Article shall be computed on all amounts unpaid thereunder from month to month (which need not be a calendar month) or other regular period; provided, however, if the regular period is other than a monthly period such time price differential shall be computed proportionately..."

As can be seen, this article does not set out a method for determining unpaid balances. It only requires that time price differential charges be assessed on all amounts unpaid from month to month. Since the relevant provisions of Chapter 6 do not require any particular method to be utilized in determining at what time in an account's billing cycle a balance will be selected for the purpose of determining the unpaid balance on which a time price differential charge will be assessed, it has always been the view of this office that a creditor has various options in selecting a procedure for the assessment of a time price differential charge, as long as the creditor is consistent in the application of the method once it had been selected. Therefore, in response to your first question, it is the position of this office that on retail charge agreements and retail credit card arrangements subject to Article 6.03, either the average daily balance method, the previous balance method, or the adjusted balance method may be utilized in calculating the unpaid balance on which a permissible time price differential charge is computed. Permissible formulations of these methods may be found in appendix G-1 to Regulation Z, promulgated under the Federal Truth in Lending Act. Any method utilized should be implemented so as to take into account the "free period" prescribed by Article 5069 -1.11(b) if the rate being charged is an Article 1.04 rate rather than an Article 6.03 rate.

Your second question is as follows:

> "For purposes of disclosing, under Texas law, the operation of a program which is subject to Article 5069 - 1.04(h)(1) may a creditor simply state the particular ceiling which is applicable or the period at which it may be adjusted. For example, would the following suffice as disclosure of the operation of Article 5069 - 1.04(h)(i); 'The rate on this account will remain in effect until your December bill closing date and may thereafter be renewed by us without further notice to you' or must anything else be disclosed?'"

In response to your second question I would first note that our Letter Interpretation No. 81-27(pp 3-4) dated November 19, 1981, although not dealing specifically with your inquiry, discussed the subject of designation of ceilings. The statements made in that letter still reflect the position of this office. As stated near the bottom of page 3 of that letter, there is no language in Article 1.04(h)(1) expressly stating that in an open-end, fixed rate contract subject to that provision that the ceiling applicable to the contract must be designated. Article 1.04(h)(1) simply provides that as an alternative to the indicated rate ceiling the creditor may implement a rate under either the quarterly or the annualized ceiling. Any quarterly ceiling rate implemented must be kept in effect for a three month period and any annual ceiling rate for a twelve month period. Articles 1.04(i)(1)(B) and (C), when referring to the notice requirements applicable to open-end accounts, require that the obligor be advised of the effective date of any rate change and of the period for which it is elected or at which time the ceiling will be adjusted.

It is our position that in a contract subject to Article 1.04(h)(1) there is no requirement that a designation be made that a particular ceiling is applicable to the agreement, but such a designation would be permissible. Even if a ceiling is designated, the agreement (or amendment) should additionally advise the obligors of the periods for which the rates are implemented, or the time at which the ceiling will be adjusted unless the rate is 18% per annum or less. Once that creditor has made an election of a period (either the quarterly or the annual), no further notice of the renewal of an election or successive renewals of elections of ceilings is required if the creditor has previously disclosed to the obligor that the election may be renewed and the rate does not exceed that previously agreed to by the obligor.

A rate of 18% per annum or less would always be permitted under Article 1.04(b)(1) on contracts subject to Article 1.04(h)(1) and no disclosure other than the rate itself would be required by Article 1.04(h)(1). A creditor may renew a ceiling without further notice and may renew a rate without notice if the rate renewed does not exceed the ceiling applicable to the agreement. If the rate is greater than 18% per annum it is recommended that the disclosure either indicate that the rate will be reduced should it exceed a future ceiling or that any renewal of the rate will be in accordance with Article 1.04(h)(1).

Sincerely,

Sam Kelley

Sam Kelley
Consumer Credit Commissioner

SK:aw