

REPORT NO. 1 OF THE SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

RECOMMENDATION*

Whereas, Credit practices which discriminate on the basis of marital status or sex impose unreasonable and unnecessary barriers to economic opportunity,

Be It Therefore Resolved, That the American Bar Association supports passage of legislation, on the local, state and federal levels, which prohibits discrimination in credit practices, by creditors against individuals on the basis of sex or marital status; and

Be It Further Resolved, That the president or his designee is authorized to present the substance of the foregoing resolution to appropriate committees of Congress, departments of the government and state legislatures.

REPORT

Women in all income brackets encounter more difficulty in obtaining credit than do their male counterparts. In an increasingly credit-oriented society this problem results in extreme financial hardship for female-headed households, families in which the mother works out of economic necessity, and for never-married, separated or divorced women. Individual cases are documented in testimony at hearings held by the National Commission on Consumer Finance in May 1972.¹

Women are deprived of the opportunity to own a home, to finance their education, to go into business and to purchase necessary automobiles, appliances, furniture and clothing on the same basis as male headed families. Such inequities were condemned by the President of the United States in his policy recommendations and goals submitted to Congress in September 1973.²

*The recommendation was approved. See page 159.

¹National Commission on Consumer Finance, *Consumer Credit in the United States* (Washington, D.C.: Government Printing Office, December 1972), p. 153.

²In his housing policy recommendations and goals, President Nixon said:

The availability of mortgage credit has also been restricted in many instances on the grounds that the applicant's financial

Women's action groups and governmental commissions³ have investigated these problems and have sought solutions through cooperative efforts with the credit industry. Because their efforts have seldom been fruitful, legislation has been introduced on

resources, which would otherwise have been adequate, were deemed insufficient because the applicant was a woman. These practices have occurred, unfortunately, not only in home mortgage lending but also in the field of consumer credit. I shall therefore work with the Congress to achieve legislation which will prohibit lenders from discriminating on the basis of sex or marital status.

³Among these organizations are the District of Columbia Commission on the Status of Women, the Pennsylvania Commission on the Status of Women, the National Organization for Women, the Women's Equity Action League, Parents Without Partners, the American Civil Liberties Union, Advocates for Women, the Citizens' Advisory Council on the Status of Women, the Women's Legal Defense Fund and many others. See "Women and Credit, A Listing of Activities in the Public and Private Sectors Relating to Women and Credit," Center for Women Policy Studies, Washington, D.C., 1973, for further information on activities in this field.

the local, state, and federal levels. As of October 1, 1973 at least twelve states had passed such bills⁴ and several others were considering them.

On July 23, 1973 the Senate passed the Equal Credit Opportunity Act by a 90-0 vote.⁵ The Bill is pending before the House Banking Committee, Consumer Affairs Subcommittee. Senator Bill Brock of Tennessee, in introducing the bill, said he knew of no statistics which indicate that women are poor credit risks and added "Operation on the basis of presumption rather than on the basis of adequate evidence cannot be tolerated. This prejudice represents a transgression of the personal rights of individuals and it is potentially detrimental to our economy."⁶

The Joint Economic Committee held hearings on the economic status of women at which two law and policy research groups⁷ testified that there is no evidence whatsoever that women are poorer credit risks than men. Indeed, the few studies which have been done indicate that the opposite is true.⁸

⁴Colorado; Connecticut; Florida; Illinois; Massachusetts; Minnesota; New Jersey; New York; Rhode Island; Texas; Washington; and Wisconsin.

⁵Title III of S. 2101 is an amendment to the Truth in Lending Act. The operative language is as follows:

It shall be unlawful for any creditor or card issuer to discriminate on account of sex or marital status against any individual with respect to the approval or denial of any extension of consumer credit or with respect to the terms thereof or with respect to the approval, denial, renewal, continuation, or revocation of any open-end consumer account or with respect to the terms thereof. Section 104 of this title does not apply with respect to any transactions subject to this section.

The effect of the last sentence is to make the amendment apply to commercial loans.

⁶Congressional Record, Vol. 119, No. 111, July 16, 1973.

⁷The Center for Women Policy Studies (consumer credit) and the Center for National Policy Review (mortgages).

⁸David Durand, *Risk Elements in Consumer Installment Financing* (New York: National Bureau of Economic Research, Technical Edition, 1941), p. 74.

Two studies dealing with home mortgage delinquency and foreclosure are relevant to an analysis of sex as a determinant of risk.

The President of the American Banking Association addressing a regional meeting of that organization in June 1973 acknowledged that bankers needlessly discriminate against women, particularly those who are married, and urged a voluntary change of policy and practice.⁹ Nevertheless, the press continues to report cases of blatant sex discrimination in lending and retail credit. Suits are being attempted using constitutional theories where no adequate statutory law exists.¹⁰

Legislation is necessary at all levels of government to insure that credit-worthy women are not denied opportunity in this critical economic area because of prejudice based on outmoded ideas about their family role or place in the work force.¹¹

Home Mortgage and Foreclosure by John B. Herzog and James S. Earley (New York: National Bureau of Economic Research, 1971) found that marital status is unrelated to delinquency and foreclosure risk. Of the loan characteristics found to be related to credit risk, the loan to value ratio, the presence of junior financing, and loan purpose were clearly significant.

The only significant borrower characteristic was occupation, with professional persons, executives and managers showing the least delinquent behavior and self-employed persons and salesmen the most delinquent.

George von Furstenberg in *Technical Studies of Mortgage Default Risk: An Analysis of the Experience with FHA and VA Home Loans During the Decade 1957-66* (Ithaca, New York: Center for Urban Development Research, 1971) found that as the loan to value ratio rises, it becomes increasingly important as the predictor of default risk in mortgage loans. This may indicate that the payment to income ratio is not as important as has been thought, thus making it less valid to arbitrarily discount the working wives' income.

⁹Eugene H. Adams, "Women and Credit," as reprinted in *The American Banker*, June 25, 1973.

¹⁰*Charlene Hoberman vs. Manufacturers Hanover Trust Company*, Civil No. 73-3279 (S.D.N.Y., filed July 25, 1973.)

¹¹See the testimony of the Center for Women Policy Studies cited above, pp. 4-7, demonstrating that labor force trends and other indirect information dealing with the economic stability of women as a class have improved significantly during the lifetime of persons controlling credit policy. Furthermore, the Center points out that other factors may be more relevant to credit-

This resolution is consistent with, and is necessary to further implement, the resolution passed by the House of Delegates in

worthiness. For example, Center research discovered only two studies which examined good and bad credit accounts to determine whether sex was a valid factor for identifying risk. Both students indicated that women are more apt to pay their debts than are men. See testimony, p. 8.

1972, which urged "the extension of legal rights, privileges and responsibilities to persons, regardless of sex." This resolution, and the accompanying report, were approved by the Council of the Section of Individual Rights and Responsibilities at its October 19, 1973 meeting in Chicago, Illinois.

ALBERT E. JENNER, JR.

Chairman