(b) Notification of applicant

Not later than 14 days after the date on which the Secretary of Commerce receives an application for a contract, grant, or other financial assistance provided under a nondiscretionary assistance program administered by the National Oceanic and Atmospheric Administration, the Secretary shall indicate in writing to the applicant whether or not the application is complete and, if not complete, shall specify the additional material that the applicant must provide to complete the application.

(c) Exemption

In the case of a program for which the recipient of a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, a State or an interstate fishery commission, such financial assistance may be provided by the Secretary to that recipient on a sole-source basis, notwithstanding any other provision of law.

(d) "Nondiscretionary assistance program" defined

In this section, the term ''nondiscretionary assistance program'' means any program for providing financial assistance—

(1) under which the amount of funding for, and the intended recipient of, the financial assistance is specified by Congress; or

(2) the recipients of which have customarily been a State or an interstate fishery commission.

(Pub. L. 102–567, title IV, § 404, Oct. 29, 1992, 106 Stat. 4292.)

§ 1540. Cooperative agreements

The Secretary of Commerce, acting through the Under Secretary of Commerce for Oceans and Atmosphere, may enter into cooperative agreements and other financial agreements with any nonprofit organization to—

(1) aid and promote scientific and educational activities to foster public understanding of the National Oceanic and Atmospheric Administration or its programs; and

(2) solicit private donations for the support of such activities.

(Pub. L. 102–567, title IV, § 406, Oct. 29, 1992, 106 Stat. 4293.)

CHAPTER 41—CONSUMER CREDIT PROTECTION

SUBCHAPTER I—CONSUMER CREDIT COST DISCLOSURE

PART A—GENERAL PROVISIONS

Sec.
1601. Congressional findings and declaration of purpose.
(a) Informed use of credit.
(b) Terms of personal property leases.
1602. Definitions and rules of construction.
1603. Exempted transactions.
1604. Disclosure guidelines.
(a) Promulgation, contents, etc., of regulations.
(b) Model disclosure forms and clauses; publication, criteria, compliance, etc.
(c) Procedures applicable for adoption of model forms and clauses.
(d) Effective dates of regulations containing new disclosure requirements.
(f) Exemption authority.
(g) Waiver for certain borrowers.
1605. Determination of finance charge.
(a) ''Finance charge'' defined.
(b) Life, accident, or health insurance premiums included in finance charge.
(c) Property damage and liability insurance premiums included in finance charge.
(d) Items exempted from computation of finance charge in all credit transactions.
(e) Items exempted from computation of finance charge in extensions of credit secured by an interest in real property.
(f) Tolerances for accuracy.
1606. Determination of annual percentage rate.
(a) ''Annual percentage rate'' defined.
(b) Computation of rate of finance charges for balances within a specified range.
(c) Allowable tolerances for purposes of compliance with disclosure requirements.
(d) Use of rate tables or charts having allowable variance from determined rates.
(e) Authorization of tolerances in determining annual percentage rates.
1607. Administrative enforcement.
(a) Enforcing agencies.
(b) Violations of this subchapter deemed violations of pre-existing statutory requirements; additional agency powers.
(c) Federal Trade Commission as overall enforcing agency.
(d) Rules and regulations.
(e) Adjustment of finance charges; procedures applicable, coverage, criteria, etc.
1608. Views of other agencies.
1609. Repealed.
1610. Effect on other laws.
(a) Inconsistent provisions; procedures applicable for determination.
(b) State credit charge statutes.
(c) Disclosure as evidence.
(d) Contract or other obligations under State or Federal law.
(e) Certain credit and charge card application and solicitation disclosure provisions.
1611. Criminal liability for willful and knowing violation.
1612. Effect on government agencies.
(a) Consultation requirements respecting compliance of credit instruments issued to participating creditor.
(b) Inapplicability of Federal civil or criminal penalties to Federal, State, and local agencies.
(c) Inapplicability of Federal civil or criminal penalties to participating creditor where violating instrument issued by United States.
(d) Applicability of State penalties to violations by participating creditor.
1613. Annual reports to Congress by Board.
1614. Repealed.
1615. Prohibition on use of ''Rule of 78's'' in connection with mortgage refinancings and other consumer loans.

Sec.
(a) Prompt refund of unearned interest required.
(b) Use of ''Rule of 78's'' prohibited.
(c) Statement of prepayment amount.
(d) Definitions.

PART B—CREDIT TRANSACTIONS

1631. Disclosure requirements.
(a) Duty of creditor or lessor respecting one or more than one obligor.
(b) Creditor or lessor required to make disclosure.
(c) Estimates as satisfying statutory requirements; basis of disclosure for per diem interest.
(d) Tolerances for numerical disclosures.
1632. Form of disclosure; additional information.
(a) Information clearly and conspicuously disclosed; ''annual percentage rate'' and ''finance charge''; order of disclosures and use of different terminology.
(b) Optional information by creditor or lessor.
(c) Tabular format required for certain disclosures under section 1637(c).
1633. Exemption for State-regulated transactions.
1634. Effect of subsequent occurrence.
1635. Right of rescission as to certain transactions.
(a) Disclosure of obligor's right to rescind.
(b) Return of money or property following rescission.
(c) Rebuttable presumption of delivery of required disclosures.
(d) Modification and waiver of rights.
(e) Exempted transactions; reapplication of provisions.
(f) Time limit for exercise of right.
(g) Additional relief.
(h) Limitation on rescission.
(i) Rescission rights in foreclosure.
1636. Repealed.
1637. Open end consumer credit plans.
(a) Required disclosures by creditor.
(b) Statement required with each billing cycle.
(c) Disclosure in credit and charge card applications and solicitations.
(d) Disclosure prior to renewal.
(e) Other rules for disclosures under subsections (c) and (d).
(f) Disclosure of range of certain fees which vary by State allowed.
(g) Insurance in connection with certain open end credit card plans.
1637a. Disclosure requirements for open end consumer credit plans secured by consumer's principal dwelling.
(a) Application disclosures.
(b) Time and form of disclosures.
(c) Third party applications.
(d) ''Principal dwelling'' defined.
(e) Pamphlet.
1638. Transactions other than under an open end credit plan.
(a) Required disclosures by creditor.
(b) Form and timing of disclosures; residential mortgage transaction requirements.
(c) Timing of disclosures on unsolicited mailed or telephone purchase orders or loan requests.
(d) Timing of disclosure in cases of an addition of a deferred payment price to an existing outstanding balance.
1639. Requirements for certain mortgages.
(a) Disclosures.
(b) Time of disclosures.
(c) No prepayment penalty.
(d) Limitations after default.
(e) No balloon payments.
(f) No negative amortization.
(g) No prepaid payments.
(h) Prohibition on extending credit without regard to payment ability of consumer.
(i) Requirements for payments under home improvement contracts.
(j) Consequence of failure to comply.
(k) ''Affiliate'' defined.
(*l*) Discretionary regulatory authority of Board.
1640. Civil liability.
(a) Individual or class action for damages; amount of award; factors determining amount of award.
(b) Correction of errors.
(c) Unintentional violations; bona fide errors.
(d) Liability in transaction or lease involving multiple obligors.
(e) Jurisdiction of courts; limitations on actions; State attorney general enforcement.
(f) Good faith compliance with rule, regulation, or interpretation of Board or with interpretation or approval of duly authorized official or employee of Federal Reserve System.
(g) Recovery for multiple failures to disclose.
(h) Offset from amount owed to creditor or assignee; rights of defaulting consumer.
(i) Class action moratorium.
1641. Liability of assignees.
(a) Prerequisites.
(b) Proof of compliance with statutory provisions.
(c) Right of rescission by consumer unaffected.
(d) Rights upon assignment of certain mortgages.
(e) Liability of assignee for consumer credit transactions secured by real property.
(f) Treatment of servicer.
1642. Issuance of credit cards.
1643. Liability of holder of credit card.
(a) Limits on liability.
(b) Burden of proof.
(c) Liability imposed by other laws or by agreement with issuer.
(d) Exclusiveness of liability.
1644. Fraudulent use of credit cards; penalties.
(a) Use, attempt or conspiracy to use card in transaction affecting interstate or foreign commerce.
(b) Transporting, attempting or conspiring to transport card in interstate commerce.
(c) Use of interstate commerce to sell or transport card.
(d) Receipt, concealment, etc., of goods obtained by use of card.
(e) Receipt, concealment, etc., of tickets for interstate or foreign transportation obtained by use of card.
(f) Furnishing of money, etc., through use of card.
1645. Business credit cards; limits on liability of employees.
1646. Dissemination of annual percentage rates; implementation, etc.
(a) Annual percentage rates.
(b) Credit card price and availability information.

Sec.
(c) Implementation.
1647. Home equity plans.
(a) Index requirement.
(b) Grounds for acceleration of outstanding balance.
(c) Change in terms.
(d) Terms changed after application.
(e) Additional requirements relating to refunds and imposition of nonrefundable fees.
1648. Reverse mortgages.
(a) In general.
(b) Projected total cost.
1649. Certain limitations on liability.
(a) Limitations on liability.
(b) Exceptions.

PART C—CREDIT ADVERTISING

1661. Catalogs and multiple-page advertisements.
1662. Advertising of down payments and installments.
1663. Advertising of open end credit plans.
1664. Advertising of credit other than open end plans.
(a) Exclusion of open end credit plans.
(b) Advertisements of residential real estate.
(c) Rate of finance charge expressed as annual percentage rate.
(d) Requisite disclosures in advertisement.
1665. Nonliability of advertising media.
1665a. Use of annual percentage rate in oral disclosures; exceptions.
1665b. Advertising of open end consumer credit plans secured by consumer's principal dwelling.
(a) In general.
(b) Tax deductibility.
(c) Certain terms prohibited.
(d) Discounted initial rate.
(e) Balloon payment.
(f) ''Balloon payment'' defined.

PART D—CREDIT BILLING

1666. Correction of billing errors.
(a) Written notice by obligor to creditor; time for and contents of notice; procedure upon receipt of notice by creditor.
(b) Billing error.
(c) Action by creditor to collect amount or any part thereof regarded by obligor to be a billing error.
(d) Restricting or closing by creditor of account regarded by obligor to contain a billing error.
(e) Effect of noncompliance with requirements by creditor.
1666a. Regulation of credit reports.
(a) Reports by creditor on obligor's failure to pay amount regarded as billing error.
(b) Reports by creditor on delinquent amounts in dispute; notification of obligor of parties notified of delinquency.
(c) Reports by creditor of subsequent resolution of delinquent amounts.
1666b. Length of billing period in credit statement for imposition of finance charge; effect of failure of timely mailing or delivery of statement.
(a) Additional finance charge.
(b) Excusable cause.
1666c. Prompt crediting of payments; imposition of finance charge.
1666d. Treatment of credit balances.
Sec.
1666e. Notification of credit card issuer by seller of return of goods, etc., by obligor; credit for account of obligor.
1666f. Inducements to cardholders by sellers of cash discounts for payments by cash, check or similar means; credit card surcharge prohibition; finance charge for sales transactions involving cash discounts.
(a) Cash discounts.
(b) Finance charge.
1666g. Tie-in services prohibited for issuance of credit card.
1666h. Offset of cardholder's indebtedness by issuer of credit card with funds deposited with issuer by cardholder; remedies of creditors under State law not affected.
(a) Offset against consumer's funds.
(b) Attachments and levies.
1666i. Assertion by cardholder against card issuer of claims and defenses arising out of credit card transaction; prerequisites; limitation on amount of claims or defenses.
(a) Claims and defenses assertible.
(b) Amount of claims and defenses assertible.
1666j. Applicability of State laws.
(a) Consistency of provisions
(b) Exemptions by Board from credit billing requirements.
(c) Finance charge or other charge for credit for sales transactions involving cash discounts.

PART E—CONSUMER LEASES

1667. Definitions.
1667a. Consumer lease disclosures.
1667b. Lessee's liability on expiration or termination of lease.
(a) Estimated residual value of property as basis; presumptions; action by lessor for excess liability; mutually agreeable final adjustment.
(b) Penalties and charges for delinquency, default, or early termination.
(c) Independent professional appraisal of residual value of property at termination of lease; finality.
1667c. Consumer lease advertising; liability of advertising media.
(a) In general.
(b) Advertising medium not liable.
(c) Radio advertisements.
1667d. Civil liability of lessors.
(a) Grounds for maintenance of action.
(b) Additional grounds for maintenance of action; ''creditor'' defined.
(c) Jurisdiction of courts; time limitation.
1667e. Applicability of State laws; exemptions by Board from leasing requirements.
1667f. Regulations.
(a) Regulations authorized.
(b) Model disclosure.

SUBCHAPTER II—RESTRICTIONS ON GARNISHMENT

1671. Congressional findings and declaration of purpose.
(a) Disadvantages of garnishment.
(b) Necessity for regulation.
1672. Definitions.
1673. Restriction on garnishment.
(a) Maximum allowable garnishment.
(b) Exceptions.
(c) Execution or enforcement of garnishment order or process prohibited.
1674. Restriction on discharge from employment by reason of garnishment.

Sec.
(a) Termination of employment.
(b) Penalties.
1675. Exemption for State-regulated garnishments.
1676. Enforcement by Secretary of Labor.
1677. Effect on State laws.

SUBCHAPTER II–A—CREDIT REPAIR ORGANIZATIONS

1679. Findings and purposes.
(a) Findings.
(b) Purposes.
1679a. Definitions.
1679b. Prohibited practices.
(a) In general.
(b) Payment in advance.
1679c. Disclosures.
(a) Disclosure required.
(b) Separate statement requirement.
(c) Retention of compliance records.
1679d. Credit repair organizations contracts.
(a) Written contracts required.
(b) Terms and conditions of contract.
1679e. Right to cancel contract.
(a) In general.
(b) Cancellation form and other information.
(c) Consumer copy of contract required.
1679f. Noncompliance with this subchapter.
(a) Consumer waivers invalid.
(b) Attempt to obtain waiver.
(c) Contracts not in compliance.
1679g. Civil liability.
(a) Liability established.
(b) Factors to be considered in awarding punitive damages.
1679h. Administrative enforcement.
(a) In general.
(b) Violations of this subchapter treated as violations of Federal Trade Commission Act.
(c) State action for violations.
1679i. Statute of limitations.
1679j. Relation to State law.

SUBCHAPTER III—CREDIT REPORTING AGENCIES

1681. Congressional findings and statement of purpose.
(a) Accuracy and fairness of credit reporting.
(b) Reasonable procedures.
1681a. Definitions; rules of construction.
1681b. Permissible purposes of consumer reports.
(a) In general.
(b) Conditions for furnishing and using consumer reports for employment purposes.
(c) Furnishing reports in connection with credit or insurance transactions that are not initiated by consumer.
(d) Reserved.
(e) Election of consumer to be excluded from lists.
(f) Certain use or obtaining of information prohibited.
(g) Furnishing reports containing medical information.
1681c. Requirements relating to information contained in consumer reports.
(a) Information excluded from consumer reports.
(b) Exempted cases.
(c) Running of reporting period.
(d) Information required to be disclosed.
(e) Indication of closure of account by consumer.
(f) Indication of dispute by consumer.
1681d. Disclosure of investigative consumer reports.
(a) Disclosure of fact of preparation.
(b) Disclosure on request of nature and scope of investigation.
(c) Limitation on liability upon showing of reasonable procedures for compliance with provisions.
(d) Prohibitions.
1681e. Compliance procedures.
(a) Identity and purposes of credit users.
(b) Accuracy of report.
(c) Disclosure of consumer reports by users allowed.
(d) Notice to users and furnishers of information.
(e) Procurement of consumer report for resale.
1681f. Disclosures to governmental agencies.
1681g. Disclosures to consumers.
(a) Information on file; sources; report recipients.
(b) Exempt information.
(c) Summary of rights required to be included with disclosure.
1681h. Conditions and form of disclosure to consumers.
(a) In general.
(b) Other forms of disclosure.
(c) Trained personnel.
(d) Persons accompanying consumer.
(e) Limitation of liability.
1681i. Procedure in case of disputed accuracy.
(a) Reinvestigations of disputed information.
(b) Statement of dispute.
(c) Notification of consumer dispute in subsequent consumer reports.
(d) Notification of deletion of disputed information.
1681j. Charges for certain disclosures.
(a) Reasonable charges allowed for certain disclosures.
(b) Free disclosure after adverse notice to consumer.
(c) Free disclosure under certain other circumstances.
(d) Other charges prohibited.
1681k. Public record information for employment purposes.
1681*l*. Restrictions on investigative consumer reports.
1681m. Requirements on users of consumer reports.
(a) Duties of users taking adverse actions on basis of information contained in consumer reports.
(b) Adverse action based on information obtained from third parties other than consumer reporting agencies.
(c) Reasonable procedures to assure compliance.
(d) Duties of users making written credit or insurance solicitations on basis of information contained in consumer files.
1681n. Civil liability for willful noncompliance.
(a) In general.
(b) Civil liability for knowing noncompliance.
(c) Attorney's fees.
1681*o*. Civil liability for negligent noncompliance.
(a) In general.
(b) Attorney's fees.
1681p. Jurisdiction of courts; limitation of actions.
1681q. Obtaining information under false pretenses.
1681r. Unauthorized disclosures by officers or employees.
1681s. Administrative enforcement.
(a) Enforcement by Federal Trade Commission.
(b) Enforcement by other agencies.
(c) State action for violations.
(d) Enforcement under other authority.
(e) Interpretive authority.

Sec.
1681s–1. Information on overdue child support obligations.
1681s–2. Responsibilities of furnishers of information to consumer reporting agencies.
(a) Duty of furnishers of information to provide accurate information.
(b) Duties of furnishers of information upon notice of dispute.
(c) Limitation on liability.
(d) Limitation on enforcement.
1681t. Relation to State laws.
(a) In general.
(b) General exceptions.
(c) ''Firm offer of credit or insurance'' defined.
(d) Limitations.
1681u. Disclosures to FBI for counterintelligence purposes.
(a) Identity of financial institutions.
(b) Identifying information.
(c) Court order for disclosure of consumer reports.
(d) Confidentiality.
(e) Payment of fees.
(f) Limit on dissemination.
(g) Rules of construction.
(h) Reports to Congress.
(i) Damages.
(j) Disciplinary actions for violations.
(k) Good-faith exception.
(*l*) Limitation of remedies.
(m) Injunctive relief.

SUBCHAPTER IV—EQUAL CREDIT OPPORTUNITY

1691. Scope of prohibition.
(a) Activities constituting discrimination.
(b) Activities not constituting discrimination.
(c) Additional activities not constituting discrimination.
(d) Reason for adverse action; procedure applicable; ''adverse action'' defined.
(e) Appraisals; copies of reports to applicants; costs.
1691a. Definitions; rules of construction.
1691b. Promulgation of regulations by Board; establishment of Consumer Advisory Council by Board; duties, membership, etc., of Council.
(a) Regulations.
(b) Consumer Advisory Council.
1691c. Administrative enforcement.
(a) Enforcing agencies.
(b) Violations of subchapter deemed violations of pre-existing statutory requirements; additional agency powers.
(c) Overall enforcement authority of Federal Trade Commission.
(d) Rules and regulations by enforcing agencies.
1691c–1. Incentives for self-testing and self-correction.
(a) Privileged information.
(b) Results of self-testing.
(c) Adjudication.
1691d. Applicability of other laws.
(a) Requests for signature of husband and wife for creation of valid lien, etc.
(b) State property laws affecting creditworthiness.
(c) State laws prohibiting separate extension of consumer credit to husband and wife.
(d) Combining credit accounts of husband and wife with same creditor to determine permissible finance charges or loan ceilings under Federal or State laws.
(e) Election of remedies under subchapter or State law; nature of relief determining applicability.
(f) Compliance with inconsistent State laws; determination of inconsistency.
(g) Exemption by regulation of credit transactions covered by State law; failure to comply with State law.
1691e. Civil liability.
(a) Individual or class action for actual damages.
(b) Recovery of punitive damages in individual and class action for actual damages; exemptions; maximum amount of punitive damages in individual actions; limitation on total recovery in class actions; factors determining amount of award.
(c) Action for equitable and declaratory relief.
(d) Recovery of costs and attorney fees.
(e) Good faith compliance with rule, regulation, or interpretation of Board or interpretation or approval by an official or employee of Federal Reserve System duly authorized by Board.
(f) Jurisdiction of courts; time for maintenance of action; exceptions.
(g) Request by responsible enforcement agency to Attorney General for civil action.
(h) Authority for Attorney General to bring civil action; jurisdiction.
(i) Recovery under both subchapter and fair housing enforcement provisions prohibited for violation based on same transaction.
(j) Discovery of creditor's granting standards.
(k) Notice to HUD of violations.
1691f. Annual reports to Congress; contents.

SUBCHAPTER V—DEBT COLLECTION PRACTICES

1692. Congressional findings and declaration of purpose.
(a) Abusive practices.
(b) Inadequacy of laws.
(c) Available non-abusive collection methods.
(d) Interstate commerce.
(e) Purposes.
1692a. Definitions.
1692b. Acquisition of location information.
1692c. Communication in connection with debt collection.
(a) Communication with the consumer generally.
(b) Communication with third parties.
(c) Ceasing communication.
(d) ''Consumer'' defined.
1692d. Harassment or abuse.
1692e. False or misleading representations.
1692f. Unfair practices.
1692g. Validation of debts.
(a) Notice of debt; contents.
(b) Disputed debts.
(c) Admission of liability.
1692h. Multiple debts.
1692i. Legal actions by debt collectors.
(a) Venue.
(b) Authorization of actions.
1692j. Furnishing certain deceptive forms.
1692k. Civil liability.
(a) Amount of damages.
(b) Factors considered by court.
(c) Intent.
(d) Jurisdiction.

Sec.
(e) Advisory opinions of Commission.
1692*l*. Administrative enforcement.
(a) Federal Trade Commission.
(b) Applicable provisions of law.
(c) Agency powers.
(d) Rules and regulations.
1692m. Reports to Congress by the Commission; views of other Federal agencies.
1692n. Relation to State laws.
1692*o*. Exemption for State regulation.

SUBCHAPTER VI—ELECTRONIC FUND TRANSFERS

1693. Congressional findings and declaration of purpose.
(a) Rights and liabilities undefined.
(b) Purposes.
1693a. Definitions.
1693b. Regulations.
(a) Prescription by Board.
(b) Issuance of model clauses.
(c) Criteria; modification of requirements.
(d) Applicability to service providers other than certain financial institutions.
1693c. Terms and conditions of transfers.
(a) Disclosures; time; form; contents.
(b) Notification of changes to consumer.
(c) Time for disclosures respecting accounts accessible prior to effective date of this subchapter.
1693d. Documentation of transfers.
(a) Availability of written documentation to consumer; contents.
(b) Notice of credit to consumer.
(c) Periodic statement; contents.
(d) Consumer passbook accounts.
(e) Accounts other than passbook accounts.
(f) Documentation as evidence.
1693e. Preauthorized transfers.
1693f. Error resolution.
(a) Notification to financial institution of error.
(b) Correction of error; interest.
(c) Provisional recredit of consumer's account.
(d) Absence of error; finding; explanation.
(e) Treble damages.
(f) Acts constituting error.
1693g. Consumer liability.
(a) Unauthorized electronic fund transfers; limit.
(b) Burden of proof.
(c) Determination of limitation on liability.
(d) Restriction on liability.
(e) Scope of liability.
1693h. Liability of financial institutions.
(a) Action or failure to act proximately causing damages.
(b) Acts of God and technical malfunctions.
(c) Intent.
1693i. Issuance of cards or other means of access.
(a) Prohibition; proper issuance.
(b) Exceptions.
(c) Validation.
1693j. Suspension of obligations.
1693k. Compulsory use of electronic fund transfers.
1693*l*. Waiver of rights.
1693m. Civil liability.
(a) Individual or class action for damages; amount of award.
(b) Factors determining amount of award.
(c) Unintentional violations; bona fide error.
(d) Good faith compliance with rule, regulation, or interpretation of Board or approval of duly authorized official or employee of Federal Reserve System.
(e) Notification to consumer prior to action; adjustment of consumer's account.
(f) Action in bad faith or for harassment; attorney's fees.
(g) Jurisdiction of courts; time for maintenance of action.
1693n. Criminal liability.
(a) Violations respecting giving of false or inaccurate information, failure to provide information, and failure to comply with provisions of this subchapter.
(b) Violations affecting interstate or foreign commerce.
(c) ''Debit instrument'' defined.
1693*o*. Administrative enforcement.
(a) Enforcing agencies.
(b) Violations of subchapter deemed violations of pre-existing statutory requirements; additional powers.
(c) Overall enforcement authority of Federal Trade Commission.
1693p. Reports to Congress.
1693q. Relation to State laws.
1693r. Exemption for State regulation.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 11 section 523.

SUBCHAPTER I—CONSUMER CREDIT COST DISCLOSURE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 5721 of this title; title 12 sections 2199, 2610, 3806, 4803; title 20 section 1083.

PART A—GENERAL PROVISIONS

§ 1601. Congressional findings and declaration of purpose

(a) Informed use of credit

The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

(b) Terms of personal property leases

The Congress also finds that there has been a recent trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that these leases have been offered without adequate cost disclosures. It is the purpose of this subchapter to assure a meaningful disclosure of the terms of leases of personal property for personal, family, or household purposes so as to en-

able the lessee to compare more readily the various lease terms available to him, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and to assure meaningful and accurate disclosures of lease terms in advertisements.

(Pub. L. 90–321, title I, § 102, May 29, 1968, 82 Stat. 146; Pub. L. 93–495, title III, § 302, Oct. 28, 1974, 88 Stat. 1511; Pub. L. 94–240, § 2, Mar. 23, 1976, 90 Stat. 257.)

AMENDMENTS

1976—Pub. L. 94–240 designated existing provisions as subsec. (a) and added subsec. (b).

1974—Pub. L. 93–495 inserted provisions expanding purposes of subchapter to include protection of consumer against inaccurate and unfair credit billing and credit card practices.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–240 effective on expiration of one year after Mar. 23, 1976, see section 6 of Pub. L. 94–240, set out as an Effective Date note under section 1667 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–495, see section 308 of Pub. L. 93–495, set out as an Effective Date note under section 1666 of this title.

EFFECTIVE DATE

Section 504(a) of Pub. L. 90–321 provided that this part is effective May 29, 1968.

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–208, div. A, title II, § 2401, Sept. 30, 1996, 110 Stat. 3009–426, provided that: ''This chapter [chapter 1 (§§ 2401–2422) of subtitle D of title II of div. A of Pub. L. 104–208, enacting section 1681s–2 of this title, amending sections 1681a to 1681e, 1681g to 1681j, 1681m to 1681*o*, 1681q to 1681s, and 1681t of this title, and enacting provisions set out as notes under sections 1681a, 1681b, and 1681g of this title] may be cited as the 'Consumer Credit Reporting Reform Act of 1996'.''

SHORT TITLE OF 1995 AMENDMENTS

Pub. L. 104–29, § 1, Sept. 30, 1995, 109 Stat. 271, provided that: ''This Act [enacting section 1649 of this title, amending sections 1605, 1631, 1635, 1640, and 1641 of this title, and enacting provisions set out as notes under section 1605 of this title] may be cited as the 'Truth in Lending Act Amendments of 1995'.''

Pub. L. 104–12, § 1, May 18, 1995, 109 Stat. 161, provided that: ''This Act [amending section 1640 of this title] may be cited as the 'Truth in Lending Class Action Relief Act of 1995'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–325, title I, § 151, Sept. 23, 1994, 108 Stat. 2190, provided that: ''This subtitle [subtitle B (§§ 151–158) of title I of Pub. L. 103–325, enacting sections 1639 and 1648 of this title, amending sections 1602, 1604, 1610, 1640, 1641, and 1647 of this title, and enacting provisions set out as notes under this section and section 1602 of this title] may be cited as the 'Home Ownership and Equity Protection Act of 1994'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–537, § 1, Oct. 27, 1992, 106 Stat. 3531, provided that: ''This Act [enacting section 1681s–1 of this title, amending section 1681a of this title, and enacting provisions set out as a note under section 1681a of this title] may be cited as the 'Ted Weiss Child Support Enforcement Act of 1992'.''

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–709, § 1, Nov. 23, 1988, 102 Stat. 4725, provided that: ''This Act [enacting sections 1637a, 1647, and 1665b of this title, amending sections 1632 and 1637 of this title, and enacting provisions set out as notes under section 1637a of this title] may be cited as the 'Home Equity Loan Consumer Protection Act of 1988'.''

Pub. L. 100–583, § 1, Nov. 3, 1988, 102 Stat. 2960, provided that: ''This Act [amending sections 1610, 1632, 1637, 1640, and 1646 of this title and enacting provisions set out as a note under section 1637 of this title] may be cited as the 'Fair Credit and Charge Card Disclosure Act of 1988'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–25, § 1, July 27, 1981, 95 Stat. 144, provided: ''That this Act [amending sections 1602 and 1666f of this title, section 29 of Title 12, Banks and Banking, and sections 205 and 212 of Title 42, The Public Health and Welfare; enacting provisions set out as notes under this section and sections 1602 and 1666f of this title; and amending provisions set out as notes under sections 1602 and 1666f of this title] may be cited as the 'Cash Discount Act'.''

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–221, title VI, § 601, Mar. 31, 1980, 94 Stat. 168, provided that: ''This title [enacting section 1646 of this title, amending sections 57a, 1602 to 1607, 1610, 1612, 1613, 1631, 1632, 1635, 1637, 1638, 1640, 1641, 1643, 1663, 1664, 1665a, 1666, 1666d, 1667d, and 1691f of this title, repealing sections 1614, 1636, and 1639 of this title, and enacting provisions set out as notes under sections 1602 and 1607 of this title] may be cited as the 'Truth in Lending Simplification and Reform Act'.''

SHORT TITLE OF 1976 AMENDMENTS

Section 1 of Pub. L. 94–240 provided that: ''This Act [enacting sections 1667 to 1667e of this title, amending this section and section 1640 of this title, and enacting provisions set out as a note under section 1667 of this title] may be cited as the 'Consumer Leasing Act of 1976'.''

Pub. L. 94–239, § 1(a), Mar. 23, 1976, 90 Stat. 251, provided that: ''This Act [enacting section 1691f of this title, amending this section and sections 1691b, 1691c, 1691d, 1691e of this title, repealing section 1609 of this title, enacting provisions set out as notes under this section, and repealing provision set out as a note under this section] may be cited as the 'Equal Credit Opportunity Act Amendments of 1976'.''

Section 1(c) of Pub. L. 94–239 repealed section 501 of Pub. L. 93–495, title V, Oct. 28, 1974, 88 Stat. 1521, which provided that subchapter IV of this chapter and notes set out under section 1691 were to be cited as the ''Equal Credit Opportunity Act''.

SHORT TITLE OF 1974 AMENDMENT

Section 301 of title III of Pub. L. 93–495 provided that: ''This title [enacting sections 1666 to 1666j of this title, amending this section and sections 1602, 1610, 1631, 1632, and 1637 of this title, and enacting provision set out as a note under section 1666 of this title] may be cited as the 'Fair Credit Billing Act'.''

SHORT TITLE

Section 1 of Pub. L. 90–321 provided that: ''This Act [enacting this chapter, sections 891 to 896 of Title 18, Crimes and Criminal Procedure, and provisions set out as notes under this section, sections 1631 and 1671 of this title, and section 891 of Title 18] may be cited as the 'Consumer Credit Protection Act'.''

Section 101 of title I of Pub. L. 90–321 provided that: ''This title [enacting this subchapter] may be cited as the 'Truth in Lending Act'.''

Section 401 of title IV of Pub. L. 90–321, as added by Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–454, provided that: ''This title [enacting subchapter II–A of this chapter] may be cited as the 'Credit Repair Organizations Act'.''

Section 601 of title VI of Pub. L. 90–321, as added by Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1128,

provided that: ''This title [enacting subchapter III of this chapter] may be cited as the 'Fair Credit Reporting Act'.''

Section 709 of title VII of Pub. L. 90–321, as added by section 1(b) of Pub. L. 94–239, Mar. 23, 1976, 90 Stat. 251, provided that: ''This title [enacting subchapter IV of this chapter and notes set out under section 1691 of this title] may be cited as the 'Equal Credit Opportunity Act'.''

Section 801 of title VIII of Pub. L. 90–321, as added by Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 874, provided that: ''This title [enacting subchapter V of this chapter] may be cited as the 'Fair Debt Collection Practices Act'.''

Section 901 of title IX of Pub. L. 90–321, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3728, provided that: ''This title [enacting subchapter VI of this chapter] may be cited as the 'Electronic Fund Transfer Act'.''

SEVERABILITY

Section 501 of Pub. L. 90–321 provided that: ''If a provision enacted by this Act [see Short Title note above], is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this Act is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications.''

FEDERAL RESERVE STUDY OF HOME EQUITY LENDING AND APPROPRIATE INTEREST RATE INDEX

Pub. L. 103–325, title I, § 157, Sept. 23, 1994, 108 Stat. 2197, provided that: ''During the period beginning 180 days after the date of enactment of this Act [Sept. 23, 1994] and ending 2 years after that date of enactment, the Board of Governors of the Federal Reserve System shall conduct a study and submit to the Congress a report, including recommendations for any appropriate legislation, regarding—

''(1) whether a consumer engaging in an open end credit transaction (as defined in section 103 of the Truth in Lending Act [15 U.S.C. 1602]) secured by the consumer's principal dwelling is provided adequate protections under Federal law, including section 127A of the Truth in Lending Act [15 U.S.C. 1637a]; and

''(2) whether a more appropriate interest rate index exists for purposes of subparagraph (A) of section 103(aa)(1) of the Truth in Lending Act (as added by section 152(a) of this Act [15 U.S.C. 1602(aa)(1)(A)]) than the yield on Treasury securities referred to in that subparagraph.''

HEARINGS ON HOME EQUITY LENDING

Pub. L. 103–325, title I, § 158, Sept. 23, 1994, 108 Stat. 2197, provided that:

''(a) HEARINGS.—Not less than once during the 3-year period beginning on the date of enactment of this Act [Sept. 23, 1994], and regularly thereafter, the Board of Governors of the Federal Reserve System, in consultation with the Consumer Advisory Council of the Board, shall conduct a public hearing to examine the home equity loan market and the adequacy of existing regulatory and legislative provisions and the provisions of this subtitle [see Short Title of 1994 Amendment note above] in protecting the interests of consumers, and low-income consumers in particular.

''(b) PARTICIPATION.—In conducting hearings required by subsection (a), the Board of Governors of the Federal Reserve System shall solicit participation from consumers, representatives of consumers, lenders, and other interested parties.''

STUDY BY FEDERAL RESERVE BOARD OF GOVERNORS COVERING EFFECT OF CHARGE CARD TRANSACTIONS UPON CARD ISSUERS, MERCHANTS, AND CONSUMERS

Pub. L. 97–25, title II, § 202, July 27, 1981, 95 Stat. 145, directed Board of Governors of Federal Reserve System, not later than 2 years after July 27, 1981, to prepare a study and submit its findings to Congress on the effect of charge card transactions upon card issuers, merchants, and consumers.

INFERENCE OF LEGISLATIVE INTENT IN SECTION CAPTIONS AND CATCHLINES

Section 502 of Pub. L. 90–321 provided that: ''Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the legislative intent with respect to any provision enacted by this Act [enacting this chapter, section 891 to 896 of Title 18, Crimes and Criminal Procedure, and provisions set out as notes under this section, sections 1631 and 1671 of this title, and section 891 of Title 18] may be drawn from them.''

GRAMMATICAL USAGES

Section 503 of Pub. L. 90–321 provided that: ''In this Act [enacting this chapter, sections 891 to 896 of Title 18, Crimes and Criminal Procedure, and provisions set out as notes under sections 1601, 1631 and 1671 of this title, and section 891 of Title 18]:

''(1) The word 'may' is used to indicate that an action either is authorized or is permitted.

''(2) The word 'shall' is used to indicate that an action is both authorized and required.

''(3) The phrase 'may not' is used to indicate that an action is both unauthorized and forbidden.

''(4) Rules of law are stated in the indicative mood.''

§ 1602. Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term ''Board'' refers to the Board of Governors of the Federal Reserve System.

(c) The term ''organization'' means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(d) The term ''person'' means a natural person or an organization.

(e) The term ''credit'' means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(f) The term ''creditor'' refers only to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the preceding sentence, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge are creditors. For the purpose of the requirements imposed under part D of this subchapter and sections 1637(a)(5), 1637(a)(6), 1637(a)(7), 1637(b)(1), 1637(b)(2), 1637(b)(3), 1637(b)(8), and 1637(b)(10) of this title, the term ''creditor'' shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Board shall, by regulation, apply these requirements to such card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offer-

ing open-end credit plans. Any person who originates 2 or more mortgages referred to in subsection (aa) of this section in any 12-month period or any person who originates 1 or more such mortgages through a mortgage broker shall be considered to be a creditor for purposes of this subchapter.

(g) The term ''credit sale'' refers to any sale in which the seller is a creditor. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(h) The adjective ''consumer'', used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes.

(i) The term ''open end credit plan'' means a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance. A credit plan which is an open end credit plan within the meaning of the preceding sentence is an open end credit plan even if credit information is verified from time to time.

(j) The term ''adequate notice,'' as used in section 1643 of this title, means a printed notice to a cardholder which sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning. Such notice may be given to a cardholder by printing the notice on any credit card, or on each periodic statement of account, issued to the cardholder, or by any other means reasonably assuring the receipt thereof by the cardholder.

(k) The term ''credit card'' means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(*l*) The term ''accepted credit card'' means any credit card which the cardholder has requested and received or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor, or services on credit.

(m) The term ''cardholder'' means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(n) The term ''card issuer'' means any person who issues a credit card, or the agent of such person with respect to such card.

(*o*) The term ''unauthorized use,'' as used in section 1643 of this title, means a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit.

(p) The term ''discount'' as used in section 1666f of this title means a reduction made from the regular price. The term ''discount'' as used in section 1666f of this title shall not mean a surcharge.

(q) The term ''surcharge'' as used in this section and section 1666f of this title means any means of increasing the regular price to a cardholder which is not imposed upon customers paying by cash, check, or similar means.''

(r) The term ''State'' refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(s) The term ''agricultural purposes'' includes the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of farmland, real property with a farm residence, and personal property and services used primarily in farming.

(t) The term ''agricultural products'' includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(u) The term ''material disclosures'' means the disclosure, as required by this subchapter, of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number and amount of payments, the due dates or periods of payments scheduled to repay the indebtedness, and the disclosures required by section 1639(a) of this title.

(v) The term ''dwelling'' means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.

(w) The term ''residential mortgage transaction'' means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of such dwelling.

(x) As used in this section and section 1666f of this title, the term ''regular price'' means the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit plan or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted, one of which is charged when payment is made by use of an open-end credit plan or a credit card and the other when payment is made by use of cash, check, or similar means. For purposes of this definition, payment by check, draft, or other negotiable instrument which may result in the debiting of an open-end credit plan

or a credit cardholder's open-end account shall not be considered payment made by use of the plan or the account.

(y) Any reference to any requirement imposed under this subchapter or any provision thereof includes reference to the regulations of the Board under this subchapter or the provision thereof in question.

(z) The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this subchapter does not in itself constitute a violation of this subchapter.

(aa)(1) A mortgage referred to in this subsection means a consumer credit transaction that is secured by the consumer's principal dwelling, other than a residential mortgage transaction, a reverse mortgage transaction, or a transaction under an open end credit plan, if—

(A) the annual percentage rate at consummation of the transaction will exceed by more than 10 percentage points the yield on Treasury securities having comparable periods of maturity on the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(B) the total points and fees payable by the consumer at or before closing will exceed the greater of—

(i) 8 percent of the total loan amount; or

(ii) $400.

(2)(A) After the 2-year period beginning on the effective date of the regulations promulgated under section 155 of the Riegle Community Development and Regulatory Improvement Act of 1994, and no more frequently than biennially after the first increase or decrease under this subparagraph, the Board may by regulation increase or decrease the number of percentage points specified in paragraph (1)(A), if the Board determines that the increase or decrease is—

(i) consistent with the consumer protections against abusive lending provided by the amendments made by subtitle B of title I of the Riegle Community Development and Regulatory Improvement Act of 1994; and

(ii) warranted by the need for credit.

(B) An increase or decrease under subparagraph (A) may not result in the number of percentage points referred to in subparagraph (A) being—

(i) less that 8 percentage points; or

(ii) greater than 12 percentage points.

(C) In determining whether to increase or decrease the number of percentage points referred to in subparagraph (A), the Board shall consult with representatives of consumers, including low-income consumers, and lenders.

(3) The amount specified in paragraph (1)(B)(ii) shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index, as reported on June 1 of the year preceding such adjustment.

(4) For purposes of paragraph (1)(B), points and fees shall include—

(A) all items included in the finance charge, except interest or the time-price differential;

(B) all compensation paid to mortgage brokers;

(C) each of the charges listed in section 1605(e) of this title (except an escrow for future payment of taxes), unless—

(i) the charge is reasonable;

(ii) the creditor receives no direct or indirect compensation; and

(iii) the charge is paid to a third party unaffiliated with the creditor; and

(D) such other charges as the Board determines to be appropriate.

(5) This subsection shall not be construed to limit the rate of interest or the finance charge that a person may charge a consumer for any extension of credit.

(bb) The term ''reverse mortgage transaction'' means a nonrecourse transaction in which a mortgage, deed of trust, or equivalent consensual security interest is created against the consumer's principal dwelling—

(1) securing one or more advances; and

(2) with respect to which the payment of any principal, interest, and shared appreciation or equity is due and payable (other than in the case of default) only after—

(A) the transfer of the dwelling;

(B) the consumer ceases to occupy the dwelling as a principal dwelling; or

(C) the death of the consumer.

(Pub. L. 90–321, title I, § 103, May 29, 1968, 82 Stat. 147; Pub. L. 91–508, title V, § 501, Oct. 26, 1970, 84 Stat. 1126; Pub. L. 93–495, title III, § 303, Oct. 28, 1974, 88 Stat. 1511; Pub. L. 94–222, § 3(a), Feb. 27, 1976, 90 Stat. 197; Pub. L. 96–221, title VI, §§ 602, 603(a), (b), 604, 612(a)(2), (b), Mar. 31, 1980, 94 Stat. 168, 169, 175, 176; Pub. L. 97–25, title I, § 102, July 27, 1981, 95 Stat. 144; Pub. L. 97–320, title VII, § 702(a), Oct. 15, 1982, 96 Stat. 1538; Pub. L. 103–325, title I, §§ 152(a)–(c), 154(a), Sept. 23, 1994, 108 Stat. 2190, 2191, 2196.)

REFERENCES IN TEXT

The Riegle Community Development and Regulatory Improvement Act of 1994, referred to in subsec. (aa)(2)(A)(i), is Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2160. Section 155 of the Act is set out below. For classification of subtitle B of title I of the Act, known as the ''Home Ownership and Equity Protection Act of 1994'', see Short Title of 1994 Amendment note set out under section 1601 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4701 of Title 12, Banks and Banking, and Tables.

AMENDMENTS

1994—Subsec. (f). Pub. L. 103–325, § 152(c), inserted at end ''Any person who originates 2 or more mortgages referred to in subsection (aa) of this section in any 12-month period or any person who originates 1 or more such mortgages through a mortgage broker shall be considered to be a creditor for purposes of this subchapter.''

Subsec. (u). Pub. L. 103–325, § 152(b), substituted ''the due dates'' for ''and the due dates'' and inserted before period at end '', and the disclosures required by section 1639(a) of this title''.

Subsec. (aa). Pub. L. 103–325, § 152(a), added subsec. (aa).

Subsec. (bb). Pub. L. 103–325, § 154(a), added subsec. (bb).

1982—Subsec. (f). Pub. L. 97–320 struck out provision that a person who regularly arranged for the extension of consumer credit payable in more than four installments or for which the payment of a finance charge was or might have been required from persons not

creditors was a creditor, and provision that this subchapter applied to any creditor, irrespective of his or its status as a natural person or any type of organization, who was a card issuer.

1981—Subsecs. (x) to (z). Pub. L. 97–25 added subsec. (z) and, effective Apr. 10, 1982, redesignated subsecs. (x), (y), and (z) as (y), (z), and (x), respectively.

1980—Subsec. (f). Pub. L. 96–221, § 602(a), substituted provisions defining term ''creditor'' as referring only to a person who both regularly extends consumer credit, subject to specified conditions, and is the person to whom the debt arising is initially payable on the face of the indebtedness or by agreement, and notwithstanding such provisions, also refers to a person regularly arranging for the extension of consumer credit, and a card issuer and any person honoring the credit card, subject to specified conditions, for provisions defining term ''creditor'' as referring only to creditors who regularly extend, or arrange for the extension of credit payable in more than four installments or where a finance charge is or may be required, and substituted ''(a)(5)'' for ''(a)(6)'', ''(a)(6)'' for ''(a)(7)'', ''(a)(7)'' for ''(a)(8)'', ''(b)(8)'' for ''(b)(9)'', and ''(b)(10)'' for ''(b)(11)''.

Subsec. (g). Pub. L. 96–221, § 602(b), substituted ''in which the seller is a creditor'' for ''with respect to which credit is extended or arranged by the seller''.

Subsec. (h). Pub. L. 96–221, § 603(a), struck out applicability to agricultural purposes.

Subsec. (i). Pub. L. 96–221, § 604, inserted provisions respecting the reasonable contemplations of the creditor, and verification of credit information from time to time.

Subsecs. (s), (t). Pub. L. 96–221, § 603(b), added subsecs. (s) and (t). Former subsecs. (s) and (t) redesignated (x) and (y), respectively.

Subsec. (u). Pub. L. 96–221, § 612(a)(2), added subsec. (u).

Subsecs. (v), (w). Pub. L. 96–221, § 612(b), added subsecs. (v) and (w).

Subsecs. (x), (y). Pub. L. 96–221, § 603(b), redesignated former subsecs. (s) and (t) as (x) and (y), respectively.

1976—Subsecs. (p) to (t). Pub. L. 94–222 added subsecs. (p) and (q) and redesignated former subsecs. (p) to (r) as (r) to (t), respectively.

1974—Subsec. (f). Pub. L. 93–495 inserted provision requiring the credit to be payable by agreement in more than four installments and defining term ''creditor'' for the purposes of the requirements imposed under the enumerated sections of this chapter.

1970—Subsecs. (j) to (r). Pub. L. 91–508 added subsecs. (j) to (*o*) and redesignated former subsecs. (j) to (*l*) as (p) to (r), respectively.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 702(b) of Pub. L. 97–320 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the effective date of title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980 [two years and six months after Mar. 31, 1980, see Effective Date of 1980 Amendment note below].''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 102(b) of Pub. L. 97–25 provided that the amendment made by that section is effective Apr. 10, 1982.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 625 of title VI of Pub. L. 96–221, as amended by Pub. L. 97–25, title III, § 301, July 27, 1981, 95 Stat. 145; Pub. L. 97–110, title III, § 301, Dec. 26, 1981, 95 Stat. 1515, provided that:

''(a) Except as provided in section 608(b) [set out as an Effective Date of 1980 Amendment note under section 1607 of this title], the amendments made by this title [enacting section 1646 of this title, amending sections 57a, 1602 to 1606, 1610, 1612, 1613, 1631, 1632, 1635, 1637, 1638, 1640, 1641, 1643, 1663, 1664, 1665a, 1666, 1666d, 1667d, and 1691f of this title, repealing sections 1614, 1636, and 1639 of this title, and enacting provisions set out as a note under section 1601 of this title] shall take effect upon the expiration of two years and six months after the date of enactment of this title [Mar. 31, 1980].

''(b) All regulations, forms, and clauses required to be prescribed under the amendments made by this title shall be promulgated at least one year prior to such effective date.

''(c) Notwithstanding subsections (a) and (b), any creditor may comply with the amendments made by this title, in accordance with the regulations, forms, and clauses prescribed by the Board, prior to such effective date. Any creditor who elects to comply with such amendments and any assignee of such a creditor shall be subject to the provisions of sections 130 and 131 of the Truth in Lending Act, as amended by sections 615 and 616, respectively, of this title [sections 1640 and 1641 of this title].''

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–495, see section 308 of Pub. L. 93–495, set out as an Effective Date note under section 1666 of this title.

REGULATIONS

Section 155 of title I of Pub. L. 103–325 provided that: ''Not later than 180 days after the date of enactment of this Act [Sept. 23, 1994], the Board of Governors of the Federal Reserve System shall issue such regulations as may be necessary to carry out this subtitle [subtitle B (§§ 151–158) of title I of Pub. L. 103–325, see Short Title of 1994 Amendment note set out under section 1601 of this title], and such regulations shall become effective on the date on which disclosure regulations are required to become effective under section 105(d) of the Truth in Lending Act [15 U.S.C. § 1604(d)].''

APPLICABILITY OF 1994 AMENDMENTS AND REGULATIONS TO SUBSECTION (aa) MORTGAGES

Section 156 of title I of Pub. L. 103–325 provided that: ''This subtitle [subtitle B (§§ 151–158) of title I of Pub. L. 103–325, see Short Title of 1994 Amendment note set out under section 1601 of this title], and the amendments made by this subtitle, shall apply to every mortgage referred to in section 103(aa) of the Truth in Lending Act [15 U.S.C. 1602(aa)] (as added by section 152(a) of this Act) consummated on or after the date on which regulations issued under section 155 [set out above] become effective.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1604, 1605, 1610, 1615, 1631, 1635, 1638, 1639, 1641, 1667, 1679a, 1693a, 1693g of this title; title 12 sections 1735f–5, 1735f–7a, 1834b, 2602, 3401; title 18 section 1030; title 42 section 5511.

§ 1603. Exempted transactions

This subchapter does not apply to the following:

(1) Credit transactions involving extensions of credit primarily for business, commercial, or agricultural purposes, or to government or governmental agencies or instrumentalities, or to organizations.

(2) Transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission.

(3) Credit transactions, other than those in which a security interest is or will be acquired in real property, or in personal property used or expected to be used as the principal dwelling of the consumer, in which the total amount financed exceeds $25,000.

(4) Transactions under public utility tariffs, if the Board determines that a State regu-

latory body regulates the charges for the public utility services involved, the charges for delayed payment, and any discount allowed for early payment.

(5) Transactions for which the Board, by rule, determines that coverage under this subchapter is not necessary to carry out the purposes of this subchapter.

(6) Repealed. Pub. L. 96–221, title VI, § 603(c)(3), Mar. 31, 1980, 94 Stat. 169.

(7) Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.].

(Pub. L. 90–321, title I, § 104, May 29, 1968, 82 Stat. 147; Pub. L. 93–495, title IV, § 402, Oct. 28, 1974, 88 Stat. 1517; Pub. L. 96–221, title VI, § 603(c), Mar. 31, 1980, 94 Stat. 169; Pub. L. 97–320, title VII, § 701(a), Oct. 15, 1982, 96 Stat. 1538; Pub. L. 104–208, div. A, title II, § 2102(a), Sept. 30, 1996, 110 Stat. 3009–398.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in par. (7), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Higher Education Act of 1965 is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education, and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

1996—Pars. (5) to (7). Pub. L. 104–208 added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

1982—Par. (6). Pub. L. 97–320 added par. (6).

1980—Par. (1). Pub. L. 96–221, § 603(c)(1), inserted provision relating to applicability to agricultural purposes.

Par. (3). Pub. L. 96–221, § 603(c)(2), substituted provision excepting security interest in real property, or in personal property used as the consumer's principal dwelling, for provisions excepting real property transactions.

Par. (5). Pub. L. 96–221, § 603(c)(3), struck out par. (5) which related to credit transactions primarily for agricultural purposes where the amount financed exceeds $25,000.

1974—Par. (5). Pub. L. 93–495 added par. (5).

EFFECTIVE DATE OF 1982 AMENDMENT

Section 701(c) of Pub. L. 97–320, as amended by Pub. L. 97–457, § 31, Jan. 12, 1983, 96 Stat. 2511, provided that: "The amendment made by subsection (a) [amending this section] and subsection (b) [enacting section 1099 of Title 20, Education] shall be effective with respect to loans made prior to, on, and after the date of the enactment of this Act [Oct. 15, 1982]."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

EXCEPTIONS IN AREAS WHERE MAJOR DISASTER EXISTS

Board of Governors of Federal Reserve System authorized to make exceptions to requirements of this subchapter for transactions within an area in which the President has determined that a major disaster exists, if Board determines that exception can reasonably be expected to alleviate hardships to the public that outweigh possible adverse effects, see section 2 of Pub. L. 103–76, set out as a note under section 4008 of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1645 of this title; title 12 section 2606.

§ 1604. Disclosure guidelines

(a) Promulgation, contents, etc., of regulations

The Board shall prescribe regulations to carry out the purposes of this subchapter. Except in the case of a mortgage referred to in section 1602(aa) of this title, these regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(b) Model disclosure forms and clauses; publication, criteria, compliance, etc.

The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this subchapter and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures. In devising such forms, the Board shall consider the use by creditors or lessors of data processing or similar automated equipment. Nothing in this subchapter may be construed to require a creditor or lessor to use any such model form or clause prescribed by the Board under this section. A creditor or lessor shall be deemed to be in compliance with the disclosure provisions of this subchapter with respect to other than numerical disclosures if the creditor or lessor (1) uses any appropriate model form or clause as published by the Board, or (2) uses any such model form or clause and changes it by (A) deleting any information which is not required by this subchapter, or (B) rearranging the format, if in making such deletion or rearranging the format, the creditor or lessor does not affect the substance, clarity, or meaningful sequence of the disclosure.

(c) Procedures applicable for adoption of model forms and clauses

Model disclosure forms and clauses shall be adopted by the Board after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5.

(d) Effective dates of regulations containing new disclosure requirements

Any regulation of the Board, or any amendment or interpretation thereof, requiring any disclosure which differs from the disclosures

previously required by this part, part D, or part E of this subchapter or by any regulation of the Board promulgated thereunder shall have an effective date of that October 1 which follows by at least six months the date of promulgation, except that the Board may at its discretion take interim action by regulation, amendment, or interpretation to lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements or shorten the length of time for creditors or lessors to make such adjustments when it makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive disclosure practices. Notwithstanding the previous sentence, any creditor or lessor may comply with any such newly promulgated disclosure requirements prior to the effective date of the requirements.

(f)[1] Exemption authority

(1) In general

The Board may exempt, by regulation, from all or part of this subchapter any class of transactions, other than transactions involving any mortgage described in section 1602(aa) of this title, for which, in the determination of the Board, coverage under all or part of this subchapter does not provide a meaningful benefit to consumers in the form of useful information or protection.

(2) Factors for consideration

In determining which classes of transactions to exempt in whole or in part under paragraph (1), the Board shall consider the following factors and publish its rationale at the time a proposed exemption is published for comment:

(A) The amount of the loan and whether the disclosures, right of rescission, and other provisions provide a benefit to the consumers who are parties to such transactions, as determined by the Board.

(B) The extent to which the requirements of this subchapter complicate, hinder, or make more expensive the credit process for the class of transactions.

(C) The status of the borrower, including—

(i) any related financial arrangements of the borrower, as determined by the Board;

(ii) the financial sophistication of the borrower relative to the type of transaction; and

(iii) the importance to the borrower of the credit, related supporting property, and coverage under this subchapter, as determined by the Board;

(D) whether the loan is secured by the principal residence of the consumer; and

(E) whether the goal of consumer protection would be undermined by such an exemption.

(g) Waiver for certain borrowers

(1) In general

The Board, by regulation, may exempt from the requirements of this subchapter certain credit transactions if—

(A) the transaction involves a consumer—

(i) with an annual earned income of more than $200,000; or

(ii) having net assets in excess of $1,000,000 at the time of the transaction; and

(B) a waiver that is handwritten, signed, and dated by the consumer is first obtained from the consumer.

(2) Adjustments by the Board

The Board, at its discretion, may adjust the annual earned income and net asset requirements of paragraph (1) for inflation.

(Pub. L. 90–321, title I, § 105, May 29, 1968, 82 Stat. 148; Pub. L. 96–221, title VI, § 605, Mar. 31, 1980, 94 Stat. 170; Pub. L. 103–325, title I, § 152(e)(2)(A), Sept. 23, 1994, 108 Stat. 2194; Pub. L. 104–208, div. A, title II, §§ 2102(b), 2104, Sept. 30, 1996, 110 Stat. 3009–399, 3009–401.)

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–208, § 2102(b), added subsec. (f).

Subsec. (g). Pub. L. 104–208, § 2104, added subsec. (g).

1994—Subsec. (a). Pub. L. 103–325 substituted ''Except in the case of a mortgage referred to in section 1602(aa) of this title, these'' for ''These'' in second sentence.

1980—Pub. L. 96–221 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

§ 1605. Determination of finance charge

(a) "Finance charge" defined

Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. The finance charge does not include charges of a type payable in a comparable cash transaction. The finance charge shall not include fees and amounts imposed by third party closing agents (including settlement agents, attorneys, and escrow and title companies) if the creditor does not require the imposition of the charges or the services provided and does not retain the charges. Examples of charges which are included in the finance charge include any of the following types of charges which are applicable:

(1) Interest, time price differential, and any amount payable under a point, discount, or other system or additional charges.

(2) Service or carrying charge.

(3) Loan fee, finder's fee, or similar charge.

(4) Fee for an investigation or credit report.

(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

[1] So in original. No subsec. (e) has been enacted.

(6) Borrower-paid mortgage broker fees, including fees paid directly to the broker or the lender (for delivery to the broker) whether such fees are paid in cash or financed.

(b) Life, accident, or health insurance premiums included in finance charge

Charges or premiums for credit life, accident, or health insurance written in connection with any consumer credit transaction shall be included in the finance charges unless

(1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and

(2) in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(c) Property damage and liability insurance premiums included in finance charge

Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained.

(d) Items exempted from computation of finance charge in all credit transactions

If any of the following items is itemized and disclosed in accordance with the regulations of the Board in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction:

(1) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction.

(2) The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph (1) which would otherwise be payable.

(3) Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a precondition for recording the instrument securing the evidence of indebtedness.

(e) Items exempted from computation of finance charge in extensions of credit secured by an interest in real property

The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

(1) Fees or premiums for title examination, title insurance, or similar purposes.

(2) Fees for preparation of loan-related documents.

(3) Escrows for future payments of taxes and insurance.

(4) Fees for notarizing deeds and other documents.

(5) Appraisal fees, including fees related to any pest infestation or flood hazard inspections conducted prior to closing.

(6) Credit reports.

(f) Tolerances for accuracy

In connection with credit transactions not under an open end credit plan that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge—

(1) shall be treated as being accurate for purposes of this subchapter if the amount disclosed as the finance charge—

(A) does not vary from the actual finance charge by more than $100; or

(B) is greater than the amount required to be disclosed under this subchapter; and

(2) shall be treated as being accurate for purposes of section 1635 of this title if—

(A) except as provided in subparagraph (B), the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to one-half of one percent of the total amount of credit extended; or

(B) in the case of a transaction, other than a mortgage referred to in section 1602(aa) of this title, which—

(i) is a refinancing of the principal balance then due and any accrued and unpaid finance charges of a residential mortgage transaction as defined in section 1602(w) of this title, or is any subsequent refinancing of such a transaction; and

(ii) does not provide any new consolidation or new advance;

if the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to one percent of the total amount of credit extended.

(Pub. L. 90–321, title I, § 106, May 29, 1968, 82 Stat. 148; Pub. L. 96–221, title VI § 606, Mar. 31, 1980, 94 Stat. 170; Pub. L. 104–29, §§ 2(a), (b)(1), (c)–(e), 3(a), Sept. 30, 1995, 109 Stat. 271, 272.)

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–29, § 2(a), in introductory provisions inserted after second sentence ''The finance charge shall not include fees and amounts imposed by third party closing agents (including settlement agents, attorneys, and escrow and title companies) if the creditor does not require the imposition of the charges or the services provided and does not retain the charges.''

Subsec. (a)(6). Pub. L. 104–29, § 2(b)(1), added par. (6).

Subsec. (d)(3). Pub. L. 104–29, § 2(c), added par. (3).

Subsec. (e)(2). Pub. L. 104–29, § 2(d), amended par. (2) generally, substituting ''loan-related'' for ''a deed, settlement statement, or other''.

Subsec. (e)(5). Pub. L. 104–29, § 2(e), inserted before period ", including fees related to any pest infestation or flood hazard inspections conducted prior to closing".

Subsec. (f). Pub. L. 104–29, § 3(a), added subsec. (f).

1980—Subsec. (a). Pub. L. 96–221, § 606(a), inserted provisions excluding charges of a type payable in comparable cash transactions and indicated that pars. (1) to (5) are examples of charges.

Subsec. (d). Pub. L. 96–221, § 606(b), struck out pars. (3) and (4) setting forth applicability to taxes and any other type of charge, respectively.

EFFECTIVE DATE OF 1995 AMENDMENT

Section 2(b)(2) of Pub. L. 104–29 provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on the earlier of—

"(A) 60 days after the date on which the Board of Governors of the Federal Reserve System issues final regulations under paragraph (3) [set out below]; or

"(B) the date that is 12 months after the date of the enactment of this Act [Sept. 30, 1995]."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

REGULATIONS

Section 2(b)(3) of Pub. L. 104–29 provided that: "The Board of Governors of the Federal Reserve System shall promulgate regulations implementing the amendment made by paragraph (1) [amending this section] by no later than 6 months after the date of the enactment of this Act [Sept. 30, 1995]."

ENSURING THAT FINANCE CHARGES REFLECT COST OF CREDIT

Section 2(f) of Pub. L. 104–29 provided that:

"(1) REPORT.—

"(A) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act [Sept. 30, 1995], the Board of Governors of the Federal Reserve System shall submit to the Congress a report containing recommendations on any regulatory or statutory changes necessary—

"(i) to ensure that finance charges imposed in connection with consumer credit transactions more accurately reflect the cost of providing credit; and

"(ii) to address abusive refinancing practices engaged in for the purpose of avoiding rescission.

"(B) REPORT REQUIREMENTS.—In preparing the report under this paragraph, the Board shall—

"(i) consider the extent to which it is feasible to include in finance charges all charges payable directly or indirectly by the consumer to whom credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit (especially those charges excluded from finance charges under section 106 of the Truth in Lending Act [15 U.S.C. 1605] as of the date of the enactment of this Act), excepting only those charges which are payable in a comparable cash transaction; and

"(ii) consult with and consider the views of affected industries and consumer groups.

"(2) REGULATIONS.—The Board of Governors of the Federal Reserve System shall prescribe any appropriate regulation in order to effect any change included in the report under paragraph (1), and shall publish the regulation in the Federal Register before the end of the 1-year period beginning on the date of enactment of this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602, 1607, 1635, 1638, 1649, 1666f of this title; title 12 section 1735f–7a.

§ 1606. Determination of annual percentage rate

(a) "Annual percentage rate" defined

The annual percentage rate applicable to any extension of consumer credit shall be determined, in accordance with the regulations of the Board,

(1) in the case of any extension of credit other than under an open end credit plan, as

(A) that nominal annual percentage rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed, calculated according to the actuarial method of allocating payments made on a debt between the amount financed and the amount of the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed; or

(B) the rate determined by any method prescribed by the Board as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined under subparagraph (A).

(2) in the case of any extension of credit under an open end credit plan, as the quotient (expressed as a percentage) of the total finance charge for the period to which it relates divided by the amount upon which the finance charge for that period is based, multiplied by the number of such periods in a year.

(b) Computation of rate of finance charges for balances within a specified range

Where a creditor imposes the same finance charge for balances within a specified range, the annual percentage rate shall be computed on the median balance within the range, except that if the Board determines that a rate so computed would not be meaningful, or would be materially misleading, the annual percentage rate shall be computed on such other basis as the Board may be regulation require.

(c) Allowable tolerances for purposes of compliance with disclosure requirements

The disclosure of an annual percentage rate is accurate for the purpose of this subchapter if the rate disclosed is within a tolerance not greater than one-eighth of 1 per centum more or less than the actual rate or rounded to the nearest one-fourth of 1 per centum. The Board may allow a greater tolerance to simplify compliance where irregular payments are involved.

(d) Use of rate tables or charts having allowable variance from determined rates

The Board may authorize the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with subsection (a)(1)(A) of this section by not more than such tolerances as the Board may allow. The Board may not allow a tolerance greater than 8 per centum of that rate except to simplify compliance where irregular payments are involved.

(e) Authorization of tolerances in determining annual percentage rates

In the case of creditors determining the annual percentage rate in a manner other than as

described in subsection (d) of this section, the Board may authorize other reasonable tolerances.

(Pub. L. 90–321, title I, § 107, May 29, 1968, 82 Stat. 149; Pub. L. 96–221, title VI, § 607, Mar. 31, 1980, 94 Stat. 170.)

AMENDMENTS

1980—Subsec. (c). Pub. L. 96–221, § 607(a), substituted provisions relating to allowable tolerances for purposes of compliance with disclosure requirements, for provisions relating to rounding off of annual percentage rates which are converted from single add-on or other rates.

Subsec. (e). Pub. L. 96–221, § 607(b), struck out reference to subsection (c) of this section.

Subsec. (f). Pub. L. 96–221, § 607(c), struck out subsec. (f) setting forth requirements for form of expressing percentage rates prior to Jan. 1, 1971.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1607, 1611, 1637, 1638, 1640 of this title.

§ 1607. Administrative enforcement

(a) Enforcing agencies

Compliance with the requirements imposed under this subchapter shall be enforced under

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a)[1] of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.

(3) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the National Credit Union Administration Board with respect to any Federal credit union.

(4) part A of subtitle VII of title 49, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part.

(5) the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.] (except as provided in section 406 of that Act [7 U.S.C. 226, 227]), by the Secretary of Agriculture with respect to any activities subject to that Act.

(6) the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.] by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(b) Violations of this subchapter deemed violations of pre-existing statutory requirements; additional agency powers

For the purpose of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter, any other authority conferred on it by law.

(c) Federal Trade Commission as overall enforcing agency

Except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under subsection (a) of this section, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

(d) Rules and regulations

The authority of the Board to issue regulations under this subchapter does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this subchapter.

(e) Adjustment of finance charges; procedures applicable, coverage, criteria, etc.

(1) In carrying out its enforcement activities under this section, each agency referred to in

[1] See References in Text note below.

subsection (a) or (c) of this section, in cases where an annual percentage rate or finance charge was inaccurately disclosed, shall notify the creditor of such disclosure error and is authorized in accordance with the provisions of this subsection to require the creditor to make an adjustment to the account of the person to whom credit was extended, to assure that such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower. For the purposes of this subsection, except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, in determining whether a disclosure error has occurred and in calculating any adjustment, (A) each agency shall apply (i) with respect to the annual percentage rate, a tolerance of one-quarter of 1 percent more or less than the actual rate, determined without regard to section 1606(c) of this title, and (ii) with respect to the finance charge, a corresponding numerical tolerance as generated by the tolerance provided under this subsection for the annual percentage rate; except that (B) with respect to transactions consummated after two years following March 31, 1980, each agency shall apply (i) for transactions that have a scheduled amortization of ten years or less, with respect to the annual percentage rate, a tolerance not to exceed one-quarter of 1 percent more or less than the actual rate, determined without regard to section 1606(c) of this title, but in no event a tolerance of less than the tolerances allowed under section 1606(c) of this title, (ii) for transactions that have a scheduled amortization of more than ten years, with respect to the annual percentage rate, only such tolerances as are allowed under section 1606(c) of this title, and (iii) for all transactions, with respect to the finance charge, a corresponding numerical tolerance as generated by the tolerances provided under this subsection for the annual percentage rate.

(2) Each agency shall require such an adjustment when it determines that such disclosure error resulted from (A) a clear and consistent pattern or practice of violations, (B) gross negligence, or (C) a willful violation which was intended to mislead the person to whom the credit was extended. Notwithstanding the preceding sentence, except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, an agency need not require such an adjustment if it determines that such disclosure error—

(A) resulted from an error involving the disclosure of a fee or charge that would otherwise be excludable in computing the finance charge, including but not limited to violations involving the disclosures described in sections 1605(b), (c) and (d) of this title, in which event the agency may require such remedial action as it determines to be equitable, except that for transactions consummated after two years after March 31, 1980, such an adjustment shall be ordered for violations of section 1605(b) of this title;

(B) involved a disclosed amount which was 10 per centum or less of the amount that should have been disclosed and (i) in cases where the error involved a disclosed finance charge, the annual percentage rate was disclosed correctly, and (ii) in cases where the error involved a disclosed annual percentage rate, the finance charge was disclosed correctly; in which event the agency may require such adjustment as it determines to be equitable;

(C) involved a total failure to disclose either the annual percentage rate or the finance charge, in which event the agency may require such adjustment as it determines to be equitable; or

(D) resulted from any other unique circumstance involving clearly technical and nonsubstantive disclosure violations that do not adversely affect information provided to the consumer and that have not misled or otherwise deceived the consumer.

In the case of other such disclosure errors, each agency may require such an adjustment.

(3) Notwithstanding paragraph (2), no adjustment shall be ordered—

(A) if it would have a significantly adverse impact upon the safety or soundness of the creditor, but in any such case, the agency may—

(i) require a partial adjustment in an amount which does not have such an impact; or

(ii) require the full adjustment, but permit the creditor to make the required adjustment in partial payments over an extended period of time which the agency considers to be reasonable, if (in the case of an agency referred to in paragraph (1), (2), or (3) of subsection (a) of this section), the agency determines that a partial adjustment or making partial payments over an extended period is necessary to avoid causing the creditor to become undercapitalized pursuant to section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831*o*];

(B) the[2] amount of the adjustment would be less than $1, except that if more than one year has elapsed since the date of the violation, the agency may require that such amount be paid into the Treasury of the United States, or

(C) except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, in the case of an open-end credit plan, more than two years after the violation, or in the case of any other extension of credit, as follows:

(i) with respect to creditors that are subject to examination by the agencies referred to in paragraphs (1) through (3) of subsection (a) of this section, except in connection with violations arising from practices identified in the current examination and only in connection with transactions that are consummated after the date of the immediately preceding examination, except that where practices giving rise to violations identified in earlier examinations have not been corrected, adjustments for those violations shall be required in con-

[2] So in original. Probably should be preceded by "if".

nection with transactions consummated after the date of examination in which such practices were first identified;

(ii) with respect to creditors that are not subject to examination by such agencies, except in connection with transactions that are consummated after May 10, 1978; and

(iii) in no event after the later of (I) the expiration of the life of the credit extension, or (II) two years after the agreement to extend credit was consummated.

(4)(A) Notwithstanding any other provision of this section, an adjustment under this subsection may be required by an agency referred to in subsection (a) or (c) of this section only by an order issued in accordance with cease and desist procedures provided by the provision of law referred to in such subsections.

(B) In case of an agency which is not authorized to conduct cease and desist proceedings, such an order may be issued after an agency hearing on the record conducted at least thirty but not more than sixty days after notice of the alleged violation is served on the creditor. Such a hearing shall be deemed to be a hearing which is subject to the provisions of section 8(h) of the Federal Deposit Insurance Act [12 U.S.C. 1818(h)] and shall be subject to judicial review as provided therein.

(5) Except as otherwise specifically provided in this subsection and notwithstanding any provision of law referred to in subsection (a) or (c) of this section, no agency referred to in subsection (a) or (c) of this section may require a creditor to make dollar adjustments for errors in any requirements under this subchapter, except with regard to the requirements of section 1666d of this title.

(6) A creditor shall not be subject to an order to make an adjustment, if within sixty days after discovering a disclosure error, whether pursuant to a final written examination report or through the creditor's own procedures, the creditor notifies the person concerned of the error and adjusts the account so as to assure that such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

(7) Notwithstanding the second sentence of subsection (e)(1), subsection (e)(3)(C)(i), and subsection (e)(3)(C)(ii) of this section, each agency referred to in subsection (a) or (c) of this section shall require an adjustment for an annual percentage rate disclosure error that exceeds a tolerance of one quarter of one percent less than the actual rate, determined without regard to section 1606(c) of this title, with respect to any transaction consummated between January 1, 1977, and March 31, 1980.

(Pub. L. 90–321, title I, § 108, May 29, 1968, 82 Stat. 150; Pub. L. 91–206, § 3, Mar. 10, 1970, 84 Stat. 49; Pub. L. 93–495, title IV, § 403, Oct. 28, 1974, 88 Stat. 1517; Pub. L. 95–630, title V, § 501, Nov. 10, 1978, 92 Stat. 3680; Pub. L. 96–221, title VI, § 608(a), (c), Mar. 21, 1980, 94 Stat. 171, 173; Pub. L. 98–443, § 9(n), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 101–73, title VII, § 744(k), Aug. 9, 1989, 103 Stat. 439; Pub. L. 102–242, title II, § 212(b), Dec. 19, 1991, 105 Stat. 2299; Pub. L. 102–550, title XVI, § 1604(a)(5), Oct. 28, 1992, 106 Stat. 4082; Pub. L. 104–208, div. A, title II, § 2106, Sept. 30, 1996, 110 Stat. 3009–402.)

REFERENCES IN TEXT

Section 25(a) of the Federal Reserve Act, referred to in subsec. (a)(1)(B), which is classified to subchapter II (§ 611 et seq.) of chapter 6 of Title 12, Banks and Banking, was renumbered section 25A of that act by Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§ 601 et seq.) of chapter 6 of Title 12.

The Federal Credit Union Act, referred to in subsec. (a)(3), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§ 1751 et seq.) of Title 12. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Packers and Stockyards Act, 1921, referred to in subsec. (a)(5), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, as amended, which is classified to chapter 9 (§ 181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in subsec. (a)(6), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, as amended, which is classified generally to chapter 23 (§ 2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

The Federal Trade Commission Act, referred to in subsec. (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

CODIFICATION

In subsec. (a)(4), ''part A of subtitle VII of title 49'' substituted for ''the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]'' and ''that part'' substituted for ''that Act'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1996—Subsec. (e)(3). Pub. L. 104–208 struck out ''ordered (A) if'' and inserted ''ordered—

''(A) if'';

struck out ''may require a partial'' and inserted ''may—

''(i) require a partial'';

struck out '', except that with respect to any transaction consumated after March 31, 1980, the agency shall require'' and inserted ''; or

''(ii) require'';

directed the substitution of ''reasonable, if (in the case of an agency referred to in paragraph (1), (2), or (3) of subsection (a) of this section), the agency determines that a partial adjustment or making partial payments over an extended period is necessary to avoid causing the creditor to become undercapitalized pursuant to section 38 of the Federal Deposit Insurance Act;

''(B) the'';

for ''reasonable, (B) the'', which was executed by making the substitution for ''reasonable, (B) if the''; and struck out ''(C) except'' and inserted

''(C) except''.

1992—Subsec. (a)(1)(C). Pub. L. 102–550 substituted semicolon for period at end.

1991—Subsec. (a). Pub. L. 102–242, § 212(b)(2), inserted at end ''The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).''

Pub. L. 102–242, § 212(b)(1), added par. (1) and struck out former par. (1) which read as follows: ''section 8 of the Federal Deposit Insurance Act, in the case of

''(A) national banks, by the Comptroller of the Currency.

''(B) member banks of the Federal Reserve System (other than national banks), by the Board.

''(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.''

1989—Subsec. (a)(2). Pub. L. 101–73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''section 5(d) of the Home Owner's Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions.''

1984—Subsec. (a)(4). Pub. L. 98–443 substituted ''Secretary of Transportation'' for ''Civil Aeronautics Board''.

1980—Subsec. (e). Pub. L. 96–221, § 608(a), added subsec. (e).

Pub. L. 96–221, § 608(c), struck out in pars. (1)(A)(i) and (7) '', except in the case of an irregular mortgage lending transaction'' after ''section 1606(c) of this title''. See Effective Date of 1980 Amendment note below.

1974—Subsec. (a)(4) to (6). Pub. L. 93–495 redesignated pars. (5) and (6) as (4) and (5), respectively. Former par. (4), which related to enforcement by the Interstate Commerce Commission, was struck out.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 608(b) of Pub. L. 96–221 provided that: ''This section [amending this section] shall take effect on the date of enactment of the Truth in Lending Simplification and Reform Act [Mar. 31, 1980].''

Section 608(c) of Pub. L. 96–221 provided that the amendment made by that section is effective one year after Mar. 31, 1980.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

TRANSFER OF FUNCTIONS

''National Credit Union Administration Board'' substituted for ''Director of the Bureau of Federal Credit Unions'' in subsec. (a)(3) pursuant to section 3 of Pub. L. 91–206 and section 501 of Pub. L. 95–630 [12 U.S.C. 1752a] which transferred functions of Bureau of Federal Credit Unions, and Director thereof, to National Credit Union Administration and vested authority for management of Administration in National Credit Union Administration Board.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1640, 1641 of this title; title 12 section 3806.

§ 1608. Views of other agencies

In the exercise of its functions under this subchapter, the Board may obtain upon requests the views of any other Federal agency which, in the judgment of the Board, exercises regulatory or supervisory functions with respect to any class of creditors subject to this subchapter.

(Pub. L. 90–321, title I, § 109, May 29, 1968, 82 Stat. 150.)

§ 1609. Repealed. Pub. L. 94–239, § 3(b)(1), Mar. 23, 1976, 90 Stat. 253

Section, Pub. L. 90–321, title I, § 110, May 29, 1968, 82 Stat. 151, provided for establishment of an advisory committee authorized to seek to achieve a fair representation of interests of sellers of merchandise on credit, lenders, and the public.

EFFECTIVE DATE OF REPEAL

Repeal effective Mar. 23, 1976, see section 708 of Pub. L. 90–321, set out as an Effective Date note under section 1691 of this title.

§ 1610. Effect on other laws

(a) Inconsistent provisions; procedures applicable for determination

(1) Except as provided in subsection (e) of this section, this part and parts B and C of this subchapter, do not annul, alter, or affect the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the provisions of this subchapter and then only to the extent of the inconsistency. Upon its own motion or upon the request of any creditor, State or other interested party which is submitted in accordance with procedures prescribed in regulations of the Board, the Board shall determine whether any such inconsistency exists. If the Board determines that a State-required disclosure is inconsistent, creditors located in that State may not make disclosures using the inconsistent term or form, and shall incur no liability under the law of that State for failure to use such term or form, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(2) Upon its own motion or upon the request of any creditor, State, or other interested party which is submitted in accordance with procedures prescribed in regulations of the Board, the Board shall determine whether any disclosure required under the law of any State is substantially the same in meaning as a disclosure required under this subchapter. If the Board determines that a State-required disclosure is substantially the same in meaning as a disclosure required by this subchapter, then creditors located in that State may make such disclosure in compliance with such State law in lieu of the disclosure required by this subchapter, except that the annual percentage rate and finance charge shall be disclosed as required by section 1632 of this title, and such State-required disclosure may not be made in lieu of the disclosures applicable to certain mortgages under section 1639 of this title.

(b) State credit charge statutes

Except as provided in section 1639 of this title, this subchapter does not otherwise annul, alter or affect in any manner the meaning, scope or applicability of the laws of any State, including,

but not limited to, laws relating to the types, amounts or rates of charges, or any element or elements of charges, permissible under such laws in connection with the extension or use of credit, nor does this subchapter extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply. The provisions of section 1639 of this title do not annul, alter, or affect the applicability of the laws of any State or exempt any person subject to the provisions of section 1639 of this title from complying with the laws of any State, with respect to the requirements for mortgages referred to in section 1602(aa) of this title, except to the extent that those State laws are inconsistent with any provisions of section 1639 of this title, and then only to the extent of the inconsistency.

(c) Disclosure as evidence

In any action or proceeding in any court involving a consumer credit sale, the disclosure of the annual percentage rate as required under this subchapter in connection with that sale may not be received as evidence that the sale was a loan or any type of transaction other than a credit sale.

(d) Contract or other obligations under State or Federal law

Except as specified in sections 1635, 1640, and 1666e of this title, this subchapter and the regulations issued thereunder do not affect the validity or enforceability of any contract or obligation under State or Federal law.

(e) Certain credit and charge card application and solicitation disclosure provisions

The provisions of subsection (c) of section 1632 of this title and subsections (c), (d), (e), and (f) of section 1637 of this title shall supersede any provision of the law of any State relating to the disclosure of information in any credit or charge card application or solicitation which is subject to the requirements of section 1637(c) of this title or any renewal notice which is subject to the requirements of section 1637(d) of this title, except that any State may employ or establish State laws for the purpose of enforcing the requirements of such sections.

(Pub. L. 90–321, title I, § 111, May 29, 1968, 82 Stat. 151; Pub. L. 93–495, title III, § 307(b), Oct. 28, 1974, 88 Stat. 1516; Pub. L. 96–221, title VI, § 609, Mar. 31, 1980, 94 Stat. 173; Pub. L. 100–583, § 4, Nov. 3, 1988, 102 Stat. 2967; Pub. L. 103–325, title I, § 152(e)(2)(B), (C), Sept. 23, 1994, 108 Stat. 2194.)

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–325, § 152(e)(2)(B), which directed the amendment of par. (2) by inserting ", and such State-required disclosure may not be made in lieu of the disclosures applicable to certain mortgages under section 1639 of this title" before period, was executed by making the insertion before period at end of par. (2), to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 103–325, § 152(e)(2)(C), substituted "Except as provided in section 1639 of this title, this subchapter" for "This subchapter" and inserted at end "The provisions of section 1639 of this title do not annul, alter, or affect the applicability of the laws of any State or exempt any person subject to the provisions of section 1639 of this title from complying with the laws of any State, with respect to the requirements for mortgages referred to in section 1602(aa) of this title, except to the extent that those State laws are inconsistent with any provisions of section 1639 of this title, and then only to the extent of the inconsistency."

1988—Subsec. (a)(1). Pub. L. 100–583, § 4(1), substituted "Except as provided in subsection (e) of this section, this part" for "This part".

Subsec. (e). Pub. L. 100–583, § 4(2), added subsec. (e).

1980—Subsec. (a). Pub. L. 96–221 designated existing provisions as par. (1), substituted provisions respecting the effect of this part and parts B and C of this subchapter, and procedures applicable for determination, for provisions respecting the effect of this subchapter, and added par. (2).

1974—Subsec. (d). Pub. L. 93–495 inserted reference to section 1666e of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–495, see section 308 of Pub. L. 93–495, set out as an Effective Date note under section 1666 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1612, 1640 of this title.

§ 1611. Criminal liability for willful and knowing violation

Whoever willfully and knowingly

(1) gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this subchapter or any regulation issued thereunder,

(2) uses any chart or table authorized by the Board under section 1606 of this title in such a manner as to consistently understate the annual percentage rate determined under section 1606(a)(1)(A) of this title, or

(3) otherwise fails to comply with any requirement imposed under this subchapter,

shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(Pub. L. 90–321, title I, § 112, May 29, 1968, 82 Stat. 151.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1640 of this title.

§ 1612. Effect on government agencies

(a) Consultation requirements respecting compliance of credit instruments issued to participating creditor

Any department or agency of the United States which administers a credit program in which it extends, insures, or guarantees consumer credit and in which it provides instruments to a creditor which contain any disclosures required by this subchapter shall, prior to the issuance or continued use of such instruments, consult with the Board to assure that such instruments comply with this subchapter.

(b) Inapplicability of Federal civil or criminal penalties to Federal, State, and local agencies

No civil or criminal penalty provided under this subchapter for any violation thereof may be imposed upon the United States or any department or agency thereof, or upon any State or political subdivision thereof, or any agency of any State of political subdivision.

(c) Inapplicability of Federal civil or criminal penalties to participating creditor where violating instrument issued by United States

A creditor participating in a credit program administered, insured, or guaranteed by any department or agency or the United States shall not be held liable for a civil or criminal penalty under this subchapter in any case in which the violation results from the use of an instrument required by any such department or agency.

(d) Applicability of State penalties to violations by participating creditor

A creditor participating in a credit program administered, insured, or guaranteed by any department or agency of the United States shall not be held liable for a civil or criminal penalty under the laws of any State (other than laws determined under section 1610 of this title to be inconsistent with this subchapter) for any technical or procedural failure, such as a failure to use a specific form, to make information available at a specific place on an instrument, or to use a specific typeface, as required by State law, which is caused by the use of an instrument required to be used by such department or agency.

(Pub. L. 90–321, title I, § 113, May 29, 1968, 82 Stat. 151; Pub. L. 96–221, title VI, § 622(a), Mar. 31, 1980, 94 Stat. 184.)

AMENDMENTS

1980—Pub. L. 96–221 amended section generally, designating existing provisions as subsec. (b) and adding subsecs. (a), (c), and (d).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

§ 1613. Annual reports to Congress by Board

Each year the Board shall make a report to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Board deems necessary or appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with the requirements imposed under this subchapter is being achieved.

(Pub. L. 90–321, title I, § 114, May 29, 1968, 82 Stat. 151; Pub. L. 96–221, title VI, § 610(a), Mar. 31, 1980, 94 Stat. 174; Pub. L. 97–375, title II, § 209(b), Dec. 21, 1982, 96 Stat. 1825.)

AMENDMENTS

1982—Pub. L. 97–375 struck out requirement that the Attorney General make a report on the same terms as the Board.

1980—Pub. L. 96–221 substituted ''Each year'' for ''Not later than January 3 of each year after 1969,''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

§ 1614. Repealed. Pub. L. 96–221, title VI, § 616(b), Mar. 31, 1980, 94 Stat. 182

Section, Pub. L. 90–321, title I, § 115, as added Pub. L. 93–495, title IV, § 413(a), Oct. 28, 1974, 88 Stat. 1520, related to liability of assignees. See section 1641 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 1602 of this title.

§ 1615. Prohibition on use of "Rule of 78's" in connection with mortgage refinancings and other consumer loans

(a) Prompt refund of unearned interest required

(1) In general

If a consumer prepays in full the financed amount under any consumer credit transaction, the creditor shall promptly refund any unearned portion of the interest charge to the consumer.

(2) Exception for refund of de minimus amount

No refund shall be required under paragraph (1) with respect to the prepayment of any consumer credit transaction if the total amount of the refund would be less than $1.

(3) Applicability to refinanced transactions and acceleration by the creditor

This subsection shall apply with respect to any prepayment of a consumer credit transaction described in paragraph (1) without regard to the manner or the reason for the prepayment, including—

(A) any prepayment made in connection with the refinancing, consolidation, or restructuring of the transaction; and

(B) any prepayment made as a result of the acceleration of the obligation to repay the amount due with respect to the transaction.

(b) Use of "Rule of 78's" prohibited

For the purpose of calculating any refund of interest required under subsection (a) of this section for any precomputed consumer credit transaction of a term exceeding 61 months which is consummated after September 30, 1993, the creditor shall compute the refund based on a method which is at least as favorable to the consumer as the actuarial method.

(c) Statement of prepayment amount

(1) In general

Before the end of the 5-day period beginning on the date an oral or written request is received by a creditor from a consumer for the disclosure of the amount due on any precomputed consumer credit account, the creditor or assignee shall provide the consumer with a statement of—

(A) the amount necessary to prepay the account in full; and

(B) if the amount disclosed pursuant to subparagraph (A) includes an amount which is required to be refunded under this section with respect to such prepayment, the amount of such refund.

(2) Written statement required if request is in writing

If the customer's request is in writing, the statement under paragraph (1) shall be in writing.

(3) 1 free annual statement

A consumer shall be entitled to obtain 1 statement under paragraph (1) each year without charge.

(4) Additional statements subject to reasonable fees

Any creditor may impose a reasonable fee to cover the cost of providing any statement under paragraph (1) to any consumer in addition to the 1 free annual statement required under paragraph (3) if the amount of the charge for such additional statement is disclosed to the consumer before furnishing such statement.

(d) Definitions

For the purpose of this section—

(1) Actuarial method

The term ''actuarial method'' means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(2) Consumer, credit

The terms ''consumer'' and ''creditor'' have the meanings given to such terms in section 1602 of this title.

(3) Creditor

The term ''creditor''—

(A) has the meaning given to such term in section 1602 of this title; and

(B) includes any assignee of any creditor with respect to credit extended in connection with any consumer credit transaction and any subsequent assignee with respect to such credit.

(Pub. L. 102–550, title IX, § 933, Oct. 28, 1992, 106 Stat. 3891.)

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1992, and not as part of the Consumer Credit Protection Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1639 of this title.

PART B—CREDIT TRANSACTIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1610 of this title.

§ 1631. Disclosure requirements

(a) Duty of creditor or lessor respecting one or more than one obligor

Subject to subsection (b) of this section, a creditor or lessor shall disclose to the person who is obligated on a consumer lease or a consumer credit transaction the information required under this subchapter. In a transaction involving more than one obligor, a creditor or lessor, except in a transaction under section 1635 of this title, need not disclose to more than one of such obligors if the obligor given disclosure is a primary obligor.

(b) Creditor or lessor required to make disclosure

If a transaction involves one creditor as defined in section 1602(f) of this title, or one lessor as defined in section 1667(3) of this title, such creditor or lessor shall make the disclosures. If a transaction involves more than one creditor or lessor, only one creditor or lessor shall by required to make the disclosures. The Board shall by regulation specify which creditor or lessor shall make the disclosures.

(c) Estimates as satisfying statutory requirements; basis of disclosure for per diem interest

The Board may provide by regulation that any portion of the information required to be disclosed by this subchapter may be given in the form of estimates where the provider of such information is not in a position to know exact information. In the case of any consumer credit transaction a portion of the interest on which is determined on a per diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of interest shall be deemed to be accurate for purposes of this subchapter if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction.

(d) Tolerances for numerical disclosures

The Board shall determine whether tolerances for numerical disclosures other than the annual percentage rate are necessary to facilitate compliance with this subchapter, and if it determines that such tolerances are necessary to facilitate compliance, it shall by regulation permit disclosures within such tolerances. The Board shall exercise its authority to permit tolerances for numerical disclosures other than the annual percentage rate so that such tolerances are narrow enough to prevent such tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of this subchapter.

(Pub. L. 90–321, title I, § 121, May 29, 1968, 82 Stat. 152; Pub. L. 93–495, title III, § 307(c), (d), title IV, § 409, Oct. 28, 1974, 88 Stat. 1516, 1519; Pub. L. 94–205, § 11, Jan. 2, 1976, 89 Stat. 1159; Pub. L. 96–221, title VI, § 611, Mar. 31, 1980, 94 Stat. 174; Pub. L. 104–29, § 3(b), Sept. 30, 1995, 109 Stat. 273.)

AMENDMENTS

1995—Subsec. (c). Pub. L. 104–29 inserted at end ''In the case of any consumer credit transaction a portion of the interest on which is determined on a per diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of interest shall be deemed to be accurate for purposes of this subchapter if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction.''

1980—Subsec. (a). Pub. L. 96–221 substituted provisions respecting to which obligor duty of creditor or lessor, where one or more than one obligor is involved, is owed, for provisions setting forth clear and conspicuous disclosure requirements for creditors to persons extended consumer credit.

Subsec. (b). Pub. L. 96–221 substituted provisions relating to disclosure requirements of creditor or lessor, for provisions relating to statement of information where more than one obligor is involved.

Subsecs. (c), (d). Pub. L. 96–221 added subsecs. (c) and (d).

1976—Subsec. (c). Pub. L. 94–205 struck out subsec. (c) which related to disclosure including a full statement of closing costs incurred and permitted estimates of such information where the lender was not in a position to know exact information.

1974—Subsec. (a). Pub. L. 93–495, § 307(c), inserted reference to part D of this subchapter and struck out ''and upon whom a finance charge is or may be imposed'' after ''extended''.

Subsec. (b). Pub. L. 93–495, § 307(d), inserted reference to part D of this subchapter.

Subsec. (c). Pub. L. 93–495, § 409, added subsec (c).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–205 effective Jan. 2, 1976, see section 12 of Pub. L. 94–205, set out as a note under section 2602 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by section 307(c), (d) of Pub. L. 93–495, see section 308 of Pub. L. 93–495, set out as an Effective Date note under section 1666 of this title.

For effective date of amendment by section 409 of Pub. L. 93–495, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

EFFECTIVE DATE

Section 504(b) of Pub. L. 90–321 provided in part that chapter 2 of title I, which enacted sections 1631 to 1641 of this title, is effective July 1, 1969.

REAL ESTATE SETTLEMENT PROCEDURES

Provisions of Real Estate Settlement Procedures Act of 1974, as superseding provisions of subsec. (c) of this section insofar as applying to federally related mortgage loans, see section 2605 of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1638 of this title.

§ 1632. Form of disclosure; additional information

(a) Information clearly and conspicuously disclosed; "annual percentage rate" and "finance charge"; order of disclosures and use of different terminology

Information required by this subchapter shall be disclosed clearly and conspicuously, in accordance with regulations of the Board. The terms ''annual percentage rate'' and ''finance charge'' shall be disclosed more conspicuously than other terms, data, or information provided in connection with a transaction, except information relating to the identify of the creditor. Except as provided in subsection (c) of this section, regulations of the Board need not require that disclosures pursuant to this subchapter be made in the order set forth in this subchapter and, except as otherwise provided, may permit the use of terminology different from that employed in this subchapter if it conveys substantially the same meaning.

(b) Optional information by creditor or lessor

Any creditor or lessor may supply additional information or explanation with any disclosures required under parts D and E of this subchapter and, except as provided in sections 1637a(b)(3) and 1638(b)(1) of this title, under this part.

(c) Tabular format required for certain disclosures under section 1637(c)

(1) In general

The information described in paragraphs (1)(A), (3)(B)(i)(I), (4)(A), and (4)(C)(i)(I) of section 1637(c) of this title shall be—

(A) disclosed in the form and manner which the Board shall prescribe by regulations; and

(B) placed in a conspicuous and prominent location on or with any written application, solicitation, or other document or paper with respect to which such disclosure is required.

(2) Tabular format

(A) Form of table to be prescribed

In the regulations prescribed under paragraph (1)(A) of this subsection, the Board shall require that the disclosure of such information shall, to the extent the Board determines to be practicable and appropriate, be in the form of a table which—

(i) contains clear and concise headings for each item of such information; and

(ii) provides a clear and concise form for stating each item of information required to be disclosed under each such heading.

(B) Board discretion in prescribing order and wording of table

In prescribing the form of the table under subparagraph (A), the Board may—

(i) list the items required to be included in the table in a different order than the

order in which such items are set forth in paragraph (1)(A) or (4)(A) of section 1637(c) of this title; and

(ii) subject to subparagraph (C), employ terminology which is different than the terminology which is employed in section 1637(c) of this title if such terminology conveys substantially the same meaning.

(C) Grace period

Either the heading or the statement under the heading which relates to the time period referred to in section 1637(c)(1)(A)(iii) of this title shall contain the term ''grace period''.

(Pub. L. 90–321, title I, § 122, May 29, 1968, 82 Stat. 152; Pub. L. 93–495, title III, § 307(e), (f), Oct. 28, 1974, 88 Stat. 1516, 1517; Pub. L. 96–221, title VI, § 611, Mar. 31, 1980, 94 Stat. 175; Pub. L. 100–583, § 2(b), Nov. 3, 1988, 102 Stat. 2966; Pub. L. 100–709, § 2(d), Nov. 23, 1988, 102 Stat. 4731.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–583, § 2(b)(1), substituted ''Except as provided in subsection (c) of this section, regulations'' for ''Regulations''.

Subsec. (b). Pub. L. 100–709 substituted ''sections 1637a(b)(3) and 1638(b)(1)'' for ''section 1638(b)(1)''.

Subsec. (c). Pub. L. 100–583, § 2(b)(2), added subsec. (c).

1980—Subsec. (a). Pub. L. 96–221 substituted provisions setting forth form of disclosure to meet requirements of this subchapter, for provisions setting forth form of disclosure authorized under this part or part D of this subchapter.

Subsec. (b). Pub. L. 96–221 substituted provisions setting forth disclosure requirements for additional information by creditors or lessors, for provisions setting forth disclosure requirements for additional information by creditors.

1974—Subsecs. (a), (b). Pub. L. 93–495 inserted references to part D of this subchapter.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendments by Pub. L. 100–709, see Regulations; Effective Date note below.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–495, see section 308 of Pub. L. 93–495, set out as an Effective Date note under section 1666 of this title.

REGULATIONS; EFFECTIVE DATE

For provisions relating to promulgation of regulations to implement amendment by Pub. L. 100–709, and effective date of such amendment in connection with those regulations, see section 7 of Pub. L. 100–709, set out as a note under section 1637a of this title.

For provisions relating to promulgation of regulations to implement amendment by Pub. L. 100–583, and effective date of such amendment in connection with those regulations, see section 7 of Pub. L. 100–583, set out as a note under section 1637 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1610, 1637 of this title.

§ 1633. Exemption for State-regulated transactions

The Board shall by regulation exempt from the requirements of this part any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this part, and that there is adequate provision for enforcement.

(Pub. L. 90–321, title I, § 123, May 29, 1968, 82 Stat. 152.)

§ 1634. Effect of subsequent occurrence

If information disclosed in accordance with this part is subsequently rendered inaccurate as the result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this part.

(Pub. L. 90–321, title I, § 124, May 29, 1968, 82 Stat. 152.)

§ 1635. Right of rescission as to certain transactions

(a) Disclosure of obligor's right to rescind

Except as otherwise provided in this section, in the case of any consumer credit transaction (including opening or increasing the credit limit for an open end credit plan) in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required under this section together with a statement containing the material disclosures required under this subchapter, whichever is later, by notifying the creditor, in accordance with regulations of the Board, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.

(b) Return of money or property following rescission

When an obligor exercises his right to rescind under subsection (a) of this section, he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20 days after receipt of a notice of rescission, the creditor shall return to the boligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may re-

tain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it. The procedures prescribed by this subsection shall apply except when otherwise ordered by a court.

(c) Rebuttable presumption of delivery of required disclosures

Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this subchapter by a person to whom information, forms, and a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

(d) Modification and waiver of rights

The Board may, if it finds that such action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those regulations.

(e) Exempted transactions; reapplication of provisions

This section does not apply to—

(1) a residential mortgage transaction as defined in section 1602(w) of this title;

(2) a transaction which constitutes a refinancing or consolidation (with no new advances) of the principal balance then due and any accrued and unpaid finance charges of an existing extension of credit by the same creditor secured by an interest in the same property;

(3) a transaction in which an agency of a State is the creditor; or

(4) advances under a preexisting open end credit plan if a security interest has already been retained or acquired and such advances are in accordance with a previously established credit limit for such plan.

(f) Time limit for exercise of right

An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this part have not been delivered to the obligor, except that if (1) any agency empowered to enforce the provisions of this subchapter institutes a proceeding to enforce the provisions of this section within three years after the date of consummation of the transaction, (2) such agency finds a violation of this section, and (3) the obligor's right to rescind is based in whole or in part on any matter involved in such proceeding, then the obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the earlier sale of the property, or upon the expiration of one year following the conclusion of the proceeding, or any judicial review or period for judicial review thereof, whichever is later.

(g) Additional relief

In any action in which it is determined that a creditor has violated this section, in addition to rescission the court may award relief under section 1640 of this title for violations of this subchapter not relating to the right to rescind.

(h) Limitation on rescission

An obligor shall have no rescission rights arising solely from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section, if the creditor provided the obligor the appropriate form of written notice published and adopted by the Board, or a comparable written notice of the rights of the obligor, that was properly completed by the creditor, and otherwise complied with all other requirements of this section regarding notice.

(i) Rescission rights in foreclosure

(1) In general

Notwithstanding section 1649 of this title, and subject to the time period provided in subsection (f) of this section, in addition to any other right of rescission available under this section for a transaction, after the initiation of any judicial or nonjudicial foreclosure process on the primary dwelling of an obligor securing an extension of credit, the obligor shall have a right to rescind the transaction equivalent to other rescission rights provided by this section, if—

(A) a mortgage broker fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or

(B) the form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the Board or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice.

(2) Tolerance for disclosures

Notwithstanding section 1605(f) of this title, and subject to the time period provided in subsection (f) of this section, for the purposes of exercising any rescission rights after the initiation of any judicial or nonjudicial foreclosure process on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than $35 or is greater than the amount required to be disclosed under this subchapter.

(3) Right of recoupment under State law

Nothing in this subsection affects a consumer's right of rescission in recoupment under State law.

(4) Applicability

This subsection shall apply to all consumer credit transactions in existence or consummated on or after September 30, 1995.

(Pub. L. 90–321, title I, § 125, May 29, 1968, 82 Stat. 153; Pub. L. 93–495, title IV, §§ 404, 405, 412, Oct. 28, 1974, 88 Stat. 1517, 1519; Pub. L. 96–221, title VI, § 612(a)(1), (3)–(6), Mar. 31, 1980, 94 Stat. 175, 176; Pub. L. 98–479, title II, § 205, Oct. 17, 1984, 98 Stat. 2234; Pub. L. 104–29, §§ 5, 8, Sept. 30, 1995, 109 Stat. 274, 275.)

AMENDMENTS

1995—Subsec. (h). Pub. L. 104–29, § 5, added subsec. (h).

Subsec. (i). Pub. L. 104–29, § 8, added subsec. (i).

1984—Subsec. (e). Pub. L. 98–479 redesignated par. (1) as subsec. (e), redesignated subpars. (A), (B), (C), and (D) of par. (1) as pars. (1), (2), (3), and (4), respectively, and struck out par. (2) which read as follows: ''The provisions of paragraph (1)(D) shall cease to be effective 3 years after the effective date of the Truth in Lending Simplification Reform Act.''

1980—Subsec. (a). Pub. L. 96–221, § 612(a)(1), substituted provisions relating to the right of rescission until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required together with the statement containing the material disclosures required under this subchapter, whichever is later, for provisions relating to right of rescission until midnight of the third business day following the consummation of the transaction or the delivery of the required disclosures and all other material disclosures required under this part, whichever is later.

Subsec. (b). Pub. L. 96–221, § 612(a)(3), (4), inserted provisions setting forth applicability of procedures prescribed by this subsection, and substituted ''20'' for ''ten'' in two places.

Subsec. (c). Pub. L. 96–221, § 612(a)(5), inserted ''information, forms, and'' after ''whom''.

Subsec. (e). Pub. L. 96–221, § 612(a)(6), substituted provisions relating to nonapplicability to residential mortgage transactions, refinancing or consolidation transactions, etc., for provisions relating to nonapplicability to creation or retention of first liens.

Subsec. (f). Pub. L. 96–221, § 612(a)(6), substituted provisions setting forth duration of right of rescission where the required information and forms or other disclosures required under this part have not been delivered to the obligor, and exceptions to such term, for provisions setting forth duration of right of rescission where the required disclosures or any other material disclosures required under this part have not been delivered to the obligor.

Subsec. (g). Pub. L. 96–221, § 612(a)(6), added subsec. (g).

1974—Subsecs. (a), (b). Pub. L. 93–495, § 404, inserted provisions relating to security interest arising by operation of law.

Subsec. (e). Pub. L. 93–495, § 412, inserted exemption for consumer credit transactions where a State agency is the creditor.

Subsec. (f). Pub. L. 93–495, § 405, added subsec. (f).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1605, 1610, 1631, 1639, 1640, 1641, 1649 of this title.

§ 1636. Repealed. Pub. L. 96–221, title VI, § 614(e)(1), Mar. 31, 1980, 94 Stat. 180

Section, Pub. L. 90–321, title I, § 126, May 29, 1968, 82 Stat. 153, related to contents of periodic statements.

EFFECTIVE DATE OF REPEAL

Repeal effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 1602 of this title.

§ 1637. Open end consumer credit plans

(a) Required disclosures by creditor

Before opening any account under an open end consumer credit plan, the creditor shall disclose to the person to whom credit is to be extended each of the following items, to the extent applicable:

(1) The conditions under which a finance charge may be imposed, including the time period (if any) within which any credit extended may be repaid without incurring a finance charge, except that the creditor may, at his election and without disclosure, impose no such finance charge if payment is received after the termination of such time period. If no such time period is provided, the creditor shall disclose such fact.

(2) The method of determining the balance upon which a finance charge will be imposed.

(3) The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge.

(4) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(5) Identification of other charges which may be imposed as part of the plan, and their method of computation, in accordance with regulations of the Board.

(6) In cases where the credit is or will be secured, a statement that a security interest has been or will be taken in (A) the property purchased as part of the credit transaction, or (B) property not purchased as part of the credit transaction identified by item or type.

(7) A statement, in a form prescribed by regulations of the Board of the protection provided by sections 1666 and 1666i of this title to an obligor and the creditor's responsibilities under sections 1666a and 1666i of this title. With respect to one billing cycle per calendar year, at intervals of not less than six months or more than eighteen months, the creditor shall transmit such statement to each obligor to whom the creditor is required to transmit a statement pursuant to subsection (b) of this section for such billing cycle.

(8) In the case of any account under an open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, any information which—

(A) is required to be disclosed under section 1637a(a) of this title; and

(B) the Board determines is not described in any other paragraph of this subsection.

(b) Statement required with each billing cycle

The creditor of any account under an open end consumer credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items to the extent applicable:

(1) The outstanding balance in the account at the beginning of the statement period.

(2) The amount and date of each extension of credit during the period, and a brief identification, on or accompanying the statement of each extension of credit in a form prescribed by the Board sufficient to enable the obligor either to identify the transaction or to relate it to copies of sales vouchers or similar instruments previously furnished, except that a creditor's failure to disclose such information in accordance with this paragraph shall not be deemed a failure to comply with this part or this subchapter if (A) the creditor maintains procedures reasonably adapted to procure and provide such information, and (B) the creditor responds to and treats any inquiry for clarification or documentation as a billing error and an erroneously billed amount under section 1666 of this title. In lieu of complying with the requirements of the previous sentence, in the case of any transaction in which the creditor and seller are the same person, as defined by the Board, and such person's open end credit plan has fewer than 15,000 accounts, the creditor may elect to provide only the amount and date of each extension of credit during the period and the seller's name and location where the transaction took place if (A) a brief identification of the transaction has been previously furnished, and (B) the creditor responds to and treats any inquiry for clarification or documentation as a billing error and an erroneously billed amount under section 1666 of this title.

(3) The total amount credited to the account during the period.

(4) The amount of any finance charge added to the account during the period, itemized to show the amounts, if any, due to the application of percentage rates and the amount, if any, imposed as a minimum or fixed charge.

(5) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and, unless the annual percentage rate (determined under section 1606(a)(2) of this title) is required to be disclosed pursuant to paragraph (6), the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(6) Where the total finance charge exceeds 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, the total finance charge expressed as an annual percentage rate (determined under section 1606(a)(2) of this title), except that if the finance charge is the sum of two or more products of a rate times a portion of the balance, the creditor may, in lieu of disclosing a single rate for the total charge, disclose each such rate expressed as an annual percentage rate, and the part of the balance to which it is applicable.

(7) The balance on which the finance charge was computed and a statement of how the balance was determined. If the balance is determined without first deducting all credits during the period, that fact and the amount of such payments shall also be disclosed.

(8) The outstanding balance in the account at the end of the period.

(9) The date by which or the period (if any) within which, payment must be made to avoid additional finance charges, except that the creditor may, at his election and without disclosure, impose no such additional finance charge if payment is received after such date or the termination of such period.

(10) The address to be used by the creditor for the purpose of receiving billing inquiries from the obligor.

(c) Disclosure in credit and charge card applications and solicitations

(1) Direct mail applications and solicitations

(A) Information in tabular format

Any application to open a credit card account for any person under an open end consumer credit plan, or a solicitation to open such an account without requiring an application, that is mailed to consumers shall disclose the following information, subject to subsection (e) of this section and section 1632(c) of this title:

(i) Annual percentage rates

(I) Each annual percentage rate applicable to extensions of credit under such credit plan.

(II) Where an extension of credit is subject to a variable rate, the fact that the rate is variable, the annual percentage rate in effect at the time of the mailing, and how the rate is determined.

(III) Where more than one rate applies, the range of balances to which each rate applies.

(ii) Annual and other fees

(I) Any annual fee, other periodic fee, or membership fee imposed for the issuance or availability of a credit card, including any account maintenance fee or other charge imposed based on activity or inactivity for the account during the billing cycle.

(II) Any minimum finance charge imposed for each period during which any extension of credit which is subject to a finance charge is outstanding.

(III) Any transaction charge imposed in connection with use of the card to purchase goods or services.

(iii) Grace period

(I) The date by which or the period within which any credit extended under such credit plan for purchases of goods or services must be repaid to avoid incurring a finance charge, and, if no such period is offered, such fact shall be clearly stated.

(II) If the length of such ''grace period'' varies, the card issuer may disclose the range of days in the grace period, the minimum number of days in the grace period, or the average number of days in the grace period, if the disclosure is identified as such.

(iv) Balance calculation method

(I) The name of the balance calculation method used in determining the balance on which the finance charge is computed if the method used has been defined by the Board, or a detailed explanation of the balance calculation method used if the method has not been so defined.

(II) In prescribing regulations to carry out this clause, the Board shall define and name not more than the 5 balance calculation methods determined by the Board to be the most commonly used methods.

(B) Other information

In addition to the information required to be disclosed under subparagraph (A), each application or solicitation to which such subparagraph applies shall disclose clearly and conspicuously the following information, subject to subsections (e) and (f) of this section:

(i) Cash advance fee

Any fee imposed for an extension of credit in the form of cash.

(ii) Late fee

Any fee imposed for a late payment.

(iii) Over-the-limit fee

Any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to such account.

(2) Telephone solicitations

(A) In general

In any telephone solicitation to open a credit card account for any person under an open end consumer credit plan, the person making the solicitation shall orally disclose the information described in paragraph (1)(A).

(B) Exception

Subparagraph (A) shall not apply to any telephone solicitation if—

(i) the credit card issuer—

(I) does not impose any fee described in paragraph (1)(A)(ii)(I); or

(II) does not impose any fee in connection with telephone solicitations unless the consumer signifies acceptance by using the card;

(ii) the card issuer discloses clearly and conspicuously in writing the information described in paragraph (1) within 30 days after the consumer requests the card, but in no event later than the date of delivery of the card; and

(iii) the card issuer discloses clearly and conspicuously that the consumer is not obligated to accept the card or account and the consumer will not be obligated to pay any of the fees or charges disclosed unless the consumer elects to accept the card or account by using the card.

(3) Applications and solicitations by other means

(A) In general

Any application to open a credit card account for any person under an open end consumer credit plan, and any solicitation to open such an account without requiring an application, that is made available to the public or contained in catalogs, magazines, or other publications shall meet the disclosure requirements of subparagraph (B), (C), or (D).

(B) Specific information

An application or solicitation described in subparagraph (A) meets the requirement of this subparagraph if such application or solicitation contains—

(i) the information—

(I) described in paragraph (1)(A) in the form required under section 1632(c) of this title, subject to subsection (e) of this section, and

(II) described in paragraph (1)(B) in a clear and conspicuous form, subject to subsections (e) and (f) of this section;

(ii) a statement, in a conspicuous and prominent location on the application or solicitation, that—

(I) the information is accurate as of the date the application or solicitation was printed;

(II) the information contained in the application or solicitation is subject to change after such date; and

(III) the applicant should contact the creditor for information on any change in the information contained in the application or solicitation since it was printed;

(iii) a clear and conspicuous disclosure of the date the application or solicitation was printed; and

(iv) a disclosure, in a conspicuous and prominent location on the application or solicitation, of a toll free telephone number or a mailing address at which the applicant may contact the creditor to obtain any change in the information provided in the application or solicitation since it was printed.

(C) General information without any specific term

An application or solicitation described in subparagraph (A) meets the requirement of this subparagraph if such application or solicitation—

(i) contains a statement, in a conspicuous and prominent location on the application or solicitation, that—

(I) there are costs associated with the use of credit cards; and

(II) the applicant may contact the creditor to request disclosure of specific information of such costs by calling a toll free telephone number or by writing to an address, specified in the application;

(ii) contains a disclosure, in a conspicuous and prominent location on the application or solicitation, of a toll free telephone number and a mailing address at which the applicant may contact the creditor to obtain such information; and

(iii) does not contain any of the items described in paragraph (1).

(D) Applications or solicitations containing subsection (a) disclosures

An application or solicitation meets the requirement of this subparagraph if it contains, or is accompanied by—

(i) the disclosures required by paragraphs (1) through (6) of subsection (a) of this section;

(ii) the disclosures required by subparagraphs (A) and (B) of paragraph (1) of this subsection included clearly and conspiciously[1] (except that the provisions of section 1632(c) of this title shall not apply); and

(iii) a toll free telephone number or a mailing address at which the applicant may contact the creditor to obtain any change in the information provided.

(E) Prompt response to information requests

Upon receipt of a request for any of the information referred to in subparagraph (B), (C), or (D), the card issuer or the agent of such issuer shall promptly disclose all of the information described in paragraph (1).

(4) Charge card applications and solicitations

(A) In general

Any application or solicitation to open a charge card account shall disclose clearly and conspicuously the following information in the form required by section 1632(c) of this title, subject to subsection (e) of this section:

(i) Any annual fee, other periodic fee, or membership fee imposed for the issuance or availability of the charge card, including any account maintenance fee or other charge imposed based on activity or inactivity for the account during the billing cycle.

(ii) Any transaction charge imposed in connection with use of the card to purchase goods or services.

(iii) A statement that charges incurred by use of the charge card are due and payable upon receipt of a periodic statement rendered for such charge card account.

(B) Other information

In addition to the information required to be disclosed under subparagraph (A), each written application or solicitation to which such subparagraph applies shall disclose clearly and conspicuously the following information, subject to subsections (e) and (f) of this section:

(i) Cash advance fee

Any fee imposed for an extension of credit in the form of cash.

(ii) Late fee

Any fee imposed for a late payment.

(iii) Over-the-limit fee

Any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to such account.

(C) Applications and solicitations by other means

Any application to open a charge card account, and any solicitation to open such an account without requiring an application, that is made available to the public or contained in catalogs, magazines, or other publications shall contain—

(i) the information—

(I) described in subparagraph (A) in the form required under section 1632(c) of this title, subject to subsection (e) of this section, and

(II) described in subparagraph (B) in a clear and conspicuous form, subject to subsections (e) and (f) of this section;

(ii) a statement, in a conspicuous and prominent location on the application or solicitation, that—

(I) the information is accurate as of the date the application or solicitation was printed;

(II) the information contained in the application or solicitation is subject to change after such date; and

(III) the applicant should contact the creditor for information on any change in the information contained in the application or solicitation since it was printed;

(iii) a clear and conspicuous disclosure of the date the application or solicitation was printed; and

(iv) a disclosure, in a conspicuous and prominent location on the application or solicitation, of a toll free telephone number or a mailing address at which the applicant may contact the creditor to obtain any change in the information provided in the application or solicitation since it was printed.

(D) Issuers of charge cards which provide access to open end consumer credit plans

If a charge card permits the card holder to receive an extension of credit under an open end consumer credit plan, which is not maintained by the charge card issuer, the charge card issuer may provide the information described in subparagraphs (A) and (B) in the form required by such subparagraphs in lieu of the information required to be provided under paragraph (1), (2), or (3) with re-

[1] So in original. Probably should be ''conspicuously''.

spect to any credit extended under such plan, if the charge card issuer discloses clearly and conspicuously to the consumer in the application or solicitation that—

(i) the charge card issuer will make an independent decision as to whether to issue the card;

(ii) the charge card may arrive before the decision is made with respect to an extension of credit under an open end consumer credit plan; and

(iii) approval by the charge card issuer does not constitute approval by the issuer of the extension of credit.

The information required to be disclosed under paragraph (1) shall be provided to the charge card holder by the creditor which maintains such open end consumer credit plan before the first extension of credit under such plan.

(E) Charge card defined

For the purposes of this subsection, the term ''charge card'' means a card, plate, or other single credit device that may be used from time to time to obtain credit which is not subject to a finance charge.

(5) Regulatory authority of the Board

The Board may, by regulation, require the disclosure of information in addition to that otherwise required by this subsection or subsection (d) of this section, and modify any disclosure of information required by this subsection or subsection (d) of this section, in any application to open a credit card account for any person under an open end consumer credit plan or any application to open a charge card account for any person, or a solicitation to open any such account without requiring an application, if the Board determines that such action is necessary to carry out the purposes of, or prevent evasions of, any paragraph of this subsection.

(d) Disclosure prior to renewal

(1) In general

Except as provided in paragraph (2), a card issuer that imposes any fee described in subsection (c)(1)(A)(ii)(I) or (c)(4)(A)(i) of this section shall transmit to a consumer at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card account a clear and conspicuous disclosure of—

(A) the date by which, the month by which, or the billing period at the close of which, the account will expire if not renewed;

(B) the information described in subsection (c)(1)(A) or (c)(4)(A) of this section that would apply if the account were renewed, subject to subsection (e) of this section; and

(C) the method by which the consumer may terminate continued credit availability under the account.

(2) Special rule for certain disclosures

(A) In general

The disclosures required by this subsection may be provided—

(i) prior to posting a fee described in subsection (c)(1)(A)(ii)(I) or (c)(4)(A)(i) of this section to the account, or

(ii) with the periodic billing statement first disclosing that the fee has been posted to the account.

(B) Limitation on use of special rule

Disclosures may be provided under subparagraph (A) only if—

(i) the consumer is given a 30-day period to avoid payment of the fee or to have the fee recredited to the account in any case where the consumer does not wish to continue the availability of the credit; and

(ii) the consumer is permitted to use the card during such period without incurring an obligation to pay such fee.

(3) Short-term renewals

The Board may by regulation provide for fewer disclosures than are required by paragraph (1) in the case of an account which is renewable for a period of less than 6 months.

(e) Other rules for disclosures under subsections (c) and (d)

(1) Fees determined on the basis of a percentage

If the amount of any fee required to be disclosed under subsection (c) or (d) of this section is determined on the basis of a percentage of another amount, the percentage used in making such determination and the identification of the amount against which such percentage is applied shall be disclosed in lieu of the amount of such fee.

(2) Disclosure only of fees actually imposed

If a credit or charge card issuer does not impose any fee required to be disclosed under any provision of subsection (c) or (d) of this section, such provision shall not apply with respect to such issuer.

(f) Disclosure of range of certain fees which vary by State allowed

If the amount of any fee required to be disclosed by a credit or charge card issuer under paragraph (1)(B), (3)(B)(i)(II), (4)(B), or (4)(C)(i)(II) of subsection (c) of this section varies from State to State, the card issuer may disclose the range of such fees for purposes of subsection (c) of this section in lieu of the amount for each applicable State, if such disclosure includes a statement that the amount of such fee varies from State to State.

(g) Insurance in connection with certain open end credit card plans

(1) Change in insurance carrier

Whenever a card issuer that offers any guarantee or insurance for repayment of all or part of the outstanding balance of an open end credit card plan proposes to change the person providing that guarantee or insurance, the card issuer shall send each insured consumer written notice of the proposed change not less than 30 days prior to the change, including notice of any increase in the rate or substantial decrease in coverage or service which will result from such change. Such notice may be in-

cluded on or with the monthly statement provided to the consumer prior to the month in which the proposed change would take effect.

(2) Notice of new insurance coverage

In any case in which a proposed change described in paragraph (1) occurs, the insured consumer shall be given the name and address of the new guarantor or insurer and a copy of the policy or group certificate containing the basic terms and conditions, including the premium rate to be charged.

(3) Right to discontinue guarantee or insurance

The notices required under paragraphs (1) and (2) shall each include a statement that the consumer has the option to discontinue the insurance or guarantee.

(4) No preemption of State law

No provision of this subsection shall be construed as superseding any provision of State law which is applicable to the regulation of insurance.

(5) Board definition of substantial decrease in coverage or service

The Board shall define, in regulations, what constitutes a ''substantial decrease in coverage or service'' for purposes of paragraph (1).

(Pub. L. 90–321, title I, § 127, May 29, 1968, 82 Stat. 153; Pub. L. 93–495, title III, §§ 304, 305, title IV, §§ 411, 415, Oct. 28, 1974, 88 Stat. 1511, 1519, 1521; Pub. L. 96–221, title VI, § 613(a)–(e), Mar. 31, 1980, 94 Stat. 176, 177; Pub. L. 100–583, §§ 2(a), 6, Nov. 3, 1988, 102 Stat. 2960, 2968; Pub. L. 100–709, § 2(b), Nov. 23, 1988, 102 Stat. 4729.)

AMENDMENTS

1988—Subsec. (a)(8). Pub. L. 100–709 added par. (8).

Subsecs. (c) to (f). Pub. L. 100–583, § 2(a), added subsecs. (c) to (f).

Subsec. (g). Pub. L. 100–583, § 6, added subsec. (g).

1980—Subsec. (a)(1). Pub. L. 96–221, § 613(a)(1), inserted provisions requiring the creditor to disclose that no time period is provided.

Subsec. (a)(5). Pub. L. 96–221, § 613(a)(2), (3), redesignated par. (6) as (5) and inserted provisions relating to identification of other charges, and regulations by the Board. Former par. (5), relating to elective rights of the creditor, was struck out.

Subsec. (a)(6). Pub. L. 96–221, § 613(a)(2), (3), redesignated par. (7) as (6) and revised nomenclature and expanded statement requirements. Former par. (6) redesignated (5).

Subsec. (a)(7), (8). Pub. L. 96–221, § 613(a)(2), (d), redesignated par. (8) as (7) and substituted provisions relating to one billing cycle per calendar year, for provisions relating to each of two billing cycles per year. Former par. (7) redesignated (6).

Subsec. (b)(2). Pub. L. 96–221, § 613(b), inserted provisions relating to failure of the creditor to disclose information in accordance with this paragraph, and made minor changes in phraseology.

Subsec. (b)(7) to (11). Pub. L. 96–221, § 613(c), struck out par. (7) which related to elective rights of the creditor, and redesignated pars. (8) to (11) as (7) to (10), respectively.

Subsec. (c). Pub. L. 96–221, § 613(e), struck out subsec. (c) which related to the time for making disclosures with respect to open end consumer credit plans having an outstanding balance of more than $1 at or after the close of the first full billing cycle.

1974—Subsec. (a)(1). Pub. L. 93–495, § 415(1), inserted exception relating to nonimposition of a finance charge at the election of the creditor and without disclosure.

Subsec. (a)(8). Pub. L. 93–495, § 304(a), added par. (8).

Subsec. (b)(2). Pub. L. 93–495, § 411, substituted provisions requiring a brief identification on or accompanying the statement of credit extension sufficient to enable the obligor to identify the transaction or relate it to copies of sales vouchers or similar instruments previously furnished, for provisions requiring for purchases a brief identification, unless previously furnished, of the goods or services purchased.

Subsec. (b)(10). Pub. L. 93–495, § 415(2), inserted exception relating to nonimposition of additional finance charge at the election of the creditor and without disclosure.

Subsec. (b)(11). Pub. L. 93–495, § 305, added par. (11).

Subsec. (c). Pub. L. 93–495, § 304(b), substituted provisions relating to disclosure requirements in a notice mailed or delivered to the obligor not later than the time of mailing the next statement required by subsec. (b) of this section, for provisions relating to disclosure requirements in a notice mailed or delivered to the obligor not later than thirty days after July 1, 1969.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendments by Pub. L. 100–709, see Regulations; Effective Date note below.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by sections 304 and 305 of Pub. L. 93–495, see section 308 of Pub. L. 93–495, set out as an Effective Date note under section 1666 of this title.

For effective date of amendment by section 411 of Pub. L. 93–495, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

Amendment by section 415 of Pub. L. 93–495 effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

REGULATIONS; EFFECTIVE DATE

For provisions relating to promulgation of regulations to implement amendment by Pub. L. 100–709, and effective date of such amendment in connection with those regulations, see section 7 of Pub. L. 100–709, set out as a note under section 1637a of this title.

Section 7 of Pub. L. 100–583 provided that: ''Any regulation required to be prescribed by the Board under the amendments made by section 2 [amending this section and section 1632 of this title] shall—

''(1) take effect not later than the end of the 150-day period beginning on the date of the enactment of this Act [Nov. 3, 1988]; and

''(2) apply only with respect to applications, solicitations, and other material distributed after the end of the 150-day period beginning after the end of the period referred to in paragraph (1), except that—

''(A) in the case of applications and solicitations subject to paragraph (3) or (4)(C) of section 127(c) of the Truth in Lending Act [15 U.S.C. 1637(c)(3), (4)(C)] (as added by section 2), such period shall be 240 days; and

''(B) any card issuer may, at its option, comply with the requirements of the amendments made by this Act [see Short Title of 1988 Amendment note under section 1601 of this title] prior to the applicable effective date, in which case the amendments made by this Act shall be fully applicable to such card issuer.''

REPORTS TO CONGRESS

Section 8 of Pub. L. 100–583 provided that: ''Not later than 1 year after the regulations prescribed under section 7 of this Act [set out as a note above] become effective and annually thereafter, the Board of Governors of the Federal Reserve System shall transmit to the Congress a report containing an assessment by the Board of the profitability of credit card operations of depository institutions, including an analysis of any impact of the amendments made by this Act [see Short Title of 1988 Amendment note under section 1601 of this title] on such profitability.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602, 1610, 1632, 1640, 1643, 1646, 1666 of this title.

§ 1637a. Disclosure requirements for open end consumer credit plans secured by consumer's principal dwelling

(a) Application disclosures

In the case of any open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, the creditor shall make the following disclosures in accordance with subsection (b) of this section:

(1) Fixed annual percentage rate

Each annual percentage rate imposed in connection with extensions of credit under the plan and a statement that such rate does not include costs other than interest.

(2) Variable percentage rate

In the case of a plan which provides for variable rates of interest on credit extended under the plan—

(A) a description of the manner in which such rate will be computed and a statement that such rate does not include costs other than interest;

(B) a description of the manner in which any changes in the annual percentage rate will be made, including—

(i) any negative amortization and interest rate carryover;

(ii) the timing of any such changes;

(iii) any index or margin to which such changes in the rate are related; and

(iv) a source of information about any such index;

(C) if an initial annual percentage rate is offered which is not based on an index—

(i) a statement of such rate and the period of time such initial rate will be in effect; and

(ii) a statement that such rate does not include costs other than interest;

(D) a statement that the consumer should ask about the current index value and interest rate;

(E) a statement of the maximum amount by which the annual percentage rate may change in any 1-year period or a statement that no such limit exists;

(F) a statement of the maximum annual percentage rate that may be imposed at any time under the plan;

(G) subject to subsection (b)(3) of this section, a table, based on a $10,000 extension of credit, showing how the annual percentage rate and the minimum periodic payment amount under each repayment option of the plan would have been affected during the preceding 15-year period by changes in any index used to compute such rate;

(H) a statement of—

(i) the maximum annual percentage rate which may be imposed under each repayment option of the plan;

(ii) the minimum amount of any periodic payment which may be required, based on a $10,000 outstanding balance, under each such option when such maximum annual percentage rate is in effect; and

(iii) the earliest date by which such maximum annual interest rate may be imposed; and

(I) a statement that interest rate information will be provided on or with each periodic statement.

(3) Other fees imposed by the creditor

An itemization of any fees imposed by the creditor in connection with the availability or use of credit under such plan, including annual fees, application fees, transaction fees, and closing costs (including costs commonly described as ''points''), and the time when such fees are payable.

(4) Estimates of fees which may be imposed by third parties

(A) Aggregate amount

An estimate, based on the creditor's experience with such plans and stated as a single amount or as a reasonable range, of the aggregate amount of additional fees that may be imposed by third parties (such as governmental authorities, appraisers, and attorneys) in connection with opening an account under the plan.

(B) Statement of availability

A statement that the consumer may ask the creditor for a good faith estimate by the creditor of the fees that may be imposed by third parties.

(5) Statement of risk of loss of dwelling

A statement that—

(A) any extension of credit under the plan is secured by the consumer's dwelling; and

(B) in the event of any default, the consumer risks the loss of the dwelling.

(6) Conditions to which disclosed terms are subject

(A) Period during which such terms are available

A clear and conspicuous statement—

(i) of the time by which an application must be submitted to obtain the terms disclosed; or

(ii) if applicable, that the terms are subject to change.

(B) Right of refusal if certain terms change

A statement that—

(i) the consumer may elect not to enter into an agreement to open an account under the plan if any term changes (other

than a change contemplated by a variable feature of the plan) before any such agreement is final; and

(ii) if the consumer makes an election described in clause (i), the consumer is entitled to a refund of all fees paid in connection with the application.

(C) Retention of information

A statement that the consumer should make or otherwise retain a copy of information disclosed under this subparagraph.

(7) Rights of creditor with respect to extensions of credit

A statement that—

(A) under certain conditions, the creditor may terminate any account under the plan and require immediate repayment of any outstanding balance, prohibit any additional extension of credit to the account, or reduce the credit limit applicable to the account; and

(B) the consumer may receive, upon request, more specific information about the conditions under which the creditor may take any action described in subparagraph (A).

(8) Repayment options and minimum periodic payments

The repayment options under the plan, including—

(A) if applicable, any differences in repayment options with regard to—

(i) any period during which additional extensions of credit may be obtained; and

(ii) any period during which repayment is required to be made and no additional extensions of credit may be obtained;

(B) the length of any repayment period, including any differences in the length of any repayment period with regard to the periods described in clauses (i) and (ii) of subparagraph (A); and

(C) an explanation of how the amount of any minimum monthly or periodic payment will be determined under each such option, including any differences in the determination of any such amount with regard to the periods described in clauses (i) and (ii) of subparagraph (A).

(9) Example of minimum payments and maximum repayment period

An example, based on a $10,000 outstanding balance and the interest rate (other than a rate not based on the index under the plan) which is, or was recently, in effect under such plan, showing the minimum monthly or periodic payment, and the time it would take to repay the entire $10,000 if the consumer paid only the minimum periodic payments and obtained no additional extensions of credit.

(10) Statement concerning balloon payments

If, under any repayment option of the plan, the payment of not more than the minimum periodic payments required under such option over the length of the repayment period—

(A) would not repay any of the principal balance; or

(B) would repay less than the outstanding balance by the end of such period,

as the case may be, a statement of such fact, including an explicit statement that at the end of such repayment period a balloon payment (as defined in section 1665b(f) of this title) would result which would be required to be paid in full at that time.

(11) Negative amortization

If applicable, a statement that—

(A) any limitation in the plan on the amount of any increase in the minimum payments may result in negative amortization;

(B) negative amortization increases the outstanding principal balance of the account; and

(C) negative amortization reduces the consumer's equity in the consumer's dwelling.

(12) Limitations and minimum amount requirements on extensions of credit

(A) Number and dollar amount limitations

Any limitation contained in the plan on the number of extensions of credit and the amount of credit which may be obtained during any month or other defined time period.

(B) Minimum balance and other transaction amount requirements

Any requirement which establishes a minimum amount for—

(i) the initial extension of credit to an account under the plan;

(ii) any subsequent extension of credit to an account under the plan; or

(iii) any outstanding balance of an account under the plan.

(13) Statement regarding consultation of tax advisor

A statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan.

(14) Disclosure requirements established by Board

Any other term which the Board requires, in regulations, to be disclosed.

(b) Time and form of disclosures

(1) Time of disclosure

(A) In general

The disclosures required under subsection (a) of this section with respect to any open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling and the pamphlet required under subsection (e) of this section shall be provided to any consumer at the time the creditor distributes an application to establish an account under such plan to such consumer.

(B) Telephone, publications, and third party applications

In the case of telephone applications, applications contained in magazines or other publications, or applications provided by a third party, the disclosures required under

subsection (a) of this section and the pamphlet required under subsection (e) of this section shall be provided by the creditor before the end of the 3-day period beginning on the date the creditor receives a completed application from a consumer.

(2) Form

(A) In general

Except as provided in paragraph (1)(B), the disclosures required under subsection (a) of this section shall be provided on or with any application to establish an account under an open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling.

(B) Segregation of required disclosures from other information

The disclosures required under subsection (a) of this section shall be conspicuously segregated from all other terms, data, or additional information provided in connection with the application, either by grouping the disclosures separately on the application form or by providing the disclosures on a separate form, in accordance with regulations of the Board.

(C) Precedence of certain information

The disclosures required by paragraphs (5), (6), and (7) of subsection (a) of this section shall precede all of the other required disclosures.

(D) Special provision relating to variable interest rate information

Whether or not the disclosures required under subsection (a) of this section are provided on the application form, the variable rate information described in subsection (a)(2) of this section may be provided separately from the other information required to be disclosed.

(3) Requirement for historical table

In preparing the table required under subsection (a)(2)(G) of this section, the creditor shall consistently select one rate of interest for each year and the manner of selecting the rate from year to year shall be consistent with the plan.

(c) Third party applications

In the case of an application to open an account under any open end consumer credit plan described in subsection (a) of this section which is provided to a consumer by any person other than the creditor—

(1) such person shall provide such consumer with—

(A) the disclosures required under subsection (a) of this section with respect to such plan, in accordance with subsection (b) of this section; and

(B) the pamphlet required under subsection (e) of this section; or

(2) if such person cannot provide specific terms about the plan because specific information about the plan terms is not available, no nonrefundable fee may be imposed in connection with such application before the end of the 3-day period beginning on the date the consumer receives the disclosures required under subsection (a) of this section with respect to the application.

(d) "Principal dwelling" defined

For purposes of this section and sections 1647 and 1665b of this title, the term ''principal dwelling'' includes any second or vacation home of the consumer.

(e) Pamphlet

In addition to the disclosures required under subsection (a) of this section with respect to an application to open an account under any open end consumer credit plan described in such subsection, the creditor or other person providing such disclosures to the consumer shall provide—

(1) a pamphlet published by the Board pursuant to section 4 of the Home Equity Consumer Protection Act of 1988; or

(2) any pamphlet which provides substantially similar information to the information described in such section, as determined by the Board.

(Pub. L. 90–321, title I, §127A, as added Pub. L. 100–709, §2(a), Nov. 23, 1988, 102 Stat. 4725.)

REFERENCES IN TEXT

Section 4 of the Home Equity Consumer Protection Act of 1988, referred to in subsec. (e)(1), is section 4 of Pub. L. 100–709, which is set out as a note below.

EFFECTIVE DATE

For effective date of section, see Regulations; Effective Date note below.

REGULATIONS; EFFECTIVE DATE

Section 7 of Pub. L. 100–709 provided that:

''(a) REGULATIONS.—Before the end of the 60-day period beginning on the date of the enactment of this Act [Nov. 23, 1988], the Board of Governors of the Federal Reserve System shall prescribe such regulations as may be necessary to carry out the proposes [sic] of the amendments made by this Act [enacting this section and sections 1647 and 1665b of this title, amending sections 1632 and 1637 of this title, and enacting provisions set out as notes under this section and section 1601 of this title].

''(b) EFFECTIVE DATE.—The amendments made by this Act, and the regulations prescribed pursuant to subsection (a) with respect to such amendments, shall apply to—

''(1) any agreement to open an account under an open end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling which is entered into after the end of the 5-month period beginning on the date on which the regulations prescribed under subsection (a) become final; and

''(2) any application to open such an account which is distributed by, or received by a creditor, after the end of such 5-month period.

''(c) VOLUNTARY COMPLIANCE.—Notwithstanding subsection (b), any creditor may comply with the amendments made by this Act, in accordance with the regulations prescribed by the Board, before the effective date established under such subsection.''

CONSUMER EDUCATION

Section 4 of Pub. L. 100–709 provided that: ''The Board of Governors of the Federal Reserve System shall develop and prepare a pamphlet for distribution to consumers which contains—

''(1) a general description of open end consumer credit plans secured by the consumer's principal

dwelling and the terms and conditions under which such loans are generally extended; and

''(2) a discussion of the potential advantages and disadvantages of such plans, including how to compare among home equity plans and between home equity and closed end credit plans.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1632, 1647, 1665b of this title.

§ 1638. Transactions other than under an open end credit plan

(a) Required disclosures by creditor

For each consumer credit transaction other than under an open end credit plan, the creditor shall disclose each of the following items, to the extent applicable:

(1) The identity of the creditor required to make disclosure.

(2)(A) The ''amount financed'', using that term, which shall be the amount of credit of which the consumer has actual use. This amount shall be computed as follows, but the computations need not be disclosed and shall not be disclosed with the disclosures conspicuously segregated in accordance with subsection (b)(1) of this section:

(i) take the principal amount of the loan or the cash price less downpayment and trade-in;

(ii) add any charges which are not part of the finance charge or of the principal amount of the loan and which are financed by the consumer, including the cost of any items excluded from the finance charge pursuant to section 1605 of this title; and

(iii) subtract any charges which are part of the finance charge but which will be paid by the consumer before or at the time of the consummation of the transaction, or have been withheld from the proceeds of the credit.

(B) In conjunction with the disclosure of the amount financed, a creditor shall provide a statement of the consumer's right to obtain, upon a written request, a written itemization of the amount financed. The statement shall include spaces for a ''yes'' and ''no'' indication to be initialed by the consumer to indicate whether the consumer wants a written itemization of the amount financed. Upon receiving an affirmative indication, the creditor shall provide, at the time other disclosures are required to be furnished, a written itemization of the amount financed. For the purposes of this subparagraph, ''itemization of the amount financed'' means a disclosure of the following items, to the extent applicable:

(i) the amount that is or will be paid directly to the consumer;

(ii) the amount that is or will be credited to the consumer's account to discharge obligations owed to the creditor;

(iii) each amount that is or will be paid to third persons by the creditor on the consumer's behalf, together with an identification of or reference to the third person; and

(iv) the total amount of any charges described in the preceding subparagraph (A)(iii).

(3) The ''finance charge'', not itemized, using that term.

(4) The finance charge expressed as an ''annual percentage rate'', using that term. This shall not be required if the amount financed does not exceed $75 and the finance charge does not exceed $5, or if the amount financed exceeds $75 and the finance charge does not exceed $7.50.

(5) The sum of the amount financed and the finance charge, which shall be termed the ''total of payments''.

(6) The number, amount, and due dates or period of payments scheduled to repay the total of payments.

(7) In a sale of property or services in which the seller is the creditor required to disclose pursuant to section 1631(b) of this title, the ''total sale price'', using that term, which shall be the total of the cash price of the property or services, additional charges, and the finance charge.

(8) Descriptive explanations of the terms ''amount financed'', ''finance charge'', ''annual percentage rate'', ''total of payments'', and ''total sale price'' as specified by the Board. The descriptive explanation of ''total sale price'' shall include reference to the amount of the downpayment.

(9) Where the credit is secured, a statement that a security interest has been taken in (A) the property which is purchased as part of the credit transaction, or (B) property not purchased as part of the credit transaction identified by item or type.

(10) Any dollar charge or percentage amount which may be imposed by a creditor solely on account of a late payment, other than a deferral or extension charge.

(11) A statement indicating whether or not the consumer is entitled to a rebate of any finance charge upon refinancing or prepayment in full pursuant to acceleration or otherwise, if the obligation involves a precomputed finance charge. A statement indicating whether or not a penalty will be imposed in those same circumstances if the obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance.

(12) A statement that the consumer should refer to the appropriate contract document for any information such document provides about nonpayment, default, the right to accelerate the maturity of the debt, and prepayment rebates and penalties.

(13) In any residential mortgage transaction, a statement indicating whether a subsequent purchaser or assignee of the consumer may assume the debt obligation on its original terms and conditions.

(14) In the case of any variable interest rate residential mortgage transaction, in disclosures provided at application as prescribed by the Board for a variable rate transaction secured by the consumer's principal dwelling, at the option of the creditor, a statement that the periodic payments may increase or decrease substantially, and the maximum interest rate and payment for a $10,000 loan originated at a recent interest rate, as determined

by the Board, assuming the maximum periodic increases in rates and payments under the program, or a historical example illustrating the effects of interest rate changes implemented according to the loan program.

(b) Form and timing of disclosures; residential mortgage transaction requirements

(1) Except as otherwise provided in this part, the disclosures required under subsection (a) of this section shall be made before the credit is extended. Except for the disclosures required by subsection (a)(1) of this section, all disclosures required under subsection (a) of this section and any disclosure provided for in subsection (b), (c), or (d) of section 1605 of this title shall be conspicuously segregated from all other terms, data, or information provided in connection with a transaction, including any computations or itemization.

(2) In the case of a residential mortgage transaction, as defined in section 1602(w) of this title, which is also subject to the Real Estate Settlement Procedures Act [12 U.S.C. 2601 et seq.], good faith estimates of the disclosures required under subsection (a) of this section shall be made in accordance with regulations of the Board under section 1631(c) of this title before the credit is extended, or shall be delivered or placed in the mail not later than three business days after the creditor receives the consumer's written application, which ever is earlier. If the disclosure statement furnished within three days of the written application contains an annual percentage rate which is subsequently rendered inaccurate within the meaning of section 1606(c) of this title, the creditor shall furnish another statement at the time of settlement or consummation.

(c) Timing of disclosures on unsolicited mailed or telephone purchase orders or loan requests

(1) If a creditor receives a purchase order by mail or telephone without personal solicitation, and the cash price and the total sale price and the terms of financing, including the annual percentage rate, are set forth in the creditor's catalog or other printed material distributed to the public, then the disclosures required under subsection (a) of this section may be made at any time not later than the date the first payment is due.

(2) If a creditor receives a request for a loan by mail or telephone without personal solicitation and the terms of financing, including the annual percentage rate for representative amounts of credit, are set forth in the creditor's printed material distributed to the public, or in the contract of loan or other printed material delivered to the obligor, then the disclosures required under subsection (a) of this section may be made at any time not later than the date the first payment is due.

(d) Timing of disclosure in cases of an addition of a deferred payment price to an existing outstanding balance

If a consumer credit sale is one of a series of consumer credit sales transactions made pursuant to an agreement providing for the addition of the deferred payment price of that sale to an existing outstanding balance, and the person to whom the credit is extended has approved in writing both the annual percentage rate or rates and the method of computing the finance charge or charges, and the creditor retains no security interest in any property as to which he has received payments aggregating the amount of the sales price including any finance charges attributable thereto, then the disclosure required under subsection (a) of this section for the particular sale may be made at any time not later than the date the first payment for that sale is due. For the purposes of this subsection, in the case of items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest price shall be deemed first paid for.

(Pub. L. 90–321, title I, § 128, May 29, 1968, 82 Stat. 155; Pub. L. 96–221, title VI, § 614(a)–(c), Mar. 31, 1980, 94 Stat. 178, 179; Pub. L. 104–208, div. A, title II, § 2105, Sept. 30, 1996, 110 Stat. 3009–402.)

REFERENCES IN TEXT

The Real Estate Settlement Procedures Act, referred to in subsec. (b)(2), probably refers to the Real Estate Settlement Procedures Act of 1974, Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, as amended, which is classified principally to chapter 27 (§ 2601 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 12 and Tables.

AMENDMENTS

1996—Subsec. (a)(14). Pub. L. 104–208 added par. (14).

1980—Subsec. (a). Pub. L. 96–221, § 614(a), substituted provisions setting forth required disclosures by the creditor for transactions other than under an open end credit plan, for provisions setting forth required disclosures by the creditor for sales not under open end credit plans.

Subsec. (b). Pub. L. 96–221, § 614(b), designated existing provisions as par. (1), inserted provisions relating to the conspicuous segregation of required disclosures, and struck out provisions authorizing the required information to be disclosed in the signed evidence of indebtedness, and added par. (2).

Subsec. (c). Pub. L. 96–221, § 614(c), designated existing provisions as par. (1), substituted ''total sale'' for ''deferred payment'', and added par. (2).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1632, 1640 of this title.

§ 1639. Requirements for certain mortgages

(a) Disclosures

(1) Specific disclosures

In addition to other disclosures required under this subchapter, for each mortgage referred to in section 1602(aa) of this title, the creditor shall provide the following disclosures in conspicuous type size:

(A) ''You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application.''.

(B) ''If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.''.

(2) Annual percentage rate

In addition to the disclosures required under paragraph (1), the creditor shall disclose—

(A) in the case of a credit transaction with a fixed rate of interest, the annual percentage rate and the amount of the regular monthly payment; or

(B) in the case of any other credit transaction, the annual percentage rate of the loan, the amount of the regular monthly payment, a statement that the interest rate and monthly payment may increase, and the amount of the maximum monthly payment, based on the maximum interest rate allowed pursuant to section 3806 of title 12.

(b) Time of disclosures

(1) In general

The disclosures required by this section shall be given not less than 3 business days prior to consummation of the transaction.

(2) New disclosures required

(A) In general

After providing the disclosures required by this section, a creditor may not change the terms of the extension of credit if such changes make the disclosures inaccurate, unless new disclosures are provided that meet the requirements of this section.

(B) Telephone disclosure

A creditor may provide new disclosures pursuant to subparagraph (A) by telephone, if—

(i) the change is initiated by the consumer; and

(ii) at the consummation of the transaction under which the credit is extended—

(I) the creditor provides to the consumer the new disclosures, in writing; and

(II) the creditor and consumer certify in writing that the new disclosures were provided by telephone, by not later than 3 days prior to the date of consummation of the transaction.

(3) Modifications

The Board may, if it finds that such action is necessary to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of rights created under this subsection, to the extent and under the circumstances set forth in those regulations.

(c) No Prepayment penalty

(1) In general

(A) Limitation on terms

A mortgage referred to in section 1602(aa) of this title may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal before the date on which the principal is due.

(B) Construction

For purposes of this subsection, any method of computing a refund of unearned scheduled interest is a prepayment penalty if it is less favorable to the consumer than the actuarial method (as that term is defined in section 1615(d) of this title).

(2) Exception

Notwithstanding paragraph (1), a mortgage referred to in section 1602(aa) of this title may contain a prepayment penalty (including terms calculating a refund by a method that is not prohibited under section 1615(b) of this title for the transaction in question) if—

(A) at the time the mortgage is consummated—

(i) the consumer is not liable for an amount of monthly indebtedness payments (including the amount of credit extended or to be extended under the transaction) that is greater than 50 percent of the monthly gross income of the consumer; and

(ii) the income and expenses of the consumer are verified by a financial statement signed by the consumer, by a credit report, and in the case of employment income, by payment records or by verification from the employer of the consumer (which verification may be in the form of a copy of a pay stub or other payment record supplied by the consumer);

(B) the penalty applies only to a prepayment made with amounts obtained by the consumer by means other than a refinancing by the creditor under the mortgage, or an affiliate of that creditor;

(C) the penalty does not apply after the end of the 5-year period beginning on the date on which the mortgage is consummated; and

(D) the penalty is not prohibited under other applicable law.

(d) Limitations after default

A mortgage referred to in section 1602(aa) of this title may not provide for an interest rate applicable after default that is higher than the interest rate that applies before default. If the date of maturity of a mortgage referred to in subsection[1] 1602(aa) of this title is accelerated due to default and the consumer is entitled to a rebate of interest, that rebate shall be computed by any method that is not less favorable than the actuarial method (as that term is defined in section 1615(d) of this title).

(e) No balloon payments

A mortgage referred to in section 1602(aa) of this title having a term of less than 5 years may not include terms under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal balance.

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[1] So in original. Probably should be ''section''.

(f) No negative amortization

A mortgage referred to in section 1602(aa) of this title may not include terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.

(g) No prepaid payments

A mortgage referred to in section 1602(aa) of this title may not include terms under which more than 2 periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the consumer.

(h) Prohibition on extending credit without regard to payment ability of consumer

A creditor shall not engage in a pattern or practice of extending credit to consumers under mortgages referred to in section 1602(aa) of this title based on the consumers' collateral without regard to the consumers' repayment ability, including the consumers' current and expected income, current obligations, and employment.

(i) Requirements for payments under home improvement contracts

A creditor shall not make a payment to a contractor under a home improvement contract from amounts extended as credit under a mortgage referred to in section 1602(aa) of this title, other than—

(1) in the form of an instrument that is payable to the consumer or jointly to the consumer and the contractor; or

(2) at the election of the consumer, by a third party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor before the date of payment.

(j) Consequence of failure to comply

Any mortgage that contains a provision prohibited by this section shall be deemed a failure to deliver the material disclosures required under this subchapter, for the purpose of section 1635 of this title.

(k) "Affiliate" defined

For purposes of this section, the term ''affiliate'' has the same meaning as in section 1841(k) of title 12.

(*l*) Discretionary regulatory authority of Board

(1) Exemptions

The Board may, by regulation or order, exempt specific mortgage products or categories of mortgages from any or all of the prohibitions specified in subsections (c) through (i) of this section, if the Board finds that the exemption—

(A) is in the interest of the borrowing public; and

(B) will apply only to products that maintain and strengthen home ownership and equity protection.

(2) Prohibitions

The Board, by regulation or order, shall prohibit acts or practices in connection with—

(A) mortgage loans that the Board finds to be unfair, deceptive, or designed to evade the provisions of this section; and

(B) refinancing of mortgage loans that the Board finds to be associated with abusive lending practices, or that are otherwise not in the interest of the borrower.

(Pub. L. 90–321, title I, § 129, as added Pub. L. 103–325, title I, § 152(d), Sept. 23, 1994, 108 Stat. 2191.)

PRIOR PROVISIONS

A prior section 1639, Pub. L. 90–321, title I, § 129, May 29, 1968, 82 Stat. 156, related to consumer loans not under open end credit plans, prior to repeal by Pub. L. 96–221, title VI, § 614(d)(1), Mar. 31, 1980, 94 Stat. 180. Repeal effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 1602 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602, 1610, 1640 of this title.

§ 1640. Civil liability

(a) Individual or class action for damages; amount of award; factors determining amount of award

Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this part, including any requirement under section 1635 of this title, or part D or E of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A)(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, (ii) in the case of an individual action relating to a consumer lease under part E of this subchapter, 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000, or (iii) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than $200 or greater than $2,000; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same creditor shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the creditor;

(3) in the case of any successful action to enforce the foregoing liability or in any action in which a person is determined to have a right of rescission under section 1635 of this title, the costs of the action, together with a reasonable attorney's fee as determined by the court; and

(4) in the case of a failure to comply with any requirement under section 1639 of this title, an amount equal to the sum of all finance charges and fees paid by the consumer, unless the creditor demonstrates that the failure to comply is not material.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional. In connection with the disclosures referred to in subsections (a) and (b) of section 1637 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635 of this title, section 1637(a) of this title, or of paragraph (4), (5), (6), (7), (8), (9), or (10) of section 1637(b) of this title or for failing to comply with disclosure requirements under State law for any term or item which the Board has determined to be substantially the same in meaning under section 1610(a)(2) of this title as any of the terms or items referred to in section 1637(a) of this title or any of those paragraphs of section 1637(b) of this title. In connection with the disclosures referred to in subsection (c) or (d) of section 1637 of this title, a card issuer shall have a liability under this section only to a cardholder who pays a fee described in section 1637(c)(1)(A)(ii)(I) or section 1637(c)(4)(A)(i) of this title or who uses the credit card or charge card. In connection with the disclosures referred to in section 1638 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635 of this title or of paragraph (2) (insofar as it requires a disclosure of the ''amount financed''), (3), (4), (5), (6), or (9) of section 1638(a) of this title, or for failing to comply with disclosure requirements under State law for any term which the Board has determined to be substantially the same in meaning under section 1610(a)(2) of this title as any of the terms referred to in any of those paragraphs of section 1638(a) of this title. With respect to any failure to make disclosures required under this part or part D or E of this subchapter, liability shall be imposed only upon the creditor required to make disclosure, except as provided in section 1641 of this title.

(b) Correction of errors

A creditor or assignee has no liability under this section or section 1607 of this title or section 1611 of this title for any failure to comply with any requirement imposed under this part or part E of this subchapter, if within sixty days after discovering an error, whether pursuant to a final written examination report or notice issued under section 1607(e)(1) of this title or through the creditor's or assignee's own procedures, and prior to the institution of an action under this section or the receipt of written notice of the error from the obligor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

(c) Unintentional violations; bona fide errors

A creditor or assignee may not be held liable in any action brought under this section or section 1635 of this title for a violation of this subchapter if the creditor or assignee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programing, and printing errors, except that an error of legal judgment with respect to a person's obligations under this subchapter is not a bona fide error.

(d) Liability in transaction or lease involving multiple obligors

When there are multiple obligors in a consumer credit transaction or consumer lease, there shall be no more than one recovery of damages under subsection (a)(2) of this section for a violation of this subchapter.

(e) Jurisdiction of courts; limitations on actions; State attorney general enforcement

Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation. This subsection does not bar a person from asserting a violation of this subchapter in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action, except as otherwise provided by State law. An action to enforce a violation of section 1639 of this title may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. The State attorney general shall provide prior written notice of any such civil action to the Federal agency responsible for enforcement under section 1607 of this title and shall provide the agency with a copy of the complaint. If prior notice is not feasible, the State attorney general shall provide notice to such agency immediately upon instituting the action. The Federal agency may—

(1) intervene in the action;

(2) upon intervening—

(A) remove the action to the appropriate United States district court, if it was not originally brought there; and

(B) be heard on all matters arising in the action; and

(3) file a petition for appeal.

(f) Good faith compliance with rule, regulation, or interpretation of Board or with interpretation or approval of duly authorized official or employee of Federal Reserve System

No provision of this section, section 1607(b) of this title, section 1607(c) of this title, section

1607(e) of this title, or section 1611 of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(g) Recovery for multiple failures to disclose

The multiple failure to disclose to any person any information required under this part or part D or E of this subchapter to be disclosed in connection with a single account under an open end consumer credit plan, other single consumer credit sale, consumer loan, consumer lease, or other extension of consumer credit, shall entitle the person to a single recovery under this section but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries. This subsection does not bar any remedy permitted by section 1635 of this title.

(h) Offset from amount owed to creditor or assignee; rights of defaulting consumer

A person may not take any action to offset any amount for which a creditor or assignee is potentially liable to such person under subsection (a)(2) of this section against any amount owed by such person, unless the amount of the creditor's or assignee's liability under this subchapter has been determined by judgment of a court of competent jurisdiction in an action of which such person was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of this subchapter as an original action, or as a defense or counterclaim to an action to collect amounts owed by the consumer brought by a person liable under this subchapter.

(i) Class action moratorium

(1) In general

During the period beginning on May 18, 1995, and ending on October 1, 1995, no court may enter any order certifying any class in any action under this subchapter—

(A) which is brought in connection with any credit transaction not under an open end credit plan which is secured by a first lien on real property or a dwelling and constitutes a refinancing or consolidation of an existing extension of credit; and

(B) which is based on the alleged failure of a creditor—

(i) to include a charge actually incurred (in connection with the transaction) in the finance charge disclosed pursuant to section 1638 of this title;

(ii) to properly make any other disclosure required under section 1638 of this title as a result of the failure described in clause (i); or

(iii) to provide proper notice of rescission rights under section 1635(a) of this title due to the selection by the creditor of the incorrect form from among the model forms prescribed by the Board or from among forms based on such model forms.

(2) Exceptions for certain alleged violations

Paragraph (1) shall not apply with respect to any action—

(A) described in clause (i) or (ii) of paragraph (1)(B), if the amount disclosed as the finance charge results in an annual percentage rate that exceeds the tolerance provided in section 1606(c) of this title; or

(B) described in paragraph (1)(B)(iii), if—

(i) no notice relating to rescission rights under section 1635(a) of this title was provided in any form; or

(ii) proper notice was not provided for any reason other than the reason described in such paragraph.

(Pub. L. 90–321, title I, §130, May 29, 1968, 82 Stat. 157; Pub. L. 93–495, title IV, §§406, 407, 408(a)–(d), Oct. 28, 1974, 88 Stat. 1518; Pub. L. 94–222, §3(b), Feb. 27, 1976, 90 Stat. 197; Pub. L. 94–240, §4, Mar. 23, 1976, 90 Stat. 260; Pub. L. 96–221, title VI, §615, Mar. 31, 1980, 94 Stat. 180; Pub. L. 100–583, §3, Nov. 3, 1988, 102 Stat. 2966; Pub. L. 103–325, title I, §153(a), (b), Sept. 23, 1994, 108 Stat. 2195; Pub. L. 104–12, §2, May 18, 1995, 109 Stat. 161; Pub. L. 104–29, §6, Sept. 30, 1995, 109 Stat. 274.)

AMENDMENTS

1995—Subsec. (a)(2)(A)(iii). Pub. L. 104–29 added cl. (iii).

Subsec. (i). Pub. L. 104–12 added subsec. (i).

1994—Subsec. (a)(4). Pub. L. 103–325, §153(a), added par. (4).

Subsec. (e). Pub. L. 103–325, §153(b), inserted at end "An action to enforce a violation of section 1639 of this title may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. The State attorney general shall provide prior written notice of any such civil action to the Federal agency responsible for enforcement under section 1607 of this title and shall provide the agency with a copy of the complaint. If prior notice is not feasible, the State attorney general shall provide notice to such agency immediately upon instituting the action. The Federal agency may—

"(1) intervene in the action;

"(2) upon intervening—

"(A) remove the action to the appropriate United States district court, if it was not originally brought there; and

"(B) be heard on all matters arising in the action; and

"(3) file a petition for appeal."

1988—Subsec. (a). Pub. L. 100–583 substituted "in subsections (a) and (b) of section 1637" for "in section 1637" in third sentence and inserted provisions limiting liability of card issuer under this section to cardholders who pay fee or use credit card or charge card.

1980—Subsec. (a). Pub. L. 96–221, §615(b), in introductory text inserted provisions respecting applicability of section 1635 of this title, and in text following numbered pars. inserted provisions relating to disclosures required under sections 1637 and 1638 of this title.

Subsec. (a)(2)(B). Pub. L. 96–221, §615(a)(1), substituted provisions respecting recovery under this subparagraph in any class action or series of class actions, for provisions respecting recovery in a class action.

Subsec. (a)(3). Pub. L. 96–221, §615(a)(2), inserted provisions relating to right of rescission under section 1635 of this title.

Subsec. (b). Pub. L. 96–221, § 615(a)(3), substituted provisions relating to correction of errors within sixty days by a creditor or assignee, for provisions relating to correction of errors within fifteen days by a creditor.

Subsec. (c). Pub. L. 96–221, § 615(a)(3), substituted provisions relating to liability of a creditor or assignee in any action brought under this section or section 1635 of this title, for provisions relating to liability of a creditor in any action brought under this section.

Subsec. (d). Pub. L. 96–221, § 615(a)(3), substituted provisions relating to liability in transaction or lease involving multiple obligors, for provisions relating to liability of subsequent assignees original creditor.

Subsec. (e). Pub. L. 96–221, § 615(a)(4), inserted provisions relating to limitations on actions.

Subsec. (f). Pub. L. 96–221, § 615(a)(5), inserted references to section 1607(b), (c), and (e) of this title.

Subsec. (g). Pub. L. 96–221, § 615(a)(6), inserted provisions relating to remedy under section 1635 of this title.

Subsec. (h). Pub. L. 96–221, § 615(a)(7), substituted provisions relating to offset from amounts owed to the creditor or assignee, and rights of defaulting consumer, for provisions relating to offset from amounts owed to the creditor.

1976—Subsec. (a). Pub. L. 94–240, § 4(1), inserted ''or E'' after ''part D''.

Subsec. (a)(2)(A). Pub. L. 94–240, § 4(2), designated existing provision as cl. (i) and added cl. (ii).

Subsec. (a)(2)(B). Pub. L. 94–240, § 4(3), substituted ''lesser of $500,000'' for ''lesser of $100,000''.

Subsec. (b). Pub. L. 94–240, § 4(4), inserted ''or part E of this subchapter'' after ''this part'' and struck out ''finance'' after ''required to pay a''.

Subsec. (f). Pub. L. 94–222 inserted ''or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor'' after ''by the Board'', and substituted ''interpretation, or approval'' for ''or interpretation'' before ''is amended''.

Subsec. (g). Pub. L. 94–240, § 4(5), inserted ''or part D or E of this subchapter'' after ''this part'', and ''consumer lease'' after ''consumer loan''.

1974—Subsec. (a). Pub. L. 93–495, § 408(a), substituted provisions setting forth determination of amount of liability of any creditor failing to comply with any requirement imposed under part D of this subchapter or this part, for provisions setting forth determination of amount of liability of any creditor failing to disclose in connection with any consumer credit transaction any information required under this part to be disclosed to specified persons.

Subsec. (b). Pub. L. 93–495, § 408(b), inserted ''for any failure to comply with any requirement imposed under this part,'' before ''if within''.

Subsec. (c). Pub. L. 93–495, § 408(c), substituted ''subchapter'' for ''part''.

Subsec. (f). Pub. L. 93–495, § 406, added subsec. (f).

Subsec. (g). Pub. L. 93–495, § 407, added subsec. (g).

Subsec. (h). Pub. L. 93–495, § 408(d), added subsec. (h).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–240 effective on expiration of one year after Mar. 23, 1976, see section 6 of Pub. L. 94–240, set out as an Effective Date note under section 1667 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

DETERMINATION OF LIABILITY PRIOR TO OCTOBER 28, 1974

Section 408(e) of Pub. L. 93–495 provided that: ''The amendments made by sections 406, 407, and 408 [amending this section] shall apply in determining the liability of any person under chapter 2 or 4 of the Truth in Lending Act [this part or part D of this subchapter], unless prior to the date of enactment of this Act [Oct. 28, 1974] such liability has been determined by final judgment of a court of competent jurisdiction and no further review of such judgment may be had by appeal or otherwise.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1610, 1635, 1667d of this title; title 12 section 3806.

§ 1641. Liability of assignees

(a) Prerequisites

Except as otherwise specifically provided in this subchapter, any civil action for a violation of this subchapter or proceeding under section 1607 of this title which may be brought against a creditor may be maintained against any assignee of such creditor only if the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement, except where the assignment was involuntary. For the purpose of this section, a violation apparent on the face of the disclosure statement includes, but is not limited to (1) a disclosure which can be determined to be incomplete or inaccurate from the face of the disclosure statement or other documents assigned, or (2) a disclosure which does not use the terms required to be used by this subchapter.

(b) Proof of compliance with statutory provisions

Except as provided in section 1635(c) of this title, in any action or proceeding by or against any subsequent assignee of the original creditor without knowledge to the contrary by the assignee when he acquires the obligation, written acknowledgement of receipt by a person to whom a statement is required to be given pursuant to this subchapter shall be conclusive proof of the delivery thereof and, except as provided in subsection (a) of this section, of compliance with this part. This section does not affect the rights of the obligor in any action against the original creditor.

(c) Right of rescission by consumer unaffected

Any consumer who has the right to rescind a transaction under section 1635 of this title may rescind the transaction as against any assignee of the obligation.

(d) Rights upon assignment of certain mortgages

(1) In general

Any person who purchases or is otherwise assigned a mortgage referred to in section 1602(aa) of this title shall be subject to all claims and defenses with respect to that mortgage that the consumer could assert against the creditor of the mortgage, unless the purchaser or assignee demonstrates, by a prepon-

derance of the evidence, that a reasonable person exercising ordinary due diligence, could not determine, based on the documentation required by this subchapter, the itemization of the amount financed, and other disclosure of disbursements that the mortgage was a mortgage referred to in section 1602(aa) of this title. The preceding sentence does not affect rights of a consumer under subsection (a), (b), or (c) of this section or any other provision of this subchapter.

(2) Limitation on damages

Notwithstanding any other provision of law, relief provided as a result of any action made permissible by paragraph (1) may not exceed—

(A) with respect to actions based upon a violation of this subchapter, the amount specified in section 1640 of this title; and

(B) with respect to all other causes of action, the sum of—

(i) the amount of all remaining indebtedness; and

(ii) the total amount paid by the consumer in connection with the transaction.

(3) Offset

The amount of damages that may be awarded under paragraph (2)(B) shall be reduced by the amount of any damages awarded under paragraph (2)(A).

(4) Notice

Any person who sells or otherwise assigns a mortgage referred to in section 1602(aa) of this title shall include a prominent notice of the potential liability under this subsection as determined by the Board.

(e) Liability of assignee for consumer credit transactions secured by real property

(1) In general

Except as otherwise specifically provided in this subchapter, any civil action against a creditor for a violation of this subchapter, and any proceeding under section 1607 of this title against a creditor, with respect to a consumer credit transaction secured by real property may be maintained against any assignee of such creditor only if—

(A) the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement provided in connection with such transaction pursuant to this subchapter; and

(B) the assignment to the assignee was voluntary.

(2) Violation apparent on the face of the disclosure described

For the purpose of this section, a violation is apparent on the face of the disclosure statement if—

(A) the disclosure can be determined to be incomplete or inaccurate by a comparison among the disclosure statement, any itemization of the amount financed, the note, or any other disclosure of disbursement; or

(B) the disclosure statement does not use the terms or format required to be used by this subchapter.

(f) Treatment of servicer

(1) In general

A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as an assignee of such obligation for purposes of this section unless the servicer is or was the owner of the obligation.

(2) Servicer not treated as owner on basis of assignment for administrative convenience

A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as the owner of the obligation for purposes of this section on the basis of an assignment of the obligation from the creditor or another assignee to the servicer solely for the administrative convenience of the servicer in servicing the obligation. Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address, and telephone number of the owner of the obligation or the master servicer of the obligation.

(3) "Servicer" defined

For purposes of this subsection, the term ''servicer'' has the same meaning as in section 2605(i)(2) of title 12.

(4) Applicability

This subsection shall apply to all consumer credit transactions in existence or consummated on or after September 30, 1995.

(Pub. L. 90–321, title I, § 131, May 29, 1968, 82 Stat. 157; Pub. L. 96–221, title VI, § 616(a), Mar. 31, 1980, 94 Stat. 182; Pub. L. 103–325, title I, § 153(c), Sept. 23, 1994, 108 Stat. 2195; Pub. L. 104–29, § 7, Sept. 30, 1995, 109 Stat. 274.)

AMENDMENTS

1995—Subsec. (e). Pub. L. 104–29, § 7(a), added subsec. (e).

Subsec. (f). Pub. L. 104–29, § 7(b), added subsec. (f).

1994—Subsec. (d). Pub. L. 103–325 added subsec. (d).

1980—Pub. L. 96–221 added subsecs. (a) and (c), designated existing provisions as subsec. (b), substituted ''excepted as provided in subsection (a) of this section'' for ''unless the violation is apparent on the face of the statement'', and struck out exception for actions under section 1640(d) of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1640, 1667d of this title.

§ 1642. Issuance of credit cards

No credit card shall be issued except in response to a request or application therefor. This prohibition does not apply to the issuance of a credit card in renewal of, or in substitution for, an accepted credit card.

(Pub. L. 90–321, title I, § 132, as added Pub. L. 91–508, title V, § 502(a), Oct. 26, 1970, 84 Stat. 1126.)

EFFECTIVE DATE

Section 503(1) of Pub. L. 91–508 provided that: ''Section 132 of such Act [this section] takes effect on date of enactment of this title [Oct. 26, 1970].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1645 of this title.

§ 1643. Liability of holder of credit card

(a) Limits on liability

(1) A cardholder shall be liable for the unauthorized use of a credit card only if—

(A) the card is an accepted credit card;

(B) the liability is not in excess of $50;

(C) the card issuer gives adequate notice to the cardholder of the potential liability;

(D) the card issuer has provided the cardholder with a description of a means by which the card issuer may be notified of loss or theft of the card, which description may be provided on the face or reverse side of the statement required by section 1637(b) of this title or on a separate notice accompanying such statement;

(E) the unauthorized use occurs before the card issuer has been notified that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise; and

(F) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it.

(2) For purposes of this section, a card issuer has been notified when such steps as may be reasonably required in the ordinary course of of business to provide the card issuer with the pertinent information have been taken, whether or not any particular officer, employee, or agent of the card issuer does in fact receive such information.

(b) Burden of proof

In any action by a card issuer to enforce liability for the use of a credit card, the burden of proof is upon the card issuer to show that the use was authorized or, if the use was unauthorized, then the burden of proof is upon the card issuer to show that the conditions of liability for the unauthorized use of a credit card, as set forth in subsection (a) of this section, have been met.

(c) Liability imposed by other laws or by agreement with issuer

Nothing in this section imposes liability upon a cardholder for the unauthorized use of a credit card in excess of his liability for such use under other applicable law or under any agreement with the card issuer.

(d) Exclusiveness of liability

Except as provided in this section, a cardholder incurs no liability from the unauthorized use of a credit card.

(Pub. L. 90–321, title I, § 133, as added Pub. L. 91–508, title V, § 502(a), Oct. 26, 1970, 84 Stat. 1126; amended Pub. L. 96–221, title VI, § 617, Mar. 31, 1980, 94 Stat. 182.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–221 revised existing provisions into pars. (1) and (2) and, as so revised, in par. (1) made changes in structure and phraseology and revised means of notice and verification, and in par. (2) made changes in phraseology.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE

Section 503(2) of Pub. L. 91–508 provided that: ''Section 133 of such Act [this section] takes effect upon the expiration of 90 days after such date of enactment [Oct. 26, 1970].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602, 1645 of this title.

§ 1644. Fraudulent use of credit cards; penalties

(a) Use, attempt or conspiracy to use card in transaction affecting interstate or foreign commerce

Whoever knowingly in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating $1,000 or more; or

(b) Transporting, attempting or conspiring to transport card in interstate commerce

Whoever, with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(c) Use of interstate commerce to sell or transport card

Whoever, with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(d) Receipt, concealment, etc., of goods obtained by use of card

Whoever knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (1) within any one-year period has a value aggregating $1,000 or more, (2) has moved in or is part of, or which constitutes interstate or foreign commerce, and (3) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card; or

(e) Receipt, concealment, etc., of tickets for interstate or foreign transportation obtained by use of card

Whoever knowingly receives, conceals, uses, sells, or transports in interstate or foreign com-

merce one or more tickets for interstate or foreign transportation, which (1) within any one-year period have a value aggregating $500 or more, and (2) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit cards; or

(f) Furnishing of money, etc., through use of card

Whoever in a transaction affecting interstate or foreign commerce furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating $1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(Pub. L. 90–321, title I, § 134, as added Pub. L. 91–508, title V, § 502(a), Oct. 26, 1970, 84 Stat. 1127; amended Pub. L. 93–495, title IV, § 414, Oct. 28, 1974, 88 Stat. 1520.)

AMENDMENTS

1974—Pub. L. 93–495 generally reorganized provisions by designating former unlettered paragraph cls. (a) to (f), and as so designated, expanded prohibitions relating to fraudulent use of credit cards, decreased amount required for fraudulent use from a retail value aggregating $5,000, or more, to enumerated amounts for particular activities, and increased the punishment from a sentence of not more than five years to a sentence of not more than ten years.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

EFFECTIVE DATE

Section 503(3) of Pub. L. 91–508 provided that: ''Section 134 of such Act [this section] applies to offenses committed on or after such date of enactment [Oct. 26, 1970].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1645 of this title.

§ 1645. Business credit cards; limits on liability of employees

The exemption provided by section 1603(1) of this title does not apply to the provisions of sections 1642, 1643, and 1644 of this title, except that a card issuer and a business or other organization which provides credit cards issued by the same card issuer to ten or more of its employees may by contract agree as to liability of the business or other organization with respect to unauthorized use of such credit cards without regard to the provisions of section 1643 of this title, but in no case may such business or other organization or card issuer impose liability upon any employee with respect to unauthorized use of such a credit card except in accordance with and subject to the limitations of section 1643 of this title.

(Pub. L. 90–321, title I, § 135, as added Pub. L. 93–495, title IV, § 410(a), Oct. 28, 1974, 88 Stat. 1519.)

EFFECTIVE DATE

Section effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as a note under section 1665a of this title.

§ 1646. Dissemination of annual percentage rates; implementation, etc.

(a) Annual percentage rates

The Board shall collect, publish, and disseminate to the public, on a demonstration basis in a number of standard metropolitan statistical areas to be determined by the Board, the annual percentage rates charged for representative types of nonsale credit by creditors in such areas. For the purpose of this section, the Board is authorized to require creditors in such areas to furnish information necessary for the Board to collect, publish, and disseminate such information.

(b) Credit card price and availability information

(1) Collection required

The Board shall collect, on a semiannual basis, credit card price and availability information, including the information required to be disclosed under section 1637(c) of this title, from a broad sample of financial institutions which offer credit card services.

(2) Sample requirements

The broad sample of financial institutions required under paragraph (1) shall include—

(A) the 25 largest issuers of credit cards; and

(B) not less than 125 additional financial institutions selected by the Board in a manner that ensures—

(i) an equitable geographical distribution within the sample; and

(ii) the representation of a wide spectrum of institutions within the sample.

(3) Report of information from sample

Each financial institution in the broad sample established pursuant to paragraph (2) shall report the information to the Board in accordance with such regulations or orders as the Board may prescribe.

(4) Public availability of collected information; report to Congress

The Board shall—

(A) make the information collected pursuant to this subsection available to the public upon request; and

(B) report such information semiannually to Congress.

(c) Implementation

The Board is authorized to enter into contracts or other arrangements with appropriate persons, organizations, or State agencies to carry out its functions under subsections (a) and (b) of this section and to furnish financial assistance in support thereof.

(Pub. L. 90–321, title I, § 136, as added Pub. L. 96–221, title VI, § 618(a), Mar. 31, 1980, 94 Stat. 183; amended Pub. L. 100–583, § 5, Nov. 3, 1988, 102 Stat. 2967.)

AMENDMENTS

1988—Subsecs. (b), (c). Pub. L. 100–583 added subsec. (b), redesignated former subsec. (b) as (c), and substituted ''subsections (a) and (b)'' for ''subsection (a)''.

EFFECTIVE DATE

Section effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 1602 of this title.

§ 1647. Home equity plans

(a) Index requirement

In the case of extensions of credit under an open end consumer credit plan which are subject to a variable rate and are secured by a consumer's principal dwelling, the index or other rate of interest to which changes in the annual percentage rate are related shall be based on an index or rate of interest which is publicly available and is not under the control of the creditor.

(b) Grounds for acceleration of outstanding balance

A creditor may not unilaterally terminate any account under an open end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling and require the immediate repayment of any outstanding balance at such time, except in the case of—

(1) fraud or material misrepresentation on the part of the consumer in connection with the account;

(2) failure by the consumer to meet the repayment terms of the agreement for any outstanding balance; or

(3) any other action or failure to act by the consumer which adversely affects the creditor's security for the account or any right of the creditor in such security.

This subsection does not apply to reverse mortgage transactions.

(c) Change in terms

(1) In general

No open end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling may contain a provision which permits a creditor to change unilaterally any term required to be disclosed under section 1637a(a) of this title or any other term, except a change in insignificant terms such as the address of the creditor for billing purposes.

(2) Certain changes not precluded

Notwithstanding the provisions of subsection[1] (1), a creditor may make any of the following changes:

(A) Change the index and margin applicable to extensions of credit under such plan if the index used by the creditor is no longer available and the substitute index and margin would result in a substantially similar interest rate.

(B) Prohibit additional extensions of credit or reduce the credit limit applicable to an account under the plan during any period in which the value of the consumer's principal dwelling which secures any outstanding balance is significantly less than the original appraisal value of the dwelling.

(C) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which the creditor has reason to believe that the consumer will be unable to comply with the repayment requirements of the account due to a material change in the consumer's financial circumstances.

(D) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which the consumer is in default with respect to any material obligation of the consumer under the agreement.

(E) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which—

(i) the creditor is precluded by government action from imposing the annual percentage rate provided for in the account agreement; or

(ii) any government action is in effect which adversely affects the priority of the creditor's security interest in the account to the extent that the value of the creditor's secured interest in the property is less than 120 percent of the amount of the credit limit applicable to the account.

(F) Any change that will benefit the consumer.

(3) Material obligations

Upon the request of the consumer and at the time an agreement is entered into by a consumer to open an account under an open end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling, the consumer shall be given a list of the categories of contract obligations which are deemed by the creditor to be material obligations of the consumer under the agreement for purposes of paragraph (2)(D).

(4) Consumer benefit

(A) In general

For purposes of paragraph (2)(F), a change shall be deemed to benefit the consumer if the change is unequivocally beneficial to the borrower and the change is beneficial through the entire term of the agreement.

(B) Board categorization

The Board may, by regulation, determine categories of changes that benefit the consumer.

(d) Terms changed after application

If any term or condition described in section 1637a(a) of this title which is disclosed to a consumer in connection with an application to open an account under an open end consumer credit plan described in such section (other than a variable feature of the plan) changes before the account is opened, and if, as a result of such change, the consumer elects not to enter into the plan agreement, the creditor shall refund all fees paid by the consumer in connection with such application.

[1] So in original. Probably should be "paragraph".

(e) Additional requirements relating to refunds and imposition of nonrefundable fees

(1) In general

No nonrefundable fee may be imposed by a creditor or any other person in connection with any application by a consumer to establish an account under any open end consumer credit plan which provides for extensions of credit which are secured by a consumer's principal dwelling before the end of the 3-day period beginning on the date such consumer receives the disclosure required under section 1637a(a) of this title and the pamphlet required under section 1637a(e) of this title with respect to such application.

(2) Constructive receipt

For purposes of determining when a nonrefundable fee may be imposed in accordance with this subsection if the disclosures and pamphlet referred to in paragraph (1) are mailed to the consumer, the date of the receipt of the disclosures by such consumer shall be deemed to be 3 business days after the date of mailing by the creditor.

(Pub. L. 90–321, title I, § 137, as added Pub. L. 100–709, § 3, Nov. 23, 1988, 102 Stat. 4731; amended Pub. L. 103–325, title I, § 154(c), Sept. 23, 1994, 108 Stat. 2197.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–325 inserted at end ''This subsection does not apply to reverse mortgage transactions.''

EFFECTIVE DATE

For effective date of section, see Regulations; Effective Date note below.

REGULATIONS; EFFECTIVE DATE

For provisions relating to promulgation of regulations to implement amendment by Pub. L. 100–709 [enacting this section], and effective date of such amendment in connection with those regulations, see section 7 of Pub. L. 100–709, set out as a note under section 1637a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1637a of this title; title 12 section 1715z–20.

§ 1648. Reverse mortgages

(a) In general

In addition to the disclosures required under this subchapter, for each reverse mortgage, the creditor shall, not less than 3 days prior to consummation of the transaction, disclose to the consumer in conspicuous type a good faith estimate of the projected total cost of the mortgage to the consumer expressed as a table of annual interest rates. Each annual interest rate shall be based on a projected total future credit extension balance under a projected appreciation rate for the dwelling and a term for the mortgage. The disclosure shall include—

(1) statements of the annual interest rates for not less than 3 projected appreciation rates and not less than 3 credit transaction periods, as determined by the Board, including—

(A) a short-term reverse mortgage;

(B) a term equaling the actuarial life expectancy of the consumer; and

(C) such longer term as the Board deems appropriate; and

(2) a statement that the consumer is not obligated to complete the reverse mortgage transaction merely because the consumer has received the disclosure required under this section or has signed an application for the reverse mortgage.

(b) Projected total cost

In determining the projected total cost of the mortgage to be disclosed to the consumer under subsection (a) of this section, the creditor shall take into account—

(1) any shared appreciation or equity that the lender will, by contract, be entitled to receive;

(2) all costs and charges to the consumer, including the costs of any associated annuity that the consumer elects or is required to purchase as part of the reverse mortgage transaction;

(3) all payments to and for the benefit of the consumer, including, in the case in which an associated annuity is purchased (whether or not required by the lender as a condition of making the reverse mortgage), the annuity payments received by the consumer and financed from the proceeds of the loan, instead of the proceeds used to finance the annuity; and

(4) any limitation on the liability of the consumer under reverse mortgage transactions (such as nonrecourse limits and equity conservation agreements).

(Pub. L. 90–321, title I, § 138, as added Pub. L. 103–325, title I, § 154(b), Sept. 23, 1994, 108 Stat. 2196.)

§ 1649. Certain limitations on liability

(a) Limitations on liability

For any closed end consumer credit transaction that is secured by real property or a dwelling, that is subject to this subchapter, and that is consummated before September 30, 1995, a creditor or any assignee of a creditor shall have no civil, administrative, or criminal liability under this subchapter for, and a consumer shall have no extended rescission rights under section 1635(f) of this title with respect to—

(1) the creditor's treatment, for disclosure purposes, of—

(A) taxes described in section 1605(d)(3) of this title;

(B) fees described in section 1605(e)(2) and (5) of this title;

(C) fees and amounts referred to in the 3rd sentence of section 1605(a) of this title; or

(D) borrower-paid mortgage broker fees referred to in section 1605(a)(6) of this title;

(2) the form of written notice used by the creditor to inform the obligor of the rights of the obligor under section 1635 of this title if the creditor provided the obligor with a properly dated form of written notice published and adopted by the Board or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice; or

(3) any disclosure relating to the finance charge imposed with respect to the transaction if the amount or percentage actually disclosed—

(A) may be treated as accurate for purposes of this subchapter if the amount disclosed as the finance charge does not vary from the actual finance charge by more than $200;

(B) may, under section 1605(f)(2) of this title, be treated as accurate for purposes of section 1635 of this title; or

(C) is greater than the amount or percentage required to be disclosed under this subchapter.

(b) Exceptions

Subsection (a) of this section shall not apply to—

(1) any individual action or counterclaim brought under this subchapter which was filed before June 1, 1995;

(2) any class action brought under this subchapter for which a final order certifying a class was entered before January 1, 1995;

(3) the named individual plaintiffs in any class action brought under this subchapter which was filed before June 1, 1995; or

(4) any consumer credit transaction with respect to which a timely notice of rescission was sent to the creditor before June 1, 1995.

(Pub. L. 90–321, title I, § 139, as added Pub. L. 104–29, § 4(a), Sept. 30, 1995, 109 Stat. 273; amended Pub. L. 104–208, div. A, title II, § 2107(a), Sept. 30, 1996, 110 Stat. 3009–402.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208 substituted ''For any closed end consumer credit transaction that is secured by real property or a dwelling, that is subject to this subchapter, and'' for ''For any consumer credit transaction subject to this subchapter''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 2107(b) of div. A of Pub. L. 104–208 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as of September 30, 1995.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1635 of this title.

PART C—CREDIT ADVERTISING

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1610 of this title.

§ 1661. Catalogs and multiple-page advertisements

For the purposes of this part, a catalog or other multiple-page advertisement shall be considered a single advertisement if it clearly and conspicuously displays a credit terms table on which the information required to be stated under this part is clearly set forth.

(Pub. L. 90–321, title I, § 141, May 29, 1968, 82 Stat. 158.)

EFFECTIVE DATE

Section 504(b) of Pub. L. 90–321 provided that chapter 3 of title I, which enacted sections 1661 to 1665 of this title, is effective July 1, 1969.

§ 1662. Advertising of downpayments and installments

No advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit may state

(1) that a specific periodic consumer credit amount or installment amount can be arranged, unless the creditor usually and customarily arranges credit payments or installments for that period and in that amount.

(2) that a specified downpayment is required in connection with any extension of consumer credit, unless the creditor usually and customarily arranges downpayments in that amount.

(Pub. L. 90–321, title I, § 142, May 29, 1968, 82 Stat. 158.)

§ 1663. Advertising of open end credit plans

No advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit under an open end credit plan may set forth any of the specific terms of that plan unless it also clearly and conspicuously sets forth all of the following items:

(1) Any minimum or fixed amount which could be imposed.

(2) In any case in which periodic rates may be used to compute the finance charge, the periodic rates expressed as annual percentage rates.

(3) Any other term that the Board may by regulation require to be disclosed.

(Pub. L. 90–321, title I, § 143, May 29, 1968, 82 Stat. 158; Pub. L. 96–221, title VI, §§ 613(f), 619(a), Mar. 31, 1980, 94 Stat. 177, 183.)

AMENDMENTS

1980—Pub. L. 96–221 in existing introductory text struck out applicability of rate determined under section 1637(a)(5) of this title, and amended section generally substituting items setting forth minimum or fixed amount, etc., set out in pars. (1) to (3), for items time period, etc., set out in pars. (1) to (5).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

§ 1664. Advertising of credit other than open end plans

(a) Exclusion of open end credit plans

Except as provided in subsection (b) of this section, this section applies to any advertisement to aid, promote, or assist directly or indirectly any consumer credit sale, loan, or other extension of credit subject to the provisions of this subchapter, other than an open end credit plan.

(b) Advertisements of residential real estate

The provisions of this section do not apply to advertisements of residential real estate except to the extent that the Board may by regulation require.

(c) Rate of finance charge expressed as annual percentage rate

If any advertisement to which this section applies states the rate of a finance charge, the advertisement shall state the rate of that charge expressed as an annual percentage rate.

(d) Requisite disclosures in advertisement

If any advertisement to which this section applies states the amount of the downpayment, if any, the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment, then the advertisement shall state all of the following items:

(1) The downpayment, if any.

(2) The terms of repayment.

(3) The rate of the finance charge expressed as an annual percentage rate.

(Pub. L. 90–321, title I, § 144, May 29, 1968, 82 Stat. 158; Pub. L. 96–221, title VI, § 619(b), Mar. 31, 1980, 94 Stat. 183.)

AMENDMENTS

1980—Subsec. (d). Pub. L. 97–221 substituted items setting forth downpayment, etc., set out in pars. (1) to (3), for items setting forth cash price or amount of loan, etc., set out in pars. (1) to (4).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

§ 1665. Nonliability of advertising media

There is no liability under this part on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

(Pub. L. 90–321, title I, § 145, May 29, 1968, 82 Stat. 159.)

§ 1665a. Use of annual percentage rate in oral disclosures; exceptions

In responding orally to any inquiry about the cost of credit, a creditor, regardless of the method used to compute finance charges, shall state rates only in terms of the annual percentage rate, except that in the case of an open end credit plan, the periodic rate also may be stated and, in the case of an other than open end credit plan where a major component of the finance charge consists of interest computed at a simple annual rate, the simple annual rate also may be stated. The Board may, by regulation, modify the requirements of this section or provide an exception from this section for a transaction or class of transactions for which the creditor cannot determine in advance the applicable annual percentage rate.

(Pub. L. 90–321, title I, § 146, as added Pub. L. 93–495, title IV, § 401(a), Oct. 28, 1974, 88 Stat. 1517; amended Pub. L. 96–221, title VI, § 623(a), Mar. 31, 1980, 94 Stat. 185.)

AMENDMENTS

1980—Pub. L. 96–221 substituted provisions relating to use of annual percentage rate in oral disclosures by creditors, for provisions setting forth requirements for advertisements concerning consumer credit repayable in more than four installments.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE

Section 416 of title IV of Pub. L. 93–495 provided that: ''This title [enacting this section and sections 1614 and 1645 of this title, amending sections 1603, 1607, 1635, 1637, 1640, and 1644 of this title, and enacting provision set out as a note under section 1640 of this title] takes effect upon the date of its enactment [Oct. 28, 1974], except that sections 409 [amending section 1631 of this title] and 411 [amending section 1637 of this title] take effect upon the expiration of one year after the date of its enactment [Oct. 28, 1974].''

§ 1665b. Advertising of open end consumer credit plans secured by consumer's principal dwelling

(a) In general

If any advertisement to aid, promote, or assist, directly or indirectly, the extension of consumer credit through an open end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling states, affirmatively or negatively, any of the specific terms of the plan, including any periodic payment amount required under such plan, such advertisement shall also clearly and conspicuously set forth the following information, in such form and manner as the Board may require:

(1) Loan fees and opening cost estimates

Any loan fee the amount of which is determined as a percentage of the credit limit applicable to an account under the plan and an estimate of the aggregate amount of other fees for opening the account, based on the creditor's experience with the plan and stated as a single amount or as a reasonable range.

(2) Periodic rates

In any case in which periodic rates may be used to compute the finance charge, the periodic rates expressed as an annual percentage rate.

(3) Highest annual percentage rate

The highest annual percentage rate which may be imposed under the plan.

(4) Other information

Any other information the Board may by regulation require.

(b) Tax deductibility

If any advertisement described in subsection (a) of this section contains a statement that any interest expense incurred with respect to the

plan is or may be tax deductible, the advertisement shall not be misleading with respect to such deductibility.

(c) Certain terms prohibited

No advertisement described in subsection (a) of this section with respect to any home equity account may refer to such loan as ''free money'' or use other terms determined by the Board by regulation to be misleading.

(d) Discounted initial rate

(1) In general

If any advertisement described in subsection (a) of this section includes an initial annual percentage rate that is not determined by the index or formula used to make later interest rate adjustments, the advertisement shall also state with equal prominence the current annual percentage rate that would have been applied using the index or formula if such initial rate had not been offered.

(2) Quoted rate must be reasonably current

The annual percentage rate required to be disclosed under the paragraph (1) rate must be current as of a reasonable time given the media involved.

(3) Period during which initial rate is in effect

Any advertisement to which paragraph (1) applies shall also state the period of time during which the initial annual percentage rate referred to in such paragraph will be in effect.

(e) Balloon payment

If any advertisement described in subsection (a) of this section contains a statement regarding the minimum monthly payment under the plan, the advertisement shall also disclose, if applicable, the fact that the plan includes a balloon payment.

(f) "Balloon payment" defined

For purposes of this section and section 1637a of this title, the term ''balloon payment'' means, with respect to any open end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling, any repayment option under which—

(1) the account holder is required to repay the entire amount of any outstanding balance as of a specified date or at the end of a specified period of time, as determined in accordance with the terms of the agreement pursuant to which such credit is extended; and

(2) the aggregate amount of the minimum periodic payments required would not fully amortize such outstanding balance by such date or at the end of such period.

(Pub. L. 90–321, title I, § 147, as added Pub. L. 100–709, § 2(c), Nov. 23, 1988, 102 Stat. 4730.)

EFFECTIVE DATE

For effective date of section, see Regulations; Effective Date note below.

REGULATIONS; EFFECTIVE DATE

For provisions relating to promulgation of regulations to implement amendment by Pub. L. 100–709 [enacting this section], and effective date of such amendment in connection with those regulations, see section 7 of Pub. L. 100–709, set out as a note under section 1637a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1637a of this title.

PART D—CREDIT BILLING

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1602, 1604, 1632, 1640, 5721 of this title.

§ 1666. Correction of billing errors

(a) Written notice by obligor to creditor; time for and contents of notice; procedure upon receipt of notice by creditor

If a creditor, within sixty days after having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, receives at the address disclosed under section 1637(b)(10) of this title a written notice (other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 1637(a)(7) of this title) from the obligor in which the obligor—

(1) sets forth or otherwise enables the creditor to identify the name and account number (if any) of the obligor,

(2) indicates the obligor's belief that the statement contains a billing error and the amount of such billing error, and

(3) sets forth the reasons for the obligor's belief (to the extent applicable) that the statement contains a billing error,

the creditor shall, unless the obligor has, after giving such written notice and before the expiration of the time limits herein specified, agreed that the statement was correct—

(A) not later than thirty days after the receipt of the notice, send a written acknowledgment thereof to the obligor, unless the action required in subparagraph (B) is taken within such thirty-day period, and

(B) not later than two complete billing cycles of the creditor (in no event later than ninety days) after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the obligor under paragraph (2) either—

(i) make appropriate corrections in the account of the obligor, including the crediting of any finance charges on amounts erroneously billed, and transmit to the obligor a notification of such corrections and the creditor's explanation of any change in the amount indicated by the obligor under paragraph (2) and, if any such change is made and the obligor so requests, copies of documentary evidence of the obligor's indebtedness; or

(ii) send a written explanation or clarification to the obligor, after having conducted an investigation, setting forth to the extent applicable the reasons why the creditor believes the account of the obligor was correctly shown in the statement and, upon request of the obligor, provide copies of documentary evidence of the obligor's indebtedness. In the case of a billing error where the obligor alleges that the creditor's billing

statement reflects goods not delivered to the obligor or his designee in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless he determines that such goods were actually delivered, mailed, or otherwise sent to the obligor and provides the obligor with a statement of such determination.

After complying with the provisions of this subsection with respect to an alleged billing error, a creditor has no further responsibility under this section if the obligor continues to make substantially the same allegation with respect to such error.

(b) Billing error

For the purpose of this section, a ''billing error'' consists of any of the following:

(1) A reflection on a statement of an extension of credit which was not made to the obligor or, if made, was not in the amount reflected on such statement.

(2) A reflection on a statement of an extension of credit for which the obligor requests additional clarification including documentary evidence thereof.

(3) A reflection on a statement of goods or services not accepted by the obligor or his designee or not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction.

(4) The creditor's failure to reflect properly on a statement a payment made by the obligor or a credit issued to the obligor.

(5) A computation error or similar error of an accounting nature of the creditor on a statement.

(6) Failure to transmit the statement required under section 1637(b) of this title to the last address of the obligor which has been disclosed to the creditor, unless that address was furnished less than twenty days before the end of the billing cycle for which the statement is required.

(7) Any other error described in regulations of the Board.

(c) Action by creditor to collect amount or any part thereof regarded by obligor to be a billing error

For the purposes of this section, ''action to collect the amount, or any part thereof, indicated by an obligor under paragraph (2)'' does not include the sending of statements of account, which may include finance charges on amounts in dispute, to the obligor following written notice from the obligor as specified under subsection (a) of this section, if—

(1) the obligor's account is not restricted or closed because of the failure of the obligor to pay the amount indicated under paragraph (2) of subsection (a) of this section, and

(2) the creditor indicates the payment of such amount is not required pending the creditor's compliance with this section.

Nothing in this section shall be construed to prohibit any action by a creditor to collect any amount which has not been indicated by the obligor to contain a billing error.

(d) Restricting or closing by creditor of account regarded by obligor to contain a billing error

Pursuant to regulations of the Board, a creditor operating an open end consumer credit plan may not, prior to the sending of the written explanation or clarification required under paragraph (B)(ii), restrict or close an account with respect to which the obligor has indicated pursuant to subsection (a) of this section that he believes such account to contain a billing error solely because of the obligor's failure to pay the amount indicated to be in error. Nothing in this subsection shall be deemed to prohibit a creditor from applying against the credit limit on the obligor's account the amount indicated to be in error.

(e) Effect of noncompliance with requirements by creditor

Any creditor who fails to comply with the requirements of this section or section 1666a of this title forfeits any right to collect from the obligor the amount indicated by the obligor under paragraph (2) of subsection (a) of this section, and any finance charges thereon, except that the amount required to be forfeited under this subsection may not exceed $50.

(Pub. L. 90–321, title I, § 161, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1512; amended Pub. L. 96–221, title VI §§ 613(g), 620, Mar. 31, 1980, 94 Stat. 177, 184.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–221, § 613(g), substituted ''(b)(10)'' for ''(b)(11)'' and ''(a)(7)'' for ''(a)(8)''.

Subsec. (b)(6), (7). Pub. L. 96–221, § 620(a), added par. (6) and redesignated former par. (6) as (7).

Subsec. (c). Pub. L. 96–221, § 620(b), inserted provisions respecting finance charges on amounts in dispute.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment buy Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE

Section 308 of title III of Pub. L. 93–495 provided that: ''This title [enacting this section and sections 1666a to 1666j of this title, amending sections 1601, 1602, 1610, 1631, 1632, and 1637 of this title, and enacting provision set out as a note under section 1601 of this title] takes effect upon the expiration of one year after the date of its enactment [Oct. 28, 1974].''

SHORT TITLE

Title III of Pub. L. 93–495, which is classified principally to this part, is known as the ''Fair Credit Billing Act''. For complete classification of Title III to the Code, see Short Title of 1974 Amendment note set out under section 1601 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1637, 1666a of this title.

§ 1666a. Regulation of credit reports

(a) Reports by creditor on obligor's failure to pay amount regarded as billing error

After receiving a notice from an obligor as provided in section 1666(a) of this title, a credi-

tor or his 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 1666(a)(2) of this title, and such amount may not be reported as delinquent to any third party until the creditor has met the requirements of section 1666 of this title 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) Reports by creditor on delinquent amounts in dispute; notification of obligor of parties notified of delinquency

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 has indicated under section 1666(a)(2) of this title, 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) Reports by creditor of subsequent resolution of delinquent amounts

A creditor shall report any subsequent resolution of any delinquencies reported pursuant to subsection (b) of this section to the parties to whom such delinquencies were initially reported.

(Pub. L. 90–321, title I, § 162, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1513.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1637, 1666 of this title.

§ 1666b. Length of billing period in credit statement for imposition of finance charge; effect of failure of timely mailing or delivery of statement

(a) Additional finance charge

If an open end consumer credit plan provides a time period within which an obligor may repay any portion of the credit extended without incurring an additional finance charge, such additional finance charge may not be imposed with respect to such portion of the credit extended for the billing cycle of which such period is a part unless a statement which includes the amount upon which the finance charge for that period is based was mailed at least fourteen days prior to the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge.

(b) Excusable cause

Subsection (a) of this section does not apply in any case where a creditor has been prevented, delayed, or hindered in making timely mailing or delivery of such periodic statement within the time period specified in such subsection because of an act of God, war, natural disaster, strike, or other excusable or justifiable cause, as determined under regulations of the Board.

(Pub. L. 90–321, title I, § 163, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1514.)

§ 1666c. Prompt crediting of payments; imposition of finance charge

Payments received from an obligor under an open end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Board. Such regulations shall prevent a finance charge from being imposed on any obligor if the creditor has received the obligor's payment in readily identifiable form in the amount, manner, location, and time indicated by the creditor to avoid the imposition thereof.

(Pub. L. 90–321, title I, § 164, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1514.)

§ 1666d. Treatment of credit balances

Whenever a credit balance in excess of $1 is created in connection with a consumer credit transaction through (1) transmittal of funds to a creditor in excess of the total balance due on an account, (2) rebates of unearned finance charges or insurance premiums, or (3) amounts otherwise owed to or held for the benefit of an obligor, the creditor shall—

(A) credit the amount of the credit balance to the consumer's account;

(B) refund any part of the amount of the remaining credit balance, upon request of the consumer; and

(C) make a good faith effort to refund to the consumer by cash, check, or money order any part of the amount of the credit balance remaining in the account for more than six months, except that no further action is required in any case in which the consumer's current location is not known by the creditor and cannot be traced through the consumer's last known address or telephone number.

(Pub. L. 90–321, title I, § 165, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1514; amended Pub. L. 96–221, title VI, § 621(a), Mar. 31, 1980, 94 Stat. 184.)

AMENDMENTS

1980—Pub. L. 96–221 substituted provisions relating to duties of creditor whenever a credit balance in excess of $1 is created in connection with a consumer credit transaction, for provisions relating to duties of creditor whenever an obligor transmits funds to creditor in excess of the total balance due on an open end consumer credit account.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

§ 1666e. Notification of credit card issuer by seller of return of goods, etc., by obligor; credit for account of obligor

With respect to any sales transaction where a credit card has been used to obtain credit, where

the seller is a person other than the card issuer, and where the seller accepts or allows a return of the goods or forgiveness of a debit for services which were the subject of such sale, the seller shall promptly transmit to the credit card issuer, a credit statement with respect thereto and the credit card issuer shall credit the account of the obligor for the amount of the transaction.

(Pub. L. 90–321, title I, § 166, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1514.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1610 of this title.

§ 1666f. Inducements to cardholders by sellers of cash discounts for payments by cash, check or similar means; credit card surcharge prohibition; finance charge for sales transactions involving cash discounts

(a) Cash discounts

With respect to credit card which may be used for extensions of credit in sales transactions in which the seller is a person other than the card issuer, the card issuer may not, by contract, or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check, or similar means rather than use a credit card.

(b) Finance charge

With respect to any sales transaction, any discount from the regular price offered by the seller for the purpose of inducing payment by cash, checks, or other means not involving the use of an open-end credit plan or a credit card shall not constitute a finance charge as determined under section 1605 of this title if such discount is offered to all prospective buyers and its availability is disclosed clearly and conspicuously.

(Pub. L. 90–321, title I, § 167, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1515; amended Pub. L. 94–222, § 3(c)(1), Feb. 27, 1976, 90 Stat. 197; Pub. L. 97–25, title I, § 101, July 27, 1981, 95 Stat. 144.)

AMENDMENTS

1981—Subsec. (b). Pub. L. 97–25 substituted ''With respect to any sales transaction, any discount from the regular price offered by the seller for the purpose of inducing payment by cash, checks, or other means not involving the use of an open-end credit plan or a credit card shall not constitute a finance charge as determined under section 1605 of this title if such discount is offered to all prospective buyers and its availability is disclosed clearly and conspicuously'' for ''With respect to any sales transaction, any discount not in excess of 5 per centum offered by the seller for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card shall not constitute a finance charge as determined under section 1605 of this title, if such discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with regulations of the Board''.

1976—Subsec. (a). Pub. L. 94–222 temporarily designated existing provisions as par. (1) and added par. (2). See Termination Date of 1976 Amendment note below.

TERMINATION DATE OF 1976 AMENDMENT

Section 3(c)(2) of Pub. L. 94–222, as amended by Pub. L. 95–630, title XV, § 1501, Nov. 10, 1978, 92 Stat. 3713; Pub. L. 97–25, title II, § 201, July 27, 1981, 95 Stat. 44, provided that: ''The amendments made by paragraph (1) [amending this section] shall cease to be effective on February 27, 1984.''

NULLIFICATION OF BOARD RULES AND REGULATIONS UNDER SUBSECTION (b) OF THIS SECTION IN EFFECT ON JULY 26, 1981

Section 103 of Pub. L. 97–25 provided that: ''Any rule or regulation of the Board of Governors of the Federal Reserve System pursuant to section 167(b) of the Truth in Lending Act [subsec. (b) of this section], as such section was in effect on the day before the date of enactment of this Act [July 27, 1981], is null and void.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602, 1607, 1666j of this title.

§ 1666g. Tie-in services prohibited for issuance of credit card

Notwithstanding any agreement to the contrary, a card issuer may not require a seller, as a condition to participating in a credit card plan, to open an account with or procure any other service from the card issuer or its subsidiary or agent.

(Pub. L. 90–321, title I, § 168, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1515.)

§ 1666h. Offset of cardholder's indebtedness by issuer of credit card with funds deposited with issuer by cardholder; remedies of creditors under State law not affected

(a) Offset against consumer's funds

A card issuer may not take any action to offset a cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer unless—

(1) such action was previously authorized in writing by the cardholder in accordance with a credit plan whereby the cardholder agrees periodically to pay debts incurred in his open end credit account by permitting the card issuer periodically to deduct all or a portion of such debt from the cardholder's deposit account, and

(2) such action with respect to any outstanding disputed amount not be taken by the card issuer upon request of the cardholder.

In the case of any credit card account in existence on the effective date of this section, the previous written authorization referred to in clause (1) shall not be required until the date (after such effective date) when such account is renewed, but in no case later than one year after such effective date. Such written authorization shall be deemed to exist if the card issuer has previously notified the cardholder that the use of his credit card account will subject any funds which the card issuer holds in deposit accounts of such cardholder to offset against any amounts due and payable on his credit card account which have not been paid in accordance with the terms of the agreement between the card issuer and the cardholder.

(b) Attachments and levies

This section does not alter or affect the right under State law of a card issuer to attach or

otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally.

(Pub. L. 90–321, title I, § 169, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1515.)

REFERENCES IN TEXT

For effective date of this section, referred to in subsec. (a), see Effective Date note set out under section 1666 of this title.

§ 1666i. Assertion by cardholder against card issuer of claims and defenses arising out of credit card transaction; prerequisites; limitation on amount of claims or defenses

(a) Claims and defenses assertible

Subject to the limitation contained in subsection (b) of this section, a card issuer who has issued a credit card to a cardholder pursuant to an open end consumer credit plan shall be subject to all claims (other than tort claims) and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if (1) the obligor has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card; (2) the amount of the initial transaction exceeds $50; and (3) the place where the initial transaction occurred was in the same State as the mailing address previously provided by the cardholder or was within 100 miles from such address, except that the limitations set forth in clauses (2) and (3) with respect to an obligor's right to assert claims and defenses against a card issuer shall not be applicable to any transaction in which the person honoring the credit card (A) is the same person as the card issuer, (B) is controlled by the card issuer, (C) is under direct or indirect common control with the card issuer, (D) is a franchised dealer in the card issuer's products or services, or (E) has obtained the order for such transaction through a mail solicitation made by or participated in by the card issuer in which the cardholder is solicited to enter into such transaction by using the credit card issued by the card issuer.

(b) Amount of claims and defenses assertible

The amount of claims or defenses asserted by the cardholder may not exceed the amount of credit outstanding with respect to such transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of such claim or defense. For the purpose of determining the amount of credit outstanding in the preceding sentence, payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of: (1) late charges in the order of their entry to the account; (2) finance charges in order of their entry to the account; and (3) debits to the account other than those set forth above, in the order in which each debit entry to the account was made.

(Pub. L. 90–321, title I, § 170, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1515.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1637 of this title.

§ 1666j. Applicability of State laws

(a) Consistency of provisions

This part does not annul, alter, or affect, or exempt any person subject to the provisions of this part from complying with, the laws of any State with respect to credit billing practices, except to the extent that those laws are inconsistent with any provision of this part, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this part if the Board determines that such law gives greater protection to the consumer.

(b) Exemptions by Board from credit billing requirements

The Board shall by regulation exempt from the requirements of this part any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this part or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.

(c) Finance charge or other charge for credit for sales transactions involving cash discounts

Notwithstanding any other provisions of this subchapter, any discount offered under section 1666f(b) of this title shall not be considered a finance charge or other charge for credit under the usury laws of any State or under the laws of any State relating to disclosure of information in connection with credit transactions, or relating to the types, amounts or rates of charges, or to any element or elements of charges permissible under such laws in connection with the extension or use of credit.

(Pub. L. 90–321, title I, § 171, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1516; amended Pub. L. 94–222, § 3(d), Feb. 27, 1976, 90 Stat. 198.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–222 added subsec. (c).

PART E—CONSUMER LEASES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1604, 1632, 1640 of this title.

§ 1667. Definitions

For purposes of this part—

(1) The term ''consumer lease'' means a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding $25,000, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any credit sale as defined in section 1602(g) of this title. Such term does not include a lease for agricultural, business, or commercial purposes, or to a government or

governmental agency or instrumentality, or to an organization.

(2) The term ''lessee'' means a natural person who leases or is offered a consumer lease.

(3) The term ''lessor'' means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease.

(4) The term ''personal property'' means any property which is not real property under the laws of the State where situated at the time offered or otherwise made available for lease.

(5) The terms ''security'' and ''security interest'' mean any interest in property which secures payment or performance of an obligation.

(Pub. L. 90–321, title I, § 181, as added Pub. L. 94–240, § 3, Mar. 23, 1976, 90 Stat. 257.)

EFFECTIVE DATE

Section 6 of Pub. L. 94–240 provided that: ''This Act [enacting this section and sections 1667a to 1667e of this title, amending sections 1601 and 1640 of this title, and enacting provisions set out as a note under section 1601 of this title] takes effect one year after the date of its enactment [Mar. 23, 1976].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1631 of this title.

§ 1667a. Consumer lease disclosures

Each lessor shall give a lessee prior to the consummation of the lease a dated written statement on which the lessor and lessee are identified setting out accurately and in a clear and conspicuous manner the following information with respect to that lease, as applicable:

(1) A brief description or identification of the leased property;

(2) The amount of any payment by the lessee required at the inception of the lease;

(3) The amount paid or payable by the lessee for official fees, registration, certificate of title, or license fees or taxes;

(4) The amount of other charges payable by the lessee not included in the periodic payments, a description of the charges and that the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability;

(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time;

(6) A statement identifying all express warranties and guarantees made by the manufacturer or lessor with respect to the leased property, and identifying the party responsible for maintaining or servicing the leased property together with a description of the responsibility;

(7) A brief description of insurance provided or paid for by the lessor or required of the lessee, including the types and amounts of the coverages and costs;

(8) A description of any security interest held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates;

(9) The number, amount, and due dates or periods of payments under the lease and the total amount of such periodic payments;

(10) Where the lease provides that the lessee shall be liable for the anticipated fair market value of the property on expiration of the lease, the fair market value of the property at the inception of the lease, the aggregate cost of the lease on expiration, and the differential between them; and

(11) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the term and the amount or method of determining any penalty or other charge for delinquency, default, late payments, or early termination.

The disclosures required under this section may be made in the lease contract to be signed by the lessee. The Board may provide by regulation that any portion of the information required to be disclosed under this section may be given in the form of estimates where the lessor is not in a position to know exact information.

(Pub. L. 90–321, title I, § 182, as added Pub. L. 94–240, § 3, Mar. 23, 1976, 90 Stat. 258.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1667d of this title.

§ 1667b. Lessee's liability on expiration or termination of lease

(a) Estimated residual value of property as basis; presumptions; action by lessor for excess liability; mutually agreeable final adjustment

Where the lessee's liability on expiration of a consumer lease is based on the estimated residual value of the property such estimated residual value shall be a reasonable approximation of the anticipated actual fair market value of the property on lease expiration. There shall be a rebuttable presumption that the estimated residual value is unreasonable to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease. In addition, where the lessee has such liability on expiration of a consumer lease there shall be a rebuttable presumption that the lessor's estimated residual value is not in good faith to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease and such lessor shall not collect from the lessee the amount of such excess liability on expiration of a consumer lease unless the lessor brings a successful action with respect to such excess liability. In all actions, the lessor shall pay the lessee's reasonable attorney's fees. The presumptions stated in this section shall not apply to the extent the excess of estimated over actual residual value is due to physical damage to the property beyond reasonable wear and use, or to excessive use, and the lease may set standards for such wear and use if such standards are not unreasonable. Nothing in this subsection shall preclude the right of a willing lessee to make

any mutually agreeable final adjustment with respect to such excess residual liability, provided such an agreement is reached after termination of the lease.

(b) Penalties and charges for delinquency, default, or early termination

Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

(c) Independent professional appraisal of residual value of property at termination of lease; finality

If a lease has a residual value provision at the termination of the lease, the lessee may obtain at his expense, a professional appraisal of the leased property by an independent third party agreed to by both parties. Such appraisal shall be final and binding on the parties.

(Pub. L. 90–321, title I, § 183, as added Pub. L. 94–240, § 3, Mar. 23, 1976, 90 Stat. 259.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1667d of this title.

§ 1667c. Consumer lease advertising; liability of advertising media

(a) In general

If an advertisement for a consumer lease includes a statement of the amount of any payment or a statement that any or no initial payment is required, the advertisement shall clearly and conspicuously state, as applicable—

(1) the transaction advertised is a lease;

(2) the total amount of any initial payments required on or before consummation of the lease or delivery of the property, whichever is later;

(3) that a security deposit is required;

(4) the number, amount, and timing of scheduled payments; and

(5) with respect to a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term.

(b) Advertising medium not liable

No owner or employee of any entity that serves as a medium in which an advertisement appears or through which an advertisement is disseminated, shall be liable under this section.

(c) Radio advertisements

(1) In general

An advertisement by radio broadcast to aid, promote, or assist, directly or indirectly, any consumer lease shall be deemed to be in compliance with the requirements of subsection (a) of this section if such advertisement clearly and conspicuously—

(A) states the information required by paragraphs (1) and (2) of subsection (a) of this section;

(B) states the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease;

(C) includes—

(i) a referral to—

(I) a toll-free telephone number established in accordance with paragraph (2) that may be used by consumers to obtain the information required under subsection (a) of this section; or

(II) a written advertisement that—

(aa) appears in a publication in general circulation in the community served by the radio station on which such advertisement is broadcast during the period beginning 3 days before any such broadcast and ending 10 days after such broadcast; and

(bb) includes the information required to be disclosed under subsection (a) of this section; and

(ii) the name and dates of any publication referred to in clause (i)(II); and

(D) includes any other information which the Board determines necessary to carry out this part.

(2) Establishment of toll-free number

(A) In general

In the case of a radio broadcast advertisement described in paragraph (1) that includes a referral to a toll-free telephone number, the lessor who offers the consumer lease shall—

(i) establish such a toll-free telephone number not later than the date on which the advertisement including the referral is broadcast;

(ii) maintain such telephone number for a period of not less than 10 days, beginning on the date of any such broadcast; and

(iii) provide the information required under subsection (a) of this section with respect to the lease to any person who calls such number.

(B) Form of information

The information required to be provided under subparagraph (A)(iii) shall be provided verbally or, if requested by the consumer, in written form.

(3) No effect on other law

Nothing in this subsection shall affect the requirements of Federal law as such requirements apply to advertisement by any medium other than radio broadcast.

(Pub. L. 90–321, title I, § 184, as added Pub. L. 94–240, § 3, Mar. 23, 1976, 90 Stat. 259; amended Pub. L. 103–325, title III, § 336(a), Sept. 23, 1994, 108 Stat. 2234; Pub. L. 104–208, div. A, title II, § 2605(c), Sept. 30, 1996, 110 Stat. 3009–473.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, § 2605(c)(1), (3), added subsec. (a) and struck out former subsec. (a) consisting of introductory provisions and 5 pars. relating to contents of lease agreements required if consumer lease advertisement stated amount of payment, number of required payments, or that any or no payments were required at lease inception.

Subsec. (b). Pub. L. 104–208, § 2605(c)(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 104–208, § 2605(c)(1), (2), redesignated subsec. (b) as (c) and struck out former subsec. (c) which read as follows: ''There is no liability under this section on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.''

1994—Subsecs. (b), (c). Pub. L. 103–325 added subsec. (b) and redesignated former subsec. (b) as (c).

STUDY OF ADVERTISING RULES

Section 336(b) of Pub. L. 103–325 provided that: ''Not later than 365 days after the date of enactment of this Act [Sept. 23, 1994], the Board of Governors of the Federal Reserve System shall submit a report to the Congress on—

''(1) the current rules applicable to credit advertising;

''(2) how such rules could be modified to increase consumer benefit and decrease creditor costs; and

''(3) how such rules could be modified, if at all, for radio advertisements without diminishing consumer protection.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1667d of this title.

§ 1667d. Civil liability of lessors

(a) Grounds for maintenance of action

Any lessor who fails to comply with any requirement imposed under section 1667a or 1667b of this title with respect to any person is liable to such person as provided in section 1640 of this title.

(b) Additional grounds for maintenance of action; "creditor" defined

Any lessor who fails to comply with any requirement imposed under section 1667c of this title with respect to any person who suffers actual damage from the violation is liable to such person as provided in section 1640 of this title. For the purposes of this section, the term ''creditor'' as used in sections 1640 and 1641 of this title shall include a lessor as defined in this part.

(c) Jurisdiction of courts; time limitation

Notwithstanding section 1640(e) of this title, any action under this section may be brought in any United States district court or in any other court of competent jurisdiction. Such actions alleging a failure to disclose or otherwise comply with the requirements of this part shall be brought within one year of the termination of the lease agreement.

(Pub. L. 90–321, title I, § 185, as added Pub. L. 94–240, § 3, Mar. 23, 1976, 90 Stat. 260; amended Pub. L. 96–221, title VI, § 624, Mar. 31, 1980, 94 Stat. 185.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–221 struck out applicability of section 1614 of this title to term ''creditor''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

§ 1667e. Applicability of State laws; exemptions by Board from leasing requirements

(a) This part does not annul, alter, or affect, or exempt any person subject to the provisions of this part from complying with, the laws of any State with respect to consumer leases, except to the extent that those laws are inconsistent with any provision of this part, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this part if the Board determines that such law gives greater protection and benefit to the consumer.

(b) The Board shall by regulation exempt from the requirements of this part any class of lease transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this part or that such law gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement.

(Pub. L. 90–321, title I, § 186, as added Pub. L. 94–240, § 3, Mar. 23, 1976, 90 Stat. 260.)

§ 1667f. Regulations

(a) Regulations authorized

(1) In general

The Board shall prescribe regulations to update and clarify the requirements and definitions applicable to lease disclosures and contracts, and any other issues specifically related to consumer leasing, to the extent that the Board determines such action to be necessary—

(A) to carry out this part;

(B) to prevent any circumvention of this part; or

(C) to facilitate compliance with the requirements of the[1] part.

(2) Classifications, adjustments

Any regulations prescribed under paragraph (1) may contain classifications and differentiations, and may provide for adjustments and exceptions for any class of transactions, as the Board considers appropriate.

(b) Model disclosure

(1) Publication

The Board shall establish and publish model disclosure forms to facilitate compliance with the disclosure requirements of this part and to aid the consumer in understanding the transaction to which the subject disclosure form relates.

(2) Use of automated equipment

In establishing model forms under this subsection, the Board shall consider the use by lessors of data processing or similar automated equipment.

[1] So in original. Probably should be ''this''.

(3) Use optional

A lessor may utilize a model disclosure form established by the Board under this subsection for purposes of compliance with this part, at the discretion of the lessor.

(4) Effect of use

Any lessor who properly uses the material aspects of any model disclosure form established by the Board under this subsection shall be deemed to be in compliance with the disclosure requirements to which the form relates.

(Pub. L. 90–321, title I, § 187, as added Pub. L. 104–208, div. A, title II, § 2605(b)(1), Sept. 30, 1996, 110 Stat. 3009–471.)

EFFECTIVE DATE

Section 2605(b)(2) of div. A of Pub. L. 104–208 provided that:

''(A) IN GENERAL.—Any regulation of the Board, or any amendment or interpretation of any regulation of the Board issued pursuant to section 187 of the Truth in Lending Act [15 U.S.C. 1667f] (as added by paragraph (1) of this subsection), shall become effective on the first October 1 that follows the date of promulgation of that regulation, amendment, or interpretation by not less than 6 months.

''(B) LONGER PERIOD.—The Board may, at the discretion of the Board, extend the time period referred to in subparagraph (A) in accordance with subparagraph (C), to permit lessors to adjust their disclosure forms to accommodate the requirements of section 127 [187] of the Truth in Lending Act (as added by paragraph (1) of this subsection).

''(C) SHORTER PERIOD.—The Board may shorten the time period referred to in subparagraph (A), if the Board makes a specific finding that such action is necessary to comply with the findings of a court or to prevent an unfair or deceptive practice.

''(D) COMPLIANCE BEFORE EFFECTIVE DATE.—Any lessor may comply with any means of disclosure provided for in section 127 [187] of the Truth in Lending Act (as added by paragraph (1) of this subsection) before the effective date of such requirement.

''(E) DEFINITIONS.—For purposes of this subsection, the term 'lessor' has the same meaning as in section 181 of the Truth in Lending Act [15 U.S.C. 1667].''

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES

Section 2605(a) of div. A of Pub. L. 104–208 provided that:

''(1) FINDINGS.—The Congress finds that—

''(A) competition among the various financial institutions and other firms engaged in the business of consumer leasing is greatest when there is informed use of leasing;

''(B) the informed use of leasing results from an awareness of the cost of leasing by consumers; and

''(C) there has been a continued trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that leasing product advances have occurred such that lessors have been unable to provide consistent industry-wide disclosures to fully account for the competitive progress that has occurred.

''(2) PURPOSES.—The purposes of this section are—

''(A) to assure a simple, meaningful disclosure of leasing terms so that the consumer will be able to compare more readily the various leasing terms available to the consumer and avoid the uninformed use of leasing, and to protect the consumer against inaccurate and unfair leasing practices;

''(B) to provide for adequate cost disclosures that reflect the marketplace without impairing competition and the development of new leasing products; and

''(C) to provide the Board with the regulatory authority to assure a simplified, meaningful definition and disclosure of the terms of certain leases of personal property for personal, family, or household purposes so as to—

''(i) enable the lessee to compare more readily the various lease terms available to the lessee;

''(ii) enable comparison of lease terms with credit terms, as appropriate; and

''(iii) assure meaningful and accurate disclosures of lease terms in advertisements.''

SUBCHAPTER II—RESTRICTIONS ON GARNISHMENT

§ 1671. Congressional findings and declaration of purpose

(a) Disadvantages of garnishment

The Congress finds:

(1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.

(2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce.

(3) The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country.

(b) Necessity for regulation

On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of this subchapter are necessary and proper for the purpose of carrying into execution the powers of the Congress to regulate commerce and to establish uniform bankruptcy laws.

(Pub. L. 90–321, title III, § 301, May 29, 1968, 82 Stat. 163.)

REFERENCES IN TEXT

The bankruptcy laws, referred to in subsec. (b), are generally classified to Title 11 (§ 101 et seq.), Bankruptcy.

EFFECTIVE DATE

Section 504(c) of Pub. L. 90–321 provided that: ''Title III [enacting this section and sections 1672 to 1677 of this title] takes effect on July 1, 1970.''

§ 1672. Definitions

For the purposes of this subchapter:

(a) The term ''earnings'' means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) The term ''disposable earnings'' means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(c) The term ''garnishment'' means any legal or equitable procedure through which the earn-

ings of any individual are required to be withheld for payment of any debt.

(Pub. L. 90–321, title III, § 302, May 29, 1968, 82 Stat. 163.)

§ 1673. Restriction on garnishment

(a) Maximum allowable garnishment

Except as provided in subsection (b) of this section and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of title 29 in effect at the time the earnings are payable,

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) Exceptions

(1) The restrictions of subsection (a) of this section do not apply in the case of

(A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

(B) any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11.

(C) any debt due for any State or Federal tax.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed—

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

(c) Execution or enforcement of garnishment order or process prohibited

No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section.

(Pub. L. 90–321, title III, § 303, May 29, 1968, 82 Stat. 163; Pub. L. 95–30, title V, § 501(e)(1)–(3), May 23, 1977, 91 Stat. 161, 162; Pub. L. 95–598, title III, § 312(a), Nov. 6, 1978, 92 Stat. 2676.)

AMENDMENTS

1978—Subsec. (b)(1)(B). Pub. L. 95–598 substituted ''court of the United States having jurisdiction over cases under chapter 13 of title 11'' for ''court of bankruptcy under chapter XIII of the Bankruptcy Act''.

1977—Subsec. (b). Pub. L. 95–30, § 501(e)(1), (2), designated existing provisions as par. (1) and existing pars. (1), (2), and (3) as subpars. (A), (B), and (C) thereof, substituted ''for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review'' for ''of any court for the support of any person'' in subpar. (A) as so redesignated, and added par. (2).

Subsec. (c). Pub. L. 95–30, § 501(e)(3), inserted '', and no State (or officer or agency thereof),'' after ''or any State''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 501(e)(5) of Pub. L. 95–30 provided that: ''The amendments made by this subsection [amending this section and section 1675 of this title] shall take effect on the first day of the first calendar month which begins after the date of enactment of this Act [May 23, 1977].''

CROSS REFERENCES

Enforcement of legal obligations to provide child support and make alimony payments, see section 659 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1675 of this title; title 5 section 5520a; title 18 section 3613; title 28 sections 3002, 3003; title 29 section 1056; title 42 sections 665, 666, 1396g–1.

§ 1674. Restriction on discharge from employment by reason of garnishment

(a) Termination of employment

No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

(b) Penalties

Whoever willfully violates subsection (a) of this section shall be fined not more than $1,000, or imprisoned not more than one year, or both.

(Pub. L. 90–321, title III, § 304, May 29, 1968, 82 Stat. 163.)

§ 1675. Exemption for State-regulated garnishments

The Secretary of Labor may by regulation exempt from the provisions of section 1673(a) and (b)(2) of this title garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in section 1673(a) and (b)(2) of this title.

(Pub. L. 90–321, title III, § 305, May 29, 1968, 82 Stat. 164; Pub. L. 95–30, title V, § 501(e)(4), May 23, 1977, 91 Stat. 162.)

AMENDMENTS

1977—Pub. L. 95–30 substituted ''section 1673(a) and (b)(2) of this title'' for ''section 1673(a) of this title'' in two places.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1673 of this title.

§ 1676. Enforcement by Secretary of Labor

The Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor, shall enforce the provisions of this subchapter.

(Pub. L. 90–321, title III, § 306, May 29, 1968, 82 Stat. 164.)

§ 1677. Effect on State laws

This subchapter does not annul, alter, or affect, or exempt any person from complying with, the laws of any State

(1) prohibiting garnishments or providing for more limited garnishment than are allowed under this subchapter, or

(2) prohibiting the discharge of any employee by reason of the fact that his earnings have been subjected to garnishment for more than one indebtedness.

(Pub. L. 90–321, title III, § 307, May 29, 1968, 82 Stat. 164.)

SUBCHAPTER II–A—CREDIT REPAIR ORGANIZATIONS

§ 1679. Findings and purposes

(a) Findings

The Congress makes the following findings:

(1) Consumers have a vital interest in establishing and maintaining their credit worthiness[1] and credit standing in order to obtain and use credit. As a result, consumers who have experienced credit problems may seek assistance from credit repair organizations which offer to improve the credit standing of such consumers.

(2) Certain advertising and business practices of some companies engaged in the business of credit repair services have worked a financial hardship upon consumers, particularly those of limited economic means and who are inexperienced in credit matters.

(b) Purposes

The purposes of this subchapter are—

(1) to ensure that prospective buyers of the services of credit repair organizations are provided with the information necessary to make an informed decision regarding the purchase of such services; and

(2) to protect the public from unfair or deceptive advertising and business practices by credit repair organizations.

(Pub. L. 90–321, title IV, § 402, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–455.)

PRIOR PROVISIONS

A prior title IV of Pub. L. 90–321, May 29, 1968, 82 Stat. 164, as amended by Pub. L. 91–344, July 20, 1970, 84 Stat. 440; Pub. L. 92–321, June 30, 1972, 86 Stat. 382, which was set out as a note under section 1601 of this title, established a bipartisan National Commission on Consumer Finance to study the functioning and structure of the consumer finance industry as well as consumer credit transactions generally. The Commission was to submit a final report by Dec. 31, 1972, and was to cease to exist thereafter.

EFFECTIVE DATE OF SUBCHAPTER

Section 413 of title IV of Pub. L. 90–321, as added by Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–462, provided that: ''This title [enacting this subchapter] shall apply after the end of the 6-month period beginning on the date of the enactment of the Credit Repair Organizations Act [Sept. 30, 1996], except with respect to contracts entered into by a credit repair organization before the end of such period.''

§ 1679a. Definitions

For purposes of this subchapter, the following definitions apply:

(1) Consumer

The term ''consumer'' means an individual.

(2) Consumer credit transaction

The term ''consumer credit transaction'' means any transaction in which credit is offered or extended to an individual for personal, family, or household purposes.

(3) Credit repair organization

The term ''credit repair organization''—

(A) means any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of—

(i) improving any consumer's credit record, credit history, or credit rating; or

(ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i); and

(B) does not include—

(i) any nonprofit organization which is exempt from taxation under section 501(c)(3) of title 26;

(ii) any creditor (as defined in section 1602 of this title), with respect to any consumer, to the extent the creditor is assisting the consumer to restructure any debt owed by the consumer to the creditor; or

(iii) any depository institution (as that term is defined in section 1813 of title 12) or any Federal or State credit union (as those terms are defined in section 1752 of title 12), or any affiliate or subsidiary of such a depository institution or credit union.

(4) Credit

The term ''credit'' has the meaning given to such term in section 1602(e) of this title.

(Pub. L. 90–321, title IV, § 403, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–455.)

PRIOR PROVISIONS

For a prior section 403 of Pub. L. 90–321, see note set out under section 1679 of this title.

[1] So in original. Probably should be ''creditworthiness''.

§ 1679b. Prohibited practices

(a) In general

No person may—

(1) make any statement, or counsel or advise any consumer to make any statement, which is untrue or misleading (or which, upon the exercise of reasonable care, should be known by the credit repair organization, officer, employee, agent, or other person to be untrue or misleading) with respect to any consumer's credit worthiness,[1] credit standing, or credit capacity to—

(A) any consumer reporting agency (as defined in section 1681a(f) of this title); or

(B) any person—

(i) who has extended credit to the consumer; or

(ii) to whom the consumer has applied or is applying for an extension of credit;

(2) make any statement, or counsel or advise any consumer to make any statement, the intended effect of which is to alter the consumer's identification to prevent the display of the consumer's credit record, history, or rating for the purpose of concealing adverse information that is accurate and not obsolete to—

(A) any consumer reporting agency;

(B) any person—

(i) who has extended credit to the consumer; or

(ii) to whom the consumer has applied or is applying for an extension of credit;

(3) make or use any untrue or misleading representation of the services of the credit repair organization; or

(4) engage, directly or indirectly, in any act, practice, or course of business that constitutes or results in the commission of, or an attempt to commit, a fraud or deception on any person in connection with the offer or sale of the services of the credit repair organization.

(b) Payment in advance

No credit repair organization may charge or receive any money or other valuable consideration for the performance of any service which the credit repair organization has agreed to perform for any consumer before such service is fully performed.

(Pub. L. 90–321, title IV, § 404, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–456.)

PRIOR PROVISIONS

For a prior section 404 of Pub. L. 90–321, see note set out under section 1679 of this title.

§ 1679c. Disclosures

(a) Disclosure required

Any credit repair organization shall provide any consumer with the following written statement before any contract or agreement between the consumer and the credit repair organization is executed:

[1] So in original. Probably should be ''creditworthiness,''.

"Consumer Credit File Rights Under State and Federal Law

''You have a right to dispute inaccurate information in your credit report by contacting the credit bureau directly. However, neither you nor any 'credit repair' company or credit repair organization has the right to have accurate, current, and verifiable information removed from your credit report. The credit bureau must remove accurate, negative information from your report only if it is over 7 years old. Bankruptcy information can be reported for 10 years.

''You have a right to obtain a copy of your credit report from a credit bureau. You may be charged a reasonable fee. There is no fee, however, if you have been turned down for credit, employment, insurance, or a rental dwelling because of information in your credit report within the preceding 60 days. The credit bureau must provide someone to help you interpret the information in your credit file. You are entitled to receive a free copy of your credit report if you are unemployed and intend to apply for employment in the next 60 days, if you are a recipient of public welfare assistance, or if you have reason to believe that there is inaccurate information in your credit report due to fraud.

''You have a right to sue a credit repair organization that violates the Credit Repair Organization Act. This law prohibits deceptive practices by credit repair organizations.

''You have the right to cancel your contract with any credit repair organization for any reason within 3 business days from the date you signed it.

''Credit bureaus are required to follow reasonable procedures to ensure that the information they report is accurate. However, mistakes may occur.

''You may, on your own, notify a credit bureau in writing that you dispute the accuracy of information in your credit file. The credit bureau must then reinvestigate and modify or remove inaccurate or incomplete information. The credit bureau may not charge any fee for this service. Any pertinent information and copies of all documents you have concerning an error should be given to the credit bureau.

''If the credit bureau's reinvestigation does not resolve the dispute to your satisfaction, you may send a brief statement to the credit bureau, to be kept in your file, explaining why you think the record is inaccurate. The credit bureau must include a summary of your statement about disputed information with any report it issues about you.

''The Federal Trade Commission regulates credit bureaus and credit repair organizations. For more information contact:

''The Public Reference Branch
''Federal Trade Commission
''Washington, D.C. 20580''.

(b) Separate statement requirement

The written statement required under this section shall be provided as a document which is separate from any written contract or other agreement between the credit repair organization and the consumer or any other written material provided to the consumer.

(c) Retention of compliance records

(1) In general

The credit repair organization shall maintain a copy of the statement signed by the consumer acknowledging receipt of the statement.

(2) Maintenance for 2 years

The copy of any consumer's statement shall be maintained in the organization's files for 2 years after the date on which the statement is signed by the consumer.

(Pub. L. 90–321, title IV, § 405, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–457.)

REFERENCES IN TEXT

The Credit Repair Organization Act, referred to in subsec. (a), probably means the Credit Repair Organizations Act, Pub. L. 90–321, title IV, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–454, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

PRIOR PROVISIONS

For a prior section 405 of Pub. L. 90–321, see note set out under section 1679 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1679e of this title.

§ 1679d. Credit repair organizations contracts

(a) Written contracts required

No services may be provided by any credit repair organization for any consumer—

(1) unless a written and dated contract (for the purchase of such services) which meets the requirements of subsection (b) of this section has been signed by the consumer; or

(2) before the end of the 3-business-day period beginning on the date the contract is signed.

(b) Terms and conditions of contract

No contract referred to in subsection (a) of this section meets the requirements of this subsection unless such contract includes (in writing)—

(1) the terms and conditions of payment, including the total amount of all payments to be made by the consumer to the credit repair organization or to any other person;

(2) a full and detailed description of the services to be performed by the credit repair organization for the consumer, including—

(A) all guarantees of performance; and

(B) an estimate of—

(i) the date by which the performance of the services (to be performed by the credit repair organization or any other person) will be complete; or

(ii) the length of the period necessary to perform such services;

(3) the credit repair organization's name and principal business address; and

(4) a conspicuous statement in bold face type, in immediate proximity to the space reserved for the consumer's signature on the contract, which reads as follows: ''You may cancel this contract without penalty or obligation at any time before midnight of the 3rd business day after the date on which you signed the contract. See the attached notice of cancellation form for an explanation of this right.''.

(Pub. L. 90–321, title IV, § 406, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–458.)

PRIOR PROVISIONS

For a prior section 406 of Pub. L. 90–321, see note set out under section 1679 of this title.

§ 1679e. Right to cancel contract

(a) In general

Any consumer may cancel any contract with any credit repair organization without penalty or obligation by notifying the credit repair organization of the consumer's intention to do so at any time before midnight of the 3rd business day which begins after the date on which the contract or agreement between the consumer and the credit repair organization is executed or would, but for this subsection, become enforceable against the parties.

(b) Cancellation form and other information

Each contract shall be accompanied by a form, in duplicate, which has the heading ''Notice of Cancellation'' and contains in bold face type the following statement:

''You may cancel this contract, without any penalty or obligation, at any time before midnight of the 3rd day which begins after the date the contract is signed by you.

''To cancel this contract, mail or deliver a signed, dated copy of this cancellation notice, or any other written notice to [name of credit repair organization] at [address of credit repair organization] before midnight on [date]

''I hereby cancel this transaction,

[date]

[purchaser's signature].''.

(c) Consumer copy of contract required

Any consumer who enters into any contract with any credit repair organization shall be given, by the organization—

(1) a copy of the completed contract and the disclosure statement required under section 1679c of this title; and

(2) a copy of any other document the credit repair organization requires the consumer to sign,

at the time the contract or the other document is signed.

(Pub. L. 90–321, title IV, § 407, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–459.)

PRIOR PROVISIONS

For a prior section 407 of Pub. L. 90–321, see note set out under section 1679 of this title.

§ 1679f. Noncompliance with this subchapter

(a) Consumer waivers invalid

Any waiver by any consumer of any protection provided by or any right of the consumer under this subchapter—

(1) shall be treated as void; and

(2) may not be enforced by any Federal or State court or any other person.

(b) Attempt to obtain waiver

Any attempt by any person to obtain a waiver from any consumer of any protection provided by or any right of the consumer under this subchapter shall be treated as a violation of this subchapter.

(c) Contracts not in compliance

Any contract for services which does not comply with the applicable provisions of this subchapter—

(1) shall be treated as void; and

(2) may not be enforced by any Federal or State court or any other person.

(Pub. L. 90–321, title IV, § 408, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–459.)

§ 1679g. Civil liability

(a) Liability established

Any person who fails to comply with any provision of this subchapter with respect to any other person shall be liable to such person in an amount equal to the sum of the amounts determined under each of the following paragraphs:

(1) Actual damages

The greater of—

(A) the amount of any actual damage sustained by such person as a result of such failure; or

(B) any amount paid by the person to the credit repair organization.

(2) Punitive damages

(A) Individual actions

In the case of any action by an individual, such additional amount as the court may allow.

(B) Class actions

In the case of a class action, the sum of—

(i) the aggregate of the amount which the court may allow for each named plaintiff; and

(ii) the aggregate of the amount which the court may allow for each other class member, without regard to any minimum individual recovery.

(3) Attorneys' fees

In the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with reasonable attorneys' fees.

(b) Factors to be considered in awarding punitive damages

In determining the amount of any liability of any credit repair organization under subsection (a)(2) of this section, the court shall consider, among other relevant factors—

(1) the frequency and persistence of noncompliance by the credit repair organization;

(2) the nature of the noncompliance;

(3) the extent to which such noncompliance was intentional; and

(4) in the case of any class action, the number of consumers adversely affected.

(Pub. L. 90–321, title IV, § 409, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–459.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1679h of this title.

§ 1679h. Administrative enforcement

(a) In general

Compliance with the requirements imposed under this subchapter with respect to credit repair organizations shall be enforced under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] by the Federal Trade Commission.

(b) Violations of this subchapter treated as violations of Federal Trade Commission Act

(1) In general

For the purpose of the exercise by the Federal Trade Commission of the Commission's functions and powers under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], any violation of any requirement or prohibition imposed under this subchapter with respect to credit repair organizations shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act [15 U.S.C. 45(a)].

(2) Enforcement authority under other law

All functions and powers of the Federal Trade Commission under the Federal Trade Commission Act shall be available to the Commission to enforce compliance with this subchapter by any person subject to enforcement by the Federal Trade Commission pursuant to this subsection, including the power to enforce the provisions of this subchapter in the same manner as if the violation had been a violation of any Federal Trade Commission trade regulation rule, without regard to whether the credit repair organization—

(A) is engaged in commerce; or

(B) meets any other jurisdictional tests in the Federal Trade Commission Act.

(c) State action for violations

(1) Authority of States

In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this subchapter, the State—

(A) may bring an action to enjoin such violation;

(B) may bring an action on behalf of its residents to recover damages for which the person is liable to such residents under section 1679g of this title as a result of the violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

(2) Rights of Commission

(A) Notice to Commission

The State shall serve prior written notice of any civil action under paragraph (1) upon

the Federal Trade Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

(B) Intervention

The Commission shall have the right—

(i) to intervene in any action referred to in subparagraph (A);

(ii) upon so intervening, to be heard on all matters arising in the action; and

(iii) to file petitions for appeal.

(3) Investigatory powers

For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) Limitation

Whenever the Federal Trade Commission has instituted a civil action for violation of this subchapter, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of this subchapter that is alleged in that complaint.

(Pub. L. 90–321, title IV, § 410, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–460.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

§ 1679i. Statute of limitations

Any action to enforce any liability under this subchapter may be brought before the later of—

(1) the end of the 5-year period beginning on the date of the occurrence of the violation involved; or

(2) in any case in which any credit repair organization has materially and willfully misrepresented any information which—

(A) the credit repair organization is required, by any provision of this subchapter, to disclose to any consumer; and

(B) is material to the establishment of the credit repair organization's liability to the consumer under this subchapter,

the end of the 5-year period beginning on the date of the discovery by the consumer of the misrepresentation.

(Pub. L. 90–321, title IV, § 411, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–461.)

§ 1679j. Relation to State law

This subchapter shall not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with any law of any State except to the extent that such law is inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

(Pub. L. 90–321, title IV, § 412, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–462.)

SUBCHAPTER III—CREDIT REPORTING AGENCIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 18 section 1030; title 20 section 1080a; title 50 section 436.

§ 1681. Congressional findings and statement of purpose

(a) Accuracy and fairness of credit reporting

The Congress makes the following findings:

(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness,[1] credit standing, credit capacity, character, and general reputation of consumers.

(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

(b) Reasonable procedures

It is the purpose of this subchapter to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter.

(Pub. L. 90–321, title VI, § 602, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1128.)

EFFECTIVE DATE

Section 504(d) of Pub. L. 90–321, as added by Pub. L. 91–508, title VI, § 602, Oct. 26, 1970, 84 Stat. 1136, provided that: "Title VI [enacting this subchapter] takes effect upon the expiration of one hundred and eighty days following the date of its enactment [Oct. 26, 1970]."

SHORT TITLE

This subchapter known as the "Fair Credit Reporting Act", see Short Title note set out under section 1601 of this title.

[1] So in original. Probably should be "creditworthiness,".

§ 1681a. Definitions; rules of construction

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term ''person'' means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term ''consumer'' means an individual.

(d) CONSUMER REPORT.—

(1) IN GENERAL.—The term ''consumer report'' means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness,[1] credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for—

(A) credit or insurance to be used primarily for personal, family, or household purposes;

(B) employment purposes; or

(C) any other purpose authorized under section 1681b of this title.

(2) EXCLUSIONS.—The term ''consumer report'' does not include—

(A) any—

(i) report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) communication of that information among persons related by common ownership or affiliated by corporate control; or

(iii) any communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons;

(B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 1681m of this title; or

(D) a communication described in subsection (*o*) of this section.

(e) The term ''investigative consumer report'' means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(f) The term ''consumer reporting agency'' means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(g) The term ''file'', when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(h) The term ''employment purposes'' when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(i) The term ''medical information'' means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

(j) DEFINITIONS RELATING TO CHILD SUPPORT OBLIGATIONS.—

(1) OVERDUE SUPPORT.—The term ''overdue support'' has the meaning given to such term in section 666(e) of title 42.

(2) STATE OR LOCAL CHILD SUPPORT ENFORCEMENT AGENCY.—The term ''State or local child support enforcement agency'' means a State or local agency which administers a State or local program for establishing and enforcing child support obligations.

(k) ADVERSE ACTION.—

(1) ACTIONS INCLUDED.—The term ''adverse action''—

(A) has the same meaning as in section 1691(d)(6) of this title; and

(B) means—

(i) a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;

(ii) a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;

(iii) a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 1681b(a)(3)(D) of this title; and

[1] So in original. Probably should be ''creditworthiness,''.

(iv) an action taken or determination that is—

(I) made in connection with an application that was made by, or a transaction that was initiated by, any consumer, or in connection with a review of an account under section 1681b(a)(3)(F)(ii) of this title; and

(II) adverse to the interests of the consumer.

(2) APPLICABLE FINDINGS, DECISIONS, COMMENTARY, AND ORDERS.—For purposes of any determination of whether an action is an adverse action under paragraph (1)(A), all appropriate final findings, decisions, commentary, and orders issued under section 1691(d)(6) of this title by the Board of Governors of the Federal Reserve System or any court shall apply.

(*l*) FIRM OFFER OF CREDIT OR INSURANCE.—The term ''firm offer of credit or insurance'' means any offer of credit or insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned on one or more of the following:

(1) The consumer being determined, based on information in the consumer's application for the credit or insurance, to meet specific criteria bearing on credit worthiness[2] or insurability, as applicable, that are established—

(A) before selection of the consumer for the offer; and

(B) for the purpose of determining whether to extend credit or insurance pursuant to the offer.

(2) Verification—

(A) that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer's application for the credit or insurance, or other information bearing on the credit worthiness[2] or insurability of the consumer; or

(B) of the information in the consumer's application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on credit worthiness[2] or insurability.

(3) The consumer furnishing any collateral that is a requirement for the extension of the credit or insurance that was—

(A) established before selection of the consumer for the offer of credit or insurance; and

(B) disclosed to the consumer in the offer of credit or insurance.

(m) CREDIT OR INSURANCE TRANSACTION THAT IS NOT INITIATED BY THE CONSUMER.—The term ''credit or insurance transaction that is not initiated by the consumer'' does not include the use of a consumer report by a person with which the consumer has an account or insurance policy, for purposes of—

(1) reviewing the account or insurance policy; or

(2) collecting the account.

(n) STATE.—The term ''State'' means any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(*o*) EXCLUDED COMMUNICATIONS.—A communication is described in this subsection if it is a communication—

(1) that, but for subsection (d)(2)(E) of this section, would be an investigative consumer report;

(2) that is made to a prospective employer for the purpose of—

(A) procuring an employee for the employer; or

(B) procuring an opportunity for a natural person to work for the employer;

(3) that is made by a person who regularly performs such procurement;

(4) that is not used by any person for any purpose other than a purpose described in subparagraph (A) or (B) of paragraph (2); or

(5) with respect to which—

(A) the consumer who is the subject of the communication—

(i) consents orally or in writing to the nature and scope of the communication, before the collection of any information for the purpose of making the communication;

(ii) consents orally or in writing to the making of the communication to a prospective employer, before the making of the communication; and

(iii) in the case of consent under clause (i) or (ii) given orally, is provided written confirmation of that consent by the person making the communication, not later than 3 business days after the receipt of the consent by that person;

(B) the person who makes the communication does not, for the purpose of making the communication, make any inquiry that if made by a prospective employer of the consumer who is the subject of the communication would violate any applicable Federal or State equal employment opportunity law or regulation; and

(C) the person who makes the communication—

(i) discloses in writing to the consumer who is the subject of the communication, not later than 5 business days after receiving any request from the consumer for such disclosure, the nature and substance of all information in the consumer's file at the time of the request, except that the sources of any information that is acquired solely for use in making the communication and is actually used for no other purpose, need not be disclosed other than under appropriate discovery procedures in any court of competent jurisdiction in which an action is brought; and

(ii) notifies the consumer who is the subject of the communication, in writing, of the consumer's right to request the information described in clause (i).

[2] So in original. Probably should be ''creditworthiness''.

(p) CONSUMER REPORTING AGENCY THAT COMPILES AND MAINTAINS FILES ON CONSUMERS ON A NATIONWIDE BASIS.—The term ''consumer reporting agency that compiles and maintains files on consumers on a nationwide basis'' means a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness,[3] credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

(1) Public record information.

(2) Credit account information from persons who furnish that information regularly and in the ordinary course of business.

(Pub. L. 90–321, title VI, § 603, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1128; amended Pub. L. 102–537, § 2(b), Oct. 27, 1992, 106 Stat. 3531; Pub. L. 104–208, div. A, title II, § 2402, Sept. 30, 1996, 110 Stat. 3009–426.)

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–208, § 2402(e), inserted subsec. heading, designated existing provisions as par. (1) and inserted heading, redesignated cls. (1) to (3) as subpars. (A) to (C), respectively, added par. (2), and struck out at end ''The term does not include (A) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under section 1681m of this title.''

Subsec. (k). Pub. L. 104–208, § 2402(a), added subsec. (k).

Subsec. (*l*). Pub. L. 104–208, § 2402(b), added subsec. (*l*).

Subsec. (m). Pub. L. 104–208, § 2402(c), added subsec. (m).

Subsec. (n). Pub. L. 104–208, § 2402(d), added subsec. (n).

Subsec. (*o*). Pub. L. 104–208, § 2402(f), added subsec. (*o*).

Subsec. (p). Pub. L. 104–208, § 2402(g), added subsec. (p).

1992—Subsec. (j). Pub. L. 102–537 added subsec. (j).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 2420 of div. A of Pub. L. 104–208 provided that: ''(a) IN GENERAL.—Except as otherwise specifically provided in this chapter [chapter 1 (§§ 2401–2422) of subtitle D of title II of div. A of Pub. L. 104–208, see Short Title of 1996 Amendment note set out under section 1601 of this title], the amendments made by this chapter shall become effective 365 days after the date of enactment of this Act [Sept. 30, 1996].

''(b) EARLY COMPLIANCE.—Any person or other entity that is subject to the requirements of this chapter may, at its option, comply with any provision of this chapter before the date on which that provision becomes effective under this chapter, in which case, each of the corresponding provisions of this chapter shall be fully applicable to such person or entity.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 2(d) of Pub. L. 102–537 provided that: ''The amendments made by this section [enacting section 1681s–1 of this title and amending this section] shall take effect on January 1, 1993.''

[3] So in original. Probably should be ''creditworthiness,''.

CONSTRUCTION OF 1996 AMENDMENT

Section 2421 of div. A of Pub. L. 104–208 provided that: ''Nothing in this chapter [chapter 1 (§§ 2401–2422) of subtitle D of title II of div. A of Pub. L. 104–208, see Short Title of 1996 Amendment note set out under section 1601 of this title] or the amendments made by this chapter shall be considered to supersede or otherwise affect section 2721 of title 18, United States Code, with respect to motor vehicle records for surveys, marketing, or solicitations.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1679b, 1681m, 1681t, 1692d, 1692e of this title; title 12 section 2605; title 18 section 1030; title 26 sections 6103, 7609; title 31 sections 3701, 3711; title 38 section 5701; title 42 section 666; title 50 section 438.

§ 1681b. Permissible purposes of consumer reports

(a) In general

Subject to subsection (c) of this section, any consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe—

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or

(F) otherwise has a legitimate business need for the information—

(i) in connection with a business transaction that is initiated by the consumer; or

(ii) to review an account to determine whether the consumer continues to meet the terms of the account.

(4) In response to a request by the head of a State or local child support enforcement agency (or a State or local government official authorized by the head of such an agency), if the person making the request certifies to the consumer reporting agency that—

(A) the consumer report is needed for the purpose of establishing an individual's capacity to make child support payments or determining the appropriate level of such payments;

(B) the paternity of the consumer for the child to which the obligation relates has been established or acknowledged by the consumer in accordance with State laws under which the obligation arises (if required by those laws);

(C) the person has provided at least 10 days' prior notice to the consumer whose report is requested, by certified or registered mail to the last known address of the consumer, that the report will be requested; and

(D) the consumer report will be kept confidential, will be used solely for a purpose described in subparagraph (A), and will not be used in connection with any other civil, administrative, or criminal proceeding, or for any other purpose.

(5) To an agency administering a State plan under section 654 of title 42 for use to set an initial or modified child support award.

(b) Conditions for furnishing and using consumer reports for employment purposes

(1) Certification from user

A consumer reporting agency may furnish a consumer report for employment purposes only if—

(A) the person who obtains such report from the agency certifies to the agency that—

(i) the person has complied with paragraph (2) with respect to the consumer report, and the person will comply with paragraph (3) with respect to the consumer report if paragraph (3) becomes applicable; and

(ii) information from the consumer report will not be used in violation of any applicable Federal or State equal employment opportunity law or regulation; and

(B) the consumer reporting agency provides with the report a summary of the consumer's rights under this subchapter, as prescribed by the Federal Trade Commission under section 1681g(c)(3) of this title.

(2) Disclosure to consumer

A person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless—

(A) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and

(B) the consumer has authorized in writing the procurement of the report by that person.

(3) Conditions on use for adverse actions

In using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates—

(A) a copy of the report; and

(B) a description in writing of the rights of the consumer under this subchapter, as prescribed by the Federal Trade Commission under section 1681g(c)(3) of this title.

(4) Exception for national security investigations

(A) In general

In the case of an agency or department of the United States Government which seeks to obtain and use a consumer report for employment purposes, paragraph (3) shall not apply to any adverse action by such agency or department which is based in part on such consumer report, if the head of such agency or department makes a written finding that—

(i) the consumer report is relevant to a national security investigation of such agency or department;

(ii) the investigation is within the jurisdiction of such agency or department;

(iii) there is reason to believe that compliance with paragraph (3) will—

(I) endanger the life or physical safety of any person;

(II) result in flight from prosecution;

(III) result in the destruction of, or tampering with, evidence relevant to the investigation;

(IV) result in the intimidation of a potential witness relevant to the investigation;

(V) result in the compromise of classified information; or

(VI) otherwise seriously jeopardize or unduly delay the investigation or another official proceeding.

(B) Notification of consumer upon conclusion of investigation

Upon the conclusion of a national security investigation described in subparagraph (A), or upon the determination that the exception under subparagraph (A) is no longer required for the reasons set forth in such subparagraph, the official exercising the authority in such subparagraph shall provide to the consumer who is the subject of the consumer report with regard to which such finding was made—

(i) a copy of such consumer report with any classified information redacted as necessary;

(ii) notice of any adverse action which is based, in part, on the consumer report; and

(iii) the identification with reasonable specificity of the nature of the investigation for which the consumer report was sought.

(C) Delegation by head of agency or department

For purposes of subparagraphs (A) and (B), the head of any agency or department of the United States Government may delegate his or her authorities under this paragraph to an official of such agency or department who has personnel security responsibilities and is a member of the Senior Executive Service or equivalent civilian or military rank.

(D) Report to the Congress

Not later than January 31 of each year, the head of each agency and department of the

United States Government that exercised authority under this paragraph during the preceding year shall submit a report to the Congress on the number of times the department or agency exercised such authority during the year.

(E) Definitions

For purposes of this paragraph, the following definitions shall apply:

(i) Classified information

The term ''classified information'' means information that is protected from unauthorized disclosure under Executive Order No. 12958 or successor orders.

(ii) National security investigation

The term ''national security investigation'' means any official inquiry by an agency or department of the United States Government to determine the eligibility of a consumer to receive access or continued access to classified information or to determine whether classified information has been lost or compromised.

(c) Furnishing reports in connection with credit or insurance transactions that are not initiated by consumer

(1) In general

A consumer reporting agency may furnish a consumer report relating to any consumer pursuant to subparagraph (A) or (C) of subsection (a)(3) of this section in connection with any credit or insurance transaction that is not initiated by the consumer only if—

(A) the consumer authorizes the agency to provide such report to such person; or

(B)(i) the transaction consists of a firm offer of credit or insurance;

(ii) the consumer reporting agency has complied with subsection (e) of this section; and

(iii) there is not in effect an election by the consumer, made in accordance with subsection (e) of this section, to have the consumer's name and address excluded from lists of names provided by the agency pursuant to this paragraph.

(2) Limits on information received under paragraph (1)(B)

A person may receive pursuant to paragraph (1)(B) only—

(A) the name and address of a consumer;

(B) an identifier that is not unique to the consumer and that is used by the person solely for the purpose of verifying the identity of the consumer; and

(C) other information pertaining to a consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity.

(3) Information regarding inquiries

Except as provided in section 1681g(a)(5) of this title, a consumer reporting agency shall not furnish to any person a record of inquiries in connection with a credit or insurance transaction that is not initiated by a consumer.

(d) Reserved

(e) Election of consumer to be excluded from lists

(1) In general

A consumer may elect to have the consumer's name and address excluded from any list provided by a consumer reporting agency under subsection (c)(1)(B) of this section in connection with a credit or insurance transaction that is not initiated by the consumer, by notifying the agency in accordance with paragraph (2) that the consumer does not consent to any use of a consumer report relating to the consumer in connection with any credit or insurance transaction that is not initiated by the consumer.

(2) Manner of notification

A consumer shall notify a consumer reporting agency under paragraph (1)—

(A) through the notification system maintained by the agency under paragraph (5); or

(B) by submitting to the agency a signed notice of election form issued by the agency for purposes of this subparagraph.

(3) Response of agency after notification through system

Upon receipt of notification of the election of a consumer under paragraph (1) through the notification system maintained by the agency under paragraph (5), a consumer reporting agency shall—

(A) inform the consumer that the election is effective only for the 2-year period following the election if the consumer does not submit to the agency a signed notice of election form issued by the agency for purposes of paragraph (2)(B); and

(B) provide to the consumer a notice of election form, if requested by the consumer, not later than 5 business days after receipt of the notification of the election through the system established under paragraph (5), in the case of a request made at the time the consumer provides notification through the system.

(4) Effectiveness of election

An election of a consumer under paragraph (1)—

(A) shall be effective with respect to a consumer reporting agency beginning 5 business days after the date on which the consumer notifies the agency in accordance with paragraph (2);

(B) shall be effective with respect to a consumer reporting agency—

(i) subject to subparagraph (C), during the 2-year period beginning 5 business days after the date on which the consumer notifies the agency of the election, in the case of an election for which a consumer notifies the agency only in accordance with paragraph (2)(A); or

(ii) until the consumer notifies the agency under subparagraph (C), in the case of an election for which a consumer notifies the agency in accordance with paragraph (2)(B);

(C) shall not be effective after the date on which the consumer notifies the agency,

through the notification system established by the agency under paragraph (5), that the election is no longer effective; and

(D) shall be effective with respect to each affiliate of the agency.

(5) Notification system

(A) In general

Each consumer reporting agency that, under subsection (c)(1)(B) of this section, furnishes a consumer report in connection with a credit or insurance transaction that is not initiated by a consumer, shall—

(i) establish and maintain a notification system, including a toll-free telephone number, which permits any consumer whose consumer report is maintained by the agency to notify the agency, with appropriate identification, of the consumer's election to have the consumer's name and address excluded from any such list of names and addresses provided by the agency for such a transaction; and

(ii) publish by not later than 365 days after September 30, 1996, and not less than annually thereafter, in a publication of general circulation in the area served by the agency—

(I) a notification that information in consumer files maintained by the agency may be used in connection with such transactions; and

(II) the address and toll-free telephone number for consumers to use to notify the agency of the consumer's election under clause (i).

(B) Establishment and maintenance as compliance

Establishment and maintenance of a notification system (including a toll-free telephone number) and publication by a consumer reporting agency on the agency's own behalf and on behalf of any of its affiliates in accordance with this paragraph is deemed to be compliance with this paragraph by each of those affiliates.

(6) Notification system by agencies that operate nationwide

Each consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall establish and maintain a notification system for purposes of paragraph (5) jointly with other such consumer reporting agencies.

(f) Certain use or obtaining of information prohibited

A person shall not use or obtain a consumer report for any purpose unless—

(1) the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and

(2) the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification.

(g) Furnishing reports containing medical information

A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction or a direct marketing transaction, a consumer report that contains medical information about a consumer, unless the consumer consents to the furnishing of the report.

(Pub. L. 90–321, title VI, § 604, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1129; amended Pub. L. 101–73, title IX, § 964(c), Aug. 9, 1989, 103 Stat. 506; Pub. L. 104–193, title III, § 352, Aug. 22, 1996, 110 Stat. 2240; Pub. L. 104–208, div. A, title II, §§ 2403, 2404(a), (b), 2405, Sept. 30, 1996, 110 Stat. 3009–430, 3009–431, 3009–433, 3009–434; Pub. L. 105–107, title III, § 311(a), Nov. 20, 1997, 111 Stat. 2255.)

REFERENCES IN TEXT

Executive Order No. 12958, referred to in subsec. (b)(4)(E)(i), is Ex. Ord. No. 12958, Apr. 17, 1995, 60 F.R. 19825, as amended, which is set out under section 435 of Title 50, War and National Defense.

AMENDMENTS

1997—Subsec. (b)(4). Pub. L. 105–107 added par. (4).

1996—Pub. L. 104–208, §§ 2403(a), 2404(a)(1), designated existing provisions as subsec. (a) and inserted heading, substituted "Subject to subsection (c) of this section, any consumer reporting agency" for "A consumer reporting agency" in introductory provisions, added subpars. (E) and (F) of par. (3), and struck out former subpar. (E) of par. (3) which read as follows: "otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer."

Subsec. (b). Pub. L. 104–208, § 2403(b), added subsec. (b).

Subsecs. (c) to (e). Pub. L. 104–208, § 2404(a)(2), added subsecs. (c) to (e).

Subsec. (f). Pub. L. 104–208, § 2404(b), added subsec. (f).

Subsec. (g). Pub. L. 104–208, § 2405, added subsec. (g).

Pars. (4), (5). Pub. L. 104–193, § 352, added pars. (4) and (5).

1989—Par. (1). Pub. L. 101–73 inserted ", or a subpoena issued in connection with proceedings before a Federal grand jury" before period at end.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–107, title III, § 311(c), Nov. 20, 1997, 111 Stat. 2256, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 1681e of this title] shall take effect as if such amendments had been included in chapter 1 of subtitle D of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 [chapter 1 (§§ 2401–2422) of subtitle D of title II of div. A of Pub. L. 104–208], as of the date of the enactment of such Act [Sept. 30, 1996]."

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

For effective date of amendment by Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of Title 42, The Public Health and Welfare.

FTC GUIDELINES REGARDING PRESCREENING FOR INSURANCE TRANSACTIONS

Section 2404(c) of div. A of Pub. L. 104–208 provided that: "The Federal Trade Commission may issue such guidelines as it deems necessary with respect to the use of consumer reports in connection with insurance transactions that are not initiated by the consumer pursuant to section 604(c) of the Fair Credit Reporting Act [15 U.S.C. 1681b(c)], as added by subsection (a) of this section."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1681a, 1681e, 1681f, 1681m, 1681s–1, 1681t, 1681u, 1692d of this title; title 31 section 3711.

§ 1681c. Requirements relating to information contained in consumer reports

(a) Information excluded from consumer reports

Except as authorized under subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) cases[1] under title 11 or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.

(2) Suits and judgments which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

(5) Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years.

(6) Any other adverse item of information which antedates the report by more than seven years.

(b) Exempted cases

The provisions of subsection (a) of this section are not applicable in the case of any consumer credit report to be used in connection with—

(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of $150,000 or more;

(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of $150,000 or more; or

(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal $75,000, or more.

(c) Running of reporting period

(1) In general

The 7-year period referred to in paragraphs (4) and (6) of subsection (a) of this section shall begin, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charge to profit and loss, or similar action.

(2) Effective date

Paragraph (1) shall apply only to items of information added to the file of a consumer on or after the date that is 455 days after September 30, 1996.

(d) Information required to be disclosed

Any consumer reporting agency that furnishes a consumer report that contains information regarding any case involving the consumer that arises under title 11 shall include in the report an identification of the chapter of such title 11 under which such case arises if provided by the source of the information. If any case arising or filed under title 11 is withdrawn by the consumer before a final judgment, the consumer reporting agency shall include in the report that such case or filing was withdrawn upon receipt of documentation certifying such withdrawal.

(e) Indication of closure of account by consumer

If a consumer reporting agency is notified pursuant to section 1681s–2(a)(4) of this title that a credit account of a consumer was voluntarily closed by the consumer, the agency shall indicate that fact in any consumer report that includes information related to the account.

(f) Indication of dispute by consumer

If a consumer reporting agency is notified pursuant to section 1681s–2(a)(3) of this title that information regarding a consumer who[2] was furnished to the agency is disputed by the consumer, the agency shall indicate that fact in each consumer report that includes the disputed information.

(Pub. L. 90–321, title VI, § 605, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1129; amended Pub. L. 95–598, title III, § 312(b), Nov. 6, 1978, 92 Stat. 2676; Pub. L. 104–208, div. A, title II, § 2406(a)–(e)(1), Sept. 30, 1996, 110 Stat. 3009–434, 3009–435.)

REFERENCES IN TEXT

The Bankruptcy Act, referred to in subsec. (a)(1), was act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified to section 1 et seq. of former Title 11, Bankruptcy, prior to its repeal by Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2549, section 101 of which enacted revised Title 11.

AMENDMENTS

1996—Pub. L. 104–208, § 2406(e)(1), amended section catchline.

Subsec. (a). Pub. L. 104–208, § 2406(a)(1), inserted heading.

Subsec. (b). Pub. L. 104–208, § 2406(a)(2), substituted ''$150,000'' for ''$50,000'' in pars. (1) and (2) and ''$75,000'' for ''$20,000'' in par. (3).

Subsec. (c). Pub. L. 104–208, § 2406(b), added subsec. (c).

Subsec. (d). Pub. L. 104–208, § 2406(c), added subsec. (d).

Subsecs. (e), (f). Pub. L. 104–208, § 2406(d), added subsecs. (e) and (f).

1978—Subsec. (a)(1). Pub. L. 95–598 substituted ''cases under title 11 or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years'' for ''Bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen years''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effec-

[1] So in original. Probably should be capitalized.

[2] So in original. Probably should be ''which''.

tive Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1681e, 1681g, 1681t of this title; title 20 sections 1080a, 1087cc.

§ 1681d. Disclosure of investigative consumer reports

(a) Disclosure of fact of preparation

A person may not procure or cause to be prepared an investigative consumer report on any consumer unless—

(1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure (A) is made in a writing mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested, and (B) includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section and the written summary of the rights of the consumer prepared pursuant to section 1681g(c) of this title; and

(2) the person certifies or has certified to the consumer reporting agency that—

(A) the person has made the disclosures to the consumer required by paragraph (1); and

(B) the person will comply with subsection (b) of this section.

(b) Disclosure on request of nature and scope of investigation

Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a)(1) of this section, make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

(c) Limitation on liability upon showing of reasonable procedures for compliance with provisions

No person may be held liable for any violation of subsection (a) or (b) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (a) or (b) of this section.

(d) Prohibitions

(1) Certification

A consumer reporting agency shall not prepare or furnish an investigative consumer report unless the agency has received a certification under subsection (a)(2) of this section from the person who requested the report.

(2) Inquiries

A consumer reporting agency shall not make an inquiry for the purpose of preparing an investigative consumer report on a consumer for employment purposes if the making of the inquiry by an employer or prospective employer of the consumer would violate any applicable Federal or State equal employment opportunity law or regulation.

(3) Certain public record information

Except as otherwise provided in section 1681k of this title, a consumer reporting agency shall not furnish an investigative consumer report that includes information that is a matter of public record and that relates to an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment, unless the agency has verified the accuracy of the information during the 30-day period ending on the date on which the report is furnished.

(4) Certain adverse information

A consumer reporting agency shall not prepare or furnish an investigative consumer report on a consumer that contains information that is adverse to the interest of the consumer and that is obtained through a personal interview with a neighbor, friend, or associate of the consumer or with another person with whom the consumer is acquainted or who has knowledge of such item of information, unless—

(A) the agency has followed reasonable procedures to obtain confirmation of the information, from an additional source that has independent and direct knowledge of the information; or

(B) the person interviewed is the best possible source of the information.

(Pub. L. 90–321, title VI, § 606, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1130; amended Pub. L. 104–208, div. A, title II, §§ 2408(d)(2), 2414, Sept. 30, 1996, 110 Stat. 3009–438, 3009–449.)

AMENDMENTS

1996—Subsec. (a)(1)(B). Pub. L. 104–208, §§ 2408(d)(2), 2414(1), inserted ''and the written summary of the rights of the consumer prepared pursuant to section 1681g(c) of this title'' before the semicolon and substituted ''and'' for ''or'' at end.

Subsec. (a)(2). Pub. L. 104–208, § 2414(2), added par. (2) and struck out former par. (2) which read as follows: ''the report is to be used for employment purposes for which the consumer has not specifically applied.''

Subsec. (b). Pub. L. 104–208, § 2414(3), substituted '', make a complete'' for '', shall make a complete''.

Subsec. (d). Pub. L. 104–208, § 2414(4), added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

§ 1681e. Compliance procedures

(a) Identity and purposes of credit users

Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of section 1681c of this title and to limit the furnishing of consumer reports to the purposes listed under section 1681b of this title. These procedures shall require that prospective

users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 1681b of this title.

(b) Accuracy of report

Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

(c) Disclosure of consumer reports by users allowed

A consumer reporting agency may not prohibit a user of a consumer report furnished by the agency on a consumer from disclosing the contents of the report to the consumer, if adverse action against the consumer has been taken by the user based in whole or in part on the report.

(d) Notice to users and furnishers of information

(1) Notice requirement

A consumer reporting agency shall provide to any person—

(A) who regularly and in the ordinary course of business furnishes information to the agency with respect to any consumer; or

(B) to whom a consumer report is provided by the agency;

a notice of such person's responsibilities under this subchapter.

(2) Content of notice

The Federal Trade Commission shall prescribe the content of notices under paragraph (1), and a consumer reporting agency shall be in compliance with this subsection if it provides a notice under paragraph (1) that is substantially similar to the Federal Trade Commission prescription under this paragraph.

(e) Procurement of consumer report for resale

(1) Disclosure

A person may not procure a consumer report for purposes of reselling the report (or any information in the report) unless the person discloses to the consumer reporting agency that originally furnishes the report—

(A) the identity of the end-user of the report (or information); and

(B) each permissible purpose under section 1681b of this titlefor which the report is furnished to the end-user of the report (or information).

(2) Responsibilities of procurers for resale

A person who procures a consumer report for purposes of reselling the report (or any information in the report) shall—

(A) establish and comply with reasonable procedures designed to ensure that the report (or information) is resold by the person only for a purpose for which the report may be furnished under section 1681b of this title, including by requiring that each person to which the report (or information) is resold and that resells or provides the report (or information) to any other person—

(i) identifies each end user of the resold report (or information);

(ii) certifies each purpose for which the report (or information) will be used; and

(iii) certifies that the report (or information) will be used for no other purpose; and

(B) before reselling the report, make reasonable efforts to verify the identifications and certifications made under subparagraph (A).

(3) Resale of consumer report to a Federal agency or department

Notwithstanding paragraph (1) or (2), a person who procures a consumer report for purposes of reselling the report (or any information in the report) shall not disclose the identity of the end-user of the report under paragraph (1) or (2) if—

(A) the end user is an agency or department of the United States Government which procures the report from the person for purposes of determining the eligibility of the consumer concerned to receive access or continued access to classified information (as defined in section 1681b(b)(4)(E)(i) of this title); and

(B) the agency or department certifies in writing to the person reselling the report that nondisclosure is necessary to protect classified information or the safety of persons employed by or contracting with, or undergoing investigation for work or contracting with the agency or department.

(Pub. L. 90–321, title VI, § 607, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1130; amended Pub. L. 104–208, div. A, title II, § 2407, Sept. 30, 1996, 110 Stat. 3009–435; Pub. L. 105–107, title III, § 311(b), Nov. 20, 1997, 111 Stat. 2256.)

AMENDMENTS

1997—Subsec. (e)(3). Pub. L. 105–107 added par. (3).

1996—Subsecs. (c) to (e). Pub. L. 104–208 added subsecs. (c) to (e).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–107 effective as if included in chapter 1 of subtitle D of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. 104–208, as of Sept. 30, 1996, see section 311(c) of Pub. L. 105–107, set out as a note under section 1681b of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1681b, 1681g of this title.

§ 1681f. Disclosures to governmental agencies

Notwithstanding the provisions of section 1681b of this title, a consumer reporting agency

may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

(Pub. L. 90–321, title VI, § 608, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1131.)

§ 1681g. Disclosures to consumers

(a) Information on file; sources; report recipients

Every consumer reporting agency shall, upon request, and subject to section 1681h(a)(1) of this title, clearly and accurately disclose to the consumer:

(1) All information in the consumer's file at the time of the request, except that nothing in this paragraph shall be construed to require a consumer reporting agency to disclose to a consumer any information concerning credit scores or any other risk scores or predictors relating to the consumer.

(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: *Provided*, That in the event an action is brought under this subchapter, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

(3)(A) Identification of each person (including each end-user identified under section 1681e(e)(1) of this title) that procured a consumer report—

(i) for employment purposes, during the 2-year period preceding the date on which the request is made; or

(ii) for any other purpose, during the 1-year period preceding the date on which the request is made.

(B) An identification of a person under subparagraph (A) shall include—

(i) the name of the person or, if applicable, the trade name (written in full) under which such person conducts business; and

(ii) upon request of the consumer, the address and telephone number of the person.

(4) The dates, original payees, and amounts of any checks upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure.

(5) A record of all inquiries received by the agency during the 1-year period preceding the request that identified the consumer in connection with a credit or insurance transaction that was not initiated by the consumer.

(b) Exempt information

The requirements of subsection (a) of this section respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this subchapter except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

(c) Summary of rights required to be included with disclosure

(1) Summary of rights

A consumer reporting agency shall provide to a consumer, with each written disclosure by the agency to the consumer under this section—

(A) a written summary of all of the rights that the consumer has under this subchapter; and

(B) in the case of a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, a toll-free telephone number established by the agency, at which personnel are accessible to consumers during normal business hours.

(2) Specific items required to be included

The summary of rights required under paragraph (1) shall include—

(A) a brief description of this subchapter and all rights of consumers under this subchapter;

(B) an explanation of how the consumer may exercise the rights of the consumer under this subchapter;

(C) a list of all Federal agencies responsible for enforcing any provision of this subchapter and the address and any appropriate phone number of each such agency, in a form that will assist the consumer in selecting the appropriate agency;

(D) a statement that the consumer may have additional rights under State law and that the consumer may wish to contact a State or local consumer protection agency or a State attorney general to learn of those rights; and

(E) a statement that a consumer reporting agency is not required to remove accurate derogatory information from a consumer's file, unless the information is outdated under section 1681c of this title or cannot be verified.

(3) Form of summary of rights

For purposes of this subsection and any disclosure by a consumer reporting agency required under this subchapter with respect to consumers' rights, the Federal Trade Commission (after consultation with each Federal agency referred to in section 1681s(b) of this title) shall prescribe the form and content of any such disclosure of the rights of consumers required under this subchapter. A consumer reporting agency shall be in compliance with this subsection if it provides disclosures under paragraph (1) that are substantially similar to the Federal Trade Commission prescription under this paragraph.

(4) Effectiveness

No disclosures shall be required under this subsection until the date on which the Federal Trade Commission prescribes the form and content of such disclosures under paragraph (3).

(Pub. L. 90–321, title VI, § 609, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1131; amended Pub. L. 103–325, title III, § 339, Sept. 23, 1994, 108 Stat. 2237; Pub. L. 104–208, div. A, title II, § 2408(a)–(d)(1), (e)(5)(A), Sept. 30, 1996, 110 Stat. 3009–436, 3009–437, 3009–439.)

REFERENCES IN TEXT

For the effective date of this subchapter, referred to in subsec. (b), see section 504(d) of Pub. L. 90–321, set

out as an Effective Date note under section 1681 of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, §2408(e)(5)(A), in introductory provisions substituted ", and subject to section 1681h(a)(1) of this title" for "and proper identification of any consumer".

Subsec. (a)(1). Pub. L. 104–208, §2408(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The nature and substance of all information (except medical information) in its files on the consumer at the time of the request."

Subsec. (a)(3). Pub. L. 104–208, §2408(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The recipients of any consumer report on the consumer which it has furnished—

"(A) for employment purposes within the two-year period preceding the request, and

"(B) for any other purpose within the six-month period preceding the request."

Subsec. (a)(5). Pub. L. 104–208, §2408(c), added par. (5).

Subsec. (c). Pub. L. 104–208, §2408(d)(1), added subsec. (c).

1994—Subsec. (a)(4). Pub. L. 103–325 added par. (4).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

SIMPLIFIED DISCLOSURE TO MAXIMIZE COMPREHENSIBILITY AND STANDARDIZATION

Section 2408(e)(2), (3) of div. A of Pub. L. 104–208 provided that:

"(2) SIMPLIFIED DISCLOSURE.—Not later than 90 days after the date of enactment of this Act [Sept. 30, 1996], each consumer reporting agency shall develop a form on which such consumer reporting agency shall make the disclosures required under section 609(a) of the Fair Credit Reporting Act [15 U.S.C. 1681g(a)], for the purpose of maximizing the comprehensibility and standardization of such disclosures.

"(3) GOALS.—The Federal Trade Commission shall take appropriate action to assure that the goals of comprehensibility and standardization are achieved in accordance with paragraph (2)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1681b, 1681d, 1681h, 1681j, 1681t of this title.

§1681h. Conditions and form of disclosure to consumers

(a) In general

(1) Proper identification

A consumer reporting agency shall require, as a condition of making the disclosures required under section 1681g of this title, that the consumer furnish proper identification.

(2) Disclosure in writing

Except as provided in subsection (b) of this section, the disclosures required to be made under section 1681g of this title shall be provided under that section in writing.

(b) Other forms of disclosure

(1) In general

If authorized by a consumer, a consumer reporting agency may make the disclosures required under[1] 1681g of this title—

(A) other than in writing; and

(B) in such form as may be—

(i) specified by the consumer in accordance with paragraph (2); and

(ii) available from the agency.

(2) Form

A consumer may specify pursuant to paragraph (1) that disclosures under section 1681g of this title shall be made—

(A) in person, upon the appearance of the consumer at the place of business of the consumer reporting agency where disclosures are regularly provided, during normal business hours, and on reasonable notice;

(B) by telephone, if the consumer has made a written request for disclosure by telephone;

(C) by electronic means, if available from the agency; or

(D) by any other reasonable means that is available from the agency.

(c) Trained personnel

Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section 1681g of this title.

(d) Persons accompanying consumer

The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

(e) Limitation of liability

Except as provided in sections 1681n and 1681*o* of this title, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 1681g, 1681h, or 1681m of this title, or based on information disclosed by a user of a consumer report to or for a consumer against whom the user has taken adverse action, based in whole or in part on the report[2] except as to false information furnished with malice or willful intent to injure such consumer.

(Pub. L. 90–321, title VI, §610, as added Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1131; amended Pub. L. 104–208, div. A, title II, §2408(e)(1), (4), (5)(B), Sept. 30, 1996, 110 Stat. 3009–438, 3009–439.)

AMENDMENTS

1996—Pub. L. 104–208, §2408(e)(5)(B), inserted "and form" after "Conditions" in section catchline.

Subsec. (a). Pub. L. 104–208, §2408(e)(1), inserted heading and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "A consumer reporting agency shall make the disclosures required under section 1681g of this title during normal business hours and on reasonable notice."

[1] So in original. Probably should be followed by "section".

[2] So in original. Probably should be followed by a comma.

Subsec. (b). Pub. L. 104–208, § 2408(e)(1), inserted heading and amended text of subsec. (b) generally. Prior to amendment, text read as follows: ''The disclosures required under section 1681g of this title shall be made to the consumer—

''(1) in person if he appears in person and furnishes proper identification; or

''(2) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.''

Subsec. (e). Pub. L. 104–208, § 2408(e)(4), inserted ''or based on information disclosed by a user of a consumer report to or for a consumer against whom the user has taken adverse action, based in whole or in part on the report'' before ''except''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1681g of this title.

§ 1681i. Procedure in case of disputed accuracy

(a) Reinvestigations of disputed information

(1) Reinvestigation required

(A) In general

If the completeness or accuracy of any item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly of such dispute, the agency shall reinvestigate free of charge and record the current status of the disputed information, or delete the item from the file in accordance with paragraph (5), before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer.

(B) Extension of period to reinvestigate

Except as provided in subparagraph (C), the 30-day period described in subparagraph (A) may be extended for not more than 15 additional days if the consumer reporting agency receives information from the consumer during that 30-day period that is relevant to the reinvestigation.

(C) Limitations on extension of period to reinvestigate

Subparagraph (B) shall not apply to any reinvestigation in which, during the 30-day period described in subparagraph (A), the information that is the subject of the reinvestigation is found to be inaccurate or incomplete or the consumer reporting agency determines that the information cannot be verified.

(2) Prompt notice of dispute to furnisher of information

(A) In general

Before the expiration of the 5-business-day period beginning on the date on which a consumer reporting agency receives notice of a dispute from any consumer in accordance with paragraph (1), the agency shall provide notification of the dispute to any person who provided any item of information in dispute, at the address and in the manner established with the person. The notice shall include all relevant information regarding the dispute that the agency has received from the consumer.

(B) Provision of other information from consumer

The consumer reporting agency shall promptly provide to the person who provided the information in dispute all relevant information regarding the dispute that is received by the agency from the consumer after the period referred to in subparagraph (A) and before the end of the period referred to in paragraph (1)(A).

(3) Determination that dispute is frivolous or irrelevant

(A) In general

Notwithstanding paragraph (1), a consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under that paragraph if the agency reasonably determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure by a consumer to provide sufficient information to investigate the disputed information.

(B) Notice of determination

Upon making any determination in accordance with subparagraph (A) that a dispute is frivolous or irrelevant, a consumer reporting agency shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the agency.

(C) Contents of notice

A notice under subparagraph (B) shall include—

(i) the reasons for the determination under subparagraph (A); and

(ii) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

(4) Consideration of consumer information

In conducting any reinvestigation under paragraph (1) with respect to disputed information in the file of any consumer, the consumer reporting agency shall review and consider all relevant information submitted by the consumer in the period described in paragraph (1)(A) with respect to such disputed information.

(5) Treatment of inaccurate or unverifiable information

(A) In general

If, after any reinvestigation under paragraph (1) of any information disputed by a consumer, an item of the information is found to be inaccurate or incomplete or cannot be verified, the consumer reporting agency shall promptly delete that item of

information from the consumer's file or modify that item of information, as appropriate, based on the results of the reinvestigation.

(B) Requirements relating to reinsertion of previously deleted material

(i) Certification of accuracy of information

If any information is deleted from a consumer's file pursuant to subparagraph (A), the information may not be reinserted in the file by the consumer reporting agency unless the person who furnishes the information certifies that the information is complete and accurate.

(ii) Notice to consumer

If any information that has been deleted from a consumer's file pursuant to subparagraph (A) is reinserted in the file, the consumer reporting agency shall notify the consumer of the reinsertion in writing not later than 5 business days after the reinsertion or, if authorized by the consumer for that purpose, by any other means available to the agency.

(iii) Additional information

As part of, or in addition to, the notice under clause (ii), a consumer reporting agency shall provide to a consumer in writing not later than 5 business days after the date of the reinsertion—

(I) a statement that the disputed information has been reinserted;

(II) the business name and address of any furnisher of information contacted and the telephone number of such furnisher, if reasonably available, or of any furnisher of information that contacted the consumer reporting agency, in connection with the reinsertion of such information; and

(III) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the disputed information.

(C) Procedures to prevent reappearance

A consumer reporting agency shall maintain reasonable procedures designed to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that is deleted pursuant to this paragraph (other than information that is reinserted in accordance with subparagraph (B)(i)).

(D) Automated reinvestigation system

Any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall implement an automated system through which furnishers of information to that consumer reporting agency may report the results of a reinvestigation that finds incomplete or inaccurate information in a consumer's file to other such consumer reporting agencies.

(6) Notice of results of reinvestigation

(A) In general

A consumer reporting agency shall provide written notice to a consumer of the results of a reinvestigation under this subsection not later than 5 business days after the completion of the reinvestigation, by mail or, if authorized by the consumer for that purpose, by other means available to the agency.

(B) Contents

As part of, or in addition to, the notice under subparagraph (A), a consumer reporting agency shall provide to a consumer in writing before the expiration of the 5-day period referred to in subparagraph (A)—

(i) a statement that the reinvestigation is completed;

(ii) a consumer report that is based upon the consumer's file as that file is revised as a result of the reinvestigation;

(iii) a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the agency, including the business name and address of any furnisher of information contacted in connection with such information and the telephone number of such furnisher, if reasonably available;

(iv) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information; and

(v) a notice that the consumer has the right to request under subsection (d) of this section that the consumer reporting agency furnish notifications under that subsection.

(7) Description of reinvestigation procedure

A consumer reporting agency shall provide to a consumer a description referred to in paragraph (6)(B)(iv) by not later than 15 days after receiving a request from the consumer for that description.

(8) Expedited dispute resolution

If a dispute regarding an item of information in a consumer's file at a consumer reporting agency is resolved in accordance with paragraph (5)(A) by the deletion of the disputed information by not later than 3 business days after the date on which the agency receives notice of the dispute from the consumer in accordance with paragraph (1)(A), then the agency shall not be required to comply with paragraphs (2), (6), and (7) with respect to that dispute if the agency—

(A) provides prompt notice of the deletion to the consumer by telephone;

(B) includes in that notice, or in a written notice that accompanies a confirmation and consumer report provided in accordance with subparagraph (C), a statement of the consumer's right to request under subsection (d) of this section that the agency furnish notifications under that subsection; and

(C) provides written confirmation of the deletion and a copy of a consumer report on the consumer that is based on the consumer's file after the deletion, not later than 5 business days after making the deletion.

(b) Statement of dispute

If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

(c) Notification of consumer dispute in subsequent consumer reports

Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.

(d) Notification of deletion of disputed information

Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) of this section to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information.

(Pub. L. 90–321, title VI, § 611, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1132; amended Pub. L. 104–208, div. A, title II, § 2409, Sept. 30, 1996, 110 Stat. 3009–439.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, § 2409(a), inserted heading and amended text of subsec. (a) generally. Prior to amendment, text read as follows: ''If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete such information. The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for believing the dispute is frivolous or irrelevant.''

Subsec. (d). Pub. L. 104–208, § 2409(b), struck out at end ''The consumer reporting agency shall clearly and conspicuously disclose to the consumer his rights to make such a request. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1681j, 1681m, 1681s–2, 1681t of this title; title 20 section 1080a.

§ 1681j. Charges for certain disclosures

(a) Reasonable charges allowed for certain disclosures

(1) In general

Except as provided in subsections (b), (c), and (d) of this section, a consumer reporting agency may impose a reasonable charge on a consumer—

(A) for making a disclosure to the consumer pursuant to section 1681g of this title, which charge—

(i) shall not exceed $8; and

(ii) shall be indicated to the consumer before making the disclosure; and

(B) for furnishing, pursuant to section 1681i(d) of this title, following a reinvestigation under section 1681i(a) of this title, a statement, codification, or summary to a person designated by the consumer under that section after the 30-day period beginning on the date of notification of the consumer under paragraph (6) or (8) of section 1681i(a) of this title with respect to the reinvestigation, which charge—

(i) shall not exceed the charge that the agency would impose on each designated recipient for a consumer report; and

(ii) shall be indicated to the consumer before furnishing such information.

(2) Modification of amount

The Federal Trade Commission shall increase the amount referred to in paragraph (1)(A)(i) on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.

(b) Free disclosure after adverse notice to consumer

Each consumer reporting agency that maintains a file on a consumer shall make all disclosures pursuant to section 1681g of this title without charge to the consumer if, not later than 60 days after receipt by such consumer of a notification pursuant to section 1681m of this title, or of a notification from a debt collection agency affiliated with that consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 1681g of this title.

(c) Free disclosure under certain other circumstances

Upon the request of the consumer, a consumer reporting agency shall make all disclosures pursuant to section 1681g of this title once during any 12-month period without charge to that consumer if the consumer certifies in writing that the consumer—

(1) is unemployed and intends to apply for employment in the 60-day period beginning on the date on which the certification is made;

(2) is a recipient of public welfare assistance; or

(3) has reason to believe that the file on the consumer at the agency contains inaccurate information due to fraud.

(d) Other charges prohibited

A consumer reporting agency shall not impose any charge on a consumer for providing any notification required by this subchapter or making any disclosure required by this subchapter, except as authorized by subsection (a) of this section.

(Pub. L. 90–321, title VI, § 612, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1132; amended Pub. L. 104–208, div. A, title II, § 2410, Sept. 30, 1996, 110 Stat. 3009–442.)

AMENDMENTS

1996—Pub. L. 104–208 amended section generally. Prior to amendment, section read as follows: ''A consumer reporting agency shall make all disclosures pursuant to section 1681g of this title and furnish all consumer reports pursuant to section 1681i(d) of this title without charge to the consumer if, within thirty days after receipt by such consumer of a notification pursuant to section 1681m of this title or notification from a debt collection agency affiliated with such consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 1681g or 1681i(d) of this title. Otherwise, the consumer reporting agency may impose a reasonable charge on the consumer for making disclosure to such consumer pursuant to section 1681g of this title, the charge for which shall be indicated to the consumer prior to making disclosure; and for furnishing notifications, statements, summaries, or codifications to person designated by the consumer pursuant to section 1681i(d) of this title, the charge for which shall be indicated to the consumer prior to furnishing such information and shall not exceed the charge that the consumer reporting agency would impose on each designated recipient for a consumer report except that no charge may be made for notifying such persons of the deletion of information which is found to be inaccurate or which can no longer be verified.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1681m of this title.

§ 1681k. Public record information for employment purposes

A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall—

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

(Pub. L. 90–321, title VI, § 613, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1133.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1681d of this title.

§ 1681*l*. Restrictions on investigative consumer reports

Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished.

(Pub. L. 90–321, title VI, § 614, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1133.)

§ 1681m. Requirements on users of consumer reports

(a) Duties of users taking adverse actions on basis of information contained in consumer reports

If any person takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the person shall—

(1) provide oral, written, or electronic notice of the adverse action to the consumer;

(2) provide to the consumer orally, in writing, or electronically—

(A) the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; and

(B) a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and

(3) provide to the consumer an oral, written, or electronic notice of the consumer's right—

(A) to obtain, under section 1681j of this title, a free copy of a consumer report on the consumer from the consumer reporting agency referred to in paragraph (2), which notice shall include an indication of the 60-day period under that section for obtaining such a copy; and

(B) to dispute, under section 1681i of this title, with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

(b) Adverse action based on information obtained from third parties other than consumer reporting agencies

(1) In general

Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness,[1] credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(2) Duties of person taking certain actions based on information provided by affiliate

(A) Duties, generally

If a person takes an action described in subparagraph (B) with respect to a consumer, based in whole or in part on information described in subparagraph (C), the person shall—

(i) notify the consumer of the action, including a statement that the consumer may obtain the information in accordance with clause (ii); and

(ii) upon a written request from the consumer received within 60 days after transmittal of the notice required by clause (i), disclose to the consumer the nature of the information upon which the action is based by not later than 30 days after receipt of the request.

(B) Action described

An action referred to in subparagraph (A) is an adverse action described in section 1681a(k)(1)(A) of this title, taken in connection with a transaction initiated by the consumer, or any adverse action described in clause (i) or (ii) of section 1681a(k)(1)(B) of this title.

(C) Information described

Information referred to in subparagraph (A)—

(i) except as provided in clause (ii), is information that—

(I) is furnished to the person taking the action by a person related by common ownership or affiliated by common corporate control to the person taking the action; and

(II) bears on the credit worthiness,[2] credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living of the consumer; and

(ii) does not include—

(I) information solely as to transactions or experiences between the consumer and the person furnishing the information; or

(II) information in a consumer report.

(c) Reasonable procedures to assure compliance

No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of this section.

(d) Duties of users making written credit or insurance solicitations on basis of information contained in consumer files

(1) In general

Any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, that is provided to that person under section 1681b(c)(1)(B) of this title, shall provide with each written solicitation made to the consumer regarding the transaction a clear and conspicuous statement that—

(A) information contained in the consumer's consumer report was used in connection with the transaction;

(B) the consumer received the offer of credit or insurance because the consumer satisfied the criteria for credit worthiness[2] or insurability under which the consumer was selected for the offer;

(C) if applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness[2] or insurability or does not furnish any required collateral;

(D) the consumer has a right to prohibit information contained in the consumer's file with any consumer reporting agency from being used in connection with any credit or insurance transaction that is not initiated by the consumer; and

(E) the consumer may exercise the right referred to in subparagraph (D) by notifying a notification system established under section 1681b(e) of this title.

(2) Disclosure of address and telephone number

A statement under paragraph (1) shall include the address and toll-free telephone number of the appropriate notification system established under section 1681b(e) of this title.

(3) Maintaining criteria on file

A person who makes an offer of credit or insurance to a consumer under a credit or insurance transaction described in paragraph (1) shall maintain on file the criteria used to select the consumer to receive the offer, all criteria bearing on credit worthiness[2] or insurability, as applicable, that are the basis for determining whether or not to extend credit or insurance pursuant to the offer, and any re-

[1] So in original. Probably should be "creditworthiness,".

[2] So in original. Probably should be "creditworthiness," or "creditworthiness".

quirement for the furnishing of collateral as a condition of the extension of credit or insurance, until the expiration of the 3-year period beginning on the date on which the offer is made to the consumer.

(4) Authority of Federal agencies regarding unfair or deceptive acts or practices not affected

This section is not intended to affect the authority of any Federal or State agency to enforce a prohibition against unfair or deceptive acts or practices, including the making of false or misleading statements in connection with a credit or insurance transaction that is not initiated by the consumer.

(Pub. L. 90–321, title VI, § 615, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1133; amended Pub. L. 104–208, div. A, title II, § 2411, Sept. 30, 1996, 110 Stat. 3009–443.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, § 2411(a), inserted heading and amended text of subsec. (a) generally. Prior to amendment, text read as follows: ''Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.''

Subsec. (b). Pub. L. 104–208, § 2411(e), inserted subsec. heading, designated existing provisions as par. (1) and inserted heading, and added par. (2).

Subsec. (c). Pub. L. 104–208, § 2411(d), substituted ''this section'' for ''subsections (a) and (b) of this section''.

Subsec. (d). Pub. L. 104–208, § 2411(b), added subsec. (d).

Subsec. (e). Pub. L. 104–208, § 2411(c), added subsec. (e) which contained subsec. designation, but no heading or text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1681a, 1681h, 1681j, 1681s, 1681t of this title.

§ 1681n. Civil liability for willful noncompliance

(a) In general

Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1)(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000; or

(B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or $1,000, whichever is greater;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Civil liability for knowing noncompliance

Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, whichever is greater.

(c) Attorney's fees

Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

(Pub. L. 90–321, title VI, § 616, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1134; amended Pub. L. 104–208, div. A, title II, § 2412(a)–(c), (e)(1), Sept. 30, 1996, 110 Stat. 3009–446.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, § 2412(a), designated existing provisions as subsec. (a), inserted heading, and in introductory provisions substituted ''Any person who'' for ''Any consumer reporting agency or user of information which''.

Subsec. (a)(1). Pub. L. 104–208, § 2412(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''any actual damages sustained by the consumer as a result of the failure;''.

Subsec. (b). Pub. L. 104–208, § 2412(c), added subsec. (b).

Subsec. (c). Pub. L. 104–208, § 2412(e)(1), added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1681h, 1681n, 1681s–2 of this title.

§ 1681*o*. Civil liability for negligent noncompliance

(a) In general

Any person who is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure;

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Attorney's fees

On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work ex-

pended in responding to the pleading, motion, or other paper.

(Pub. L. 90–321, title VI, § 617, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1134; amended Pub. L. 104–208, div. A, title II, § 2412(d), (e)(2), Sept. 30, 1996, 110 Stat. 3009–446, 3009–447.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, § 2412(d), designated existing provisions as subsec. (a), inserted heading, and substituted ''Any person who'' for ''Any consumer reporting agency or user of information which''.

Subsec. (b). Pub. L. 104–208, § 2412(e)(2), added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1681h, 1681s, 1681s–2 of this title.

§ 1681p. Jurisdiction of courts; limitation of actions

An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this subchapter to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this subchapter, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

(Pub. L. 90–321, title VI, § 618, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.)

§ 1681q. Obtaining information under false pretenses

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under title 18, imprisoned for not more than 2 years, or both.

(Pub. L. 90–321, title VI, § 619, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1134; amended Pub. L. 104–208, div. A, title II, § 2415(a), Sept. 30, 1996, 110 Stat. 3009–450.)

AMENDMENTS

1996—Pub. L. 104–208 substituted ''fined under title 18, imprisoned for not more than 2 years, or both'' for ''fined not more than $5,000 or imprisoned not more than one year, or both''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

§ 1681r. Unauthorized disclosures by officers or employees

Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be fined under title 18, imprisoned for not more than 2 years, or both.

(Pub. L. 90–321, title VI, § 620, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1134; amended Pub. L. 104–208, div. A, title II, § 2415(b), Sept. 30, 1996, 110 Stat. 3009–450.)

AMENDMENTS

1996—Pub. L. 104–208 substituted ''fined under title 18, imprisoned for not more than 2 years, or both'' for ''fined not more than $5,000 or imprisoned not more than one year, or both''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

§ 1681s. Administrative enforcement

(a) Enforcement by Federal Trade Commission

(1) Compliance with the requirements imposed under this subchapter shall be enforced under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this subchapter shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act [15 U.S.C. 45(a)] and shall be subject to enforcement by the Federal Trade Commission under section 5(b) thereof [15 U.S.C. 45(b)] with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this subchapter and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act were part of this subchapter. Any person violating any of the provisions of this subchapter shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this subchapter.

(2)(A) In the event of a knowing violation, which constitutes a pattern or practice of viola-

tions of this subchapter, the Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this subchapter. In such action, such person shall be liable for a civil penalty of not more than $2,500 per violation.

(B) In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(3) Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 1681s–2(a)(1) of this title unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.

(4) Neither the Commission nor any other agency referred to in subsection (b) of this section may prescribe trade regulation rules or other regulations with respect to this subchapter.

(b) Enforcement by other agencies

Compliance with the requirements imposed under this subchapter with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to such agencies, and users of information that are subject to subsection (d) or (e) of section 1681m of this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a)[1] of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], by the Board of Governors of the Federal Reserve System; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(4) subtitle IV of title 49, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

(5) part A of subtitle VII of title 49, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part; and

(6) the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.] (except as provided in section 406 of that Act [7 U.S.C. 226, 227]), by the Secretary of Agriculture with respect to any activities subject to that Act.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(c) State action for violations

(1) Authority of States

In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this subchapter, the State—

(A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;

(B) subject to paragraph (5), may bring an action on behalf of the residents of the State to recover—

(i) damages for which the person is liable to such residents under sections 1681n and 1681*o* of this title as a result of the violation;

(ii) in the case of a violation of section 1681s–2(a) of this title, damages for which the person would, but for section 1681s–2(c) of this title, be liable to such residents as a result of the violation; or

(iii) damages of not more than $1,000 for each willful or negligent violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

(2) Rights of Federal regulators

The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) of this section and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right—

(A) to intervene in the action;

(B) upon so intervening, to be heard on all matters arising therein;

[1] See References in Text note below.

(C) to remove the action to the appropriate United States district court; and

(D) to file petitions for appeal.

(3) Investigatory powers

For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) Limitation on State action while Federal action pending

If the Federal Trade Commission or the appropriate Federal regulator has instituted a civil action or an administrative action under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] for a violation of this subchapter, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission or the appropriate Federal regulator for any violation of this subchapter that is alleged in that complaint.

(5) Limitations on State actions for violation of section 1681s–2(a)(1)

(A) Violation of injunction required

A State may not bring an action against a person under paragraph (1)(B) for a violation of section 1681s–2(a)(1) of this title, unless—

(i) the person has been enjoined from committing the violation, in an action brought by the State under paragraph (1)(A); and

(ii) the person has violated the injunction.

(B) Limitation on damages recoverable

In an action against a person under paragraph (1)(B) for a violation of section 1681s–2(a)(1) of this title, a State may not recover any damages incurred before the date of the violation of an injunction on which the action is based.

(d) Enforcement under other authority

For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter any other authority conferred on it by law. Notwithstanding the preceding, no agency referred to in subsection (b) of this section may conduct an examination of a bank, savings association, or credit union regarding compliance with the provisions of this subchapter, except in response to a complaint (or if the agency otherwise has knowledge) that the bank, savings association, or credit union has violated a provision of this subchapter, in which case, the agency may conduct an examination as necessary to investigate the complaint. If an agency determines during an investigation in response to a complaint that a violation of this subchapter has occurred, the agency may, during its next 2 regularly scheduled examinations of the bank, savings association, or credit union, examine for compliance with this subchapter.

(e) Interpretive authority

The Board of Governors of the Federal Reserve System may issue interpretations of any provision of this subchapter as such provision may apply to any persons identified under paragraph[2] (1), (2), and (3) of subsection (b) of this section, or to the holding companies and affiliates of such persons, in consultation with Federal agencies identified in paragraphs (1), (2), and (3) of subsection (b) of this section.

(Pub. L. 90–321, title VI, § 621, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1134; amended Pub. L. 98–443, § 9(n), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 101–73, title VII, § 744(*l*), Aug. 9, 1989, 103 Stat. 439; Pub. L. 102–242, title II, § 212(c), Dec. 19, 1991, 105 Stat. 2300; Pub. L. 102–550, title XVI, § 1604(a)(6), Oct. 28, 1992, 106 Stat. 4082; Pub. L. 104–88, title III, § 314, Dec. 29, 1995, 109 Stat. 948; Pub. L. 104–208, div. A, title II, §§ 2416–2418, Sept. 30, 1996, 110 Stat. 3009–450 to 3009–452.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

Section 25(a) of the Federal Reserve Act, referred to in subsec. (b)(1)(B), which is classified to subchapter II (§ 611 et seq.) of chapter 6 of Title 12, Banks and Banking, was renumbered section 25A of that act by Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§ 601 et seq.) of chapter 6 of Title 12.

The Federal Credit Union Act, referred to in subsec. (b)(3), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§ 1751 et seq.) of Title 12. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Packers and Stockyards Act, 1921, referred to in subsec. (b)(6), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, as amended, which is classified to chapter 9 (§ 181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

CODIFICATION

In subsec. (b)(4), ''subtitle IV of title 49'' substituted for ''the Acts to regulate commerce'' on authority of Pub. L. 95–473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

In subsec. (b)(5), ''part A of subtitle VII of title 49'' substituted for ''the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]'' and ''that part'' substituted for ''that Act'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49.

[2] So in original. Probably should be ''paragraphs''.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, § 2416(b)(1), which directed the amendment of subsec. (a) by inserting heading ''Enforcement by Federal Trade Commission'' before ''Compliance with the requirements'', was executed by making the insertion after ''(a)'', to reflect the probable intent of Congress and the amendment by Pub. L. 104–208, § 2416(a). See below.

Pub. L. 104–208, § 2416(a), inserted ''(1)'' after ''(a)'' and added pars. (2) to (4).

Subsec. (b). Pub. L. 104–208, § 2416(b)(2), inserted heading and in introductory provisions substituted ''Compliance with the requirements imposed under this subchapter with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to such agencies, and users of information that are subject to subsection (d) or (e) of section 1681m of this title shall be enforced under—'' for ''Compliance with the requirements imposed under this subchapter with respect to consumer reporting agencies and persons who use consumer reports from such agencies shall be enforced under—''.

Subsec. (c). Pub. L. 104–208, § 2417(2), added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 104–208, § 2416(c), inserted at end ''Notwithstanding the preceding, no agency referred to in subsection (b) of this section may conduct an examination of a bank, savings association, or credit union regarding compliance with the provisions of this subchapter, except in response to a complaint (or if the agency otherwise has knowledge) that the bank, savings association, or credit union has violated a provision of this subchapter, in which case, the agency may conduct an examination as necessary to investigate the complaint. If an agency determines during an investigation in response to a complaint that a violation of this subchapter has occurred, the agency may, during its next 2 regularly scheduled examinations of the bank, savings association, or credit union, examine for compliance with this subchapter.''

Subsec. (d). Pub. L. 104–208, § 2417(1), redesignated subsec. (c) as (d).

Subsec. (e). Pub. L. 104–208, § 2418, added subsec. (e).

1995—Subsec. (b)(4). Pub. L. 104–88 substituted ''Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board'' for ''Interstate Commerce Commission with respect to any common carrier subject to those Acts''.

1992—Subsec. (b)(1)(C). Pub. L. 102–550 substituted semicolon for period at end.

1991—Subsec. (b). Pub. L. 102–242, § 212(c)(2), inserted at end ''The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).''

Pub. L. 102–242, § 212(c)(1), added par. (1) and struck out former par. (1) which read as follows: ''section 8 of the Federal Deposit Insurance Act, in the case of:

''(A) national banks, by the Comptroller of the Currency;

''(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

''(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.''

1989—Subsec. (b)(2). Pub. L. 101–73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;''.

1984—Subsec. (b)(5). Pub. L. 98–443 substituted ''Secretary of Transportation'' for ''Civil Aeronautics Board''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1681g, 1681s–2 of this title.

§ 1681s–1. Information on overdue child support obligations

Notwithstanding any other provision of this subchapter, a consumer reporting agency shall include in any consumer report furnished by the agency in accordance with section 1681b of this title, any information on the failure of the consumer to pay overdue support which—

(1) is provided—

(A) to the consumer reporting agency by a State or local child support enforcement agency; or

(B) to the consumer reporting agency and verified by any local, State, or Federal Government agency; and

(2) antedates the report by 7 years or less.

(Pub. L. 90–321, title VI, § 622, as added Pub. L. 102–537, § 2(a), Oct. 27, 1992, 106 Stat. 3531.)

PRIOR PROVISIONS

A prior section 622 of Pub. L. 90–321 was renumbered section 624 and is classified to section 1681t of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1993, see section 2(d) of Pub. L. 102–537, set out as an Effective Date of 1992 Amendment note under section 1681a of this title.

§ 1681s–2. Responsibilities of furnishers of information to consumer reporting agencies

(a) Duty of furnishers of information to provide accurate information

(1) Prohibition

(A) Reporting information with actual knowledge of errors

A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or consciously avoids knowing that the information is inaccurate.

(B) Reporting information after notice and confirmation of errors

A person shall not furnish information relating to a consumer to any consumer reporting agency if—

(i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and

(ii) the information is, in fact, inaccurate.

(C) No address requirement

A person who clearly and conspicuously specifies to the consumer an address for notices referred to in subparagraph (B) shall not be subject to subparagraph (A); however, nothing in subparagraph (B) shall require a person to specify such an address.

(2) Duty to correct and update information

A person who—

(A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person's transactions or experiences with any consumer; and

(B) has furnished to a consumer reporting agency information that the person determines is not complete or accurate,

shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.

(3) Duty to provide notice of dispute

If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.

(4) Duty to provide notice of closed accounts

A person who regularly and in the ordinary course of business furnishes information to a consumer reporting agency regarding a consumer who has a credit account with that person shall notify the agency of the voluntary closure of the account by the consumer, in information regularly furnished for the period in which the account is closed.

(5) Duty to provide notice of delinquency of accounts

A person who furnishes information to a consumer reporting agency regarding a delinquent account being placed for collection, charged to profit or loss, or subjected to any similar action shall, not later than 90 days after furnishing the information, notify the agency of the month and year of the commencement of the delinquency that immediately preceded the action.

(b) Duties of furnishers of information upon notice of dispute

(1) In general

After receiving notice pursuant to section 1681i(a)(2) of this title of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall—

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 1681i(a)(2) of this title;

(C) report the results of the investigation to the consumer reporting agency; and

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis.

(2) Deadline

A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer reporting agency, before the expiration of the period under section 1681i(a)(1) of this title within which the consumer reporting agency is required to complete actions required by that section regarding that information.

(c) Limitation on liability

Sections 1681n and 1681*o* of this title do not apply to any failure to comply with subsection (a) of this section, except as provided in section 1681s(c)(1)(B) of this title.

(d) Limitation on enforcement

Subsection (a) of this section shall be enforced exclusively under section 1681s of this title by the Federal agencies and officials and the State officials identified in that section.

(Pub. L. 90–321, title VI, § 623, as added Pub. L. 104–208, div. A, title II, § 2413(a)(2), Sept. 30, 1996, 110 Stat. 3009–447.)

PRIOR PROVISIONS

A prior section 623 of Pub. L. 90–321 was renumbered section 624 and is classified to section 1681t of this title.

EFFECTIVE DATE

Section effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as an Effective Date of 1996 Amendment note under section 1681a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1681c, 1681s, 1681t of this title.

§ 1681t. Relation to State laws

(a) In general

Except as provided in subsections (b) and (c) of this section, this subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any infor-

mation on consumers, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

(b) General exceptions

No requirement or prohibition may be imposed under the laws of any State—

(1) with respect to any subject matter regulated under—

(A) subsection (c) or (e) of section 1681b of this title, relating to the prescreening of consumer reports;

(B) section 1681i of this title, relating to the time by which a consumer reporting agency must take any action, including the provision of notification to a consumer or other person, in any procedure related to the disputed accuracy of information in a consumer's file, except that this subparagraph shall not apply to any State law in effect on September 30, 1996;

(C) subsections (a) and (b) of section 1681m of this title, relating to the duties of a person who takes any adverse action with respect to a consumer;

(D) section 1681m(d) of this title, relating to the duties of persons who use a consumer report of a consumer in connection with any credit or insurance transaction that is not initiated by the consumer and that consists of a firm offer of credit or insurance;

(E) section 1681c of this title, relating to information contained in consumer reports, except that this subparagraph shall not apply to any State law in effect on September 30, 1996; or

(F) section 1681s–2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies, except that this paragraph shall not apply—

(i) with respect to section 54A(a) of chapter 93 of the Massachusetts Annotated Laws (as in effect on September 30, 1996); or

(ii) with respect to section 1785.25(a) of the California Civil Code (as in effect on September 30, 1996);

(2) with respect to the exchange of information among persons affiliated by common ownership or common corporate control, except that this paragraph shall not apply with respect to subsection (a) or (c)(1) of section 2480e of title 9, Vermont Statutes Annotated (as in effect on September 30, 1996); or

(3) with respect to the form and content of any disclosure required to be made under section 1681g(c) of this title.

(c) "Firm offer of credit or insurance" defined

Notwithstanding any definition of the term ''firm offer of credit or insurance'' (or any equivalent term) under the laws of any State, the definition of that term contained in section 1681a(*l*) of this title shall be construed to apply in the enforcement and interpretation of the laws of any State governing consumer reports.

(d) Limitations

Subsections (b) and (c) of this section—

(1) do not affect any settlement, agreement, or consent judgment between any State Attorney General and any consumer reporting agency in effect on September 30, 1996; and

(2) do not apply to any provision of State law (including any provision of a State constitution) that—

(A) is enacted after January 1, 2004;

(B) states explicitly that the provision is intended to supplement this subchapter; and

(C) gives greater protection to consumers than is provided under this subchapter.

(Pub. L. 90–321, title VI, § 624, formerly § 622, as added Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1136; renumbered § 623, Pub. L. 102–537, § 2(a), Oct. 27, 1992, 106 Stat. 3531; renumbered § 624 and amended Pub. L. 104–208, div. A, title II, §§ 2413(a)(1), 2419, Sept. 30, 1996, 110 Stat. 3009–447, 3009–452.)

CODIFICATION

Another section 624 of Pub. L. 90–321 is classified to section 1681u of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, § 2419(1), designated existing provisions as subsec. (a), inserted heading, and substituted ''Except as provided in subsections (b) and (c) of this section, this subchapter'' for ''This subchapter''.

Subsecs. (b) to (d). Pub. L. 104–208, § 2419(2), added subsecs. (b) to (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective 365 days after Sept. 30, 1996, with special rule for early compliance, see section 2420 of Pub. L. 104–208, set out as a note under section 1681a of this title.

§ 1681u. Disclosures to FBI for counterintelligence purposes

(a) Identity of financial institutions

Notwithstanding section 1681b of this title or any other provision of this subchapter, a consumer reporting agency shall furnish to the Federal Bureau of Investigation the names and addresses of all financial institutions (as that term is defined in section 3401 of title 12) at which a consumer maintains or has maintained an account, to the extent that information is in the files of the agency, when presented with a written request for that information, signed by the Director of the Federal Bureau of Investigation, or the Director's designee, which certifies compliance with this section. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing that—

(1) such information is necessary for the conduct of an authorized foreign counterintelligence investigation; and

(2) there are specific and articulable facts giving reason to believe that the consumer—

(A) is a foreign power (as defined in section 1801 of title 50) or a person who is not a United States person (as defined in such section 1801 of title 50) and is an official of a foreign power; or

(B) is an agent of a foreign power and is engaging or has engaged in an act of international terrorism (as that term is defined in section 1801(c) of title 50) or clandestine intelligence activities that involve or may

involve a violation of criminal statutes of the United States.

(b) Identifying information

Notwithstanding the provisions of section 1681b of this title or any other provision of this subchapter, a consumer reporting agency shall furnish identifying information respecting a consumer, limited to name, address, former addresses, places of employment, or former places of employment, to the Federal Bureau of Investigation when presented with a written request, signed by the Director or the Director's designee, which certifies compliance with this subsection. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing that—

(1) such information is necessary to the conduct of an authorized counterintelligence investigation; and

(2) there is information giving reason to believe that the consumer has been, or is about to be, in contact with a foreign power or an agent of a foreign power (as defined in section 1801 of title 50).

(c) Court order for disclosure of consumer reports

Notwithstanding section 1681b of this title or any other provision of this subchapter, if requested in writing by the Director of the Federal Bureau of Investigation, or a designee of the Director, a court may issue an order ex parte directing a consumer reporting agency to furnish a consumer report to the Federal Bureau of Investigation, upon a showing in camera that—

(1) the consumer report is necessary for the conduct of an authorized foreign counterintelligence investigation; and

(2) there are specific and articulable facts giving reason to believe that the consumer whose consumer report is sought—

(A) is an agent of a foreign power, and

(B) is engaging or has engaged in an act of international terrorism (as that term is defined in section 1801(c) of title 50) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

The terms of an order issued under this subsection shall not disclose that the order is issued for purposes of a counterintelligence investigation.

(d) Confidentiality

No consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall disclose to any person, other than those officers, employees, or agents of a consumer reporting agency necessary to fulfill the requirement to disclose information to the Federal Bureau of Investigation under this section, that the Federal Bureau of Investigation has sought or obtained the identity of financial institutions or a consumer report respecting any consumer under subsection (a), (b), or (c) of this section, and no consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall include in any consumer report any information that would indicate that the Federal Bureau of Investigation has sought or obtained such information or a consumer report.

(e) Payment of fees

The Federal Bureau of Investigation shall, subject to the availability of appropriations, pay to the consumer reporting agency assembling or providing report or information in accordance with procedures established under this section a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching, reproducing, or transporting books, papers, records, or other data required or requested to be produced under this section.

(f) Limit on dissemination

The Federal Bureau of Investigation may not disseminate information obtained pursuant to this section outside of the Federal Bureau of Investigation, except to other Federal agencies as may be necessary for the approval or conduct of a foreign counterintelligence investigation, or, where the information concerns a person subject to the Uniform Code of Military Justice, to appropriate investigative authorities within the military department concerned as may be necessary for the conduct of a joint foreign counterintelligence investigation.

(g) Rules of construction

Nothing in this section shall be construed to prohibit information from being furnished by the Federal Bureau of Investigation pursuant to a subpoena or court order, in connection with a judicial or administrative proceeding to enforce the provisions of this subchapter. Nothing in this section shall be construed to authorize or permit the withholding of information from the Congress.

(h) Reports to Congress

On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Select Committee on Intelligence and the Committee on Banking, Housing, and Urban Affairs of the Senate concerning all requests made pursuant to subsections (a), (b), and (c) of this section.

(i) Damages

Any agency or department of the United States obtaining or disclosing any consumer reports, records, or information contained therein in violation of this section is liable to the consumer to whom such consumer reports, records, or information relate in an amount equal to the sum of—

(1) $100, without regard to the volume of consumer reports, records, or information involved;

(2) any actual damages sustained by the consumer as a result of the disclosure;

(3) if the violation is found to have been willful or intentional, such punitive damages as a court may allow; and

(4) in the case of any successful action to enforce liability under this subsection, the costs of the action, together with reasonable attorney fees, as determined by the court.

(j) Disciplinary actions for violations

If a court determines that any agency or department of the United States has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation.

(k) Good-faith exception

Notwithstanding any other provision of this subchapter, any consumer reporting agency or agent or employee thereof making disclosure of consumer reports or identifying information pursuant to this subsection in good-faith reliance upon a certification of the Federal Bureau of Investigation pursuant to provisions of this section shall not be liable to any person for such disclosure under this subchapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

(*l*) Limitation of remedies

Notwithstanding any other provision of this subchapter, the remedies and sanctions set forth in this section shall be the only judicial remedies and sanctions for violation of this section.

(m) Injunctive relief

In addition to any other remedy contained in this section, injunctive relief shall be available to require compliance with the procedures of this section. In the event of any successful action under this subsection, costs together with reasonable attorney fees, as determined by the court, may be recovered.

(Pub. L. 90–321, title VI, § 624, as added Pub. L. 104–93, title VI, § 601(a), Jan. 6, 1996, 109 Stat. 974.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (g), was in the original, ''this Act'' and was translated as reading ''this title'', meaning title VI of Pub. L. 90–321, known as the Fair Credit Reporting Act, to reflect the probable intent of Congress.

CODIFICATION

Another section 624 of Pub. L. 90–321 is classified to section 1681t of this title.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

SUBCHAPTER IV—EQUAL CREDIT OPPORTUNITY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 12 sections 1708, 4545; title 42 section 3608.

§ 1691. Scope of prohibition

(a) Activities constituting discrimination

It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction—

(1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);

(2) because all or part of the applicant's income derives from any public assistance program; or

(3) because the applicant has in good faith exercised any right under this chapter.

(b) Activities not constituting discrimination

It shall not constitute discrimination for purposes of this subchapter for a creditor—

(1) to make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of credit-worthiness;[1]

(2) to make an inquiry of the applicant's age or of whether the applicant's income derives from any public assistance program if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of credit-worthiness[1] as provided in regulations of the Board;

(3) to use any empirically derived credit system which considers age if such system is demonstrably and statistically sound in accordance with regulations of the Board, except that in the operation of such system the age of an elderly applicant may not be assigned a negative factor or value; or

(4) to make an inquiry or to consider the age of an elderly applicant when the age of such applicant is to be used by the creditor in the extension of credit in favor of such applicant.

(c) Additional activities not constituting discrimination

It is not a violation of this section for a creditor to refuse to extend credit offered pursuant to—

(1) any credit assistance program expressly authorized by law for an economically disadvantaged class of persons;

(2) any credit assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons; or

(3) any special purpose credit program offered by a profit-making organization to meet special social needs which meets standards prescribed in regulations by the Board;

if such refusal is required by or made pursuant to such program.

(d) Reason for adverse action; procedure applicable; "adverse action" defined

(1) Within thirty days (or such longer reasonable time as specified in regulations of the Board for any class of credit transaction) after receipt of a completed application for credit, a

[1] So in original. Probably should not be hyphenated.

creditor shall notify the applicant of its action on the application.

(2) Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by—

(A) providing statements of reasons in writing as a matter of course to applicants against whom adverse action is taken; or

(B) giving written notification of adverse action which discloses (i) the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made within sixty days after such notification, and (ii) the identity of the person or office from which such statement may be obtained. Such statement may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

(3) A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken.

(4) Where a creditor has been requested by a third party to make a specific extension of credit directly or indirectly to an applicant, the notification and statement of reasons required by this subsection may be made directly by such creditor, or indirectly through the third party, provided in either case that the identity of the creditor is disclosed.

(5) The requirements of paragraph (2), (3), or (4) may be satisfied by verbal statements or notifications in the case of any creditor who did not act on more than one hundred and fifty applications during the calendar year preceding the calendar year in which the adverse action is taken, as determined under regulations of the Board.

(6) For purposes of this subsection, the term ''adverse action'' means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. Such term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.

(e) Appraisals; copies of reports to applicants; costs

Each creditor shall promptly furnish an applicant, upon written request by the applicant made within a reasonable period of time of the application, a copy of the appraisal report used in connection with the applicant's application for a loan that is or would have been secured by a lien on residential real property. The creditor may require the applicant to reimburse the creditor for the cost of the appraisal.

(Pub. L. 90–321, title VII, § 701, as added Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1521; amended Pub. L. 94–239, § 2, Mar. 23, 1976, 90 Stat. 251; Pub. L. 102–242, title II, § 223(d), Dec. 19, 1991, 105 Stat. 2306.)

AMENDMENTS

1991—Subsec. (e). Pub. L. 102–242 added subsec. (e).

1976—Subsec. (a). Pub. L. 94–239 designated existing provisions as cl. (1), expanded prohibition against discrimination to include race, color, religion, national origin and age, and added cls. (2) and (3).

Subsec. (b). Pub. L. 94–239 designated existing provisions as cl. (1) and added cls. (2) to (4).

Subsecs. (c), (d). Pub. L. 94–239 added subsecs. (c) and (d).

EFFECTIVE DATE

Section 708, formerly § 707, of title VII of Pub. L. 90–321, as added by Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1525, renumbered and amended by Pub. L. 94–239, §§ 7, 8, Mar. 23, 1976, 90 Stat. 255, provided that: ''This title [enacting this subchapter and provisions set out as notes under section 1691 of this title] takes effect upon the expiration of one year after the date of its enactment [Oct. 28, 1974]. The amendments made by the Equal Credit Opportunity Act Amendments of 1976 [enacting section 1691f of this title, amending this section and sections 1691b, 1691c, 1691d, and 1691e of this title, repealing section 1609 of this title, enacting provisions set out as notes under this section, and repealing provisions set out as a note under this section] shall take effect on the date of enactment thereof [Mar. 23, 1976] and shall apply to any violation occurring on or after such date, except that the amendments made to section 701 of the Equal Credit Opportunity Act [this section] shall take effect 12 months after the date of enactment [Mar. 23, 1976].''

SHORT TITLE

This subchapter known as the ''Equal Credit Opportunity Act'', see Short Title note set out under section 1601 of this title.

CONGRESSIONAL FINDINGS AND STATEMENT OF PURPOSE

Section 502 of Pub. L. 93–495 provided that: ''The Congress finds that there is a need to insure that the various financial institutions and other firms engaged in the extensions 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 [see Short Title note set out under section 1601 of this title] to require that financial institutions and other firms engaged in the extension of credit make that credit equally available to all credit-worthy customers without regard to sex or marital status.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1681a, 1691d, 1691e of this title.

§ 1691a. Definitions; rules of construction

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term ''applicant'' means any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.

(c) The term ''Board'' refers to the Board of Governors of the Federal Reserve System.

(d) The term ''credit'' means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.

(e) The term ''creditor'' means any person who regularly extends, renews, or continues credit;

any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.

(f) The term ''person'' means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(g) Any reference to any requirement imposed under this subchapter or any provision thereof includes reference to the regulations of the Board under this subchapter or the provision thereof in question.

(Pub. L. 90–321, title VII, § 702, as added Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1522.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1691d of this title.

§ 1691b. Promulgation of regulations by Board; establishment of Consumer Advisory Council by Board; duties, membership, etc., of Council

(a) Regulations

(1) The Board shall prescribe regulations to carry out the purposes of this subchapter. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith.

(2) Such regulations may exempt from the provisions of this subchapter any class of transactions that are not primarily for personal, family, or household purposes, or business or commercial loans made available by a financial institution, except that a particular type within a class of such transactions may be exempted if the Board determines, after making an express finding that the application of this subchapter or of any provision of this subchapter of such transaction would not contribute substantially to effecting the purposes of this subchapter.

(3) An exemption granted pursuant to paragraph (2) shall be for no longer than five years and shall be extended only if the Board makes a subsequent determination, in the manner described by such paragraph, that such exemption remains appropriate.

(4) Pursuant to Board regulations, entities making business or commercial loans shall maintain such records or other data relating to such loans as may be necessary to evidence compliance with this subsection or enforce any action pursuant to the authority of this chapter. In no event shall such records or data be maintained for a period of less than one year. The Board shall promulgate regulations to implement this paragraph in the manner prescribed by chapter 5 of title 5.

(5) The Board shall provide in regulations that an applicant for a business or commercial loan shall be provided a written notice of such applicant's right to receive a written statement of the reasons for the denial of such loan.

(b) Consumer Advisory Council

The Board shall establish a Consumer Advisory Council to advise and consult with it in the exercise of its functions under this chapter and to advise and consult with it concerning other consumer related matters it may place before the Council. In appointing the members of the Council, the Board shall seek to achieve a fair representation of the interests of creditors and consumers. The Council shall meet from time to time at the call of the Board. Members of the Council who are not regular full-time employees of the United States shall, while attending meetings of such Council, be entitled to receive compensation at a rate fixed by the Board, but not exceeding $100 per day, including travel time. Such members may be allowed travel expenses, including transportation and subsistence, while away from their homes or regular place of business.

(Pub. L. 90–321, title VII, § 703, as added Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1522; amended Pub. L. 94–239, § 3(a), Mar. 23, 1976, 90 Stat. 252; Pub. L. 100–533, title III, § 301, Oct. 25, 1988, 102 Stat. 2692.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–533 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Board shall prescribe regulations to carry out the purposes of this subchapter. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith. In particular, such regulations may exempt from one or more of the provisions of this subchapter any class of transactions not primarily for personal, family, or household purposes, if the Board makes an express finding that the application of such provision or provisions would not contribute substantially to carrying out the purposes of this subchapter. Such regulations shall be prescribed as soon as possible after the date of enactment of this Act, but in no event later than the effective date of this Act.''

1976—Pub. L. 94–239 designated existing provisions as subsec. (a), inserted provisions exempting from regulations of this subchapter any class of transactions not primarily for personal, family, or household purposes to be determined by the Board, and added subsec. (b).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–239 effective Mar. 23, 1976, see section 708 of Pub. L. 94–239, set out as an Effective Date note under section 1691 of this title.

§ 1691c. Administrative enforcement

(a) Enforcing agencies

Compliance with the requirements imposed under this subchapter shall be enforced under:

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agen-

cies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a)[1] of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) Section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.

(3) The Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal Credit Union.

(4) Subtitle IV of title 49, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board.

(5) Part A of subtitle VII of title 49, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part.

(6) The Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.] (except as provided in section 406 of that Act [7 U.S.C. 226, 227]), by the Secretary of Agriculture with respect to any activities subject to that Act.

(7) The Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.], by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, and production credit association;

(8) The Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by the Securities and Exchange Commission with respect to brokers and dealers; and

(9) The Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.], by the Small Business Administration, with respect to small business investment companies.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(b) Violations of subchapter deemed violations of preexisting statutory requirements; additional agency powers

For the purpose of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in that subsection may exercise for the purpose of enforcing compliance with any requirement imposed under this subchapter, any other authority conferred on it by law. The exercise of the authorities of any of the agencies referred to in subsection (a) of this section for the purpose of enforcing compliance with any requirement imposed under this subchapter shall in no way preclude the exercise of such authorities for the purpose of enforcing compliance with any other provision of law not relating to the prohibition of discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction.

(c) Overall enforcement authority of Federal Trade Commission

Except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under subsection (a) of this section, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce any Federal Reserve Board regulation promulgated under this subchapter in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(d) Rules and regulations by enforcing agencies

The authority of the Board to issue regulations under this subchapter does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this subchapter.

(Pub. L. 90–321, title VII, § 704, as added Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1522; amended Pub. L. 94–239, § 4, Mar. 23, 1976, 90 Stat. 253; Pub. L. 98–443, § 9(n), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 101–73, title VII, § 744(m), Aug. 9, 1989, 103 Stat. 439; Pub. L. 102–242, title II, § 212(d), Dec. 19, 1991, 105 Stat. 2300; Pub. L. 102–550, title XVI, § 1604(a)(7), Oct. 28, 1992, 106 Stat. 4082; Pub. L. 104–88, title III, § 315, Dec. 29, 1995, 109 Stat. 948.)

REFERENCES IN TEXT

Section 25(a) of the Federal Reserve Act, referred to in subsec. (a)(1)(B), which is classified to subchapter II (§ 611 et seq.) of chapter 6 of Title 12, Banks and Banking, was renumbered section 25A of that act by Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§ 601 et seq.) of chapter 6 of Title 12.

The Federal Credit Union Act, referred to in subsec. (a)(3), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14

[1] See References in Text note below.

(§ 1751 et seq.) of Title 12. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Packers and Stockyards Act, 1921, referred to in subsec. (a)(6), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, as amended, which is classified to chapter 9 (§ 181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in subsec. (a)(7), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, as amended, which is classified generally to chapter 23 (§ 2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (a)(8), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see Codification note set out under section 78a of this title and Tables.

The Small Business Investment Act of 1958, referred to in subsec. (a)(9), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

CODIFICATION

In subsec. (a)(4), ''Subtitle IV of title 49'' substituted for ''The Acts to regulate commerce'' on authority of Pub. L. 95–473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

In subsec. (a)(5), ''Part A of subtitle VII of title 49'' substituted for ''The Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]'' and ''that part'' substituted for ''that Act'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49.

AMENDMENTS

1995—Subsec. (a)(4). Pub. L. 104–88 substituted ''Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board'' for ''Interstate Commerce Commission with respect to any common carrier subject to those Acts''.

1992—Subsec. (a)(1)(C). Pub. L. 102–550 substituted semicolon for period at end.

1991—Subsec. (a). Pub. L. 102–242, § 212(d)(2), inserted at end ''The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).''

Pub. L. 102–242, § 212(d)(1), added par. (1) and struck out former par. (1) which read as follows: ''Section 8 of Federal Deposit Insurance Act, in the case of—

''(A) national banks, by the Comptroller of the Currency,

''(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board,

''(C) banks the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.''

1989—Subsec. (a)(2). Pub. L. 101–73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions.''

1984—Subsec. (a)(5). Pub. L. 98–443 substituted ''Secretary of Transportation'' for ''Civil Aeronautics Board''.

1976—Subsec. (c). Pub. L. 94–239 inserted provisions giving the Federal Trade Commission power to enforce any regulation of the Federal Reserve Board promulgated under this subchapter.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–239 effective Mar. 23, 1976, see section 708 of Pub. L. 90–321, set out as an Effective Date note under section 1691 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1691e, 1691f of this title; title 12 section 4545.

§ 1691c–1. Incentives for self-testing and self-correction

(a) Privileged information

(1) Conditions for privilege

A report or result of a self-test (as that term is defined by regulations of the Board) shall be considered to be privileged under paragraph (2) if a creditor—

(A) conducts, or authorizes an independent third party to conduct, a self-test of any aspect of a credit transaction by a creditor, in order to determine the level or effectiveness of compliance with this subchapter by the creditor; and

(B) has identified any possible violation of this subchapter by the creditor and has taken, or is taking, appropriate corrective action to address any such possible violation.

(2) Privileged self-test

If a creditor meets the conditions specified in subparagraphs (A) and (B) of paragraph (1) with respect to a self-test described in that paragraph, any report or results of that self-test—

(A) shall be privileged; and

(B) may not be obtained or used by any applicant, department, or agency in any—

(i) proceeding or civil action in which one or more violations of this subchapter are alleged; or

(ii) examination or investigation relating to compliance with this subchapter.

(b) Results of self-testing

(1) In general

No provision of this section may be construed to prevent an applicant, department, or agency from obtaining or using a report or results of any self-test in any proceeding or civil action in which a violation of this subchapter is alleged, or in any examination or investigation of compliance with this subchapter if—

(A) the creditor or any person with lawful access to the report or results—

(i) voluntarily releases or discloses all, or any part of, the report or results to the applicant, department, or agency, or to the general public; or

(ii) refers to or describes the report or results as a defense to charges of violations of this subchapter against the creditor to whom the self-test relates; or

(B) the report or results are sought in conjunction with an adjudication or admission of a violation of this subchapter for the sole purpose of determining an appropriate penalty or remedy.

(2) Disclosure for determination of penalty or remedy

Any report or results of a self-test that are disclosed for the purpose specified in paragraph (1)(B)—

(A) shall be used only for the particular proceeding in which the adjudication or admission referred to in paragraph (1)(B) is made; and

(B) may not be used in any other action or proceeding.

(c) Adjudication

An applicant, department, or agency that challenges a privilege asserted under this section may seek a determination of the existence and application of that privilege in—

(1) a court of competent jurisdiction; or

(2) an administrative law proceeding with appropriate jurisdiction.

(Pub. L. 90–321, title VII, § 704A, as added Pub. L. 104–208, div. A, title II, § 2302(a)(1), Sept. 30, 1996, 110 Stat. 3009–420.)

EFFECTIVE DATE

Section 2302(c) of div. A of Pub. L. 104–208 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the privilege provided for in section 704A of the Equal Credit Opportunity Act [15 U.S.C. 1691c–1] or section 814A of the Fair Housing Act [42 U.S.C. 3614–1] (as those sections are added by this section) shall apply to a self-test (as that term is defined pursuant to the regulations prescribed under subsection (a)(2) [set out below] or (b)(2) of this section [42 U.S.C. 3614–1 note], as appropriate) conducted before, on, or after the effective date of the regulations prescribed under subsection (a)(2) or (b)(2), as appropriate.

''(2) EXCEPTION.—The privilege referred to in paragraph (1) does not apply to such a self-test conducted before the effective date of the regulations prescribed under subsection (a) or (b), as appropriate, if—

''(A) before that effective date, a complaint against the creditor or person engaged in residential real estate related lending activities (as the case may be) was—

''(i) formally filed in any court of competent jurisdiction; or

''(ii) the subject of an ongoing administrative law proceeding;

''(B) in the case of section 704A of the Equal Credit Opportunity Act, the creditor has waived the privilege pursuant to subsection (b)(1)(A)(i) of that section; or

''(C) in the case of section 814A of the Fair Housing Act, the person engaged in residential real estate related lending activities has waived the privilege pursuant to subsection (b)(1)(A)(i) of that section.''

REGULATIONS

Section 2302(a)(2) of div. A of Pub. L. 104–208 provided that:

''(A) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [Sept. 30, 1996], in consultation with the Secretary of Housing and Urban Development and the agencies referred to in section 704 of the Equal Credit Opportunity Act [15 U.S.C. 1691c], and after providing notice and an opportunity for public comment, the Board shall prescribe final regulations to implement section 704A of the Equal Credit Opportunity Act [15 U.S.C. 1691c–1], as added by this section.

''(B) SELF-TEST.—

''(i) DEFINITION.—The regulations prescribed under subparagraph (A) shall include a definition of the term 'self-test' for purposes of section 704A of the Equal Credit Opportunity Act, as added by this section.

''(ii) REQUIREMENT FOR SELF-TEST.—The regulations prescribed under subparagraph (A) shall specify that a self-test shall be sufficiently extensive to constitute a determination of the level and effectiveness of compliance by a creditor with the Equal Credit Opportunity Act [15 U.S.C. 1691 et seq.].

''(iii) SUBSTANTIAL SIMILARITY TO CERTAIN FAIR HOUSING ACT REGULATIONS.—The regulations prescribed under subparagraph (A) shall be substantially similar to the regulations prescribed by the Secretary of Housing and Urban Development to carry out section 814A(d) of the Fair Housing Act [42 U.S.C. 3614–1(d)], as added by this section.''

§ 1691d. Applicability of other laws

(a) Requests for signature of husband and wife for creation of valid lien, etc.

A request for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or assigning earnings, shall not constitute discrimination under this subchapter: *Provided, however*, That this provision shall not be construed to permit a creditor to take sex or marital status into account in connection with the evaluation of creditworthiness of any applicant.

(b) State property laws affecting creditworthiness

Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this subchapter.

(c) State laws prohibiting separate extension of consumer credit to husband and wife

Any provision of State law which prohibits the separate extension of consumer credit to each party to a marriage shall not apply in any case where each party to a marriage voluntarily applies for separate credit from the same creditor: *Provided*, That in any case where such a State law is so preempted, each party to the marriage shall be solely responsible for the debt so contracted.

(d) Combining credit accounts of husband and wife with same creditor to determine permissible finance charges or loan ceilings under Federal or State laws

When each party to a marriage separately and voluntarily applies for and obtains separate credit accounts with the same creditor, those accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceilings under the laws of any State or of the United States.

(e) Election of remedies under subchapter or State law; nature of relief determining applicability

Where the same act or omission constitutes a violation of this subchapter and of applicable State law, a person aggrieved by such conduct may bring a legal action to recover monetary damages either under this subchapter or under such State law, but not both. This election of remedies shall not apply to court actions in which the relief sought does not include monetary damages or to administrative actions.

(f) Compliance with inconsistent State laws; determination of inconsistency

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with, the laws of any State with respect to credit discrimination, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this subchapter if the Board determines that such law gives greater protection to the applicant.

(g) Exemption by regulation of credit transactions covered by State law; failure to comply with State law

The Board shall by regulation exempt from the requirements of sections 1691 and 1691a of this title any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this subchapter or that such law gives greater protection to the applicant, and that there is adequate provision for enforcement. Failure to comply with any requirement of such State law in any transaction so exempted shall constitute a violation of this subchapter for the purposes of section 1691e of this title.

(Pub. L. 90–321, title VII, § 705, as added Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1523; amended Pub. L. 94–239, § 5, Mar. 23, 1976, 90 Stat. 253.)

AMENDMENTS

1976—Subsec. (e). Pub. L. 94–239, § 5(1), substituted provisions requiring an election of remedies in legal actions involving the recovery of monetary damages, for provisions specifying a general election of remedies.

Subsecs. (f), (g). Pub. L. 94–239, § 5(2), added subsecs. (f) and (g).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–239 effective Mar. 23, 1976, see section 708 of Pub. L. 90–321, set out as an Effective Date note under section 1691 of this title.

§ 1691e. Civil liability

(a) Individual or class action for actual damages

Any creditor who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class.

(b) Recovery of punitive damages in individual and class action for actual damages; exemptions; maximum amount of punitive damages in individual actions; limitation on total recovery in class actions; factors determining amount of award

Any creditor, other than a government or governmental subdivision or agency, who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for punitive damages in an amount not greater than $10,000, in addition to any actual damages provided in subsection (a) of this section, except that in the case of a class action the total recovery under this subsection shall not exceed the lesser of $500,000 or 1 per centum of the net worth of the creditor. In determining the amount of such damages in any action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(c) Action for equitable and declaratory relief

Upon application by an aggrieved applicant, the appropriate United States district court or any other court of competent jurisdiction may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under this subchapter.

(d) Recovery of costs and attorney fees

In the case of any successful action under subsection (a), (b), or (c) of this section, the costs of the action, together with a reasonable attorney's fee as determined by the court, shall be added to any damages awarded by the court under such subsection.

(e) Good faith compliance with rule, regulation, or interpretation of Board or interpretation or approval by an official or employee of Federal Reserve System duly authorized by Board

No provision of this subchapter imposing liability shall apply to any act done or omitted in good faith in conformity with any official rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regula-

tion, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(f) Jurisdiction of courts; time for maintenance of action; exceptions

Any action under this section may be brought in the appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction. No such action shall be brought later than two years from the date of the occurrence of the violation, except that—

(1) whenever any agency having responsibility for administrative enforcement under section 1691c of this title commences an enforcement proceeding within two years from the date of the occurrence of the violation,

(2) whenever the Attorney General commences a civil action under this section within two years from the date of the occurrence of the violation,

then any applicant who has been a victim of the discrimination which is the subject of such proceeding or civil action may bring an action under this section not later than one year after the commencement of that proceeding or action.

(g) Request by responsible enforcement agency to Attorney General for civil action

The agencies having responsibility for administrative enforcement under section 1691c of this title, if unable to obtain compliance with section 1691 of this title, are authorized to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted. Each agency referred to in paragraphs (1), (2), and (3) of section 1691c(a) of this title shall refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of section 1691(a) of this title. Each such agency may refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has violated section 1691(a) of this title.

(h) Authority for Attorney General to bring civil action; jurisdiction

When a matter is referred to the Attorney General pursuant to subsection (g) of this section, or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this subchapter, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including actual and punitive damages and injunctive relief.

(i) Recovery under both subchapter and fair housing enforcement provisions prohibited for violation based on same transaction

No person aggrieved by a violation of this subchapter and by a violation of section 3605 of title 42 shall recover under this subchapter and section 3612[1] of title 42, if such violation is based on the same transaction.

[1] See References in Text note below.

(j) Discovery of creditor's granting standards

Nothing in this subchapter shall be construed to prohibit the discovery of a creditor's credit granting standards under appropriate discovery procedures in the court or agency in which an action or proceeding is brought.

(k) Notice to HUD of violations

Whenever an agency referred to in paragraph (1), (2), or (3) of section 1691c(a) of this title—

(1) has reason to believe, as a result of receiving a consumer complaint, conducting a consumer compliance examination, or otherwise, that a violation of this subchapter has occurred;

(2) has reason to believe that the alleged violation would be a violation of the Fair Housing Act [42 U.S.C. 3601 et seq.]; and

(3) does not refer the matter to the Attorney General pursuant to subsection (g) of this section,

the agency shall notify the Secretary of Housing and Urban Development of the violation, and shall notify the applicant that the Secretary of Housing and Urban Development has been notified of the alleged violation and that remedies for the violation may be available under the Fair Housing Act.

(Pub. L. 90–321, title VII, § 706, as added Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1524; amended Pub. L. 94–239, § 6, Mar. 23, 1976, 90 Stat. 253; Pub. L. 102–242, title II, § 223(a)–(c), Dec. 19, 1991, 105 Stat. 2306.)

REFERENCES IN TEXT

Section 3612 of title 42, referred to in subsec. (i), which related to enforcement of the Fair Housing Act (42 U.S.C. 3601 et seq.) by private persons, was repealed by Pub. L. 100–430, § 8(2), Sept. 13, 1988, 102 Stat. 1625. See section 3613 of Title 42, The Public Health and Welfare.

The Fair Housing Act, referred to in subsec. (k), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42 and Tables.

AMENDMENTS

1991—Subsec. (g). Pub. L. 102–242, § 223(a), inserted at end "Each agency referred to in paragraphs (1), (2), and (3) of section 1691c(a) of this title shall refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of section 1691(a) of this title. Each such agency may refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has violated section 1691(a) of this title."

Subsec. (h). Pub. L. 102–242, § 223(b), inserted "actual and punitive damages and" after "be appropriate, including".

Subsec. (k). Pub. L. 102–242, § 223(c), added subsec. (k).

1976—Subsec. (a). Pub. L. 94–239 substituted reference to member for reference to representative.

Subsec. (b). Pub. L. 94–239 inserted provisions exempting government or governmental subdivision or agency from requirements of this subchapter, incorporated provisions contained in former subsec. (c) relating to recovery in class actions and, as incorporated, raised the total amount of recovery under a class action from $100,000 to $500,000.

Subsec. (c). Pub. L. 94–239 redesignated subsec. (d) as (c) and specified United States district court or other

court of competent jurisdiction as court in which to bring action, and substituted provisions authorizing such court to grant equitable and declaratory relief, for provisions authorizing civil actions for preventive relief. Provisions of former subsec. (c) were incorporated into present subsec. (b) and amended.

Subsec. (d). Pub. L. 94–239 redesignated subsec. (e) as (d) and made minor changes in phraseology. Former subsec. (d) redesignated (c) and amended.

Subsec. (e). Pub. L. 94–239 redesignated subsec. (f) as (e) and inserted reference to officially promulgated rule, regulation, or interpretation and provisions relating to approval and interpretations by an official or employee of the Federal Reserve System duly authorized by the Board. Former subsec. (e) redesignated (d) and amended.

Subsec. (f). Pub. L. 94–239 redesignated subsec. (g) as (f) and inserted provisions which substituted a two year limitation for one year limitation and provisions extending time in which to bring action under enumerated conditions. Former subsec. (f) redesignated (e) and amended.

Subsecs. (g) to (j). Pub. L. 94–239 added subsecs. (g) to (j). Former subsec. (g) redesignated (f) and amended.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–239 effective Mar. 23, 1976, see section 708 of Pub. L. 90–321, set out as an Effective Date note under section 1691 of this title.

§ 1691f. Annual reports to Congress; contents

Each year, the Board and the Attorney General shall, respectively, make reports to the Congress concerning the administration of their functions under this subchapter, including such recommendations as the Board and the Attorney General, respectively, deem necessary or appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with the requirements of this subchapter is being achieved, and a summary of the enforcement actions taken by each of the agencies assigned administrative enforcement responsibilities under section 1691c of this title.

(Pub. L. 90–321, title VII, § 707, as added Pub. L. 94–239, § 7, Mar. 23, 1976, 90 Stat. 255; amended Pub. L. 96–221, title VI, § 610(c), Mar. 31, 1980, 94 Stat. 174.)

AMENDMENTS

1980—Pub. L. 96–221 substituted ''Each year'' for ''Not later than February 1 of each year after 1976''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

EFFECTIVE DATE

Section effective Mar. 23, 1976, see section 708 of Pub. L. 90–321, set out as a note under section 1691 of this title.

SUBCHAPTER V—DEBT COLLECTION PRACTICES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 31 section 3718.

§ 1692. Congressional findings and declaration of purpose

(a) Abusive practices

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Inadequacy of laws

Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Available non-abusive collection methods

Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Interstate commerce

Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) Purposes

It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

(Pub. L. 90–321, title VIII, § 802, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 874.)

EFFECTIVE DATE

Section 818 of title VIII of Pub. L. 90–321, as added Pub. L. 95–109, provided that: ''This title [enacting this subchapter] takes effect upon the expiration of six months after the date of its enactment [Sept. 20, 1977], but section 809 [section 1692g of this title] shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date.''

SHORT TITLE

This subchapter known as the ''Fair Debt Collection Practices Act'', see Short Title note set out under section 1601 of this title.

§ 1692a. Definitions

As used in this subchapter—

(1) The term ''Commission'' means the Federal Trade Commission.

(2) The term ''communication'' means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term ''consumer'' means any natural person obligated or allegedly obligated to pay any debt.

(4) The term ''creditor'' means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term ''debt'' means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term ''debt collector'' means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term ''location information'' means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term ''State'' means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

(Pub. L. 90–321, title VIII, § 803, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 875; amended Pub. L. 99–361, July 9, 1986, 100 Stat. 768.)

AMENDMENTS

1986—Par. (6). Pub. L. 99–361 in provision preceding cl. (A) substituted ''clause (F)'' for ''clause (G)'', struck out cl. (F) which excluded any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client from term ''debt collector'', and redesignated cl. (G) as (F).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 31 section 3718.

§ 1692b. Acquisition of location information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

(Pub. L. 90–321, title VIII, § 804, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 876.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1692c, 1692d of this title.

§ 1692c. Communication in connection with debt collection

(a) Communication with the consumer generally

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

(1) at any unusual time or place or a time or place known or which should be known to be

inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) Communication with third parties

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) Ceasing communication

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

(1) to advise the consumer that the debt collector's further efforts are being terminated;

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) "Consumer" defined

For the purpose of this section, the term ''consumer'' includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

(Pub. L. 90–321, title VIII, § 805, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 876.)

§ 1692d. Harassment or abuse

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a(f) or 1681b(3)[1] of this title.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity.

(Pub. L. 90–321, title VIII, § 806, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 877.)

REFERENCES IN TEXT

Section 1681b(3) of this title, referred to in par. (3), was redesignated section 1681b(a)(3) of this title by Pub. L. 104–208, div. A, title II, § 2403(a)(1), Sept. 30, 1996, 110 Stat. 3009–430.

§ 1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this subchapter.

[1] See References in Text note below.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.

(Pub. L. 90–321, title VIII, § 807, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 877; amended Pub. L. 104–208, div. A, title II, § 2305(a), Sept. 30, 1996, 110 Stat. 3009–425.)

AMENDMENTS

1996—Par. (11). Pub. L. 104–208 amended par. (11) generally. Prior to amendment, par. (11) read as follows: ''Except as otherwise provided for communications to acquire location information under section 1692b of this title, the failure to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 2305(b) of div. A of Pub. L. 104–208 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect 90 days after the date of enactment of this Act [Sept. 30, 1996] and shall apply to all communications made after that date of enactment.''

§ 1692f. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

(Pub. L. 90–321, title VIII, § 808, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 879.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1692a of this title.

§ 1692g. Validation of debts

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

(c) Admission of liability

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(Pub. L. 90–321, title VIII, § 809, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 879.)

EFFECTIVE DATE

Section applicable only with respect to debts for which the initial attempt to collect occurs after the effective date of this subchapter, which takes effect upon the expiration of six months after Sept. 20, 1977, see section 818 of Pub. L. 90–321, set out as a note under section 1692 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 292f.

§ 1692h. Multiple debts

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

(Pub. L. 90–321, title VIII, § 810, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 880.)

§ 1692i. Legal actions by debt collectors

(a) Venue

Any debt collector who brings any legal action on a debt against any consumer shall—

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity—

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Authorization of actions

Nothing in this subchapter shall be construed to authorize the bringing of legal actions by debt collectors.

(Pub. L. 90–321, title VIII, § 811, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 880.)

§ 1692j. Furnishing certain deceptive forms

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 1692k of this title for failure to comply with a provision of this subchapter.

(Pub. L. 90–321, title VIII, § 812, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 880.)

§ 1692k. Civil liability

(a) Amount of damages

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure;

(2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) Factors considered by court

In determining the amount of liability in any action under subsection (a) of this section, the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A) of this section, the frequency and per-

sistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) Intent

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Jurisdiction

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) Advisory opinions of Commission

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(Pub. L. 90–321, title VIII, § 813, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 881.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1692j of this title.

§ 1692*l*. Administrative enforcement

(a) Federal Trade Commission

Compliance with this subchapter shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to another agency under subsection (b) of this section. For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], a violation of this subchapter shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this subchapter in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Applicable provisions of law

Compliance with any requirements imposed under this subchapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a)[1] of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], by the Board of Governors of the Federal Reserve System; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the National Credit Union Administration Board with respect to any Federal credit union;

(4) subtitle IV of title 49, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

(5) part A of subtitle VII of title 49, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that part; and

(6) the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.] (except as provided in section 406 of that Act [7 U.S.C. 226, 227]), by the Secretary of Agriculture with respect to any activities subject to that Act.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(c) Agency powers

For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any require-

[1] See References in Text note below.

ment imposed under this subchapter any other authority conferred on it by law, except as provided in subsection (d) of this section.

(d) Rules and regulations

Neither the Commission nor any other agency referred to in subsection (b) of this section may promulgate trade regulation rules or other regulations with respect to the collection of debts by debt collectors as defined in this subchapter.

(Pub. L. 90–321, title VIII, § 814, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 881; amended Pub. L. 95–630, title V, § 501, Nov. 10, 1978, 92 Stat. 3680; Pub. L. 98–443, § 9(n), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 101–73, title VII, § 744(n), Aug. 9, 1989, 103 Stat. 440; Pub. L. 102–242, title II, § 212(e), Dec. 19, 1991, 105 Stat. 2301; Pub. L. 102–550, title XVI, § 1604(a)(8), Oct. 28, 1992, 106 Stat. 4082; Pub. L. 104–88, title III, § 316, Dec. 29, 1995, 109 Stat. 949.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

Section 25(a) of the Federal Reserve Act, referred to in subsec. (b)(1)(B), which is classified to subchapter II (§ 611 et seq.) of chapter 6 of Title 12, Banks and Banking, was renumbered section 25A of that act by Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§ 601 et seq.) of chapter 6 of Title 12.

The Federal Credit Union Act, referred to in subsec. (b)(3), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§ 1751 et seq.) of Title 12. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Packers and Stockyards Act, 1921, referred to in subsec. (b)(6), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, as amended, which is classified generally to chapter 9 (§ 181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

CODIFICATION

In subsec. (b)(4), ''subtitle IV of title 49'' substituted for ''the Acts to regulate commerce'' on authority of Pub. L. 95–473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

In subsec. (b)(5), ''part A of subtitle VII of title 49'' substituted for ''the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]'' and ''that part'' substituted for ''that Act'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49.

AMENDMENTS

1995—Subsec. (b)(4). Pub. L. 104–88 substituted ''Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board'' for ''Interstate Commerce Commission with respect to any common carrier subject to those Acts''.

1992—Subsec. (b)(1)(C). Pub. L. 102–550 substituted semicolon for period at end.

1991—Subsec. (b). Pub. L. 102–242, § 212(e)(2), inserted at end ''The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).''

Pub. L. 102–242, § 212(e)(1), added par. (1) and struck out former par. (1) which read as follows: ''section 8 of Federal Deposit Insurance Act, in the case of—

''(A) national banks, by the Comptroller of the Currency;

''(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

''(C) banks the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;''.

1989—Subsec. (b)(2). Pub. L. 101–73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;''.

1984—Subsec. (b)(5). Pub. L. 98–443 substituted ''Secretary of Transportation'' for ''Civil Aeronautics Board''.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

''National Credit Union Administration Board'' substituted for ''Administrator of the National Credit Union Administration'' in subsec. (b)(3) pursuant to section 501 of Pub. L. 95–630 [12 U.S.C. 1752a] which vested authority for management of National Credit Union Administration in National Credit Union Administration Board.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1692m of this title.

§ 1692m. Reports to Congress by the Commission; views of other Federal agencies

(a) Not later than one year after the effective date of this subchapter and at one-year intervals thereafter, the Commission shall make reports to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Commission deems necessary or appropriate. In addition, each report of the Commission shall include its assessment of the extent to which compliance with this subchapter is being achieved and a summary of the enforcement actions taken by the Commission under section 1692*l* of this title.

(b) In the exercise of its functions under this subchapter, the Commission may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 1692*l* of this title.

(Pub. L. 90–321, title VIII, § 815, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 882.)

REFERENCES IN TEXT

The effective date of this subchapter, referred to in subsec. (a), is the date occurring on expiration of six months after Sept. 20, 1977. See section 818 of Pub. L. 90–321, set out as an Effective Date note under section 1692 of this title.

§ 1692n. Relation to State laws

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

(Pub. L. 90–321, title VIII, § 816, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 883.)

§ 1692*o*. Exemption for State regulation

The Commission shall by regulation exempt from the requirements of this subchapter any class of debt collection practices within any State if the Commission determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.

(Pub. L. 90–321, title VIII, § 817, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 883.)

SUBCHAPTER VI—ELECTRONIC FUND TRANSFERS

§ 1693. Congressional findings and declaration of purpose

(a) Rights and liabilities undefined

The Congress finds that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers. However, due to the unique characteristics of such systems, the application of existing consumer protection legislation is unclear, leaving the rights and liabilities of consumers, financial institutions, and intermediaries in electronic fund transfers undefined.

(b) Purposes

It is the purpose of this subchapter to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of this subchapter, however, is the provision of individual consumer rights.

(Pub. L. 90–321, title IX, § 902, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3728.)

EFFECTIVE DATE

Section 921 of title IX of Pub. L. 90–321, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3741, provided that: ''This title [enacting this subchapter] takes effect upon the expiration of eighteen months from the date of its enactment [Nov. 10, 1978] except that sections 909 and 911 [sections 1693g, 1693i of this title] take effect upon the expiration of ninety days after the date of enactment.''

SHORT TITLE

This subchapter known as the ''Electronic Fund Transfer Act'', see Short Title note set out under section 1601 of this title.

§ 1693a. Definitions

As used in this subchapter—

(1) the term ''accepted card or other means of access'' means a card, code, or other means of access to a consumer's account for the purpose of initiating electronic fund transfers when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

(2) the term ''account'' means a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan as defined in section 1602(i) of this title), as described in regulations of the Board, established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a bona fide trust agreement;

(3) the term ''Board'' means the Board of Governors of the Federal Reserve System;

(4) the term ''business day'' means any day on which the offices of the consumer's financial institution involved in an electronic fund transfer are open to the public for carrying on substantially all of its business functions;

(5) the term ''consumer'' means a natural person;

(6) the term ''electronic fund transfer'' means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include—

(A) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer's account:

(B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer;

(C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;

(D) any automatic transfer from a savings account to a demand deposit account pursu-

ant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer's demand deposit account; or

(E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated;

as determined under regulations of the Board;

(7) the term ''electronic terminal'' means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. Such term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines;

(8) the term ''financial institution'' means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer;

(9) the term ''preauthorized electronic fund transfer'' means an electronic fund transfer authorized in advance to recur at substantially regular intervals;

(10) the term ''State'' means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing; and

(11) the term ''unauthorized electronic fund transfer'' means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit, but the term does not include any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer's account by such consumer, unless the consumer has notified the financial institution involved that transfers by such other person are no longer authorized, (B) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer, or (C) which constitutes an error committed by a financial institution.

(Pub. L. 90–321, title IX, § 903, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3728.)

§ 1693b. Regulations

(a) Prescription by Board

The Board shall prescribe regulations to carry out the purposes of this subchapter. In prescribing such regulations, the Board shall:

(1) consult with the other agencies referred to in section 1693*o* of this title and take into account, and allow for, the continuing evolution of electronic banking services and the technology utilized in such services,

(2) prepare an analysis of economic impact which considers the costs and benefits to financial institutions, consumers, and other users of electronic fund transfers, including the extent to which additional documentation, reports, records, or other paper work would be required, and the effects upon competition in the provision of electronic banking services among large and small financial institutions and the availability of such services to different classes of consumers, particularly low income consumers,

(3) to the extent practicable, the Board shall demonstrate that the consumer protections of the proposed regulations outweigh the compliance costs imposed upon consumers and financial institutions, and

(4) any proposed regulations and accompanying analyses shall be sent promptly to Congress by the Board.

(b) Issuance of model clauses

The Board shall issue model clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of section 1693c of this title and to aid consumers in understanding the rights and responsibilities of participants in electronic fund transfers by utilizing readily understandable language. Such model clauses shall be adopted after notice duly given in the Federal Register and opportunity for public comment in accordance with section 553 of title 5. With respect to the disclosures required by section 1693c(a)(3) and (4) of this title, the Board shall take account of variations in the services and charges under different electronic fund transfer systems and, as appropriate, shall issue alternative model clauses for disclosure of these differing account terms.

(c) Criteria; modification of requirements

Regulations prescribed hereunder may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of electronic fund transfers, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. The Board shall by regulation modify the requirements imposed by this subchapter on small financial institutions if the Board determines that such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objective of this subchapter.

(d) Applicability to service providers other than certain financial institutions

(1) In general

If electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by this subchapter are made applicable to such persons and services.

(2) State and local government electronic benefit transfer systems

(A) "Electronic benefit transfer system" defined

In this paragraph, the term ''electronic benefit transfer system''—

(i) means a system under which a government agency distributes needs-tested benefits by establishing accounts that may be accessed by recipients electronically, such as through automated teller machines or point-of-sale terminals; and

(ii) does not include employment-related payments, including salaries and pension, retirement, or unemployment benefits established by a Federal, State, or local government agency.

(B) Exemption generally

The disclosures, protections, responsibilities, and remedies established under this subchapter, and any regulation prescribed or order issued by the Board in accordance with this subchapter, shall not apply to any electronic benefit transfer system established under State or local law or administered by a State or local government.

(C) Exception for direct deposit into recipient's account

Subparagraph (B) shall not apply with respect to any electronic funds transfer under an electronic benefit transfer system for a deposit directly into a consumer account held by the recipient of the benefit.

(D) Rule of construction

No provision of this paragraph—

(i) affects or alters the protections otherwise applicable with respect to benefits established by any other provision[1] Federal, State, or local law; or

(ii) otherwise supersedes the application of any State or local law.

(Pub. L. 90–321, title IX, § 904, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3730; amended Pub. L. 104–193, title VIII, § 891, title IX, § 907, Aug. 22, 1996, 110 Stat. 2346, 2350.)

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–193, § 907, which directed the amendment of subsec. (d), was not executed because similar amendment by Pub. L. 104–193, § 891. See below. Section 907 of Pub. L. 104–193 provided that subsec. (d) was to be amended by inserting subsec. (d) heading, by designating existing provisions as par. (1) and inserting heading, and by adding a new par. (2) reading as follows:

''(2) STATE AND LOCAL GOVERNMENT ELECTRONIC BENEFIT TRANSFER PROGRAMS.—

''(A) EXEMPTION GENERALLY.—The disclosures, protections, responsibilities, and remedies established under this subchapter, and any regulation prescribed or order issued by the Board in accordance with this subchapter, shall not apply to any electronic benefit transfer program established under State or local law or administered by a State or local government.

''(B) EXCEPTION FOR DIRECT DEPOSIT INTO RECIPIENT'S ACCOUNT.—Subparagraph (A) shall not apply with respect to any electronic funds transfer under an electronic benefit transfer program for deposits directly into a consumer account held by the recipient of the benefit.

''(C) RULE OF CONSTRUCTION.—No provision of this paragraph may be construed as—

''(i) affecting or altering the protections otherwise applicable with respect to benefits established by Federal, State, or local law; or

''(ii) otherwise superseding the application of any State or local law.

''(D) ELECTRONIC BENEFIT TRANSFER PROGRAM DEFINED.—For purposes of this paragraph, the term 'electronic benefit transfer program'—

''(i) means a program under which a government agency distributes needs-tested benefits by establishing accounts to be accessed by recipients electronically, such as through automated teller machines, or point-of-sale terminals; and

''(ii) does not include employment-related payments, including salaries and pension, retirement, or unemployment benefits established by Federal, State, or local governments.''

Pub. L. 104–193, § 891, designated existing provisions as par. (1), inserted subsec. heading and par. (2), and substituted ''If'' for ''In the event that''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2016.

§ 1693c. Terms and conditions of transfers

(a) Disclosures; time; form; contents

The terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Board. Such disclosures shall be in readily understandable language and shall include, to the extent applicable—

(1) the consumer's liability for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of prompt reporting of any loss, theft, or unauthorized use of a card, code, or other means of access;

(2) the telephone number and address of the person or office to be notified in the event the consumer believes than[1] an unauthorized electronic fund transfer has been or may be effected;

(3) the type and nature of electronic fund transfers which the consumer may initiate, including any limitations on the frequency or dollar amount of such transfers, except that the details of such limitations need not be disclosed if their confidentiality is necessary to maintain the security of an electronic fund transfer system, as determined by the Board;

(4) any charges for electronic fund transfers or for the right to make such transfers;

(5) the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure to initiate such a stop payment order;

(6) the consumer's right to receive documentation of electronic fund transfers under section 1693d of this title;

(7) a summary, in a form prescribed by regulations of the Board, of the error resolution provisions of section 1693f of this title and the consumer's rights thereunder. The financial institution shall thereafter transmit such summary at least once per calendar year;

(8) the financial institution's liability to the consumer under section 1693h of this title; and

(9) under what circumstances the financial institution will in the ordinary course of business disclose information concerning the consumer's account to third persons.

(b) Notification of changes to consumer

A financial institution shall notify a consumer in writing at least twenty-one days prior to the

[1] So in original. Probably should be followed by ''of''.

[1] So in original. Probably should be ''that''.

effective date of any change in any term or condition of the consumer's account required to be disclosed under subsection (a) of this section if such change would result in greater cost or liability for such consumer or decreased access to the consumer's account. A financial institution may, however, implement a change in the terms or conditions of an account without prior notice when such change is immediately necessary to maintain or restore the security of an electronic fund transfer system or a consumer's account. Subject to subsection (a)(3) of this section, the Board shall require subsequent notification if such a change is made permanent.

(c) Time for disclosures respecting accounts accessible prior to effective date of this subchapter

For any account of a consumer made accessible to electronic fund transfers prior to the effective date of this subchapter, the information required to be disclosed to the consumer under subsection (a) of this section shall be disclosed not later than the earlier of—

(1) the first periodic statement required by section 1693d(c) of this title after the effective date of this subchapter; or

(2) thirty days after the effective date of this subchapter.

(Pub. L. 90–321, title IX, § 905, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3730.)

REFERENCES IN TEXT

For effective date of this subchapter, referred to in subsec. (c), see section 921 of Pub. L. 90–321, set out as an Effective Date note under section 1693 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1693b, 1693d, 1693g, 1693i of this title.

§ 1693d. Documentation of transfers

(a) Availability of written documentation to consumer; contents

For each electronic fund transfer initiated by a consumer from an electronic terminal, the financial institution holding such consumer's account shall, directly or indirectly, at the time the transfer is initiated, make available to the consumer written documentation of such transfer. The documentation shall clearly set forth to the extent applicable—

(1) the amount involved and date the transfer is initiated;

(2) the type of transfer;

(3) the identity of the consumer's account with the financial institution from which or to which funds are transferred;

(4) the identity of any third party to whom or from whom funds are transferred; and

(5) the location or identification of the electronic terminal involved.

(b) Notice of credit to consumer

For a consumer's account which is scheduled to be credited by a preauthorized electronic fund transfer from the same payor at least once in each successive sixty-day period, except where the payor provides positive notice of the transfer to the consumer, the financial institution shall elect to provide promptly either positive notice to the consumer when the credit is made as scheduled, or negative notice to the consumer when the credit is not made as scheduled, in accordance with regulations of the Board. The means of notice elected shall be disclosed to the consumer in accordance with section 1693c of this title.

(c) Periodic statement; contents

A financial institution shall provide each consumer with a periodic statement for each account of such consumer that may be accessed by means of an electronic fund transfer. Except as provided in subsections (d) and (e) of this section, such statement shall be provided at least monthly for each monthly or shorter cycle in which an electronic fund transfer affecting the account has occurred, or every three months, whichever is more frequent. The statement, which may include information regarding transactions other than electronic fund transfers, shall clearly set forth—

(1) with regard to each electronic fund transfer during the period, the information described in subsection (a) of this section, which may be provided on an accompanying document;

(2) the amount of any fee or charge assessed by the financial institution during the period for electronic fund transfers or for account maintenance;

(3) the balances in the consumer's account at the beginning of the period and at the close of the period; and

(4) the address and telephone number to be used by the financial institution for the purpose of receiving any statement inquiry or notice of account error from the consumer. Such address and telephone number shall be preceded by the caption ''Direct Inquiries To:'' or other similar language indicating that the address and number are to be used for such inquiries or notices.

(d) Consumer passbook accounts

In the case of a consumer's passbook account which may not be accessed by electronic fund transfers other than preauthorized electronic fund transfers crediting the account, a financial institution may, in lieu of complying with the requirements of subsection (c) of this section, upon presentation of the passbook provide the consumer in writing with the amount and date of each such transfer involving the account since the passbook was last presented.

(e) Accounts other than passbook accounts

In the case of a consumer's account, other than a passbook account, which may not be accessed by electronic fund transfers other than preauthorized electronic fund transfers crediting the account, the financial institution may provide a periodic statement on a quarterly basis which otherwise complies with the requirements of subsection (c) of this section.

(f) Documentation as evidence

In any action involving a consumer, any documentation required by this section to be given to the consumer which indicates that an electronic fund transfer was made to another person

shall be admissible as evidence of such transfer and shall constitute prima facie proof that such transfer was made.

(Pub. L. 90–321, title IX, § 906, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3731.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1693c, 1693f, 1693g of this title.

§ 1693e. Preauthorized transfers

(a) A preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made. A consumer may stop payment of a preauthorized electronic fund transfer by notifying the financial institution orally or in writing at any time up to three business days preceding the scheduled date of such transfer. The financial institution may require written confirmation to be provided to it within fourteen days of an oral notification if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent.

(b) In the case of preauthorized transfers from a consumer's account to the same person which may vary in amount, the financial institution or designated payee shall, prior to each transfer, provide reasonable advance notice to the consumer, in accordance with regulations of the Board, of the amount to be transferred and the scheduled date of the transfer.

(Pub. L. 90–321, title IX, § 907, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3733.)

§ 1693f. Error resolution

(a) Notification to financial institution of error

If a financial institution, within sixty days after having transmitted to a consumer documentation pursuant to section 1693d(a), (c), or (d) of this title or notification pursuant to section 1693d(b) of this title, receives oral or written notice in which the consumer—

(1) sets forth or otherwise enables the financial institution to identify the name and account number of the consumer;

(2) indicates the consumer's belief that the documentation, or, in the case of notification pursuant to section 1693d(b) of this title, the consumer's account, contains an error and the amount of such error; and

(3) sets forth the reasons for the consumer's belief (where applicable) that an error has occurred,

the financial institution shall investigate the alleged error, determine whether an error has occurred, and report or mail the results of such investigation and determination to the consumer within ten business days. The financial institution may require written confirmation to be provided to it within ten business days of an oral notification of error if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent. A financial institution which requires written confirmation in accordance with the previous sentence need not provisionally recredit a consumer's account in accordance with subsection (c) of this section, nor shall the financial institution be liable under subsection (e) of this section if the written confirmation is not received within the ten-day period referred to in the previous sentence.

(b) Correction of error; interest

If the financial institution determines that an error did occur, it shall promptly, but in no event more than one business day after such determination, correct the error, subject to section 1693g of this title, including the crediting of interest where applicable.

(c) Provisional recredit of consumer's account

If a financial institution receives notice of an error in the manner and within the time period specified in subsection (a) of this section, it may, in lieu of the requirements of subsections (a) and (b) of this section, within ten business days after receiving such notice provisionally recredit the consumer's account for the amount alleged to be in error, subject to section 1693g of this title, including interest where applicable, pending the conclusion of its investigation and its determination of whether an error has occurred. Such investigation shall be concluded not later than forty-five days after receipt of notice of the error. During the pendency of the investigation, the consumer shall have full use of the funds provisionally recredited.

(d) Absence of error; finding; explanation

If the financial institution determines after its investigation pursuant to subsection (a) or (c) of this section that an error did not occur, it shall deliver or mail to the consumer an explanation of its findings within 3 business days after the conclusion of its investigation, and upon request of the consumer promptly deliver or mail to the consumer reproductions of all documents which the financial institution relied on to conclude that such error did not occur. The financial institution shall include notice of the right to request reproductions with the explanation of its findings.

(e) Treble damages

If in any action under section 1693m of this title, the court finds that—

(1) the financial institution did not provisionally recredit a consumer's account within the ten-day period specified in subsection (c) of this section, and the financial institution (A) did not make a good faith investigation of the alleged error, or (B) did not have a reasonable basis for believing that the consumer's account was not in error; or

(2) the financial institution knowingly and willfully concluded that the consumer's account was not in error when such conclusion could not reasonably have been drawn from the evidence available to the financial institution at the time of its investigation,

then the consumer shall be entitled to treble damages determined under section 1693m(a)(1) of this title.

(f) Acts constituting error

For the purpose of this section, an error consists of—

(1) an unauthorized electronic fund transfer;

(2) an incorrect electronic fund transfer from or to the consumer's account;

(3) the omission from a periodic statement of an electronic fund transfer affecting the consumer's account which should have been included;

(4) a computational error by the financial institution;

(5) the consumer's receipt of an incorrect amount of money from an electronic terminal;

(6) a consumer's request for additional information or clarification concerning an electronic fund transfer or any documentation required by this subchapter; or

(7) any other error described in regulations of the Board.

(Pub. L. 90–321, title IX, § 908, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3733.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1693c, 1693m of this title.

§ 1693g. Consumer liability

(a) Unauthorized electronic fund transfers; limit

A consumer shall be liable for any unauthorized electronic fund transfer involving the account of such consumer only if the card or other means of access utilized for such transfer was an accepted card or other meanas[1] of access and if the issuer of such card, code, or other means of access has provided a means whereby the user of such card, code, or other means of access can be identified as the person authorized to use it, such as by signature, photograph, or fingerprint or by electronic or mechanical confirmation. In no event, however, shall a consumer's liability for an unauthorized transfer exceed the lesser of—

(1) $50; or

(2) the amount of money or value of property or services obtained in such unauthorized electronic fund transfer prior to the time the financial institution is notified of, or otherwise becomes aware of, circumstances which lead to the reasonable belief that an unauthorized electronic fund transfer involving the consumer's account has been or may be effected. Notice under this paragraph is sufficient when such steps have been taken as may be reasonably required in the ordinary course of business to provide the financial institution with the pertinent information, whether or not any particular officer, employee, or agent of the financial institution does in fact receive such information.

Notwithstanding the foregoing, reimbursement need not be made to the consumer for losses the financial institution establishes would not have occurred but for the failure of the consumer to report within sixty days of transmittal of the statement (or in extenuating circumstances such as extended travel or hospitalization, within a reasonable time under the circumstances) any unauthorized electronic fund transfer or account error which appears on the periodic statement provided to the consumer under section 1693d of this title. In addition, reimbursement need not be made to the consumer for losses which the financial institution establishes would not have occurred but for the failure of the consumer to report any loss or theft of a card or other means of access within two business days after the consumer learns of the loss or theft (or in extenuating circumstances such as extended travel or hospitalization, within a longer period which is reasonable under the circumstances), but the consumer's liability under this subsection in any such case may not exceed a total of $500, or the amount of unauthorized electronic fund transfers which occur following the close of two business days (or such longer period) after the consumer learns of the loss or theft but prior to notice to the financial institution under this subsection, whichever is less.

(b) Burden of proof

In any action which involves a consumer's liability for an unauthorized electronic fund transfer, the burden of proof is upon the financial institution to show that the electronic fund transfer was authorized or, if the electronic fund transfer was unauthorized, then the burden of proof is upon the financial institution to establish that the conditions of liability set forth in subsection (a) of this section have been met, and, if the transfer was initiated after the effective date of section 1693c of this title, that the disclosures required to be made to the consumer under section 1693c(a)(1) and (2) of this title were in fact made in accordance with such section.

(c) Determination of limitation on liability

In the event of a transaction which involves both an unauthorized electronic fund transfer and an extension of credit as defined in section 1602(e) of this title pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn, the limitation on the consumer's liability for such transaction shall be determined solely in accordance with this section.

(d) Restriction on liability

Nothing in this section imposes liability upon a consumer for an unauthorized electronic fund transfer in excess of his liability for such a transfer under other applicable law or under any agreement with the consumer's financial institution.

(e) Scope of liability

Except as provided in this section, a consumer incurs no liability from an unauthorized electronic fund transfer.

(Pub. L. 90–321, title IX, § 909, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3734.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1693f of this title.

§ 1693h. Liability of financial institutions

(a) Action or failure to act proximately causing damages

Subject to subsections (b) and (c) of this section, a financial institution shall be liable to a

[1] So in original. Probably should be ''means''.

consumer for all damages proximately caused by—

(1) the financial institution's failure to make an electronic fund transfer, in accordance with the terms and conditions of an account, in the correct amount or in a timely manner when properly instructed to do so by the consumer, except where—

(A) the consumer's account has insufficient funds;

(B) the funds are subject to legal process or other encumbrance restricting such transfer;

(C) such transfer would exceed an established credit limit;

(D) an electronic terminal has insufficient cash to complete the transaction; or

(E) as otherwise provided in regulations of the Board;

(2) the financial institution's failure to make an electronic fund transfer due to insufficient funds when the financal[1] institution failed to credit, in accordance with the terms and conditions of an account, a deposit of funds to the consumer's account which would have provided sufficient funds to make the transfer, and

(3) the financial institution's failure to stop payment of a preauthorized transfer from a consumer's account when instructed to do so in accordance with the terms and conditions of the account.

(b) Acts of God and technical malfunctions

A financial institution shall not be liable under subsection (a)(1) or (2) of this section if the financial institution shows by a preponderance of the evidence that its action or failure to act resulted from—

(1) an act of God or other circumstance beyond its control, that it exercised reasonable care to prevent such an occurrence, and that it exercised such diligence as the circumstances required; or

(2) a technical malfunction which was known to the consumer at the time he attempted to initiate an electronic fund transfer or, in the case of a preauthorized transfer, at the time such transfer should have occurred.

(c) Intent

In the case of a failure described in subsection (a) of this section which was not intentional and which resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, the financial institution shall be liable for actual damages proved.

(Pub. L. 90–321, title IX, § 910, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3735.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1693c, 1693m of this title.

§ 1693i. Issuance of cards or other means of access

(a) Prohibition; proper issuance

No person may issue to a consumer any card, code, or other means of access to such consumer's account for the purpose of initiating an electronic fund transfer other than—

(1) in response to a request or application therefor; or

(2) as a renewal of, or in substitution for, an accepted card, code, or other means of access, whether issued by the initial issuer or a successor.

(b) Exceptions

Notwithstanding the provisions of subsection (a) of this section, a person may distribute to a consumer on an unsolicited basis a card, code, or other means of access for use in initiating an electronic fund transfer from such consumer's account, if—

(1) such card, code, or other means of access is not validated;

(2) such distribution is accompanied by a complete disclosure, in accordance with section 1693c of this title, of the consumer's rights and liabilities which will apply if such card, code, or other means of access is validated;

(3) such distribution is accompanied by a clear explanation, in accordance with regulations of the Board, that such card, code, or other means of access is not validated and how the consumer may dispose of such code, card, or other means of access if validation is not desired; and

(4) such card, code, or other means of access is validated only in response to a request or application from the consumer, upon verification of the consumer's identity.

(c) Validation

For the purpose of subsection (b) of this section, a card, code, or other means of access is validated when it may be used to initiate an electronic fund transfer.

(Pub. L. 90–321, title IX, § 911, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3736.)

§ 1693j. Suspension of obligations

If a system malfunction prevents the effectuation of an electronic fund transfer initiated by a consumer to another person, and such other person has agreed to accept payment by such means, the consumer's obligation to the other person shall be suspended until the malfunction is corrected and the electronic fund transfer may be completed, unless such other person has subsequently, by written request, demanded payment by means other than an electronic fund transfer.

(Pub. L. 90–321, title IX, § 912, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3737.)

§ 1693k. Compulsory use of electronic fund transfers

No person may—

(1) condition the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic fund transfers; or

(2) require a consumer to establish an account for receipt of electronic fund transfers

[1] So in original. Probably should be "financial".

with a particular financial institution as a condition of employment or receipt of a government benefit.

(Pub. L. 90–321, title IX, § 913, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3737.)

§ 1693*l*. Waiver of rights

No writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this subchapter. Nothing in this section prohibits, however, any writing or other agreement which grants to a consumer a more extensive right or remedy or greater protection than contained in this subchapter or a waiver given in settlement of a dispute or action.

(Pub. L. 90–321, title IX, § 914, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3737.)

§ 1693m. Civil liability

(a) Individual or class action for damages; amount of award

Except as otherwise provided by this section and section 1693h of this title, any person who fails to comply with any provision of this subchapter with respect to any consumer, except for an error resolved in accordance with section 1693f of this title, is liable to such consumer in an amount equal to the sum of—

(1) any actual damage sustained by such consumer as a result of such failure;

(2)(A) in the case of an individual action, an amount not less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that (i) as to each member of the class no minimum recovery shall be applicable, and (ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the defendant; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) Factors determining amount of award

In determining the amount of liability in any action under subsection (a) of this section, the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A) of this section, the frequency and persistence of noncompliance, the nature of such noncompliance, and the extent to which the noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of noncompliance, the nature of such noncompliance, the resources of the defendant, the number of persons adversely affected, and the extent to which the noncompliance was intentional.

(c) Unintentional violations; bona fide error

Except as provided in section 1693h of this title, a person may not be held liable in any action brought under this section for a violation of this subchapter if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Good faith compliance with rule, regulation, or interpretation of Board or approval of duly authorized official or employee of Federal Reserve System

No provision of this section or section 1693n of this title imposing any liability shall apply to—

(1) any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor; or

(2) any failure to make disclosure in proper form if a financial institution utilized an appropriate model clause issued by the Board,

notwithstanding that after such act, omission, or failure has occurred, such rule, regulation, approval, or model clause is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(e) Notification to consumer prior to action; adjustment of consumer's account

A person has no liability under this section for any failure to comply with any requirement under this subchapter if, prior to the institution of an action under this section, the person notifies the consumer concerned of the failure, complies with the requirements of this subchapter, and makes an appropriate adjustment to the consumer's account and pays actual damages or, where applicable, damages in accordance with section 1693h of this title.

(f) Action in bad faith or for harassment; attorney's fees

On a finding by the court that an unsuccessful action under this section was brought in bad faith or for purposes of harassment, the court shall award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(g) Jurisdiction of courts; time for maintenance of action

Without regard to the amount in controversy, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

(Pub. L. 90–321, title IX, § 915, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3737.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1693f of this title.

§ 1693n. Criminal liability

(a) Violations respecting giving of false or inaccurate information, failure to provide information, and failure to comply with provisions of this subchapter

Whoever knowingly and willfully—

(1) gives false or inaccurate information or fails to provide information which he is required to disclose by this subchapter or any regulation issued thereunder; or

(2) otherwise fails to comply with any provision of this subchapter;

shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(b) Violations affecting interstate or foreign commerce

Whoever—

(1) knowingly, in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating $1,000 or more; or

(2) with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(3) with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(4) knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (A) within any one-year period has a value aggregating $1,000 or more, (B) has moved in or is part of, or which constitutes interstate or foreign commerce, and (C) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(5) knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (A) within any one-year period have a value aggregating $500 or more, and (B) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(6) in a transaction affecting interstate or foreign commerce, furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating $1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(c) "Debit instrument" defined

As used in this section, the term ''debit instrument'' means a card, code, or other device, other than a check, draft, or similar paper instrument, by the use of which a person may initiate an electronic fund transfer.

(Pub. L. 90–321, title IX, § 916, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3738.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1693m of this title; title 18 section 513.

§ 1693*o*. Administrative enforcement

(a) Enforcing agencies

Compliance with the requirements imposed under this subchapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a)[1] of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union.[2]

(4) part A of subtitle VII of title 49, by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that part; and

(5) the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by the Securities and Exchange Commission, with respect to any broker or dealer subject to that Act.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

[1] See References in Text note below.

[2] So in original. The period probably should be a semicolon.

(b) Violations of subchapter deemed violations of pre-existing statutory requirements; additional powers

For the purpose of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter, any other authority conferred on it by law.

(c) Overall enforcement authority of Federal Trade Commission

Except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under subsection (a) of this section, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person subject to the jurisdiction of the Commission with the requirements imposed under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

(Pub. L. 90–321, title IX, § 917, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3739; amended Pub. L. 101–73, title VII, § 744(*o*), Aug. 9, 1989, 103 Stat. 440; Pub. L. 102–242, title II, § 212(f), Dec. 19, 1991, 105 Stat. 2301; Pub. L. 104–287, § 6(h), Oct. 11, 1996, 110 Stat. 3399.)

REFERENCES IN TEXT

Section 25(a) of the Federal Reserve Act, referred to in subsec. (a)(1)(B), which is classified to subchapter II (§ 611 et seq.) of chapter 6 of Title 12, Banks and Banking, was renumbered section 25A of that act by Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§ 601 et seq.) of chapter 6 of Title 12.

The Federal Credit Union Act, referred to in subsec. (a)(3), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§ 1751 et seq.) of Title 12. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (a)(5), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

CODIFICATION

In subsec. (a)(4), ''part A of subtitle VII of title 49'' substituted for ''the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]'' and ''that part'' substituted for ''that Act'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104–287 substituted ''Secretary of Transportation'' for ''Civil Aeronautics Board''.

1991—Subsec. (a). Pub. L. 102–242, § 212(f)(2), inserted at end ''The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).''

Pub. L. 102–242, § 212(f)(1), added par. (1) and struck out former par. (1) which read as follows: ''section 8 of the Federal Deposit Insurance Act, in the case of—

''(A) national banks, by the Comptroller of the Currency;

''(B) member banks of the Federal Reserve System (other than national banks), by the Board;

''(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;''.

1989—Subsec. (a)(2). Pub. L. 101–73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;''.

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1693b, 1693p of this title.

§ 1693p. Reports to Congress

(a) Not later than twelve months after the effective date of this subchapter and at one-year intervals thereafter, the Board shall make reports to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Board deems necessary and appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with this subchapter is being achieved, and a summary of the enforcement actions taken under section 1693*o* of this title. In such report, the Board shall particularly address the effects of this subchapter on the costs and benefits to financial institutions and consumers, on competition, on the introduction of new technology, on the operations of financial institutions, and on the adequacy of consumer protection.

(b) In the exercise of its functions under this subchapter, the Board may obtain upon request the views of any other Federal agency which, in the judgment of the Board, exercises regulatory or supervisory functions with respect to any class of persons subject to this subchapter.

(Pub. L. 90–321, title IX, § 918, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3740; amended Pub. L. 97–375, title II, § 209(a), Dec. 21, 1982, 96 Stat. 1825.)

REFERENCES IN TEXT

For effective date of this subchapter, referred to in subsec. (a), see section 921 of Pub. L. 90–321, set out as an Effective Date note under section 1693 of this title.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–375 struck out requirement that the Attorney General make a report on the same terms as the Board, and that such report also contain an analysis of the impact of this subchapter on the operation, workload, and efficiency of the Federal courts, and substituted ''necessary and appropriate'' for ''necessary or appropriate''.

§ 1693q. Relation to State laws

This subchapter does not annul, alter, or affect the laws of any State relating to electronic fund transfers, except to the extent that those laws are inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency. A State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection afforded by this subchapter. The Board shall, upon its own motion or upon the request of any financial institution, State, or other interested party, submitted in accordance with procedures prescribed in regulations of the Board, determine whether a State requirement is inconsistent or affords greater protection. If the Board determines that a State requirement is inconsistent, financial institutions shall incur no liability under the law of that State for a good faith failure to comply with that law, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. This subchapter does not extend the applicability of any such law to any class of persons or transactions to which it would not otherwise apply.

(Pub. L. 90–321, title IX, § 919, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3741.)

§ 1693r. Exemption for State regulation

The Board shall by regulation exempt from the requirements of this subchapter any class of electronic fund transfers within any State if the Board determines that under the law of that State that class of electronic fund transfers is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.

(Pub. L. 90–321, title IX, § 920, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3741.)

CHAPTER 42—INTERSTATE LAND SALES

Sec.
1701. Definitions.
1702. Exemptions.
(a) Sale or lease of lots generally.
(b) Sale or lease of lots subject to other statutory registration and disclosure requirements.
(c) Rules and regulations.
1703. Requirements respecting sale or lease of lots.
(a) Prohibited activities.
(b) Revocation of nonexempt contract or agreement at option of purchaser or lessee; time limit.
(c) Revocation of contract or agreement at option of purchaser or lessee where required property report not supplied.
(d) Additional authority for revocation of nonexempt contract or agreement at option of purchaser or lessee; time limit; applicability.
(e) Repayment of purchaser or lessee upon revocation of all money paid under contract or agreement to seller or lessor.
1704. Registration of subdivisions.
(a) Filing of statement of record.
(b) Payment of fees; use by Secretary.
(c) Filing deemed to have taken place upon receipt of statement of record accompanied by fee.
(d) Availability of information to public.
1705. Information required in statement of record.
1706. Effective date of statements of record and amendments thereto.
(a) Thirtieth day after filing or such earlier date as determined by Secretary; consolidation of subsequent statement with earlier recording.
(b) Incomplete or inaccurate statements of record.
(c) Amendment of statement of record.
(d) Suspension of statement of record containing untrue statement or omission to state material fact; notice and hearing; termination of order of suspension.
(e) Examination to determine issuance of order; access to records; order suspending statement of record upon failure to cooperate.
(f) Service of notices.
1707. Property report.
(a) Contents of report.
(b) Promotional use.
1708. Certification of substantially equivalent State law.
(a) Criteria; request by State.
(b) Filing of State disclosure materials and related documentation for purposes of Federal statement of record and property report requirements; acceptance by Secretary.
(c) Notice to State upon failure to meet requirements and remedial action necessary for certification.
(d) Periodic review of certified States' laws, regulations, and administration; withdrawal of certification.
(e) State and local governmental authorities affected; cooperation with State authorities.
1709. Civil liabilities.
(a) Violations; relief recoverable.
(b) Enforcement of rights by purchaser or lessee.
(c) Amounts recoverable.
(d) Contributions.
1710. Court review of orders.
(a) Petition; jurisdiction; findings of Secretary; additional evidence; finality.
(b) Stay of Secretary's order.
1711. Limitation of actions.
(a) Section 1703(a) violations.
(b) Section 1703(b) to (e) violations.