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Legal Developments

Public Law 93-495: The New Credit Law

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Two parts of the new credit law[1] (signed into effect by President Ford on October 28, 1974) should be of interest to the readers of *The Woman CPA*. One is termed the "Fair Credit Billing Act" (Title III) and the other is cited as the "Equal Credit Opportunity Act" (Title V). Both Acts will become effective on October 28, 1975.

The Fair Credit Billing Act

The Fair Credit Billing Act greatly expands upon the Truth in Lending Act[2] which required (among other things) that creditors of open-end credit plans notify customers of the true annual rate of interest. Readers who have experienced the frustration of trying to get a billing error corrected will no longer have to cope with inane notices from a computer, endure harassment by the company and collection agencies, and run the risk of obtaining a bad credit rating. Chapter 4 of this act requires a creditor who has received a statement from the obligor regarding an error (meaning an incorrect charge, a credit not made or any other discrepancy) within 60 days of the billing to respond to the obligor within 30 days. The creditor must supply explanations of computations, copies of invoices or any other data to substantitate the charge. Furthermore, after 90 days (or two complete billing cycles if that time length is less) the creditor must make appropriate corrections to the account and notify the obligor of those changes. If the creditor believes the charges are correct, a written explanation or clarification together with documentary evidence must be sent to the obligor. If the dispute involves goods the obligor never received, the burden is upon the creditor to determine that the goods were actually "delivered, mailed or otherwise sent to the obligor."[3]

During the dispute, the creditor cannot make collection attempts including the mailing of statements of account unless it is clearly stated that no payment is required on the disputed item until it is settled. Any finance charges based on the disputed amount must be credited to the account if it is determined that the obligor did not owe the disputed amount.

Not only is the creditor barred from harrassing the customer, but no report of the disputed delinquent amount can be made to a third party and any subsequent resolution of the disputed amounts must be reported to the third party (presumably a credit bureau):[4]

> "After receiving a notice from an obligor as provided in section 161(a), a creditor or his [sic] agent may not directly or indirectly threaten to report to any person adversely on the obligor's credit rating or credit standing because of the obligor's failure to pay the amount indicated by the obligor under section 161(a) (2), and such amount may not be reported as delinquent to any third party until the creditor has met the requirements of section 161 and has allowed the obligor the same number of days (not less than ten) thereafter to make payment as is provided under the credit agreement with the obligor for the payment of undisputed amounts.
>
> "(b) If a creditor receives a further written notice from an obligor that an amount is still in dispute within the time allowed for payment under subsection (a) of this section, a creditor may not report to any third party that the amount of the obligor is delinquent because the obligor has failed to pay an amount which he [sic] has indicated under section 161(a) (2), unless the creditor also reports that the amount is in dispute and, at the same time, notifies the obligor of the name and address of each party to whom the creditor is reporting information concerning the delinquency.
>
> "(c) A creditor shall report any subsequent resolution of any delinquencies reported pursuant to subsection (b) to the parties to whom such delinquencies were initially reported."

If the creditor does not comply with these provisions, any rights to collect the disputed amount (plus finance charges thereon) are forfeited. However, the limit of the forfeiture is $50 (excluding finance charges).

While the Fair Credit Billing Act will delight consumers who have been harassed, creditors such as department stores will discover that more care and paperwork will be required of them. Two other provisions may displease creditors. One is that the creditor must allow a customer 14 days in which to pay a bill before finance charges are levied. The other is that a creditor cannont be prohibited from offering cash discounts to persons *not* using a credit card. This will affect mer-

chants that accept the several popular bank cards. It may even result in retail stores competing for the cash customer's dollars via discounts. This would certainly be beneficial to the cash consumer and probably to the retail store since the charge made by the bank card company would be eliminated and the cost of carrying receivables would be reduced. In a period of high interest rates, many retail firms are feeling a liquidity pinch, so they may be pleased over the possibility of cash discounts.

Bank card companies will probably be extremely unhappy over the provisions of § 170. This section, in effect, renders the credit card issuer liable for all claims the cardholder has against the merchant honoring the credit card. The cardholder must first attempt to obtain satisfaction from the merchant, the amount involved must be over $50 and the transaction must have occurred in the cardholder's state of residency or within 100 miles of the cardholder's address. If these conditions are met, the issuer would be liable to the cardholder for any claims (exclusive of torts) against the creditor. The effect of this provision is uncertain, but it would appear that credit card companies would have to be very selective in choosing reputable merchants to honor their cards. They are certainly exposed to a much greater legal liability.

The Equal Credit Opportunity Act

While the provisions of the Fair Credit Billing Act affect all credit-card holders, another part of Public Law 93-495 is of particular interest to women. After many years of effort in Congress, particularly by Congresswomen Martha Griffiths and Bella Abzug, the Congress has found that there is a need to insure that the various financial institutions and other firms engaged in the extension of credit exercise their responsibility to make credit available with fairness, impartiality, and without discrimination on the basis of sex or marital status. Economic stabilization would be enhanced and competition among the various financial institutions and other firms engaged in the extension of credit would be strengthened by an absence of discrimination on the basis of sex or marital status, as well as by the informed use of credit which Congress has heretofore sought to promote. It is the purpose of this Act to require that financial institutions and other firms engaged in the extention of credit make that credit equally available to all credit-worthy customers without regard to sex or marital status.

For years women have been discriminated against by creditors. A single woman was not given credit because she might get married; married women could get no credit in their own right because they might get pregnant; and divorced women could not get credit because they had established none in their own names during their marriages. Quite often families with working wives could not buy homes because the wife's income was not counted. In 1972 the Federal Home Loan Bank Board conducted a survey of savings and loan associations and discovered that only 22% would count all of a wife's income; 26% would count half; 12% would count one fourth and 25% would count none.[6] The credit horror stories told by women include those where the divorced wife (who was the sole provider of the family during the marriage) cannot establish credit because the credit rating she had so carefully built up was in her ex-husband's name.

The new law is quite simply stated: "It shall be unlawful for any creditor to discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction."[7] The Board of Governors of the Federal Reserve System is charged with writing the regulations, and the enforcement of the law is distributed among many agencies depending upon the discriminating creditor. All creditors from home loaners and credit unions to the security brokers and dealers and the Small Business Administration are subject to the new law.

The remedies provided are interesting. Any creditor guilty of violating this law will be civilly liable to the aggrieved applicant for an amount equal to the actual damages sustained (either in an individual suit or a class action suit). In addition, in an individual suit, the creditor is liable for punitive damages of not greater than $10,000 in addition to actual damages.[8] Punitive damages in a class action are limited to the lesser of $100,000 or 1% of the creditor's net worth, with no minimum recovery for each class member.[9] In addition, the creditor has to pay court costs and attorney fees of the aggrieved party in a successful suit.[10]

It must be kept in mind that this law will not become effective until October 28, 1975. After that date there are several steps a woman must take to obtain redress. The National Organization for Women recommends that a woman applying for credit should ask what the standards of "credit-worthiness"[11] are. If she meets those standards and credit is denied, she should demand to know exactly why and, if possible, to get the reasons in writing. If she indicates she is aware of the law, the problem may be solved immediately because most firms do not want unfavorable publicity or the legal hassle. If satisfaction is still not obtained, she should take the case to the local Federal Trade Commission (which is expected to bear the most responsibility for the enforcement of the law). The F.T.C. would either forward the complaint to the appropriate agency or investigate the complaint itself. The Act gives the F.T.C. (and other responsible agencies) the right to obtain a permanent or temporary injunction, restraining order, or [to take] other action.

The aggrieved person must understand that the burden of court action is upon her. The F.T.C. will not generally represent an individual but an individual complaint will quite often reveal a pattern of discrimination and the agency involved will take formal action in such cases. Otherwise the woman has to go to a private attorney and take the case to court at her own expense. (Of course, if she wins the expense will be paid by the creditor.)

It is a long, trying experience for an aggrieved person to sue a creditor. The remedy section of the law is quite difficult. However, it is expected that the law will be enough of a deterrent that the blatant discriminatory actions of the past will be eliminated. The most subtle acts of discrimination ("Do you plan to have children?") will have to be eliminated by a few brave women in really good test cases.

In short, the Fair Credit Billing Act will not insure every woman of credit anytime or anywhere she chooses. All it will do is insure that a credit-worthy woman will be considered on the same basis as a man, regardless of her sex or marital status.

Footnotes

[1]Public Law 93-495, 93rd Congress, H.R. 11221, October 28, 1974.

[2]U.S.C. 1637

[3]Chapter 4, § 161

[4]Chapter 4, § 162

[5]Title V, § 502

[6]Testimony of Martha W. Griffiths, "Testimony before the National Commission on Discrimination in Consumer Credit," May 22, 1972.

[7]Equal Opportunity Credit Act, Title VII, § 701 (a).

[8]§ 706 (b)

[9]§ 706 (c)

[10]§ 706 (e)

[11]"Equal Credit Doesn't Have to Be Easy Credit," *The Seattle Times*, Sunday, November 17, 1974, p. G.6, Col. 1.