

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111-24, set out as an Effective Date of 2009 Amendment note under section 1602 of this title.

§ 1665d. Reasonable penalty fees on open end consumer credit plans**(a) In general**

The amount of any penalty fee or charge that a card issuer may impose with respect to a credit card account under an open end consumer credit plan in connection with any omission with respect to, or violation of, the cardholder agreement, including any late payment fee, over-the-limit fee, or any other penalty fee or charge, shall be reasonable and proportional to such omission or violation.

(b) Rulemaking required

The Bureau, in consultation with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the National Credit Union Administration Board, shall issue final rules not later than 9 months after May 22, 2009, to establish standards for assessing whether the amount of any penalty fee or charge described under subsection (a) is reasonable and proportional to the omission or violation to which the fee or charge relates. Subsection (a) shall become effective 15 months after May 22, 2009.

(c) Considerations

In issuing rules required by this section, the Bureau shall consider—

- (1) the cost incurred by the creditor from such omission or violation;
- (2) the deterrence of such omission or violation by the cardholder;
- (3) the conduct of the cardholder; and
- (4) such other factors as the Bureau may deem necessary or appropriate.

(d) Differentiation permitted

In issuing rules required by this subsection, the Bureau may establish different standards for different types of fees and charges, as appropriate.

(e) Safe harbor rule authorized

The Bureau, in consultation with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the National Credit Union Administration Board, may issue rules to provide an amount for any penalty fee or charge described under subsection (a) that is presumed to be reasonable and proportional to the omission or violation to which the fee or charge relates.

(Pub. L. 90-321, title I, §149, as added Pub. L. 111-24, title I, §102(b)(1), May 22, 2009, 123 Stat.

1740; amended Pub. L. 111-203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

Editorial Notes

AMENDMENTS

2010—Subsecs. (b) to (e). Pub. L. 111-203, §1100A(2), which directed amendment of this section by substituting “Bureau” for “Board” wherever appearing, was executed by making the substitution for “Board” the first time appearing in subsecs. (b) and (e), and wherever appearing in subsecs. (c) and (d), to reflect the probable intent of Congress.

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§ 1665e. Consideration of ability to repay

A card issuer may not open any credit card account for any consumer under an open end consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required payments under the terms of such account.

(Pub. L. 90-321, title I, §150, as added Pub. L. 111-24, title I, §109(a), May 22, 2009, 123 Stat. 1743.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111-24, set out as an Effective Date of 2009 Amendment note under section 1602 of this title.

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**

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 Bureau.

(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), 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), 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 Bureau, 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) 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; Pub. L. 111-203, title X, §§1087, 1100A(2), July 21, 2010, 124 Stat. 2086, 2107.)

Editorial Notes

CODIFICATION

Pub L. 111-203, §1100A(2), which directed the substitution of “Bureau” for “Board” wherever appearing in title I of Pub. L. 90-321, was executed to this section, which is section 161 of title I of Pub. L. 90-321. Section 1087 of Pub. L. 111-203, which directed the making of an identical amendment in title III of Pub. L. 93-495, which added this section to title I of Pub. L. 90-321, has not been executed.

AMENDMENTS

2010—Subsecs. (b)(7), (d). Pub. L. 111-203, §1100A(2), substituted “Bureau” for “Board”. See Codification note above.

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.

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Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

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

Pub. L. 93-495, title III, §308, Oct. 28, 1974, 88 Stat. 1517, 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.

§ 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 creditor 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) 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.)

§ 1666b. Timing of payments**(a) Time to make payments**

A creditor may not treat a payment on a credit card account under an open end consumer credit plan as late for any purpose, unless the creditor has adopted reasonable procedures designed to ensure that each periodic statement including the information required by section 1637(b) of this title is mailed or delivered to the consumer not later than 21 days before the payment due date.

(b) Grace period

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 the period is based was mailed or delivered to the consumer not later than 21 days before the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge.

(Pub. L. 90-321, title I, §163, as added Pub. L. 93-495, title III, §306, Oct. 28, 1974, 88 Stat. 1514; amended Pub. L. 111-24, title I, §106(b)(1), May 22, 2009, 123 Stat. 1742; Pub. L. 111-93, §2, Nov. 6, 2009, 123 Stat. 2998.)

Editorial Notes

AMENDMENTS

2009—Pub. L. 111-24 amended section generally, adding provisions relating to late payments and delivery of periodic statements, substituting provisions requiring a 21-day statement delivery period for provisions requiring a 14-day period before the imposition of additional finance charges, and striking provisions relating to excusable cause for creditor’s failure to make timely mailing or delivery of periodic statements.

Subsec. (a). Pub. L. 111-93 inserted “a credit card account under” after “payment on”.