

From: Jeff Tuckfelt
Subject: Regulation Z - Truth in Lending

Comments:

I have two comments about appropriate revisions to consumer credit cards.

First, in my experience, the law in no other area permits the assessment of specified penalties on contractual defaults that cannot be considered liquidated damages, as they are neither proportional of the loss due to the breach, nor do they have any relationship to an estimation of likely actual damages. It is elementary contract law that such penalty provisions are unenforceable. It is a testament to the vast legislative influence of the lending industry that they have been able to create this exception in the law for this industry.

Second, the provisions of credit card agreements that the consumer must pay the reasonable attorney's fees and costs incurred by the lender due to any breach by the borrower is clearly an adhesion provision. Although consumers are free to decline to enter into an agreement with any particular lender, I have never seen a credit card agreement without such a provision, so the consumer really has no option, other than to avoid obtaining credit. Nevertheless, it would not be so unfair if it were not one sided. There is no comparable contractual provision that, if the consumer prevails in litigation with the lender, the consumer is entitled to recover his/her legal fees and costs. There are statutory provisions to the consumer's benefit that apply in some, but not all such cases. How about a statutory provision to the effect of

Whenever a provision in an open or closed end loan agreement between a lender engaged in such business and a consumer contains a provision that one of the parties is entitled to recover its/his/her legal fees and costs in the event of a breach by the other, such provision shall be interpreted to allow reasonable attorney's fees and costs to the substantially prevailing party in any litigation asserting a breach by one or more of the parties to the contract.

The lenders shouldn't complain. If they are not in breach, they will never have fees and costs assessed against them.

Thank you for your opportunity to comment.

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