

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue with a lighter globe, and the bottom bulb is light blue with a darker globe. The hourglass is centered on the page.

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*The Consumer Credit Protection Act: An Overview of Its  
Major Components*

Angie Welborn, American Law Division

April 6, 2006

**Abstract.** Since its enactment, the Consumer Credit Protection Act has been amended several times to add provisions relating to debt collection, credit reporting, credit billing, consumer leasing, and electronic fund transfers. Provisions prohibiting discrimination in extending or approving credit were also added. The major titles of the Act are discussed in this report.

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# The Consumer Credit Protection Act: An Overview of Its Major Components

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April 6, 2006

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## Summary

Congress enacted the Consumer Credit Protection Act in 1969 answering President Johnson's call for consumer credit protection legislation. The original Act consisted of the Truth-in-Lending Act, which was aimed at closing an important gap in consumer information, as well as provisions restricting garnishment of wages and establishing the National Commission on Consumer Finance. Since its enactment, the Consumer Credit Protection Act has been amended several times to add provisions relating to debt collection, credit reporting, credit billing, consumer leasing, and electronic fund transfers. In addition, the Equal Credit Opportunity Act was enacted to prohibit discrimination in considering an application for credit. This report discusses the major components of the Consumer Credit Protection Act, as amended, including recent amendments to the Fair Credit Reporting Act (FCRA) and the Truth-in-Lending Act, and summarizes the consumer's rights and remedies under each. This report will be updated as necessary.

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## Introduction

The Consumer Credit Protection Act was enacted on May 29, 1969, by P.L. 90-321.<sup>1</sup> Title I of the Consumer Credit Protection Act, known as the Truth in Lending Act, was intended “to provide the American consumer with truth-in-lending and truth-in-advertising by providing full disclosure of the terms and conditions of finance charges both in credit transactions and in offers to extend credit.”<sup>2</sup> Title II of the Act restricted the garnishment of wages, which Congress found to be “a frequent element in the predatory extension of credit.”<sup>3</sup> Title III established the National Commission on Consumer Finance “to study and make recommendations to the Congress and to the President on the functions and structure of the consumer finance industry, as well as consumer credit transactions generally.”<sup>4</sup>

Congress enacted the Consumer Credit Protection Act after President Johnson called for consumer credit protection in his message to Congress dated February 16, 1967.<sup>5</sup> In this message, the President recommended legislation to assure “full and accurate information to the borrower; and simple and routine calculations for the lender.”<sup>6</sup> He said that this legislation was “urgently needed to close an important gap in consumer information” and to “protect legitimate lenders against competitors who misrepresent credit costs.”<sup>7</sup>

Since its enactment, the Consumer Credit Protection Act has been amended several times to add provisions relating to debt collection<sup>8</sup>, credit reporting<sup>9</sup>, credit billing<sup>10</sup>, consumer leasing<sup>11</sup>, and electronic fund transfers.<sup>12</sup> Provisions prohibiting discrimination in extending or approving credit were also added.<sup>13</sup> The major titles of the Act will be discussed individually below.

## Truth-in-Lending Act

The Truth-in-Lending Act (TILA) was enacted in 1969 as Title I of the Consumer Credit Protection Act.<sup>14</sup> The purpose of the TILA is “to assure a meaningful disclosure of credit terms so

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<sup>1</sup> The Act was codified at 15 U.S.C. 1601 *et. seq.*

<sup>2</sup> H.Rept. 1040, 90<sup>th</sup> Congress, 2<sup>nd</sup> Session, (1967), reprinted in 2 USCCAN 1962 (1969).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 1965, citing *Message from the President of the United States transmitting recommendations for consumer protection in the fields of credit, investments, health, meat inspection, hazards in the home, electric power reliability, and natural gas pipeline safety*, H. Doc. No. 57, 90<sup>th</sup> Cong., 1<sup>st</sup> Sess. 3-4.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et. seq.*, effective 1978.

<sup>9</sup> Fair Credit Reporting Act, 15 U.S.C. 1681 *et. seq.*, effective 1971.

<sup>10</sup> Fair Credit Billing Act, 15 U.S.C. 1666 *et. seq.*, effective 1975.

<sup>11</sup> Consumer Leasing Act, 15 U.S.C. 1667 *et. seq.* effective 1977.

<sup>12</sup> Electronic Fund Transfer Act, 15 U.S.C. 1693 *et. seq.*, effective 1979.

<sup>13</sup> Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.*

<sup>14</sup> P.L. 90-321, May 29, 1969, codified at 15 U.S.C. 1601 *et. seq.*

that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.”<sup>15</sup> The TILA requires creditors to disclose certain basic information about the transaction so that the consumer will be given the information needed “to compare the cost of credit and make the best informed decision on the use of credit.”<sup>16</sup> The TILA does not apply to the following: credit transactions involving extensions of credit for primarily business, commercial or agricultural purposes; transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission; credit transactions, other than those in which a security interest is or will be acquired in real property or in personal property used as the principal dwelling, in which the total amount financed exceeds \$25,000; public utility services regulated by a State; or loans made, insured, or guaranteed pursuant to title IV of the Higher Education Act.<sup>17</sup>

## Required Disclosures

The Truth-in-Lending Act does not require a creditor to disclose all lending options to the consumer; rather, the creditor is required to disclose information relevant to the transaction in question.

Required disclosures include the finance charge, the annual percentage rate, and other terms which require explanation under the TILA including the “amount financed,” the “total of payments,” and the “total sale price.”<sup>18</sup> In transactions where the consumer has the right to rescind, the creditor must also disclose that right and provide the appropriate forms for the exercise of that right.<sup>19</sup>

The finance charge is the most important disclosure to be made.<sup>20</sup> It is defined 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.”<sup>21</sup> Included in the finance charge are the (1) interest, time price differential, and any amount payable under a point, discount, or other system of additional charges; (2) service or carrying charge; (3) loan fee, finder’s fee, or similar charge; (4) fee for an investigation or credit report; and (4) premium or other charge for any guarantee or insurance protecting the creditor against the consumer’s default or other credit loss.<sup>22</sup>

In addition to the finance charge, the TILA requires disclosure of the annual percentage rate.<sup>23</sup> In general, this is “a measure of the cost of credit which must be disclosed on a yearly basis and the

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<sup>15</sup> 15 U.S.C. 1601(a).

<sup>16</sup> H.Rept. 1040, *supra* note 2 at 1971.

<sup>17</sup> 15 U.S.C. 1603.

<sup>18</sup> CCH Consumer Credit Guide, ¶ 1013.

<sup>19</sup> An obligor has the right to rescind in the case of any credit transaction in which a security interest 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 has the right to rescind until midnight of the third business day following the consummation of the transaction or the delivery of the required forms and disclosures, whichever is later. 15 U.S.C. 1635(a); 12 C.F.R. 226.15(b).

<sup>20</sup> CCH, Consumer Credit Guide, ¶ 1013.

<sup>21</sup> 15 U.S.C. 1605(a).

<sup>22</sup> *Id.*

<sup>23</sup> CCH Consumer Credit Guide, ¶ 1013.

calculation of which is determined by the underlying transaction.”<sup>24</sup> The statute outlines specifically how the annual percentage rate is to be calculated depending on the type of transaction, and delegates authority to the Federal Reserve Board to issue implementing regulations.<sup>25</sup>

Before the first transaction is made, the creditor must furnish an initial disclosure, including the finance charge, other charges that may be imposed, the fact that the creditor has or will acquire a security interest in the property purchased, a statement of billing rights, and home equity information if applicable.<sup>26</sup> The creditor must also furnish a periodic statement for each billing cycle at the end of which the account has a debit or credit balance of more than \$1 or on which a finance charge has been imposed.<sup>27</sup> The periodic statement must be delivered at least 14 days prior to the end of the billing cycle.<sup>28</sup> Disclosures required in the periodic statement include the previous balance, an identification of transactions, credits, periodic rates, the amount of the balance to which the periodic rate was applied, the amount of finance charge, the annual percentage rate, other charges, closing date of the billing cycle and new balance, the free-ride period, and the address for notice of billing errors.<sup>29</sup>

## Enhanced Disclosures

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 included provisions amending the Truth-in-Lending Act to require lenders to make enhanced disclosures related to credit card minimum payments, introductory interest rates, and late payment deadlines and penalties.<sup>30</sup>

With respect to minimum payments, the new law requires the inclusion of the following statement on the front of the billing statement: “Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance.”<sup>31</sup> Following the statement must be a sample calculation of how long it would take to repay the balance, based on the lender’s current minimum payment required.<sup>32</sup> There must also be toll-free number that consumers may call to receive an estimate of the amount of time it would take to repay their specific balances.

When an introductory or temporary rate is offered, under the new disclosure requirements, it must be clearly and conspicuously labeled as “introductory,” and the rate after the introductory period must be stated in a clear and conspicuous manner near the listing of the introductory rate.<sup>33</sup> If the

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<sup>24</sup> *Id.*

<sup>25</sup> 15 U.S.C. 1606.

<sup>26</sup> 12 C.F.R. 226.5(b)(1), 12 C.F.R. 226.6.

<sup>27</sup> 12 C.F.R. 226.5(b)(2)(i).

<sup>28</sup> 12 C.F.R. 226.5(b)(2)(ii).

<sup>29</sup> 12 C.F.R. 226.7. The free-ride period is defined as “the date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges.” 12 C.F.R. 226.7(j).

<sup>30</sup> P.L. 109-8, tit. 13, 119 *Stat.* 23, 204.

<sup>31</sup> P.L. 109-8, Sec. 1301.

<sup>32</sup> *Id.* The sample calculation varies depending on whether the lender has a current minimum payment requirement of less than four percent or greater than four percent.

<sup>33</sup> P.L. 109-8, Sec. 1303.

temporary or introductory rate is revocable under any circumstances, the disclosure must also include a general description of the circumstances that may result in the revocation of the rate and the rate that will apply after such revocation.

If the consumer is subject to a late payment fee for failure to make a payment on or before a required date, the new law requires the disclosure of the date on which the payment is due or, if different, the earliest date on which a late payment fee may be charged and the amount of the late payment fee to be imposed if payment is made after that date.<sup>34</sup>

## Remedies and Enforcement

In cases where a finance charge was inaccurately disclosed, the creditor may be required to make an adjustment to the account to assure that the debtor does not 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.<sup>35</sup>

The Truth-in-Lending Act authorizes a private right of action to obtain civil damages from any creditor who fails to comply with any requirement imposed by the TILA, except in the case of a bona fide error corrected in a timely fashion.<sup>36</sup> Creditors may be liable for actual damages, plus twice the amount of any finance charge, in addition to attorney's fees.<sup>37</sup> In addition, a creditor may face criminal charges for willfully and knowingly giving false or inaccurate information or failing to provide information which is required to be disclosed under the TILA, or otherwise failing to comply with any requirements imposed by the Act.<sup>38</sup> A creditor may be fined up to \$5,000, imprisoned for up to one year, or both.<sup>39</sup>

Class action suits may also be filed against a creditor who fails to comply with the TILA.<sup>40</sup> As to each individual, there is no minimum recovery in such suits, but total recovery may not exceed \$500,000 or 1% of the creditor's net worth, whichever is less.<sup>41</sup>

Compliance with the TILA is enforced by several federal agencies, including the Office of the Comptroller of the Currency, Office of Thrift Supervision, the National Credit Union Administration Board, the Secretary of Transportation, the Secretary of Agriculture, and the Farm Credit Administration.<sup>42</sup> The enforcing agency varies depending on the type of transaction involved.

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<sup>34</sup> P.L. 109-8, Sec. 1305.

<sup>35</sup> 15 U.S.C. 1607(e).

<sup>36</sup> 15 U.S.C. 1640(a) and (c). Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors.

<sup>37</sup> 15 U.S.C. 1640(a).

<sup>38</sup> 15 U.S.C. 1611.

<sup>39</sup> *Id.*

<sup>40</sup> 15 U.S.C. 1640(a).

<sup>41</sup> 15 U.S.C. 1640(a)(2)(B).

<sup>42</sup> 15 U.S.C. 1607(a).

## Fair Credit Billing Act

The Fair Credit Billing Act (FCBA) was enacted on October 28, 1974, as an amendment to the Consumer Credit Protection Act.<sup>43</sup> The purpose of the FCBA is “to protect the consumer against inaccurate and unfair credit billing and credit card practices.”<sup>44</sup> The law defines and establishes a procedure for resolving billing errors in consumer credit transactions.

### Definition of Billing Error

For purposes of the Fair Credit Billing Act, a “billing error” includes unauthorized charges, charges not properly identified, charges for goods or services not accepted by the consumer or delivered to the consumer, failure to properly credit payments to consumer’s account, mathematical errors, failure to mail or deliver statement to the consumer’s last known address (provided that the change of address was provided at least 20 days before the end of the billing cycle), and charges for which the consumer has asked for an explanation or written proof of purchase.<sup>45</sup>

### Challenging Billing Errors

Under the FCBA, consumers are able to file a claim with the creditor to have billing errors resolved. In order to have an alleged billing error corrected, the consumer must provide notice to the creditor within 60 days of the transmission of the first statement that reflects the alleged error.<sup>46</sup> The notice must enable the creditor to identify the name and account number of the consumer, as well as indicate the consumer’s belief that the statement contains a billing error and the reasons for such belief.<sup>47</sup> The creditor must acknowledge the consumer’s claim within 30 days of receiving the billing error notice.<sup>48</sup>

Until the alleged billing error is resolved, the consumer is not required to pay the disputed amount, and the creditor may not attempt to collect, any part of the disputed amount, including related finance charges or other charges.<sup>49</sup> A creditor is also prohibited from making or threatening to make an adverse credit report about the consumer’s credit standing based on the consumer’s failure to pay the disputed amount.<sup>50</sup> The FCBA does not prohibit the creditor from taking action to collect any undisputed portion of the bill.<sup>51</sup>

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<sup>43</sup> P.L. 93-495, tit. 3, § 306; 88 *Stat.* 1512; 15 U.S.C. 1666 *et. seq.*

<sup>44</sup> P.L. 93-495, § 302; 15 U.S.C. 1601(a).

<sup>45</sup> 15 U.S.C. 1666(b); 12 C.F.R. 226.13(a).

<sup>46</sup> 15 U.S.C. 1666(a); 12 C.F.R. 226.13(b).

<sup>47</sup> 15 U.S.C. 1666(a).

<sup>48</sup> 15 U.S.C. 1666(a); 12 C.F.R. 226.13(c).

<sup>49</sup> 15 U.S.C. 1666(c); 12 C.F.R. 226.13(d)(1).

<sup>50</sup> 15 U.S.C. 1666a; 12 C.F.R. 226.13(d)(2). A creditor may report that a consumer is challenging a bill, but under the Equal Credit Opportunity Act, creditors cannot discriminate against consumer applicants who have exercised their rights under the Fair Credit Billing Act. 15 U.S.C. 1691(a)(3).

<sup>51</sup> 15 U.S.C. 1666(c); 12 C.F.R. 226.13(d)(1), n30.

## Resolution of Disputes

A creditor must comply with the resolution procedures set forth in the Act within two (2) billing cycles and not later than 90 days after receipt of the notice.<sup>52</sup>

If the creditor determines that the alleged billing error did occur, the creditor is obligated to correct the billing error and credit the consumer's account with the disputed amount and any applicable finance charges.<sup>53</sup> Upon crediting of the account, the creditor must provide a correction notice to the consumer.<sup>54</sup>

After investigation, if the creditor determines that a different billing error occurred, the creditor must send an explanation that sets forth the reasons for the creditor's belief that the alleged error is incorrect and that a different error occurred.<sup>55</sup> The creditor must correct the actual error and credit the consumer's account appropriately.<sup>56</sup>

If the creditor determines that no billing error occurred, the creditor must mail an explanation to the consumer setting forth the basis for this determination and furnish copies of documentary evidence of the consumer's indebtedness at the request of the consumer.<sup>57</sup> Alleged errors involving the nondelivery of goods or services or allegations that information on the bill is incorrect because a retailer made an incorrect report to the creditor cannot be denied by the creditor unless it conducts a reasonable investigation and determines that the products or services were delivered or that the information provided by the retailer was correct.<sup>58</sup> Once a billing error is resolved in favor of the creditor, the creditor must notify the consumer in writing of the time when payment is due and the portion of the disputed amount still owed, and the consumer must be given a time period in which to pay the amount due without incurring additional finance charges.<sup>59</sup>

Any creditor who does not comply with the procedures for resolution of billing errors may not collect the amount in dispute, or any related charges, up to \$50, even if the dispute is resolved in favor of the creditor.<sup>60</sup>

## Remedies Available

As with other provisions of the Consumer Credit Protection Act, a consumer is able to sue a creditor who violates the FCBA either as an individual or through a class action.<sup>61</sup> A consumer who prevails may be awarded actual damages, plus twice the amount of any finance charges, so

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<sup>52</sup> 15 U.S.C. 1666(a); 12 C.F.R. 226.13(c).

<sup>53</sup> 15 U.S.C. 1666(a); 12 C.F.R. 226.13(e).

<sup>54</sup> *Id.*

<sup>55</sup> 15 U.S.C. 1666(a); 12 C.F.R. 226.13(f).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> 12 C.F.R. 226.13(f) n. 31.

<sup>59</sup> 12 C.F.R. 226.13(g).

<sup>60</sup> 15 U.S.C. 1666(e).

<sup>61</sup> 15 U.S.C. 1640(a).

long as the amount is between \$100 and \$1000.<sup>62</sup> The consumer may also be awarded attorney's fees.<sup>63</sup> Class actions may result in damages of \$500,000 or 1% of the creditor's net worth, whichever is less.<sup>64</sup>

## Consumer Leasing Act

The Consumer Leasing Act (CLA) was enacted in 1976 to “assure a meaningful disclosure of the terms of leases of personal property for personal, family, or household purposes so as to enable 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.”<sup>65</sup> The CLA applies to leases exceeding four months, and not exceeding a total contractual obligation of more than \$25,000, primarily for personal, family, or household purposes.<sup>66</sup> The CLA does not apply to leases for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization.<sup>67</sup>

### Required Disclosures

Under the CLA, a lessor is required to disclose certain information to the lessee prior to the consummation of the lease.<sup>68</sup> Required disclosures include (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

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<sup>62</sup> 15 U.S.C. 1640(a)(1) and (2)(A).

<sup>63</sup> 15 U.S.C. 1640(a)(3).

<sup>64</sup> 15 U.S.C. 1640(a)(2)(B).

<sup>65</sup> P.L. 94-240, § 2, 90 *Stat.* 257, 15 U.S.C. 1601(b), 1667 *et. seq.*

<sup>66</sup> 15 U.S.C. 1667(1).

<sup>67</sup> *Id.*

<sup>68</sup> 15 U.S.C. 1667a, 12 C.F.R. 213.3, 213.4.

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.<sup>69</sup>

The CLA also regulates the content of advertisements for consumer leases.<sup>70</sup> An advertisement for a consumer lease may state that a specific lease of property at specific amounts or terms is available only if the lessor usually and customarily leases or will lease the property at those amounts or terms.<sup>71</sup> Advertisements for consumer leases may not state the amount of any payment or a statement that any or no initial payment is required, unless certain additional information is stated “clearly and conspicuously.”<sup>72</sup> In general, if an advertisement includes a statement of the amount of any payment or a statement that any or no initial payment is required, the advertisement must also state (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.<sup>73</sup> Radio advertisements for consumer leases must meet additional requirements.<sup>74</sup>

## Remedies Available

As with other provisions of the Consumer Credit Protection Act, lessees can recover damages in an individual or class action when a lessor fails to comply with the requirements set forth in the CLA.<sup>75</sup> A lessee may recover any actual damages sustained as a result of the lessors failure to comply, as well as 25% of the total amount of monthly payments under the lease, not less than \$100 nor greater than \$1,000.<sup>76</sup> Damages in a class action are limited to the lesser of \$500,000 or 1% of the net worth of the lessor.<sup>77</sup> Reasonable attorney’s fees may also be awarded.<sup>78</sup>

## Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA) was enacted on October 26, 1970.<sup>79</sup> The purpose of the FCRA is “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,

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<sup>69</sup> *Id.*

<sup>70</sup> 15 U.S.C. 1667c, 12 C.F.R. 213.7.

<sup>71</sup> 12 C.F.R. 213.7(a).

<sup>72</sup> 15 U.S.C. 1667c(a), 12 C.F.R. 213.7(d).

<sup>73</sup> *Id.*

<sup>74</sup> 15 U.S.C. 1667c(e), 12 C.F.R. 213.7(f).

<sup>75</sup> 15 U.S.C. 1667d.

<sup>76</sup> 15 U.S.C. 1640(a)(1), (a)(2)(A)(i), and (a)(2)(A)(ii).

<sup>77</sup> 15 U.S.C. 1640(a)(2)(B).

<sup>78</sup> 15 U.S.C. 1640(a)(3).

<sup>79</sup> P.L. 91-508, tit. 6, § 601, 84 *Stat.* 1128, 15 U.S.C. 1681 *et. seq.*

relevancy, and proper utilization of such information.”<sup>80</sup> The FCRA applies to the files maintained by “consumer reporting agencies,” a term broadly defined to include anyone in the business of furnishing reports on the credit worthiness of consumers to third parties.<sup>81</sup> Consumer credit reports generally include information about a consumer’s “credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.”<sup>82</sup> This information is gathered and sold to creditors, employers, landlords and other businesses.<sup>83</sup> The FCRA outlines a consumer’s rights in relation to his or her credit report, as well as permissible uses for credit reports and disclosure requirements.<sup>84</sup> The FCRA was recently amended to include, *inter alia*, a number of provisions aimed at preventing identity theft and assisting victims.

## Required Disclosures

Under the FCRA, a consumer has the right to access all information in his or her credit report, including the sources of the information and his or her credit score.<sup>85</sup> Pursuant to a recent amendment to the FCRA, a consumer may request one free credit report each year from each of the nationwide consumer reporting agencies.<sup>86</sup> Free reports may also be obtained under certain special circumstances.<sup>87</sup> Absent one of these special circumstances, a consumer may be charged up to \$9 for additional copies of his or her credit report.<sup>88</sup>

A consumer is also entitled to receive information identifying each person that obtained a consumer report for employment purposes during the previous two years, or for any other purpose during the previous year.<sup>89</sup> Additional information that must be disclosed to the consumer upon request includes “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;” and “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.”<sup>90</sup>

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<sup>80</sup> 15 U.S.C. 1681(b).

<sup>81</sup> 15 U.S.C. 1681a(f).

<sup>82</sup> 15 U.S.C. 1681a(d). In addition to credit information, consumer reporting agencies are allowed to include information on the failure of the consumer to pay overdue child support, if such information has been provided to the agency by a state or local child support enforcement agency or verified by any state or federal government agency. This information remains on the consumer report for up to seven years. 15 U.S.C. 1681s-1.

<sup>83</sup> 16 C.F.R. 601, Appendix A.

<sup>84</sup> For a detailed discussion of the Fair Credit Reporting Act see CRS Report RL31666, *Fair Credit Reporting Act: Rights and Responsibilities*.

<sup>85</sup> 15 U.S.C. 1681g(a). Credit scores must be made available to consumers pursuant to a recent amendment included in P.L. 108-159. Prior to this amendment consumer reporting agencies were under no obligation to release credit scores. For a discussion of how credit scores are used, see CRS Report RS21298, *Credit Scores: Development, Use, and Policy Issues*.

<sup>86</sup> P.L. 108-159, Section 211(a). For more information on free credit reports, see CRS Report RL32008, *A Consumer’s Access to a Free Credit Report: A Legal and Economic Analysis*. The free credit report is not required to include the consumer’s credit score. The credit score must be disclosed upon request, but a reasonable fee may be imposed for the disclosure. P.L. 108-159, Section 212.

<sup>87</sup> See 15 U.S.C. 1681j.

<sup>88</sup> *Id.*

<sup>89</sup> 15 U.S.C. 1681g(a)(3).

<sup>90</sup> 15 U.S.C. 1681g(a)(4), (5).

## Consumer Rights

A consumer has the right to dispute the completeness or accuracy of any item of information contained in his or her file.<sup>91</sup> Once the consumer notifies the consumer reporting agency of the dispute, the agency must reinvestigate and record the current status of the disputed information, or delete the item from the consumer's file within 30 days.<sup>92</sup> The consumer reporting agency must also notify the furnisher of the disputed information of the consumer's dispute and provide the furnisher with all relevant information regarding the dispute that the agency has received from the consumer.<sup>93</sup>

In conducting the reinvestigation, the consumer reporting agency must review and consider all relevant information submitted by the consumer.<sup>94</sup> The agency may terminate the reinvestigation if it reasonably determines that the dispute is frivolous or irrelevant, or if the consumer fails to provide sufficient information to investigate the disputed information.<sup>95</sup> Should the agency determine that the dispute is frivolous or irrelevant it must notify the consumer of the determination not later than five business days after making such determination.<sup>96</sup> If the reinvestigation leads to a determination that the disputed information is in fact inaccurate, incomplete or unverifiable, the consumer reporting agency must delete that item of information from the consumer's credit file.<sup>97</sup>

Following the reinvestigation, the consumer reporting agency must provide written notice of the results of the reinvestigation to the consumer within five days of the completion of the reinvestigation.<sup>98</sup> The notice must include a statement that the reinvestigation is completed; a copy of the consumer report reflecting the information in the consumer's file revised during the reinvestigation; a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information can be provided; 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 contained therein; and a notice that the consumer has the right to request that the consumer reporting agency send notices regarding deleted information to specified parties.<sup>99</sup>

## Permissible Uses of Consumer Credit Reports

The Fair Credit Reporting Act lists the purposes for which a consumer credit report may be furnished to a requester.<sup>100</sup> In general, a consumer reporting agency may furnish a copy of a consumer's report to a person the agency has reason to believe intends to use the information for

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<sup>91</sup> 15 U.S.C. 1681i.

<sup>92</sup> 15 U.S.C. 1681i(a)(1)(A).

<sup>93</sup> 15 U.S.C. 1681i(a)(2)(A).

<sup>94</sup> 15 U.S.C. 1681i(a)(4).

<sup>95</sup> 15 U.S.C. 1681i(a)(3)(A).

<sup>96</sup> 15 U.S.C. 1681i(a)(3)(B).

<sup>97</sup> 15 U.S.C. 1681(a)(5).

<sup>98</sup> 15 U.S.C. 1681(a)(6)(A).

<sup>99</sup> 15 U.S.C. 1681(a)(6)(B).

<sup>100</sup> 15 U.S.C. 1681b.

the purpose of extending credit to the consumer, or for review or collection of the consumer's account.<sup>101</sup>

Reports may also be issued for employment purposes if certain conditions are met.<sup>102</sup> In order to obtain a report for employment purposes, the requester must certify that it will comply with federal law and that the report will not be used in violation of any state or federal law.<sup>103</sup> The consumer must be told by the prospective employer that a report may be obtained and must consent to the procurement of a report by the employer.<sup>104</sup>

An insurer may obtain a copy of a consumer's report in connection with the underwriting of an insurance policy involving the consumer for which the consumer has applied.<sup>105</sup>

A consumer reporting agency may also issue a report to a person it has reason to believe "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 entity required by law to consider an applicant's financial responsibility or status."<sup>106</sup>

Consumer credit reports may also be issued where there is a "legitimate business need" for the information contained in the report in connection with a business transaction initiated by the consumer, or for purposes of reviewing an existing account to determine whether the consumer continues to meet the terms of the account.<sup>107</sup>

In addition to the commercial purposes listed above, the Act also authorizes the release of consumer credit reports for certain legal purposes. Specifically, the Act authorizes the release of consumer credit reports "in response to the order of a court having jurisdiction to issue such an order," or in response to "a subpoena issued in connection with proceedings before a Federal grand jury."<sup>108</sup> Reports may also be issued to the heads of state or local child support enforcement agencies, if needed to establish the consumer's capacity to make child support payments or for determining the appropriate level of such payments.<sup>109</sup> A consumer may also request in writing that the report be issued to a third-party.<sup>110</sup>

Reports may be issued in connection with transactions not initiated by the consumer only if the consumer authorizes the reporting agency to provide such reports, or if the transaction consists of a firm offer for credit or insurance, and the consumer has not elected to have his name removed from lists provided by the agency for this purpose.<sup>111</sup> A consumer may elect to have his name

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<sup>101</sup> 15 U.S.C. 1681b(a)(3)(A).

<sup>102</sup> 15 U.S.C. 1681b(a)(3)(B); 15 U.S.C. 1681b(b).

<sup>103</sup> 15 U.S.C. 1681b(b)(1).

<sup>104</sup> 15 U.S.C. 1681b(b)(2).

<sup>105</sup> 15 U.S.C. 1681b(a)(3)(C).

<sup>106</sup> 15 U.S.C. 1681b(a)(3)(D).

<sup>107</sup> 15 U.S.C. 1681b(a)(3)(F).

<sup>108</sup> 15 U.S.C. 1681b(a)(1).

<sup>109</sup> 15 U.S.C. 1681b(a)(4). In order for reports to be released for this purpose, the paternity of the consumer for the child to which the obligation relates must have been established or acknowledged by the consumer; the consumer must be given notice of the request; and the report must be kept confidential and used only for the indicated purpose. *Id.*

<sup>110</sup> 15 U.S.C. 1681b(a)(2).

<sup>111</sup> 15 U.S.C. 1681b(c)(1). This provision allows "prescreening" by a consumer reporting agency. "Prescreening" is the (continued...)

removed from such lists by notifying the reporting agency that he does not consent to the release of reports for this purpose.<sup>112</sup> If the consumer has not authorized the release of such reports, but has not elected to have his name removed from the lists, the agency may release only certain information about the consumer. Information released for transactions not initiated by the consumer is limited to the name and address of the consumer, an identifier that is not unique to the consumer and that is used solely for the purpose of verifying the consumer's identity, and 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.<sup>113</sup>

## Remedies Available

There are both civil and criminal penalties for violations of the Fair Credit Reporting Act. Actions may be brought in any appropriate United States district court or any other court of jurisdiction not later than the earlier of two years after the date of discovery by the plaintiff of the violation that is the basis for such liability, or five years after the date on which the violation occurred.<sup>114</sup> A consumer may recover actual damages as a result of the violation, in addition to attorney's fees, if successful in an action against a person who negligently fails to comply with any requirement under the FCRA.<sup>115</sup> Criminal penalties apply to persons who "knowingly and willfully" obtain information on a consumer from a consumer reporting agency under false pretenses and to employees of consumer reporting agencies who "knowingly and willfully" provide information about a consumer to a person not authorized to receive such information.<sup>116</sup>

Violations of the FCRA are also subject to the jurisdiction of the Federal Trade Commission and other federal agencies.<sup>117</sup>

## Preemption of State Law

Generally, the FCRA "does not annul, alter, affect, or exempt any person subject to the provisions of [the Act] from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of [the Act], and then only to the extent of the inconsistency."<sup>118</sup> Despite the general nonpreemption of similar laws, the Act sets forth a list of subjects with respect to which no requirement or prohibition may be imposed under state law.<sup>119</sup> The subjects listed include the following: the Act's provisions relating to prescreening of consumer reports; sections of the Act

(...continued)

process "whereby a consumer reporting agency compiles or edits a list of consumers who meet specific criteria and provides this list to the client or third party on behalf of the client for use in soliciting these consumers for the client's products or services." This is permissible under the Fair Credit Reporting Act if the client agrees in advance that each consumer on the list will receive an offer of credit. *See* CCH Consumer Credit Guide, ¶ 25,050.

<sup>112</sup> 15 U.S.C. 1681b(e).

<sup>113</sup> 15 U.S.C. 1681b(c)(2).

<sup>114</sup> The statute of limitations was recently amended by P.L. 108-159, Section 156.

<sup>115</sup> 15 U.S.C. 1681o(a).

<sup>116</sup> 15 U.S.C. 1681q; 15 U.S.C. 1681r. Violators are subject to a fine, imprisonment for up to two years, or both.

<sup>117</sup> 15 U.S.C. 1681s.

<sup>118</sup> 15 U.S.C. 1681t(a).

<sup>119</sup> 15 U.S.C. 1681t(b)(1).

relating to the time by which a consumer reporting agency must take actions with respect to a disputed accuracy;<sup>120</sup> the imposition of certain duties on persons who take adverse actions with respect to a consumer; duties of persons who use a consumer report in connection with a credit or insurance transaction that is not initiated by the consumer; requirements regarding information that may be included in a consumer report;<sup>121</sup> and provisions relating to the responsibilities of persons who furnish information to consumer reporting agencies.<sup>122</sup> State laws relating to the exchange of information among persons affiliated by common ownership or common corporate control,<sup>123</sup> as well as those relating to the form and content of the disclosure of a consumer's rights are also preempted.<sup>124</sup> A recent amendment to the FCRA made these preemptions permanent, and created new preemptions for certain state laws related to identity theft.<sup>125</sup>

## Identity Theft Provisions

Recent amendments to the FCRA added a number of new provisions aimed at preventing identity theft and assisting victims.<sup>126</sup> These new provisions, *inter alia*, allow victims to have fraud alerts placed in their credit files and block information in their files resulting from identity theft. Prevention efforts include requirements regarding the truncation of credit card account numbers on electronically printed receipts and the truncation of social security numbers on consumer credit reports, as well as requirement regarding address verification and reconciliation.

## Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act (FDCPA) was signed into law on September 29, 1977, as an amendment to the Consumer Credit Protection Act.<sup>127</sup> The purpose of the FDCPA is to “eliminate abusive debt collection practices by debt collectors.”<sup>128</sup> A “debt collector” is generally defined as “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

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<sup>120</sup> The preemption of these provisions in state law does not apply to any state law in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996. 15 U.S.C. 1681t(b)(1)(B).

<sup>121</sup> The preemption of these provisions in state law do not apply to any state law in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996. 15 U.S.C. 1681t(b)(1)(E).

<sup>122</sup> The preemption does not apply with respect to section 54A(a) of chapter 93 of the Massachusetts Annotated Laws (as in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996); or with respect to section 1785.25(a) of the California Civil Code (as in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996). 15 U.S.C. 1681t(b)(1)(F).

<sup>123</sup> The preemption does not apply with respect to subsection (a) or (c)(1) of section 2480e of title 9, Vermont Statutes Annotated (as in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996). 15 U.S.C. 1681t(b)(2).

<sup>124</sup> 15 U.S.C. 1681t(b)(2) and (3).

<sup>125</sup> P.L. 108-159, Section 711. For more information of the FCRA's preemption of state law, see CRS Report RS21449, *Fair Credit Reporting Act: Preemption of State Law*.

<sup>126</sup> See P.L. 108-159, Title I. For more information on these new provisions, see CRS Report RL31919, *Federal Laws Related to Identity Theft*, by Gina Marie Stevens.

<sup>127</sup> P.L. 95-109, 91 Stat. 874, 15 U.S.C. 1692 *et. seq.*

<sup>128</sup> 15 U.S.C. 1692(e).

another.”<sup>129</sup> The FDCPA does not apply to creditors who are collecting their own debts, unless in the process of collecting debts, the creditor uses a name other than his own which would indicate that a third person is attempting to collect the debt on his behalf.<sup>130</sup> Under the FDCPA, debt collectors are prohibited from threatening or harassing debtors, and their contacts with debtors are restricted.

## Prohibited Actions

Without prior consent of the consumer, a debt collector is prohibited from contacting the consumer at any unusual or inconvenient time or place.<sup>131</sup> Contacts are limited to between the times of 8:00am and 9:00pm, and a debt collector may not contact the consumer at his 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.”<sup>132</sup> If the consumer is represented by an attorney in connection with the debt owed, the debt collector may only contact the attorney, unless the attorney consents to direct communication with the consumer.<sup>133</sup>

Debt collectors are prohibited from communicating with third parties regarding the consumer’s debt except for the purpose of locating the consumer.<sup>134</sup> When making such contacts, the debt collector must identify himself and state that he is confirming or correcting location information concerning the consumer, and is prohibited from disclosing to the third party that the consumer owes any debt.<sup>135</sup> In general, debt collectors may contact third parties only once.<sup>136</sup>

If a consumer notifies a debt collector that the consumer refuses to pay the debt or that he wishes the debt collector to cease communication, the debt collector is prohibited from contacting the consumer, except to notify the consumer that the communication will stop or that the debt collector or creditor intends to take further action.<sup>137</sup>

While collecting or attempting to collect a debt, a debt collector may not harass or abuse a consumer. Specifically, the FDCPA prohibits the use or threat of use of violence to harm the physical person, reputation, or property of the consumer.<sup>138</sup> Debt collectors are prohibited from using obscene or profane language and cannot repeatedly call the consumer with the intent to annoy, abuse, or harass.<sup>139</sup> Debt collectors must also identify themselves when contacting the consumer by telephone.<sup>140</sup>

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<sup>129</sup> 15 U.S.C. 1692a(6).

<sup>130</sup> *Id.*

<sup>131</sup> 15 U.S.C. 1692c(a). For the purposes of this section, the term “consumer” includes, the consumer’s spouse, parent (if the consumer is a minor), guardian, executor, or administrator. 15 U.S.C. 1692c(d).

<sup>132</sup> *Id.*

<sup>133</sup> 15 U.S.C. 1692c(a)(2).

<sup>134</sup> 15 U.S.C. 1692b.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* Third parties may be contacted more than once if the debt collector reasonably believes that the earlier response was erroneous or incomplete and that the person now has correct or complete location information.

<sup>137</sup> 15 U.S.C. 1692c(c).

<sup>138</sup> 15 U.S.C. 1692d(1). This list is not exhaustive.

<sup>139</sup> 15 U.S.C. 1692d(2) and (5).

<sup>140</sup> 15 U.S.C. 1692d(6).

The FDCPA also prohibits the publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency, as well as the advertisement for sale of any debt to coerce the payment of the debt.<sup>141</sup>

Debt collectors are also prohibited from using any false, deceptive, or misleading representation or means in connection with the collection of any debt.<sup>142</sup> This prohibition includes, but is not limited to, false representation that the debt collector is affiliated with the United States or any state government, or the false representation about the legal status of the debt or the legal consequences of not paying the debt.<sup>143</sup>

In addition, a debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt, including the collection of unauthorized charges, the deposit of postdated checks, and taking or threatening to take nonjudicial action to take property from the consumer.<sup>144</sup>

## Requirements for Debt Collectors

Within five days after the initial communication with a consumer, a debt collector is required to send the consumer a written notice containing the following information: the amount of the debt; the name of the creditor to whom the debt is owed; a statement informing the consumer of the right to dispute the validity of the debt within 30 days; a statement that if the consumer notifies the debt collector of the dispute within 30 days, the debt collector will obtain verification of the debt and mail the verification to the consumer; and a statement that upon the consumer's request, the debt collector will provide the consumer with the name and address of the original creditor if different from the current creditor.<sup>145</sup>

If the consumer notifies the debt collector within the 30 day time period that the debt is disputed, the debt collector is required to cease collection of the debt, or the disputed portion thereof, until the debt collector obtains verification of the debt.<sup>146</sup>

In the case of multiple debts owed by a consumer, a debt collector is required to apply any payments made by the consumer in accordance with the consumer's directions, and is not allowed to apply such payments to any disputed debt.<sup>147</sup>

## Remedies Available

Debt collectors who violate any provision of the Fair Debt Collection Practices Act are subject to civil liability. A consumer may bring an action under the FDCPA within one year from the date on which the violation occurred, and the action may be brought in any appropriate United States district court or any other court of competent jurisdiction. An individual consumer may recover

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<sup>141</sup> 15 U.S.C. 1692d(3) and (4).

<sup>142</sup> 15 U.S.C. 1692e. This list is not exhaustive.

<sup>143</sup> *Id.*

<sup>144</sup> 15 U.S.C. 1692f. This list is not exhaustive.

<sup>145</sup> 15 U.S.C. 1692g(a).

<sup>146</sup> 15 U.S.C. 1692g(b).

<sup>147</sup> 15 U.S.C. 1692h.

actual damages as a result of the violation and additional damages not to exceed \$1,000, in addition to court costs and attorney's fees.<sup>148</sup> In determining the amount of liability, the court will consider the frequency and persistence of the noncompliance by the debt collector, the nature of the noncompliance, and the extent to which the noncompliance was intentional.<sup>149</sup> Compliance with the FDCPA is also enforced by the Federal Trade Commission and other federal agencies.<sup>150</sup>

## Equal Credit Opportunity Act

The Equal Credit Opportunity Act (ECOA) was enacted on October 28, 1974, by P.L. 93-495, and became effective on October 28, 1975.<sup>151</sup> The purpose of the ECOA is to “promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age;<sup>152</sup> to the fact that all or part of the applicant’s income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.”<sup>153</sup> The ECOA prohibits discrimination on the basis of any of these factors in extending or approving an application for credit.

### Activities Not Constituting Discrimination

Under certain circumstances creditors are able to consider some of the factors listed above. For example, a creditor may inquire as to marital status or request information about an applicant’s spouse “if the spouse will be permitted to use the account; the spouse will be contractually liable on the account; the applicant is relying on the spouse’s income as a basis for repayment of the credit requested; the applicant resides in a community property state; or the applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.”<sup>154</sup>

Creditors may consider an applicant’s age or whether any of the applicant’s income derives from public assistance for the purposes of determining the amount and probable continuance of income, credit history, or other elements of creditworthiness.<sup>155</sup> Age may also be considered if it is used to favor the extension of credit to an elderly applicant.<sup>156</sup>

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<sup>148</sup> 15 U.S.C. 1692k(a). Calculation of damages in a class action suit vary. *See* 15 U.S.C. 1692k(a)(2)(B).

<sup>149</sup> 15 U.S.C. 1692k(b). A debt collector may not be held liable for a violation of the Act, if he is able to show by a “preponderance of the 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.” 15 U.S.C. 1692k(c).

<sup>150</sup> 15 U.S.C. 1692l.

<sup>151</sup> P.L. 93-495, tit. 5, § 501, 88 *Stat.* 1520, 15 U.S.C. 1691 *et. seq.*

<sup>152</sup> Provided the applicant has the capacity to contract. In most states, the applicant must be 18 years of age. P.L. 93-495, tit. 5, § 502, 88 *Stat.* 1521, 15 U.S.C. 1691(a)(1).

<sup>153</sup> 12 C.F.R. 202.1(b).

<sup>154</sup> 12 C.F.R. 202.5(c).

<sup>155</sup> 15 U.S.C. 1691(b)(2).

<sup>156</sup> 15 U.S.C. 1691(b)(4).

## Remedies Available

If any creditor fails to comply with the provisions of the ECOA, the applicant can recover actual damages, punitive damages up to \$10,000, and attorney's fees.<sup>157</sup> The applicant may also be granted equitable and declaratory relief as is necessary to enforce the requirements of the ECOA.<sup>158</sup>

## Electronic Fund Transfer Act

The Electronic Fund Transfer Act (EFTA) was enacted by Title XX of P.L. 95-630 on November 10, 1978, as an amendment to the Consumer Credit Protection Act.<sup>159</sup> In general, the purpose of the EFTA is to “provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems.”<sup>160</sup> Its primary objective is the provision of individual consumer rights.<sup>161</sup> The phrase “electronic fund transfer” is defined as “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.”<sup>162</sup>

## Required Disclosures

Under the EFTA, the terms and conditions of electronic fund transfers involving a consumer's account must be disclosed at the time the consumer contracts for an electronic fund transfer service.<sup>163</sup> The disclosures must be “clear and readily understandable, in writing, and in a form the consumer may keep.”<sup>164</sup> Required disclosures include a summary of the consumer's liability for unauthorized electronic fund transfers; the telephone number and address of the person or office to be notified when the consumer believes that an unauthorized electronic fund transfer has been or may be made; the financial institution's business days; the type of electronic fund transfers that the consumer may make and any limitations on the frequency and dollar amount of transfers; any fees imposed by the financial institution for electronic fund transfers or for the right to make transfers; a summary of the consumer's right to receipts and periodic statements, and notices regarding preauthorized transfers; a summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for placing a stop-payment order; a summary of the financial institution's liability to the consumer for failure to make or stop certain transfers; the circumstances under which, in the ordinary course of business, the financial

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<sup>157</sup> 15 U.S.C. 1691e.

<sup>158</sup> 15 U.S.C. 1691e(c).

<sup>159</sup> P.L. 95-630, tit. XX, 92 *Stat.* 3728, 15 U.S.C. 1693 *et. seq.*

<sup>160</sup> 15 U.S.C. 1693(b).

<sup>161</sup> *Id.*

<sup>162</sup> 15 U.S.C. 1693a(6). Included in this definition are point-of-sale transfers; automated teller machine transfers; direct deposits or withdrawals of funds; transfers initiated by telephone; and transfers resulting from debit card transactions, whether or not initiated through an electronic terminal. 12 C.F.R. 205.3(b).

<sup>163</sup> 15 U.S.C. 1693c(a).

<sup>164</sup> 12 C.F.R. 205.4(a).

institution may provide information concerning the consumer's account to third parties; and a notice concerning error resolution.<sup>165</sup>

## Consumer Rights

The EFTA limits a consumer's liability for unauthorized electronic fund transfers. If the consumer notifies the financial institution within two business days after learning of the loss or theft, the consumer's liability is limited to the lesser of \$50 or the amount of the unauthorized transfers that occurred before notice was given to the financial institution.<sup>166</sup> If the consumer fails to notify the financial institution within two business days, the consumer's liability is limited to the lesser of \$500 or the sum of \$50, or the amount of unauthorized transfers that occur within the two business days, whichever is less, and the amount of unauthorized transfers that occur after the close of two business days and before notice to the institution, provided the institution establishes that these unauthorized transfers would not have occurred had the consumer notified the institution within the two day period.<sup>167</sup>

A consumer has a right to documentation of electronic fund transfers initiated by the consumer from an electronic terminal and to receive notice of preauthorized transfers. At the time the consumer initiates an electronic fund transfer at an electronic terminal, the financial institution shall make a receipt available which contains the following information, as applicable: the amount of the transfer; the date of the transfer; the type of transfer, unless the access device used is able to access only one account; a number or code to identify the consumer's account; and the location of the terminal.<sup>168</sup> In addition, the financial institution must provide a periodic statement for each monthly cycle in which an electronic fund transfer occurred, and must send a periodic statement at least quarterly if no transfer has occurred.<sup>169</sup> Periodic statements must include, as applicable, information about the electronic fund transfers, including the amount of the transfer, the date the transfer was credited or debited to the consumer's account, the type of transfer and type of account involved, the location of the terminal, and the name of any third party to or from whom funds were transferred; the number of the account; the amount of any fees assessed against the account during the statement period; the balance in the account at the beginning and at the close of the statement period; the address and telephone number to be used for inquiries or notice of errors; and a telephone number the consumer may call to ascertain whether preauthorized transfers to the consumer's account have occurred, if the financial institution uses the telephone-notice option provided in the regulations.<sup>170</sup>

In the case of preauthorized transfers, oral or written notice must be provided to the consumer within two business days after the transfer occurs, or within two business days after the date on which the transfer was scheduled to occur, but did not.<sup>171</sup> Notice of preauthorized transfers can also be made by providing a readily available telephone line that the consumer may call to determine whether the transfer occurred. The consumer may stop payment of a preauthorized

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<sup>165</sup> 15 U.S.C. 1693c(a), 12 C.F.R. 205.7(b).

<sup>166</sup> 15 U.S.C. 1693g(a), 12 C.F.R. 205.6(b)(1).

<sup>167</sup> 15 U.S.C. 1693g(a), 12 C.F.R. 205.6(b)(2).

<sup>168</sup> 15 U.S.C. 1693d(a), 12 C.F.R. 205.9(a).

<sup>169</sup> 15 U.S.C. 1693d(c), 12 C.F.R. 205.9(b).

<sup>170</sup> 15 U.S.C. 1693(c), 12 C.F.R. 205.9(b).

<sup>171</sup> 12 C.F.R. 205.10(a)(1).

transfer by notifying the financial institution orally or in writing at least three business days before the scheduled date of the transfer.<sup>172</sup> If notification is received by the financial institution orally, the consumer may be required to provide written confirmation of the stop-payment order within 14 days of the oral notification.<sup>173</sup>

## Resolution of Errors

If a financial institution receives, within 60 days after providing documentation of electronic fund transfers to the consumer, an oral or written notice from the consumer indicating the consumer's belief that the documentation provided contains an error, the financial institution shall investigate the alleged error, determine whether an error has occurred, and report or mail the results of the investigation and determination to the consumer within ten business days.<sup>174</sup> The notice from the consumer to the financial institution must identify the name and account number of the consumer; indicate the consumer's belief that the documentation contains an error and the amount of the error; and set forth the reasons for the consumer's belief that an error has occurred.<sup>175</sup>

In the event that the financial institutions determines that an error has occurred, the financial institution must correct the error within one day of the determination in accordance with the provisions relating to consumer's liability for unauthorized charges.<sup>176</sup> The financial institution may provisionally recredit the consumer's account for the amount alleged to be in error pending the conclusion of its investigation and its determination of whether an error has occurred, if it is unable to complete the investigation within ten business days.<sup>177</sup>

If the financial institution determines that an error did not occur, it must deliver or mail to the consumer an explanation of its findings within three business days after the conclusion of its investigation, and upon the request of the consumer, promptly deliver or mail to the consumer reproductions of all documents which the financial institution relied on in making its determination.<sup>178</sup>

## Remedies Available

In general, a financial institution is liable to a consumer for all damage proximately caused by 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 "the consumer's account has insufficient funds; the funds are subject to legal process or other encumbrance restricting such transfer; such transfer would exceed an established credit limit; an electronic terminal has insufficient cash to complete the transaction; or as otherwise provided in regulations of the Board."<sup>179</sup> The financial institution is

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<sup>172</sup> 15 U.S.C. 1693e(a), 12 C.F.R. 205.10(c).

<sup>173</sup> *Id.*

<sup>174</sup> 15 U.S.C. 1693f(a), 12 C.F.R. 205.11(b) and (c).

<sup>175</sup> *Id.*

<sup>176</sup> 5 U.S.C. 1693f(b).

<sup>177</sup> 15 U.S.C. 1693f(c), 12 C.F.R. 205.11(c).

<sup>178</sup> 15 U.S.C. 1693f(d), 12 C.F.R. 205.11(d).

<sup>179</sup> 15 U.S.C. 1693h(a)(1).

liable for damages proximately caused by the institution's failure to make an electronic fund transfer even when there are insufficient funds if the financial institution failed to credit a deposit of funds to the consumer's account which would have provided sufficient funds to make the transfer, or the institution failed to stop payment of a preauthorized transfer when instructed to do so.<sup>180</sup> A financial institution may not be liable for such damages if it shows by a preponderance of the evidence that its action or failure to act was caused by an act of God or other circumstances beyond its control, that it exercised reasonable care to prevent such occurrence, and that it exercised such diligence as the circumstances required.<sup>181</sup>

A consumer is also entitled to any actual damage sustained as a result of a financial institution's failure to comply with any provision of the EFTA, plus an amount not less than \$100 or more than \$1,000.<sup>182</sup> In a class action suit, the class is entitled to actual damages plus other damages the court may allow, not to exceed the lesser of \$500,000 or 1% of the net worth of the defendant.<sup>183</sup> Court costs and reasonable attorney's fees may also be awarded.<sup>184</sup> Where a financial institution has failed to comply with error resolution provisions set forth in the EFTA, the consumer is entitled to treble damages.<sup>185</sup> Financial institutions may also be subject to criminal liability for certain violations of the EFTA.<sup>186</sup>

(*Note:* This report was originally written by Angie A. Welborn, Legislative Attorney.)

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<sup>180</sup> 15 U.S.C. 1693h(a)(2).

<sup>181</sup> 15 U.S.C. 1693h(b)(1).

<sup>182</sup> 15 U.S.C. 1693m(a).

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> 15 U.S.C. 1693f(e).

<sup>186</sup> 15 U.S.C. 1693n.