

The State of South Carolina

Department of Consumer Affairs

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Administrative Interpretation No. 3.303-7617

A PERSON IS ENTITLED TO THE NOTICE TO CO-SIGNERS AND SIMILAR PARTIES IN CONNECTION WITH A LENDER CREDIT CARD ARRANGEMENT AS WELL AS OTHER TYPES OF CONSUMER LOANS.

You have asked whether Consumer Protection Code Section 3.303 entitled "Notice to Co-signers and Similar Parties" applies to lender credit card arrangements or only to precomputed consumer loans. It is the opinion of this Department that Section 3.303 applies to all consumer loans including lender credit card arrangements.

Subsection (1) of Section 3.303 states in part:

A natural person, other than the spouse of the debtor, is not obligated as a co-signer... or similar party with respect to a consumer loan, unless... the person receives a separate written notice.... (Emphasis added)

"Consumer loan" is defined in Consumer Protection Code Section 3.104 [S.C. Code Ann. §8-800.234 (1975 Cum. Supp.) (hereinafter "S.C. Code")]. There are several types of consumer loans defined elsewhere in the Code: Section 3.107(2) [S.C. Code §8-800.237] defines "precomputed" consumer loan; Section 3.108 [S.C. Code §8-800.238] defines "revolving loan account"; Section 1.301(9) [S.C. Code §8-800.131] defines "lender credit card or similar arrangement." A lender credit card arrangement is a type of revolving loan account which in turn is a type of consumer loan. Use of the term "consumer loan" in Section 3.303 indicates that all consumer loans are affected by that Section's requirements.

Besides the language itself leading to the conclusion that Section 3.303 applies to all consumer loans, the same conclusion can be reached by negative implication when comparing Section 3.303 with Section 3.302 entitled "Receipts; Statements of Account; Evidence of Payment" which is also contained in Part 3 on Disclosure with regard to consumer loans. Subsection (2) of Section 3.302 specifically excepts revolving loan accounts. By negative implication, what is not specifically excepted in Section 3.303 is included, and the general definition of consumer loan includes lender credit card arrangements.

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You also asked, if Section 3.303 does apply to lender credit card arrangements, when is the appropriate time to provide the notice? Section 3.303(1) requires that a person entitled to the notice receive that notice "before or contemporaneously with signing any separate agreement of obligation or any writing setting forth the terms of the debtor's agreement."

You pointed out the difficulties involved in the typical credit card situation when persons complete the application at home. The appropriate time to provide the notice is before or contemporaneously with the creation of the obligation or delivery of the document(s) evidencing the terms of agreement. As you suggested, because not all applications involve co-signers or similar parties, it appears that an appropriate time to provide the notice would be to include it with the Truth in Lending disclosures which are delivered to the parties with the credit cards. The application for credit should be such that the lender can determine who would be co-signers or similar parties to ensure that both the notice and the Truth in Lending disclosures are delivered to co-signers and similar parties.

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