Term paper on credit card agreements: non-negotiable contracts

Business, Company

Law

A credit card agreement is a legal contract between a bank or financial institution that issues the credit card and the consumer who uses the credit card. On the one hand the banks want “ freedom of contract,” while on the other hand the consumer wants transparency from the banks and the right to negotiate terms. (Talking, 2009, thecitizens. blogspot. gr) From the banks point of view consumers have the option to accept or to not accept the terms of the agreement. This is true because consumers can theoretically choose to never use credit cards. But from the consumers’ point of view there is little difference between the credit card agreements; a consumer can choose a card with a lower rate but the bank can change the rate at any time. Fixed terms are set within the industry. (Talking, 2009, thecitizens. blogspot. gr) In May 2009 President Obama signed into law the ‘ Credit Card Act’ which held the promise of sweeping new reforms in support of the consumer. This paper discusses the impacts of the Credit Card Act, for better or for worse. Also discussed is the problem the credit card industry faces which they call “ incomplete information,” credit card overspending of young adults and how these may impact the future policy makers’ decisions.

Credit cards have been subject to many rules and regulations over the years. The reason the Credit Card Act became important Laws have been made to regulate the actions of credit card companies. The Credit Card Act can be considered a Bill of Rights for the consumer. The Act clarifies (a) the rights and privileges of the consumers, (b) the rules and regulations the credit card company must follow, and (c) the limitations of the credit card features that are being offered. If banks would appreciate the perspective of the consumer and consumer needs the clash between regulation and deregulation supporters could be changed into a win-win situation.

There are many reasons from the consumer's point of view that the Credit Card Act became necessary. Consumers have become trapped in a never ending cycle of credit card debt. Part of the problem was due to overuse of the credit cards for buying consumer goods. Part of the problem was the bad economy so people were using their credit cards to pay for monthly bill or even groceries. Another problem some people faced was when an illness in the family put the family in debt so they needed to use credit cards. But not every problem was a problem started on the consumers' side. The credit card companies were not playing fair on their side. Goldwasser (2010) wrote for Kiplinger's Personal Finance, several reasons that consumer's needed legislation to protect them from the actions of issuers. When the last phase (The Credit Card Act) of the Credit Card Accountability, Responsibility and Disclosure (CARD) Act passed in 2009 many consumers felt that a battle had been won. The changes made that benefit consumers included some positive changes. (a) The largest amount that can be charged for a first-time late payment by the issuer is $25. (b) A second incident of late payment within six months of the first the issuer has a right to charge $35. 00. (c) Six months after two incidents of late payments have passed the issuer can only charge $25 for the next late payment. (d) No inactivity fees are allowed. (d) Only one fee can be charged per transaction. (e) A credit card issuer that raised their rates since January 1, 2009 must review increases every 6 months. All of those provisions sound very good for consumers.

Unfortunately the issuers made some adjustments that have not been beneficial for consumers. (Goldwasser 79)

The changes in credit card rules provided the issuers some advantages. (a) Although a credit card may have been issued with a fixed-rate interest rate, the rate can be changed into a variable-rate. " The law permits issuers to raise interest rates if the rate is pegged to an index that fluctuates" (Goldwasser 79). (b) Interest rates can be raised on customers that pay on time if 45 days notice is given by the issuers. (c) The credit card companies now target only the portion of the consumer base that are the most profit making for their business and ignore everyone else. (d) An individual may want to move their balance due to another credit card company that is offering a 0 percent interest rate but if they do they could end up paying a balance transfer fee of 5 percent. (Goldwasser 79)

Contractual law (which applies to credit card agreements) affects the issuer and the consumer unfairly so it is not an agreement based on contractual law. Adam Jusko founded the IndexCreditCards. com which lists approximately 1200 credit cards with information and comparisons for each card. Jusko (2010) discussed the promise of the Credit Card Act and the actions taken by banks after it was signed into law. His perspective is from the consumer's side.

President Obama signed into law a sweeping set of rules and regulations concerning the business practices of credit card issuers. Known as the Credit Card Act, the new laws promised a level playing field where consumers would be treated more fairly and credit card terms, would be easier to understand. But, much like your favorite credit card agreement, the law had something nasty buried in the fine print – no part of the law would take effect immediately. Instead, certain pieces of the law didn't take effect until August, and many others have an effective date of February 2010. Credit card issuers used the window between the law's signing and its actual enforcement to raise rates, slash credit limits, or even completely take your card away. (Roth, 2010,)

A lawyer, who writes the blog ' The Citizens,' has given examples of how contractual law has a tendency to bring the worst out of people not the best. He shares a classic example of the rich relative who promises their young niece or nephew a nice chunk of money if they graduate college – but the rich relative never pays the promised reward. According to contractual law the rich relative does not have to honor their agreement with their young relative. But the lawyer continues the " libertarian/jungle" version of contract law we learned in law school and to continue to pump over the airwaves is no longer accurate, although it is dominant in the minds of those who speak of ' freedom of contract.' That is because the consumer is making agreements with large corporations that set the terms and do not allow for negotiation. Freedom of contract assumes a two-party negotiation which is not part of the interaction happening with a credit card agreement. When it comes to credit cards there is no negotiation. The corporations dictate the terms and the consumer can ' take it or leave it.' Interestingly the lawyer concludes by commenting that " You can chose to forego credit cards, as you can choose to forego television, telephones, automobiles, or underwear" (Talking, 2009, thecitizens. blogspot. com) In other words credit cards are an integral way that transactions are made in the modern world.

The state of Utah acted to protect the consumers of Utah by making it legal to make a class action lawsuit or using arbitration waivers, Senate Bill 252 was amended to Utah’s Consumer Code. Creditors are expressly allowed “ to include in their consumer contracts a waiver of the debtor’s right to initiate or participate in a class action related to the contract; it also requires Utah courts to enforce such provisions” (ADR 9). The bill was sponsored by Senator Curtis Bramble who set out with the purpose to codify case law in six Circuits arguing that “ class action waivers are enforceable in the context of motions to compel arbitration” (ADR 9).

The Credit Card Bill of Rights of 2010 has seven main categories that are targeted to improve the agreement for the consumer and regulate the credit card issuers. The seven categories are (a) interest rates and the annual percentage rate (APR), (b) fees, (c) communications and clearly understood statements, (d) payments, (e) credit card eligibility, (f) debt collection, and (g) credit reports.

Interest Rates and the APR

The first category has caused a lot of trouble for consumers because the interest rates and APRs may change if the company decides to switch from fixed rate to a flexible rate. The Bill of Rights states that in the first year the credit card interest rate cannot be changed, but with four exceptions. If the consumer signed up for a credit card with a variable indexed interest rate then the interest will change. If the stated introductory time ends before the end of the year the interest rate may change. If the consumer does not pay on time or in any other way does not follow the payment agreement the interest rate can change. Lastly, interest rates on a credit card can change if the consumer has not paid their monthly payments and the payments are overdue more than sixty days. The annual percentage rate (APR) should not change unless it is used as a penalty for late payment after 60 days. This refers to both credit cards taken under a special promotion. The penalty APR cannot take effect until fourteen or more days after the consumer has been notified that their APR is going to be raised because of late payment.

Some people pay more than the required monthly minimum but how the money was being applied to the bill was not always clear. So rules were made to regulate how the consumer's payment could be applied to the amount due. For example the Bill of Rights (2010) states that when the amount paid is more than the minimum amount due, the extra amount must be paid against the portion of the bill with the highest interest rate. In other words the part of the balance having the lowest minimum rate should receive the minimum payment amount. Sometime consumer goods are purchased under a promotional sale that defers the interest rate payment on the item for six months or a year (or whatever time the promotional sale indicates). This can be complicated for choosing what interest rate should be chosen for the amount due when it shows up on the bill. " You may be given the choice of applying your monthly payments to this balance so you can pay it off before interest kicks in. If you are not given this options, your payments for the two billing periods prior to the end of the no-interest period will be applied to this balance" (Law 2009)

Fees

Fees may be put on a credit card statement, for example, because a consumer has charged over the top limit they are allowed or for a late payment. Also in the past one transaction could be charged more than one fee, so if you miss a payment the credit card companies were charging more than a fair value as a penalty fee; this was changed in the Bill of Rights 2010. Starting October 1, 2011 the credit card companies were regulated so that they cannot charge fees that equal " more than 25 percent of your credit card's initial limit during the first year your account is open this includes application and similar fees assessed before your account is open" but does not include any penalty fees (Law thecitizens. blogspot. com). Another outrageous act of credit card companies in the past was to charge a customer fees if they did not use their credit card – an inactivity fee. Other regulations on the credit card companies were made regarding fees that like these, seem like common sense for ethical business practitioners.

Payments

Most importantly the Bill of Rights gives the right of disputing the amount of payment to the credit card owner. The credit card companies must give the customer more chances to pay their bill on time by simple methods such as not demanding the payment be made before 5 p. m. or that a bill must be paid on a holiday if the due date happens to fall on a holiday. Two regulations that should be very practical for both the credit card companies and the consumer are to make sure the consumer receives their bill at least twenty one days before it is due and the bill must be delivered at the same time each month. The Bill of Rights also addressed another problem many credit card users found to be outrageous: if a mistake is made on the bill the owner of the credit card cannot be penalized.

Eligibility

Sometimes credit cards have been mailed to be people without an application. Or an application may be accepted without knowing whether the individual is able to pay back charges and interest on a credit card. The Bill of Rights stipulates that if a person under the age of 21 applies for a credit card they must prove that they receive an income that will realistically cover any charges or the application must have a cosigner. Instead of credit card companies taking into account the applicant’s household, the companies are required to use only the applicants’ information. Table 1 lists the regulations against discrimination that are included in the Bill of Rights (2010).

Credit Reports

The regulations on credit reports are also in favor of the consumers and demand transparency. Consumers can see their credit reports for the three major reporting agencies, at no charge, up to three times a year. Also the consumer can request the credit reports through email, regular mail, or over the telephone. If an entity denies a consumer credit based on credit report information then the consumer must be alerted to the reason and where they found the information.

Debt Collection

Debt collectors have been given many rules in order to regulate their behavior towards consumers. The rules included acting in an honest way by identifying themselves immediately, give their contact information, and send the consumer the facts about the debt in writing. Other rules are based on regulating the rude behavior of debt collectors and regulating the time that they may call the consumer (8 a. m. to 9 p. m.), telephone harassment is not allowed, they cannot contact a consumer at their place of work, or use vulgar or abusive language. Debt collectors are not allowed to lie to the consumer or share untrue data with credit bureaus or other credit reporting agencies.

Conclusion

The Point for Credit Union Research and Advice urges people to carefully review their credit card agreements. These are often printed with very small letters or written in a very confusing way but the agreement must be read and studied. The agreement should be included in every month’s statement. If a consumer does not want any negative surprises during the time they hold the credit card they must learn everything they can about the agreement. It is important for the credit card holder to review the agreement that comes each month with the statement because the issuer may make changes. For example a credit card holder may make every payment on time but the credit card company can still raise the interest if the holder of the credit is given at least 45 days notice. In general credit card holders have to be willing to spend time monitoring their credit card in order to be aware of any changes or any rules the credit card company may be overlooking. It is a good idea to use online websites that keep up on changes and new information about credit cards. One of the blogs cited in this paper that is very helpful is The Citizens on blogspot, CardHub. org, another is consumer-action. org, and the US government offers good information from the General Services Administration (GSA). The GSA has a 2012 Consumer Action Handbook that is available in paper or can be downloaded from the Internet. A contractual agreement is one that both parties discuss and come to agreement on before the paperwork is signed. From the examples above one can see that credit card companies are not talking to their customers nor are they being very helpful to them. Instead their goal seems to be to make a profit in any way possible. That is why regulations had to be passed to protect the consumers. Credit card companies cannot be trusted to follow good business ethics even with the rules and regulations though. As Goldwasser has pointed out the credit card companies look for loopholes in order to make large charges on their customers. Until the companies are willing to follow good business ethics a continuous amount of laws will have to be passed to regulate their actions. States such as Utah have started passing consumer protection laws. What may need to happen is to start charging the credit cards with criminal activity because of their tricks and dishonesty.

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