

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-185856

DATE: June 15, 1976 98830

MATTER OF: Equal Employment Opportunity Commission
Request for Advance Decision

DIGEST:

Pursuant to court decisions holding that liability protection of Truth in Lending Act for unauthorized use of credit cards extends to all credit cards, whether used for business or consumer purposes, Government is also protected under Act. Equal Employment Opportunity Commission, B-180512, May 17, 1974, 74-1 CPD 264 is overruled.

An authorized certifying officer of the Equal Employment Opportunity Commission (EEOC) requests an advance decision as to the propriety of payment of invoices submitted by Avis Rent A Car System, Inc. (Avis) for automobile rental charges in the amount of \$2,568.61 resulting from the unauthorized use of a credit card issued to EEOC.

In support of the charges, Avis has submitted copies of rental agreements for the hire of automobiles bearing the imprint of the credit card issued to EEOC. Some of the agreements are unsigned and the remaining agreements carry the signature of persons who have neither been employed nor authorized by EEOC to use its credit card. In addition, Avis submitted unsigned Check-In Reports which do not have a credit card imprint to document certain charges unsupported by rental agreements. The dates on a few of the rental agreements and Check-In Reports are incomplete, but these charges generally were incurred from April through June 1972. There is no indication that the automobiles were ever used in the performance of official agency business, and the record is void of any indication of fault or mishandling of the credit card on the part of EEOC. Avis maintains that a written agreement exists which assigns liability for the unauthorized use of the credit card to EEOC, but neither Avis nor EEOC can produce such an agreement.

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The 1970 amendment to the Truth in Lending Act, 15 U.S.C. § 1601 et seq. (1970), which became effective January 21, 1971, limits a cardholder's liability for the unauthorized use of a credit card. Section 1643(a), of principal concern in the case, states, in pertinent part:

"A cardholder shall be liable for the unauthorized use of a credit card only if the card is an accepted card, the liability is not in excess of \$50, the card issuer gives adequate notice to the card holder of the potential liability, the card issuer has provided the cardholder with a self-addressed, prestamped notification to be mailed by the cardholder in the event of the loss or theft of the credit card, and the unauthorized use occurs before the cardholder has notified the card issuer that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise. Notwithstanding the foregoing, no cardholder shall be liable for the unauthorized use of any credit card which was issued on or after the effective date of this section, and, after the expiration of twelve months following such effective date, no cardholder shall be liable for the unauthorized use of any credit card regardless of the date of its issuance, unless (1) the conditions of liability specified in the preceding sentence are met, and (2) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it."

It has been held that the protection afforded by the Truth in Lending Act in effect at the time the instant charges were incurred applies to all credit cards, whether used for business or consumer purposes. Credit Card Service Corp. v. F.T.C., 495 F.2d 1004 (D.C. Cir. 1974); American Airlines, Inc. v. Remis Industries, Inc., 494 F.2d 196 (2d Cir. 1974); see 12 C.F.R. § 226.13(a) (4) (1975). Accordingly, we are aware of no valid basis for exempting from the Act's purview credit cards issued to the Government. Claimant has not shown compliance with the conditions precedent for limited recovery of \$50 under the Act, and its claim is denied in its entirety. (While in two instances of unauthorized rentals the record does not show the year in which the card was used, we think it is incumbent upon the claimant to establish that the use occurred prior to the Act's effective date.)

Our decision, Equal Employment Opportunity Commission, B-180512, May 17, 1974, 74-1 CPD 264, which allowed payment to a card issuer for the unauthorized use of a credit card was based in part on the assumption that section 1603(1) of the Truth In Lending Act exempted a claim of this type from the quoted provision as a business transaction. Since Credit Card Service Corp., supra, decided contemporaneously, held the exemption not applicable, our earlier decision is overruled.

We note that a 1974 amendment to the Act, 15 U.S.C. § 1645, which became effective October 28, 1974, permits a card issuer and a business or other organization which provides credit cards to ten or more of its employees to agree by contract as to the liability of the organization for the unauthorized use of such credit cards without regard to the protection otherwise provided under the Act. 40 Fed. Reg. 43208 (1975). Since the instant charges were incurred prior to such amendment, we need not decide its possible applicability to the Government.


Acting Comptroller General
of the United States