



STATE OF TEXAS

# OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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July 12, 1983

83-8

Ms. Cheree R. Tull  
Alamo National Bank  
P. O. Box 900  
San Antonio, Texas 78293

Dear Ms. Tull:

This is to acknowledge receipt of your letter dated June 30, 1983 wherein you ask for a statement of the position of this office with regard to the type of notice, if any, which must be given to inactive cardholders who are participants in a variable rate open-end bank card credit program.

In your letter you state that your client, a national bank, has revised its credit card program so as to comply with the provisions of Senate Bill 405, the relevant portions of which are various sections of Article 5069, V.T.C.S. As of July 1, 1983 new card holders will be offered a variable rate plan with a ceiling of 22% and a floor of 14% per annum, subject to quarterly adjustment. On or before October 1, 1983 all existing accounts in the program will be amended pursuant to statutory provisions so as to conform with the new plan. Thus, by October 1, 1983 all card holders continuing to belong to the credit card program will have agreed in one way or the other to a variable rate which may float from 14% to 22% and be subject to quarterly adjustment.

You then inquire if, after October 1, 1983 and after all participants have agreed to the new provisions, Article 5069-1.04(h)(2) (second paragraph) requires that notice of rate changes be given to inactive cardholders even though the inactive account cardholders would not be receiving a monthly billing statement at the time of the rate change. You point out that the first billing statement sent on the previously inactive account would advise the cardholder of the rate applicable to the account, which rate the cardholder had previously agreed to.



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Article 1.04(h)(2)(second paragraph) provides as follows:

"Except to the extent inconsistent with any federal law, regulation, or interpretation from time to time in effect, on any open-end account entered under authority of this Article 1.04 which is primarily for personal, family, or household use, the creditor shall disclose any changes in the rate resulting from operation of the index, formula, or provision of law by giving notice of the change in the rate on or with the billing statement for a billing cycle preceding the first cycle as to which the change in the rate is effective or by a separate document mailed on or before the beginning of the first cycle as to which the change in the rate is effective. Variations in the rate on the account due to operation of the previously disclosed index, formula, or provision of law need not be further disclosed under this Section (h) or under Section (i) of this Article."

It should be noted that the above quoted provision begins with the phrase "Except to the extent inconsistent with any federal law, regulation or interpretation..." Also, Article 1.04(h)(2) states that the described notice shall be given on or with the billing statement sent for a cycle preceding the first cycle as to which the change is effective.

In the case of the inactive accounts described in your letter there is no federal requirement that a billing statement be sent (Regulation Z, Section 226.5(b)(2)(i); Regulation Z Official Staff Commentary, Section 226.5(b)(2)(i)).

Although Regulation Z, Section 226.9(c) and Regulation Z Official Staff Commentary 226.9(c) at least indicate that some notice should be given in the case of rate changes in credit card plans, Regulation Z Official Staff Commentary Section 226.6(a)(2)(9) states that "No notice of a change in terms is required for a rate increase under a variable rate plan as defined in comment 6(a)(2)-2", which plan is of the type involved here.

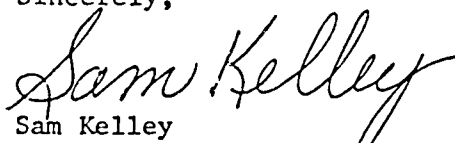
I have recently been informally advised by the Federal Reserve Board staff that Section 226.6(a)(2)(9) of the Commentary does in fact express the view of the Federal Reserve Board and that as far as federal law or regulation is concerned, no notice is required of a rate increase in a variable rate plan such as described in your letter. I have also been informally advised by the Federal Reserve Board staff that it would probably be their position that the Article 1.04(h)(2) notice provisions would not have been preempted by the federal position.

Thus to summarize, in the described inactive account situation, federal law and regulation would not require notice of a rate increase and would not require that a billing statement be sent to the inactive account cardholders. Article 1.04(h)(2), which it is here assumed has not been preempted, does require notice of rate changes in variable rate contracts but provides that this notice be given on or with the billing statement for a billing cycle immediately preceding the first cycle to which the change is effective. But, since federal law does not require a billing statement to be sent to inactive accounts, in the described situation ordinarily none would be sent with which the Article 1.04(h)(2) notice could be sent "on or with." It seems to me that the wording of Article 1.04(h)(2)(second paragraph) contemplates that a billing statement is going to be sent to the cardholder anyway, and the notice of rate change should be included in that mailing. If this office were to take the position that the Article 1.04(h)(2) notice must be given to inactive cardholders we would in effect be mandating a separate and costly mailing to cardholders who would not otherwise be receiving a statement.

It is our position therefore that in the situation described in your letter where all cardholders have previously agreed to the provisions that the rate of charge may float from 14% to 22% per annum, the notice requirements of Article 1.04(h)(2) need not be given to inactive cardholders until the next billing statement is sent to the cardholder. I am aware that in some situations this will result in a particular rate being in effect before the cardholder has notice of the change. However, the cardholder has already agreed to the rate which will be assessed and has also agreed to and presumably understood that the rate could change quarterly.

You mention in your letter that at any given time your client has approximately 100,000 inactive accounts which would not ordinarily receive billing statements until they become active. If the creditor were required to make separate and extra mailings to these customers (perhaps four times a year) to simply advise the customer of a rate change to which the cardholder had already agreed such mailings would be very expensive and cumbersome. Also, it would probably be confusing to the inactive cardholders since they would be getting statements from the creditor when they (the cardholders) knew they did not owe anything on the account. Therefore, as previously stated, it is the position that in the described situation the Article 1.04(h)(2) notice need not be given to inactive account cardholders until the next statement is sent on an account which later becomes active. This position is of course assuming that all cardholders have agreed to the terms of the plan.

Sincerely,

  
Sam Kelley  
Consumer Credit Commissioner