OVERSIGHT ON CONSUMER PROTECTION ACTIVITIES OF FEDERAL BANKING AGENCIES

HEARINGS

BEFORE THE

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

ON THE CONSUMER PROTECTION EFFORTS OF THE THREE MAJOR BANK REGULATORY AGENCIES—THE FEDERAL RESERVE BOARD, THE COMPTROLLER OF THE CURRENCY, AND THE FEDERAL DEPOSIT INSURANCE CORPORATION

JULY [illegible], [illegible]3 AND [illegible]9, 1976

Printed for the use of the Committee on Banking, Housing and Urban Affairs

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OVERSIGHT ON CONSUMER PROTECTION ACTIVITIES OF FEDERAL BANKING AGENCIES

TUESDAY, JULY 27, 1976

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in room 5302 Dirksen Senate Office Building, Senator William Proxmire (chairman of the committee) presiding.

Also present: Senator William D. Hathaway.

OPENING STATEMENT OF CHAIRMAN PROXMIRE

The CHAIRMAN. The committee will come to order.

This morning we begin 3 days of oversight hearings on the consumer protection efforts of the three major bank regulatory agencies—the Federal Reserve Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. These agencies, as we all know, exercise supervisory authority over the more than 14,000 federally chartered, federally insured, or Federal Reserve members banks.

The purpose of these hearings, frankly, is to turn over some rocks and put a microscope on the teeming insects underneath. In particular we want to find out whether consumer protection is now—in 1976—still the neglected stepchild that it was a half a decade ago in the work of these agencies.

Almost 4 years ago, the National Commission on Consumer Finance reviewed the enforcement activities of the banking agencies. While it found that these agencies had ample statutory enforcement powers, and adequate resources, the Commission concluded:

> Federal agencies charged with supervising deposit-holding institutions have evidenced great interest in the solvency of the institutions, much less interest in enforcing Federal consumer credit laws, and virtually no interest in enforcing State consumer credit laws.

The commission also noted that "the assumption of responsibility for enforcing laws protecting debtors would require a significant change in attitude" on the part of the agencies. The Commission, therefore, specifically recommended that "agencies supervising federally chartered institutions undertake systematic enforcement of Federal credit protection laws" and that State officials be given enforcement authority over federally chartered institutions with respect to State consumer laws.

To further improve this situation, Congress enacted legislation more than 1½ years ago which required these three agencies to establish complaint-handling procedures, and directed the Federal Reserve Board to issue regulations prohibiting unfair or deceptive banking practices in consumer credit transactions.

With this background, the public might have expected from these agencies a sharp change in attitude and a vigorous surge in their enforcement activities.

But I find little evidence of such changes for the better. Instead, I hear complaints from consumers over extended delays in getting responses to their agency inquiries; or of complaints handled only through inconvenient agency offices at the other end of the State, or several States away.

In the 18 months since the Federal Reserve Board has had the authority to regulate unfair or deceptive practices by banks, it has not issued a single regulation. Nor to my knowledge, has it even initiated any preliminary investigations for rulemaking procedures.

More substantially, recent hearings in Senator Biden's Consumer Affairs Subcommittee have produced astonishing admissions from the banking agencies about large numbers of truth-in-lending violations discovered by their examiners, 28 percent in the case of the FDIC; "substantial and not capable of being itemized," in the case of the Comptroller.

Yet, these agencies have taken almost no formal actions against banks for these violations, and the primary burden for enforcement of truth in lending has, therefore, fallen to individual consumers in private lawsuits. Small wonder that private truth-in-lending litigation has grown by leaps and bounds in recent years, when the violations are so numerous and the regulatory agencies show little concern.

Most regrettably, there does not seem to have been any measurable improvement in the agencies' enforcement of State consumer protection laws. Our witnesses this morning will, I believe, elaborate on the difficulties they have had in trying to assure that State laws are enforced even-handedly against federally supervised and State-supervised institutions. This area of consumer protection, it seems to me, is one where we should expect the utmost in cooperation and collaboration between State and Federal enforcement officials, and not a grudging protection of traditional roles by the Federal agencies, and emphatic complaints by bankers about the complexity and the endless burden of the clients in filling out forms and other matters relating to consumer protection, in spite of the complaints by the consumer groups, that there doesn't seem to be any effective enforcement practice.

I hope it will turn out that I am too harsh in my assessment of what the Fed, the FDIC and the Comptroller have done. But I approach these hearings with a "show me" attitude, and with a number of questions about what priority these agencies give to consumer protection, and what new legislative direction may be needed to make certain that they recognize and carry out their consumer protection responsibilities.

Senator Biden, chairman of the Consumer Affairs Subcommittee, has a statement that we'll put in the record at this point:

STATEMENT OF SENATOR BIDEN

Senator BIDEN. First of all, I would like to commend the chairman of this committee for his decision to schedule these oversight hearings dealing with consumer credit laws.

In an era when we in Congress spend too much time passing laws and too little time seeing how well—or how poorly—they work, the Senate Banking Committee, through the efforts of Senator Proxmire, has perhaps been the most active committee in exercising its watchdog responsibility.

As the chairman knows, my Subcommittee on Consumer Affairs held hearings this past March on a possible qui tam alternative to class actions for civil penalties under the Truth in Lending Act.

In the course of those hearings we received compelling testimony about the increasingly large number of private truth in lending lawsuits.

Creditors complained that these suits were swamping the courts.

We did not reach any conclusion about qui tam, but I think we did clearly establish that enforcement of consumer protection laws like truth in lending cannot be left exclusively to individual consumers in individual private lawsuits.

Complimentary enforcement by administrative agencies is essential if these laws are to have any real meaning and impact.

In the case of federally supervised banks, the agencies with enforcement responsibility—the Federal Reserve Board, the Comptroller, and the FDIC—are in an ideal position to do a thorough and vigorous job of enforcement—if they put their minds to it.

But I share your doubts, Mr. Chairman, that these agencies are doing as much as they should.

I see these oversight hearings as an opportunity to find out exactly what they are doing or not doing, and also to find out the spirit in which they seek to protect consumers.

I hope the picture turns out to be better than their performance in the area of fair lending practices.

I assure you, Mr. Chairman, of my support for your efforts to get the best possible performance from these agencies, and I, again, commend you for calling these oversight hearings for the purpose.

The CHAIRMAN. Our witnesses this morning are all State officials, either banking commissioners or consumer credit administrators. I will ask that you all present your testimony and views as a panel.

Our first witness is Carol Greenwald, Commissioner of Banking, Boston, Mass.

STATEMENT OF CAROL GREENWALD, COMMISSIONER OF BANKING, MASSACHUSETTS

Ms. GREENWALD. Thank you, Senator, for asking me to comment on the consumer enforcement activities by the Federal banking regulatory agencies.

Financial institutions seem to misunderstand the meaning of a Federal charter. They and their Federal regulators take the Federal charter to mean that their financial institutions are exempt from complying with State laws passed to protect the public. I would expect that if a State consumer protection law has not been preempted by Federal law, the Federal regulatory agencies will insure compliance with State law. This has not been the case. The Federal agencies will not check for compliance with State truth-in-lending and equal credit opportunity laws, nor will they allow appropriate State agencies to check for compliance. Thus, the Federal bank regulators rendered meaningless for federally chartered financial institutions the antipreemption language in Federal consumer protection laws.

In three separate areas within the last year, the Massachusetts State Banking Department has found disregard for State law among federally chartered savings and loan associations, disregard supported by the Federal Home Loan Board. In two of these cases, we have already asked the State attorney general's office to file litigation. The three areas of dispute have involved tax escrow accounts, equal credit opportunity and truth in lending.

In 1973, the Massachusetts Legislature passed chapter 299 of the acts, a law requiring all mortgage lenders to pay interest on tax escrow accounts on all payments received after July 1, 1975, and to report the amount of interest they paid to the State banking department on July 1, 1976—the law specifically refers to mortgage lenders, not banks. The banking department was simply to compile the information and make it available to the public. In discussions we held with the Federal Home Loan Bank of Boston we learned that the Board's regulations on tax escrow accounts differed from our statute in a number of important details—details quite significant to the legislative intent and local circumstances in Massachusetts. Specifically, the Board's regulations called for interest payments on tax escrow accounts only for single family residences and then only on new mortgages made after June 1975. Our statute requires interest payments on all tax escrow accounts for one- to four-family residences, two- and three-family housing being a predominant residential form in Massachusetts' cities, and on all owner-occupied mortgages held by mortgage lenders, regardless of when made.

Attempts to resolve our difference have not been fruitful, since the position of the Federal Home Loan Bank Board has been:

1. That Federal savings and loan associations need report only to them and not to a State regulator.

2. They are unable to accommodate a requirement to pay interest on payments received after July 1, 1975, because their regulations must be uniform throughout the country, and other States have conflicting requirements.

Our position has been that chapter 299 of the Massachusetts General Laws is not a banking statute and refers to all lenders and that the State banking commissioner has been named as a convenient data collector. Our response to the second objection is that there is no requirement that their regulations be uniform.

I believe that the Federal savings and loan associations and the Federal Home Loan Bank Board are incorrect in their position that they can disregard the laws of the Commonwealth of Massachusetts. As I said, our statute is addressed to all mortgage lenders and does not allow for any exceptions.

My position is that compliance is no more voluntary with this law than it is with paying your local real estate taxes.

Despite the position of the Federal Home Loan Bank Board, we learned from the Federal Home Loan Bank of Boston that a number of Federal savings and loan associations would "voluntarily" pay interest on all tax escrow accounts, but that about 20 percent of the Federal savings and loan associations had decided not to do so and that it was the position of the Federal Home Loan Bank Board that it was up to each individual savings and loan to make this decision for itself. I have attached copies of some of the correspondence from the Federal Home Loan Bank Board and of the Federal Home Loan Bank of Boston stating their positions. However, not one of the Federal savings and loan associations was willing to report its action to the State banking department as the law required. The Federal Home Loan Bank of Boston suggested as a compromise that it would collect the information from its members and then send me an informal note with the data so that I could report to the legislature.

I believe that both the Massachusetts Federal savings and loan associations and the Federal Home Loan Board were mistaken in their belief that they can disregard the laws of the Commonwealth of Massachusetts. Our statute is addressed to all mortgage lenders and does not allow for exception. Compliance is no more voluntary than is the payment of local real estate taxes.

I also refused to agree that the Federal Home Loan Bank of Boston should collect the data for me. I see no reason for refusing to comply with a State law which makes the State banking department an information gatherer for the public. This simply would continue the charade that Federal savings and loans are sacrosanct from State authority in any form.

Since all but one Federal savings and loan have failed to return the tax escrow forms to the State, we have asked the State attorney general's office to file suit against the Federal savings and loan associations for failure to comply with State law. The Federal Home Loan Bank Board has maintained its position that any compliance by federally chartered institutions with State law is not required and, therefore, may be made a party to the litigation.

A second area where Federal savings and loan associations have flagrantly disregarded State law has been in compliance with the State's Equal Credit Opportunity Act. Massachusetts passed an equal credit opportunity law in 1973 which gave credit grantors in the State 18 months, until November 1975, to change their lending forms to comply with the requirements of the law, that is, to remove all references to sex or marital status. In April 1976, the State banking department's consumer complaint and education department collected loan application forms from all financial institutions in the State. The forms from State-chartered institutions and from national banks were virtually letter-perfect and where there were errors, it was obvious that the institution had made an honest effort to comply with the law. Only among finance companies and Federal savings and loan associations was there widespread disregard for the law. Two-thirds of the finance companies and Federal savings and loan associations, 5 months after the law went into effect and 2 years after its passage, had made no attempt to change their loan forms.

I informed the Federal Home Loan Bank of Boston and the Federal savings and loan associations that I would turn over the offending forms to the attorney general's office for prosecution just as I had previously done to the offending finance companies. The Federal Home Loan Bank of Boston promised to effect compliance if I would let them handle the situation rather than the attorney general's office, and I agreed. Unfortunately, they did not intend to insure that the Federal savings and loans complied with Massachusetts State law, which has not been preempted by the Federal law. Instead, they simply instructed their institutions about the requirements of regulation B of the Federal Reserve Board and that their forms would have to be changed by June 30, 1976, to meet Federal requirements. They further instructed their associations that the Massachusetts Commission Against Discrimination regulations did apply to Federal savings and loans and that they should also change their forms to comply with these requirements. The Home Loan Bank of Boston did not, however, use its examining staff to insure compliance. Seven weeks after the Bank's June letter was sent out and almost 4 months after we had informed the Federal savings and loan associations of their violations, we sent interns into associations to gather loan application forms and found the offending forms still had not been changed. We have, therefore, asked the State attorney general's office to file litigation.

An interesting sidenote. When I first collected the forms and informed the Federal Home Loan Bank Board of their institutions' violations, their response was not concern of the violations, but concern that I collected them. In fact, they said, "You have no more right to collect those forms than any interested citizen." To which I could only respond, "I was an interested citizen and, therefore, I collected them."

The final area that I want to comment on today is the area of enforcement of truth-in-lending. Massachusetts also pioneered in this area, passing the first truth-in-lending laws, and is one of the five States which has been granted State jurisdiction in this area. The banking department has eight full-time examiners in the field who devote all their time to truth-in-lending and another 15 examiners and staff who devote a substantial part of their time to enforcement. But despite the fact that the State law has not been preempted, inquiries made by me to the Federal Home Loan Bank Board indicate that the Board does not examine for violations of Massachusetts' truth-in-lending laws; in fact, they do not even have a copy of the State law since it is of no concern to them, I was told.

Moreover, they have insisted that we cannot send an examiner into a Federal savings and loan association to check for compliance, although we routinely check for compliance at many retail stores which by no stretch of the imagination are banking constituents of the State Banking Department. Just within the last month, we sent truth-in-lending specialists into three Federal savings and loan associations to check for truth-in-lending violations. Massachusetts law clearly refers to creditors, not banks, and states that the Commissioner of Banks shall examine all consumer credit transactions made by all creditors to insure compliance with the State's truth-in-lending regulations. In all three cases, officers of the Federal savings and loan associations told the examiners that they had no jurisdiction.

When I made inquiry at the Federal Home Loan Bank Board to find out if they checked the violation of State law, they said they did not. They did not even have copies of the State law since it was of no interest to them.

We checked with the Regional Comptroller's Office. He said that in his district he did check for violations of State law and that they kept updating their manual to be sure they had all changes in the State law. But in both cases, the State has been denied access into these institutions to check on the level of compliance.

Again, I would like to point out that the Massachusetts law refers to all consumer credit transactions made by all creditors and my department is required to make sure there is an adequate level of enforcement. It is impossible for me to do that if I can't send a truth-in-lending specialist to simply check the level of enforcement with the Federal regulatory agency. We tried to do that within the last month and we were barred from getting any access to files. The Federal savings and loans did check with the Federal Home Loan Bank Board and they were told we have no jurisdiction and, therefore, should not be shown the files.

I have to comment here that we talked to all kinds of businesses in retail outlets that under no stretch of the imagination would be called banking institutions or constituents of State banking departments, and simply say we are supposed to check all consumer credit transactions and nobody has ever denied us access until we walked into a federally chartered institution.

As for national banks, the regional comptroller's office says that it does check for compliance with Massachusetts truth-in-lending laws; but here, too, State examiners are barred from checking on compliance.

It is my view that the Federal regulators, especially the Federal Home Loan Bank Board, have thus rendered meaningless the anti-preemption language in Federal consumer protection legislation and have subverted Congress intent that States with stricter consumer protection laws should be allowed to maintain tougher standards within their States.

Thank you.

[Complete statement of Ms. Greenwald follows:]

PROBLEMS WITH THE FEDERAL HOME LOAN BANK BOARD

IN ENFORCING STATE CONSUMER PROTECTION LAWS

PRESENTED BY

CAROL S. GREENWALD
COMMISSIONER OF BANKS
COMMONWEALTH OF MASSACHUSETTS

TO

UNITED STATES SENATE
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

JULY 27, 1976

Financial institutions seem to misunderstand the meaning of a federal charter. They and their federal regulators take the federal charter to mean that their financial institutions are exempt from complying with state laws passed to protect the public. I would expect that if a state consumer protection law has not been pre-empted by federal law, the federal regulatory agencies will ensure compliance with state law. This has not been the case. The federal agencies will not check for compliance with state truth-in-lending and equal credit opportunity laws, nor will they allow appropriate state agencies to check for compliance. Thus, the federal bank regulators rendered meaningless for federally chartered financial institutions the anti-pre-emption language in federal consumer protection laws.

In three separate areas within the last year, the Massachusetts state banking department has found disregard for state law among federally chartered savings and loan associations, disregard supported by the Federal Home Loan Board. In two of these cases, we have already asked the state Attorney General's office to file litigation. The three areas of dispute have involved tax escrow accounts, equal credit opportunity and truth-in-lending.

Tax Escrow Accounts

In 1973, the Massachusetts legislature passed Ch. 299 of the Acts, a law requiring all mortgage lenders to pay interest on tax escrow accounts on all payments received after July 1, 1975 and to report the amount of interest they paid to the state banking department on July 1, 1976. (The law specifically refers to mortgage lenders, not banks.) The banking department was simply to compile the information and make it available to the public. In discussions we held with the Federal Home Loan Bank of Boston we learned that the Board's regulations on tax escrow accounts differed from our statute in a number of important details-- details quite significant to the legislative intent and local circumstances in Massachusetts. Specifically, their regulations called for interest payments on tax escrow accounts only for single family residences and then only on mortgages made after June 1975. Our statute requires interest payments on all tax escrow accounts for one to four family residences, two and three family housing being a predominant residential form in Massachusetts' cities, and on all owner occupied mortgages held by mortgage lenders, regardless of when made.

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2. They are unable to accommodate a requirement to pay interest on payments received after July 1, 1975 because their regulations must be uniform throughout the country and other states have conflicting requirements.

Our position has been that Ch. 299 is not a banking statute and refers to all lenders and that the State Banking Commissioner has been named as a convenient person to administer the statute. Our response to the second objection is that there is no requirement that their regulations be uniform.

Despite the position of the Federal Home Loan Bank Board, we learned from the Federal Home Loan Bank of Boston that a number of federal savings and loan associations would "voluntarily" pay interest on all tax escrow accounts, but that about 20 percent of the federal

savings and loan associations had decided not to do so and that it was the position of the Federal Home Loan Bank Board that it was up to each individual savings and loan to make this decision for itself. (I have attached copies of some of the correspondence from the Federal Home Loan Bank Board and of the Federal Home Loan Bank of Boston stating their position.) However, not one of the federal savings and loan associations was willing to report its action to the state banking department as the law required. The Federal Home Loan Bank of Boston suggested as a compromise that it would collect the information from its members and then send me an informal note with the data so that I could report to the legislature.

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for failure to comply with state law. The Federal Home Loan Bank Board has maintained its position that any compliance by federally chartered institutions with state law is not required and, therefore, may be made a party to the litigation.

Equal Credit Opportunity Laws

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I informed the Federal Home Loan Bank of Boston and the federal savings and loan associations that I would turn over the offending forms to the Attorney General's office for prosecution just as I had previously done to the offending finance companies. The Federal Home Loan Bank of Boston promised to effect compliance if I would let them handle the situation rather than the Attorney General's office, and I agreed. Unfortunately, they did not intend to ensure that the federal savings and loans complied with Massachusetts state law, which has not been pre-empted by the federal law. Instead they simply instructed their institutions about the requirements of Regulation B of the Federal Reserve Board and that their forms would have to be changed by June 30, 1976 to meet federal requirements. They further instructed their associations that the Massachusetts Commission Against Discrimination regulations did apply to federal savings and loans and that they should also change their forms to comply with these requirements. The Home Loan Bank of Boston did not, however, use its examining staff to ensure compliance. Seven weeks after the Bank's June letter was sent out and almost four months after we had informed the federal savings and loan associations of their violations, we sent interns into associations to gather loan application forms and found the offending forms still had not been changed. We have, therefore, asked the State Attorney General's office to file litigation.

Truth-in-Lending

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As for national banks, the Regional Comptroller's office says that it does check for compliance with Massachusetts truth-in-lending laws;

but here too state examir[illegible]e barred from checking on compliance.

Conclusion

The federal regulators, especially the Federal Home Loan Bank Board, have thus rendered meaningless the anti-pre-emption language in federal consumer protection legislation and have subverted Congress's intent that states with stricter consumer protection laws should be allowed to maintain tougher standards within their states.

FEDERAL HOME LOAN BANK BOARD
WASHINGTON, D.C. 20552
320 FIRST STREET N.W.

OFFICE OF
GENERAL COUNSEL

FEDERAL HOME LOAN BANK SYSTEM
FEDERAL HOME LOAN MORTGAGE CORPORATION
FEDERAL SAVINGS & LOAN INSURANCE CORPORATION

March 26, 1975

Mr. R. R. Campbell
Supervisory Agent
Federal Home Loan Bank Board
P. O. Box 2196
Boston, Massachusetts 02106

Dear Mr. Campbell:

Your letter commenting on the amended interest-on-escrow-accounts proposal was referred to this Office by Mr. Richter.

With regard to the questions raised by Mr. Benedict about the Massachusetts statute, to which you directed our attention, it is noted that a Federal association in Massachusetts will not need to make filings with the Massachusetts commissioner of banks. Also, to the extent that the interest rate is unclear from a reading of the State Statute, the Board would perform the review function of determining the rate that the association would be required to pay under the new Federal regulation.

Sincerely,

Ron

Ronald L. Keaton
Associate General Counsel

FEDERAL HOME LOAN BANK OF BOSTON
ONE UNION STREET, BOSTON, MASS. 02106 P. O. BOX 2196
PHONE (617) 723-8880

BULLETIN

May 13, 1975

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Flynn MAY 14 1975

To : ALL MEMBERS

Subject : Interest on Escrow Accounts

The following press release was received today from the Federal Home Loan Bank Board, and is quoted in full for your information:

"Federal Home Loan Bank Board Chairman Thomas R. Bomar announced today that the Board has adopted regulations requiring Federal savings and loan associations to pay interest on funds held in escrow accounts in connection with home mortgage loans under certain circumstances. Escrow accounts are commonly established to ensure payment of charges such as taxes and insurance premiums.

"The regulations require interest to be paid on escrow accounts maintained in connection with loans on borrower-occupied single-family dwellings if the state where the dwelling is located generally requires thrift institutions chartered by that state to pay interest on escrow accounts. The regulations require the interest rate to be not more than the rate paid by the Federal association on its passbook savings accounts.

"The regulations will appear in the Federal Register on May 14 and become effective as to loans made by Federal associations on or after June 16, 1975."

We are in receipt of an opinion from the Associate General Counsel of the Federal Home Loan Bank Board that "...a Federal association in Massachusetts will not need to make filings with the Massachusetts commissioner of banks." This is due to a provision of Massachusetts law that might be construed as requiring such filings by Federally-chartered members. Although we do not know of similar provisions in law of the other states in the District, we would assume that the same principle applies if such exist. The interest rate to be paid on escrow accounts is clearly stated in the full text of the regulations, which will be mailed to you as soon as we receive it.

Cordially,

Bob Campbell

R. R. Campbell
Supervisory Agent

RRC/jmh

Federal Home Loan Bank Board

320 First Street, N.W.
Washington, D.C. 20552

Federal Home Loan Bank System
Federal Home Loan Mortgage Corporation
Federal Savings and Loan Insurance Corporation

May 4, 1976

Mr. Raymond H. Elliott
President
Federal Home Loan Bank
of Boston
Post Office Box 2196
Boston, Massachusetts 02106

Dear Ray:

This is in response to your letter to me of April 15, 1976, requesting an opinion of the Office of the General Counsel as to whether Federal savings and loan associations in Massachusetts must comply with Massachusetts Law 183, § 61, dealing with the payment of interest by mortgagees on escrow accounts.

The Congress of the United States, of course, can subject Federal savings and loan associations to State law. However, absent such a Federal statute, it is clear that: (1) Federal law (be it the Home Owners' Loan Act of 1933 or other applicable Federal statutes, the regulations or other regulatory action by the Federal Home Loan Bank Board (which have the same force and effect as a Federal statute), or Federal "common law") exclusively governs the operations and internal affairs of Federal savings and loan associations, including, inter alia, their mortgage lending and other transactions between such associations and their borrowing members; (2) any State law which conflicts or interferes with Federal law is wholly inapplicable to Federal savings and loan associations; and (3) there is no room under this Board's governing statute to share its regulatory and supervisory authority over Federal savings and loan associations with State officials. See, e.g., California v. Coast Federal Savings and Loan Ass'n, 98 F. Supp. 311, 316 (S.D. Cal., 1951); Kupiec v. Republic Federal Savings and Loan Ass'n, 512 F.2d 147, 150 (C.A. 7, 1975); Meyers v. Beverly Hills Federal Savings and Loan Ass'n, 499 F.2d 1145, 1147 (C.A. 9, 1974); Rettig v. Arlington Heights Federal Savings and

Loan Ass'n, 405 F. Supp. 819, 823-824 (N.D. Ill., 1975); City Federal Savings and Loan Ass'n v. Crowley, 393 F. Supp. 644, 651-657 (E.D. Wis., 1975); Lyons Savings and Loan Ass'n v. Federal Home Loan Bank Board, 377 F. Supp. 11, 17 (N.D. Ill., 1974); Elwert v. Pacific First Federal Savings and Loan Ass'n, 138 F. Supp. 395, 399-400 (D. Ore., 1956); Washington Federal Savings and Loan Ass'n v. Balaban, 281 So.2d 15, 17 (Fla., 1973). Federal preemption is particularly applicable where the Board has a regulation specifically dealing with a defined aspect of the operations of Federal savings and loan associations (see, e.g., the Meyers, Kupiec and Rettig cases, supra). In such a situation, the Board's regulation preempts the area, and any State law, as to such Federally regulated area, is wholly inapplicable to Federal savings and loan associations.

In the matter at issue, the Board has a regulation, 12 CFR 545.6-11, which governs all aspects of the establishment of escrow accounts by Federal savings and loan associations. Such Board regulation requires Federal associations to pay interest -- solely as a matter of Federal law in certain instances -- and does not require Federal savings and loan associations to follow State law. In fact, the preamble to Board Resolution No. 75-415, dated May 9, 1975, which amended § 545.6-11, plainly states that the Board requires "Federal associations, solely as a matter of Federal law, under certain circumstances and subject to certain limitations to pay interest on funds held by them in escrow accounts" (emphasis added). The preamble to the Resolution also specifically states that the amendment to 12 CFR 545.6-11 was made "to clarify that the obligation to pay interest under certain circumstances is being imposed as a matter of Federal law" (emphasis added).

To clarify even further that 12 CFR 545.6-11 imposes a wholly separate and independent Federal standard, and does not direct Federal associations to "abide" by State law, the last sentence of such Board Resolution states:

> "Except as provided by contract, a Federal association should have no obligation to pay interest on escrow accounts apart from the duties imposed by this paragraph."

Accordingly, and in view of the foregoing, it is my opinion that Massachusetts Law 183, § 61, is not applicable to Federal savings and loan associations in Massachusetts.

Sincerely yours,

Daniel J. Goldberg

Daniel J. Goldberg
Acting General Counsel

FEDERAL HOME LOAN BANK of BOSTON
ONE UNION STREET BOSTON

P.O. BOX 2196
BOSTON, MASSACHUSETTS 02106
617 723-8880

June 15, 1976

Mr. Edward F. Flynn
General Counsel
Department of Banking
Commonwealth of Massachusetts
Leverett Saltonstall Building
100 Cambridge Street
Boston, Massachusetts 02202

Dear Ed:

You and I have talked on several occasions about the administration of interest on tax escrow accounts in Massachusetts. On March 3, Commissioner Greenwald and you met with Ray Elliott and me, and we talked about the subject. At that time we gave you a report of what the 31 Federal savings and loan associations were doing on tax escrows in Massachusetts, which was somewhat limited by our information at that time.

The 31 Massachusetts FS&LAs are complying with our regulation, which is Section 545.6-11 of the Federal Savings and Loan System Rules and Regulations. Our examiners look at their practices, and so far the examination reports have not shown any problems with tax escrow policy or procedure. There are some differences between these regulations and Massachusetts State law; principally, our regulations require the payment of interest on tax escrow accounts for mortgage loans made on and after June 16, 1975. Also, our associations are required to pay tax escrow interest on single-family homes occupied or to be occupied by the borrower, and at not less than the rate required to be paid by state-chartered institutions in the particular state. This last is somewhat confusing, as no rate was specified in Massachusetts. Some of the other New England States do provide a rate.

We asked for an opinion of our General Counsel at the Federal Home Loan Bank Board on tax escrow regulations, which was furnished in his May 4, 1976 letter, copy attached for your information.

As we told you in our March meeting, we planned to obtain additional information from each of the 31 FS&LAs in Massachusetts on their practices with respect to optional features of paying tax escrow interest beyond those in the Federal regulation mentioned, and we have now done so.

In summary, out of the 31 FS&LAs, 15 established their loan procedures so that escrow accounts are not required except for FHA/VA loans and high-loan-to-value-ratio loans which are subject to escrows by regulation. If an institution does not have any such loans in its portfolio, there is no reason for them not to avoid the entire issue by granting their borrowers the opportunity to handle their own tax bills without escrowing funds at the association.

There was a variety of practices among the sixteen which do require escrows. One pays interest on all mortgages; three pay interest on all residential mortgages; five pay interest on all one-to-four-family mortgages; and seven pay interest only on single-family mortgages so long as the dwellings are owner occupied. A surprising number of the institutions requiring tax escrows do pay interest on all mortgages taken prior to June 16, 1975. The median interest rate on tax escrow funds was 2-1/2% and the average was 2.7%.

The originals of these reports are on file in our office. The subject is somewhat complex, and the reaction of individual institutions to it is obviously conditioned by the competitive situations in the communities they serve. Overall, it appears that the Federal associations in Massachusetts, as demonstrated by the foregoing, are rendering reasonable service to the public in this matter. Uniformity might be sought as a way of ordering the "real world." However, the variety does not appear to us to be unhealthy. If it turns out that you have further concerns about this subject, and would like to talk about it on the basis of individual institutions, Ray or I would be pleased to meet with you again.

Cordially,

R. R. Campbell
Executive Vice President

RRC/sag

The CHAIRMAN. Thank you, Ms. Greenwald.
Mr. Connell?

STATEMENT OF LAWRENCE CONNELL, JR., CONNECTICUT BANK COMMISSIONER

Mr. CONNELL. Thank you, Senator.

I will abbreviate my statement and try to touch on just the more important aspects of it.

First of all, I would like to say, Senator, that in Connecticut we regard consumer protection regulation as an important and constructive aspect of Government regulation in general.

That essentially is what the first page of my statement says, that it has allowed us to evolve our Government institutions along with changes in our business community, our economy, and social conditions.

With respect to the regulation of consumer matters by Federal agencies, I have a basic feeling that it is very difficult to do this effectively just from the Federal level.

This is essentially the thrust of my paper.

I would like to begin by noting that since Connecticut is one of the five States that has been granted an exemption to enforce the Federal truth-in-lending law, Federal banking agencies have limited activity in the State.

The Federal Reserve Bank and the Federal Home Loan Bank of Boston accept our truth-in-lending examination reports in lieu of conducting their own examinations.

The Federal Deposit Insurance Corporation only examines for truth-in-lending compliance for the period between its examination and our last truth-in-lending examination.

It is more of a general oversight type of examination, to determine general compliance with State law.

The Federal Deposit Insurance Corporation regards the Connecticut Banking Department as the primary regulator, so at least with respect to the Federal Home Loan Bank and the Federal Reserve Bank of Boston, I really have no comments I can offer on the effectiveness of their truth-in-lending enforcement because of the exemption.

I have to be careful to note the scope of the FDIC examination authority, where they do look to us as being the primary authority in this particular area.

At least from the experience we have had in comparing examination reports, I have to also say that until very recently the compliance examination had been part of the general bank examination and not a separate function carried out by specialized examiners.

On the other hand, the Connecticut truth-in-lending effort is conducted by a separate department of examiners trained as specialists in compliance matters.

This occurred for two reasons: First, the Connecticut Banking Department, like most State financial supervisory agencies, was already regulating and examining licensed lenders such as small loan companies.

This effort was conducted by specialized examiners sensitive to the consumer protection thrust of regulation of licensed lenders.

It usually involved examination of collection and advertising practices as well as usury law compliance.

Second, when Connecticut passed its State truth-in-lending law, which predated the Federal law, a separate division was created to enforce the State act.

Consequently, when Connecticut applied for its Federal truth-in-lending law exemption, it combined that enforcement effort with its licensed lender supervision resulting in a staff of 11 people which was sufficient to cover the State of Connecticut in this area of regulation.

So, we run it as a separate body with people who are interested only in compliance and not in solvency and liquidity as the traditional bank examination function has been geared.

Another difference between the method of enforcement under Connecticut policy and that of the Federal agencies is the matter of remedial action.

To my knowledge, no Federal agency has an active policy of consumer redress when mistakes are made in truth-in-lending violations.

Usually, bank management is merely notified of errors in disclosures.

In preparation for this testimony, we made a survey of the FDIC truth-in-lending examinations over the last fiscal year, comparing them with our State compliance examination.

With only 2 exceptions, the 15 bank examination reports sampled were reported by the FDIC to be in compliance. In contrast, 15 State reports revealed 961 offenses with $35,180 in overcharges.

Since that date, I have done some more surveys of this and we did 92 banks that are jointly examined. We found that the FDIC picked up 37 violations and our amount was $31,445 with some $42,500 in overcharges.

I think it is important to realize that the function of the FDIC in this area was just general oversight and not contact with the consumer and that type of thing.

So, there is a different focus and method of examination.

I understand that the Comptroller's Office has announced a policy of consumer redress similar to ours in Connecticut. I would expect the other agencies will follow the Comptroller's lead.

The Connecticut Banking Department also differs from Federal agencies in its cooperation with its sister agencies. We work closely with our consumer protection department in reporting false advertising programs with respect to deposit or loan services.

These are prosecuted under our State "Baby FTC Act." We will continue to work with the consumer protection department and the Connecticut attorney general's office to prevent anticompetitive or unfair and deceptive business practices.

The relationship among commissioners and other officials at a State level can be closer and more communicative than at the Federal level, simply because they are smaller, and I think this is an advantage that should be recognized.

So, regardless of the effort of individual agencies, I believe that there is a limitation to the effectiveness of Federal agencies in the consumer protection field for the following reasons. There are three principal weaknesses in a Federal scheme of consumer regulation.

First, Federal agencies and Federal banking agencies, in particular, lack the local contact to effectively respond to consumer needs.

These agencies only maintain regional offices in some 14 or 15 cities. Their examining staffs are always in a travel status with no consistent local community association.

A consumer in Connecticut is not likely to make a long distance call to Boston if he or she has a complaint. However, the consumer would be more likely to call Hartford for redress.

I am sure in other areas of the country, where distances are much greater, the communication problem would be even more severe.

The second weakness in the present concept of Federal regulation of consumer transactions is the trend toward extensive, rigid, uniform regulations that tend toward removing all flexibility in business transactions, causing extensive paperwork.

They are so complex that not even trained attorneys can fathom these intricacies of regulation. The recent debacle with RESPA disclosures was probably the straw that broke the camel's back in consumer-type regulation.

With its rigidity and complexity, the original RESPA caused turmoil in the settlement of mortgage loans that worked severely against the very persons it was intended to protect. Truth-in-lending law is tending in the same direction.

Today a personal loan form is almost as long and complex as a mortgage loan form. I doubt very much that many people really read them.

I attribute the complexity and rigidity of Federal consumer regulation to a preference for uniformity at the Federal level, a lack of real contact with consumer lending practices, a great geographic distance between the enforcement officials and the public, and reliance on a theory that disclosure will resolve all harsh business practices.

The third weakness in Federal regulation of consumer credit transactions is a lack of expertise in compliance with consumer credit laws. None of the Federal banking agencies have yet developed a significant force of trained examiners in the consumer credit field.

Truth-in-lending and other consumer type compliance has been an appendage to an examination report that was really designed and employed to determine safety and soundness. I commend the recent announcement of the Comptroller of the Currency to develop a trained staff of consumer protection compliance examiners as a recognition of inadequate enforcement at the Federal level and I am certain the other agencies have similar plans under way but I still question whether even an increased effort by the Federal banking agencies will be sufficient.

I believe there is an alternative to the present direction of Federal determination of consumer protection. Since consumerism is essentially a local matter, greater effort on a local or State level, both an enforcement and legislative standpoint might be a more effective approach.

Accordingly, I offer the following suggestions:

1. With respect to supervision over federally chartered institutions, national banks, Federal savings and loan associations and Federal credit unions, States that have been granted exemptions to enforce truth in lending over State banks should be granted authority to enforce such legislation over federally chartered institutions.

The Federal supremacy concepts of *McCulloch* v. *Maryland* need not be extended to matters that are essentially local. Consumers do not distinguish between National and State banks.

The Connecticut Banking Department receives as many complaints about national banks as State banks, yet we can only refer such complaints to Boston or to exercise a moral suasion of limited effectiveness.

On July 9, 1976, the Connecticut Banking Department made application to the Board of Governors to extend its truth-in-landing supervision to federally chartered institutions.

Our exemption from the Federal Reserve Board did not cover federally chartered institutions so we asked them to extend our exemption to that area because our particular State status does not exempt federally chartered institutions.

So, really, what I am doing is pursuing the administrative remedy first before we move ahead in this particular issue.

We have also suggested to the Federal Reserve Board that on their advisory committee on consumer matters that they consider appointing a State authority from one of the States that have an exemption in truth-in-lending.

2. To encourage States to seek exemptions from the Federal truth-in-lending and other consumer credit laws provision should be made for financial reimbursement for such enforcement.

Cost in these times of fiscal austerity at a State level has been the reason given to me why so few States sought exemption.

The other reason has been dislike of Federal Reserve's heavy handedness.

Federal aid has been common in law enforcement, another area of traditional State authority. I believe that Federal aid for consumer credit enforcement not only of present law but also for more innovative programs such as the "Consumer's Guide to Banking" published by this committee, would have public benefits well beyond those experienced in other fields of public administration.

Moreover, it would be especially appropriate for States with smaller banking departments and fewer banks because those States usually have limited staffs that could concentrate on matters of particular local interest.

3. State exemptions with respect to Federal consumer protection laws should be expanded to cover the broadest scope possible.

The precedent was set in truth-in-lending and is continued in the recent anti-red-lining statute.

4. Present consumer credit laws are too detailed. Rather than dwelling on detailed and very specific rules of conduct, I would prefer laws with more general statements of conduct buttressed by stronger and more active enforcement.

I would prefer employment of an unfair and deceptive trade practice approach where the enforcement would be directed toward the 1 percent that are offenders rather than burdening the other 99 percent with rigid complex operating rules or extensive reporting.

I readily concede and support the role of Federal executive in oversight of matters of national public interest but this role need not be implemented by detailed, rigid, statutory proscriptions.

Congressional banking committees have functioned mostly in that direction, probably because Federal banking regulation in the past had been considered the most pervasive and efficient form of regulation.

Other congressional committees such as in the health and social welfare fields have employed grant-in-aid programs to achieve certain policy objections.

I believe it is opportune to explore new directions to achieve our common goal—fair treatment of the banking public.

I believe that we could take a different focus now, a focus that has been employed in other areas of Federal activity, such as in the legal aid program, legal services programs, where grants are made to the States to conduct certain activities, that this is a direction that the banking oversight, both from the Fed, executive, and legislative areas could take a new direction, really.

That I think would be a most beneficial step to the matter of consumer protection in the United States.

Thank you, Senator.

[Prepared statement of Mr. Connell follows:]

STATEMENT OF

LAWRENCE CONNELL, JR.
BANK COMMISSIONER

State of Connecticut

before the

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

UNITED STATES SENATE

Tuesday, July 27, 1976

76-557 O - 76 - 3

Modern consumer protection regulation has often been regarded by industry and sometimes by government officials as an annoyance. To me consumer protection regulation has been with us much longer than is generally recognized. Usury laws, ancient in their origin, are such an example. More important, the recent development in consumer protection legislation at both the state and federal levels reflects an adaptability of our governmental institutions to economic, technologic and social change. By this I mean, that methods of doing business have undergone great change in the past forty years. As our country developed there was a shift of population from the cities to the suburbs Banks and other businesses in most states followed this migration with branches or subsidiaries. Too often banks lost contact with their customers. No longer could a teller go into the back room and check the customer's ledger card. That personal touch was replaced by a touch tone telephone that gave a distant, limited and impersonal reply. When there was a mistake it was usually blamed on the computer. Furthermore, rigid operating policies and branch managers with limited authority, limited knowledge of overall banking and little knowledge of the community in which he worked replaced the flexibility, personal knowledge, and decision making ability of the hometown banker. Consumers became dissatisfied with this situation, developed representation through various public interest groups and communicated their concerns to their state and federal legislators. You listened, you heard their message and you responded.

Rather than rejection and despair with our governmental and business institutions that can bring revolution in other societies, we had evolution of these institutions to meet modern public needs. While not perfect, it has been largely for the betterment of the citizen. Therefore, I regard the consumer movement as a healthy phenomenon.

However, I believe we cannot lose sight of basic reason for the movement, a dissatisfaction with impersonal bigness and I am not at all convinced that big government can provide the response required to meet the public need.

Since Connecticut is one of the five states that has been granted an exemption to enforce the federal truth in lending law, federal banking agencies have limited activity in the state. The Federal Reserve Bank and the Federal Home Loan Bank of Boston accept our truth in lending examination reports in lieu of conducting their own examinations. The Federal Deposit Insurance Corporation only examines for truth in lending compliance for the period between its examination and our last truth in lending examination. Therefore, I am not in a position to offer comment on the effectiveness of actual truth in lending examinations of the Federal Reserve System or the Federal Home Loan Bank. As far as the Federal Deposit Insurance Corporation is concerned, it appears to me that the Corporation is satisfied when there is general compliance. You will probably find that approach to have been common with respect to the compliance effort of all federal agencies. Also, it appears that, until very recently, their compliance examination was part of the general bank examination, not a separate function carried out by specialized examiners.

On the other hand, the Connecticut truth in lending effort is conducted by a separate department of examiners trained as specialists in compliance matters. This occurred for two reasons. First, the Connecticut Banking Department like most state financial supervisory agencies was already regulating and examining licensed lenders such as small loan companies. This effort was conducted by specialized examiners sensitive to the consumer protection thrust of regulation of licensed lenders. It usually involved examination of collection and advertising practices as well as usury law compliance. Second, when Connecticut passed its state truth in lending law which predated the federal law, a separate division was created to enforce the state act. Consequently, when Connecticut applied for its federal truth in lending law exemption, it combined that enforcement effort with its licensed lender supervision resulting in a staff of eleven people which was sufficient to cover the State of Connecticut in this area of regulation.

Another difference between the method of enforcement under Connecticut policy and that of the federal agencies is in the matter of remedial action. To my knowledge, no federal agency has an active policy of consumer redress when mistakes are made in truth in lending violations. Usually, bank management is merely notified of errors in disclosures. In preparation for this testimony, we made a survey of the FDIC truth in lending examinations over the last fiscal year, comparing them with our state compliance examination. With only two exceptions, the fifteen bank examination reports sampled were reported by the FDIC to be in compliance.

In contrast, fifteen state reports revealed 961 offenses with $35,180 in overcharges. Rather than merely informing bank management of the mistake, we required the bank to rebate overcharges to its customer, grant rights of rescission, or make additional disclosures that might have been omitted. I understand that the Comptroller's Office has announced a policy of consumer redress similar to ours in Connecticut. I would expect the other agencies will follow the Comptroller's lead. The Connecticut Banking Department also differs from federal agencies in its cooperation with its sister agencies. We work closely with our Consumer Protection Department in reporting false advertising programs with respect to deposit or loan services. These are prosecuted under our state "Baby FTC Act". We will continue to work with the Consumer Protection Department and the Connecticut Attorney General's Office to prevent anticompetitive or unfair and deceptive business practices. The relationship among Commissioners and other officials at a state level can be closer and more communicative than at the federal level.

Regardless of the effort of individual agencies, I believe that there is a limitation to the effectiveness of federal agencies in the consumer protection field for the following reasons. There are three principal weaknesses in a federal scheme of consumer regulation.

First, federal agencies and federal banking agencies, in particular, lack the local contact to effectively respond to consumer needs. These agencies only maintain regional offices in some fourteen or fifteen cities. Their examining staffs are always in a travel status with no consistent local community association. A consumer in Connecticut is not likely to make a long distance call to Boston if he or she has a complaint. However, the consumer would be more likely to call Hartford for redress. I am sure in other areas of the country, where distances are much greater, the communication problem would be even more severe.

The second weakness in the present concept of federal regulation of consumer transactions is the trend toward extensive, rigid, uniform regulations that tend toward removing all flexibility in business transactions, causing extensive paperwork. They are so complex that not even trained attorneys can fathom these intricacies of regulation. The recent debacle with RESPA disclosures was probably the straw that broke the camel's back in consumer type regulation. With its rigidity and complexity, the original RESPA caused turmoil in the settlement of mortgage loans that worked severely against the very persons it was intended to protect. Truth in lending law is tending in the same direction.

Today, a personal loan form is almost as long and complex as a mortgage loan form. I doubt very much that many people really read them. I attribute the complexity and rigidity of federal consumer regulation to a preference for uniformity at the federal level, a lack of real contact with consumer lending practices, a great geographic distance between the enforcement officials and the public, and reliance on a theory that disclosure will resolve all harsh business practices.

The third weakness in federal regulation of consumer credit transactions is a lack of expertise in compliance with consumer credit laws. None of the federal banking agencies have yet developed a significant force of trained examiners in the

consumer credit field. Truth in lending and other consumer type compliance has been an appendage to an examination report that was really designed and employed to determine safety and soundness. I commend the recent announcement of the Comptroller of the Currency to develop a trained staff of consumer protection compliance examiners as a recognition of inadequate enforcement at the federal level and I am certain the other agencies have similar plans underway but I still question whether even increased effort by the federal banking agencies will be sufficient.

I believe there is an alternative to the present direction of federal determination of consumer protection. Since consumerism is essentially a local matter, greater effort on a local or state level, both from an enforcement and legislative standpoint, might be a more effective approach. Accordingly, I offer the following suggestions:

(1) With respect to supervision over federally chartered institutions, national banks, federal savings and loan associations and federal credit unions, states that have been granted exemptions to enforce truth in lending over state banks should be granted authority to enforce such legislation over federally chartered institutions. The federal supremacy concepts of McCulloch v. Maryland need not be extended to matters that are essentially local. Consumers do not distinguish between national and state banks. The Connecticut Banking Department receives as many complaints about national banks as state banks, yet we can only refer such complaints to Boston or exercise a moral suasion

of limited effectiveness. On July 9, 1976, the Connecticut Banking Department made application to the Board of Governors to extend its truth in lending supervision to federally chartered institutions.

(2) To encourage states to seek exemptions from the federal truth in lending and other consumer credit laws provision should be made for financial reimbursement for such enforcement. Cost in these times of fiscal austerity at a state level has been the reason given to me why so few states sought exemption. The other reason has been dislike of Federal Reserve's heavy handedness. Federal aid has been common in law enforcement, another area of traditional state authority. I believe that federal aid for consumer credit enforcement not only of present law but also for more innovative programs such as the "Consumer's Guide to Banking" published by this Committee, would have public benefits well beyond those experienced in other fields of public adminstration. Moreover, it would be especially appropriate for states with smaller banking departments and fewer banks because those states usually have limited staffs that could concentrate on matters of particular local interest.

(3) State exemptions with respect to federal consumer protection laws should be expanded to cover the broadest scope possible. The precedent was set in truth in lending and is continued in the recent anti-red lining statute.

(4) Present consumer credit laws are too detailed. Rather than dwelling on detailed and very specific rules of conduct, I would prefer laws with more general statements of conduct buttressed by stronger and more active enforcement. I would prefer employment of an unfair and deceptive trade practice approach where the enforcement would be directed towards the one percent that are offenders rather than burdening the other ninety nine percent with rigid complex operating rules or extensive reporting.

I readily concede and support the role of the federal executive in oversight of matters of national public interest but this role need not be implemented by detailed, rigid statutory proscriptions. Congressional Banking Committees have functioned mostly in that direction, probably because federal banking regulation in the past had been considered the most pervasive and efficient form of regulation. Other Congressional Committees such as in the health and social welfare fields have employed grant in aid programs to achieve certain policy objections. I believe it is opportune to explore new directions to achieve our common goal, fair treatment of the banking public.

* * *

The CHAIRMAN. Thank you, Mr. Connell.
Mr. Francis?

STATEMENT OF RICHARD FRANCIS, COMMISSIONER, MICHIGAN FINANCIAL INSTITUTIONS BUREAU

Mr. FRANCIS. Senator Proxmire, and members of the committee, I am pleased to be with you here today to share our insights from the vantage point as Financial Institutions Commissioner from Michigan.

I feel that we are in a critical point in the evolution of consumerism both at the Federal and the State level. We are searching for programs that are responsive to the consumers and that have a significant element of accountability in them.

I also think it is significant that we are at a turning point in the evolution of consumerism. As I see it, a more sophisticated breed of consumers is coming onstream. They are concerned about competitive marketplace and they are taking a sophisticated approach on such issues as redlining, electronic funds transfer and bank structure and competition.

I think the history of consumerism in regards to how finnacial institutions respond is relevant. We have come through a period of confrontation to this era of sophistication. I do think we are in a period now where the various groups can have a dialog that is constructive, where for some reason—and I tend to put the blame on the bankers or the financial institutions because they were more sophisticated—it was a difficult period for everybody.

As my daughter said to me a couple of weeks ago when we were riding down the highway and she said, "Dad, what is an agonizing reappraisal?" I think we are going through that right now and just learning what we just digested.

I think we are coming into a new era. Our search must be between this delicate balance between programs that are responsive to needs of the consumers and, on the other hand, recognizing the cost and burden of consumer regulations to business.

My suggested focus for all consumers and programs is that we must view them from the standpoint of the consumer, the man on the street.

Our experience in Michigan is that the consumers have a high degree of frustration because they do not understand financial institutions, do not know how to deal with them. Clearly a significant percent of the public does not understand the substantive difference between a bank, a savings and loan association, or a credit union, let alone the difference between a national bank and a State bank.

Consumers have all kind of financial services, including retail finance companies, tend to come to our bureau at the State to ask us for help. I don't think that we can realistically ask the consumer to work through the maze of complex regulatory structures in order to get an answer to his problems.

I think it is also important that we have the view of what the consumer is asking for as we approach the issue.

I think, too, he is asking us for a broad range of services at competitive prices; adequate information so that he can truly make a choice; fair and responsive procedures within business—and I have suggested here to my Michigan institutions that they develop an ombudsmen program which I think is the key and has been the key in the area of redlining, whether some financial institutions have come up with high marks in community groups because they do have ombudsmen programs that are available.

Finally, I think the administrative procedures will provide quick, fair, and inexpensive remedies by understanding governmental agencies.

Next, I cover the geographic and policy considerations. I outline the Federal agencies that are located at: Federal Trade Commission, Cleveland, Ohio; Comptroller of the Currency, Chicago, Ill.; Federal Reserve Board, Chicago, Ill.; Federal Home Loan Bank Board, Indianapolis, Ind.; Federal Deposit Insurance Corporation, Madison, Wis.; National Credit Union Administration, Toledo, Ohio.

How can a consumer who doesn't understand the complex network come to grips with this pattern of location of regulatory agencies?

Of course, in Michigan we have a career person who is intimately involved with the development of consumer programs and it is a very direct charge of the Government that I be involved.

What has our experience been in Michigan with regard to some specifics? I sent out an extensive consumer questionnaire to all financial institutions, and got an interesting reply from one national bank saying that they didn't have to answer our consumerism questionnaire because we didn't have visitorial powers.

In other words, we couldn't in national banks. This was an informal kind of thing that we weren't identifying institutions, as a matter of fact.

In the area of redlining, we are now confronted with the fact that financial institutions are saying that if we pass a law that requires that the national institutions do certain things which we don't believe are onerous, that they won't have to comply.

A couple of years ago, merchants did a study on compliance with truth in lending and found that there was a high noncompliance factor with the truth-in-lending regulations in phone conversations. They came to us and came to all the Federal agencies. To my knowledge, there was no followup by any of the Federal agencies. We vigorously pursued this with the State Bankers Association, savings and loan associations; and all the institutions. I think we were singularly effective in getting a high compliance factor which was indicated by a second followup survey.

In another case, our attorney general pursued a national bank on their advertising under truth in lending, pursued them under the State Deceptive or Unfair Trade Practices Act, and the Comptroller of the Currency took the position that the State had no interest in discussing the separate practices with the national bank.

What is the role of the State? I think this all comes together under police powers of the State and its right to protect its citizens. Because of this quiltwork pattern of financial institutions and regulatory agencies, I believe the States are in the best position to develop truly responsive consumerism programs. This was recognized recently by George LeMaistre, Director of the FDIC, in a couple of speeches. I quote:

. . . Other areas where the States might appropriately assert supremacy are the areas of EFTS and consumer affairs. Recent efforts by State banking departments in both these areas demonstrate the ability of State banking to assert positions of leadership. Needless to say, the case for this sort of Federal deference to State regulation in any of these areas must be made to the Congress and in my judgment should be made as aggressively as possible.

EFTS is an example, in my opinion, of what I call the crossroads of commerce, where you have banks, State and National; savings and loans, Federal and State; credit unions, both Federal and State; consumer finance companies; community companies; retailers; and most importantly, consumers.

How does this come together? I think each State has its own personality in regard to this and many other issues—again, an example of where and how the State can assume an effective role for the consumer.

How can we do this? We can do it through laws, through administrative action, and through examinations.

I do have one concern that has been voiced by a number of national institutions. That is that there be some kind of a safety valve, because overreaching regulations could truly, in certain instances, affect service to the public. I think that in some cases there should be this dynamic check between the State and Federal system and some kind of a safety valve. I haven't thought it out completely, but I think it is an area of legitimate concern on the part of the national institutions. Again, I would concur with Commissioner Connell that revenue sharing is a kind of key. I think that is the reason why States have not played a more aggressive role in consumer compliance. I think it is an unfortunate commentary, too.

My experience has been that our consumerism department has to be separated from the traditional examination division. I think that safety and soundness were in the minds of banking agencies up until very recently. Very frankly, you do get a little overwhelmed with safety concerns, but I think that is resolved by setting up a separate department, putting it at a high level, a deputy position within the bureau and making sure that there is some form of accountability.

I think the same is true with any financial institution. I think there ought to be an ombudsman or a consumer department high within the agency.

Another problem we see is economic illiteracy. It is very clear to us, the man on the street doesn't understand the basic nature of his consumer transactions. I think through our educational institutions and probably in high school and even through educational programs of financial institutions we should see to it that the consumer understands very simple, everyday transactions that he is involved with. I think there should be some accountability on his part and probably best played through this recognition of the fact that we do have economical illiteracy.

Cost benefits understanding, or more what I might even say we might even have consumer fraud in consumerism programs, if we don't explain to consumers that there are cost benefits involved in all that we do and that they understand the tradeoffs that are involved in each regulation.

In other words, each regulation we put into effect could follow up the common axiom that there is no such thing as a free lunch through the procedures or otherwise which I think we pay for them.

I think that's OK, too, as long as we understand them. To me, it is significant that the credit movement which was instrumental in the nourishment of the consumer movement is now expressing a very loud "ouch" over the burden of compliance. I think that in the course of developing any consumerism programs at the Federal level and at the State level, we should recognize this factor and balance it insofar as is possible.

I give note to the recent developments by Federal agencies which I think are fairly aggressive and innovative in responding to consumer concerns.

In summary, consumer programs must focus on the consumer who is frustrated because of the complexity of the regulatory framework and because of his economic illiteracy.

Next, the State has a key role to play in developing consumer programs that are responsive. Revenue sharing is essential.

Next, Federal agencies should be required to coordinated their consumer programs with the State agencies. This could be the financial institution commissioner or the State consumer commissioner, as is appropriate.

Next, the States should have a representative of their system on a joint coordinating committee that is involved in consumerism or some other appropriate forum. It is apparent to me that one of the problems that in involved here is in problem identification as well as solutions. When States are given solutions and they have not been involved in the problem identification as well as the development of solutions in a partnership sense, then I think part of the problem lies there.

We should have a statement of policy on consumerism. What is this, both at the State and Federal level? How do we integrate the needs for profitable institutions and at the same time the detailed concerns for specific areas of consumerism?

Next, if the States are to assume the role they must step forward and address the issue.

Also, I think we at the Federal and State level should identify the specific issues that are a matter of concern and assess our priorities and give them a full hearing.

There should be programs for accountability in order to obtain public confidence that we now lack. This might come through a publication of a summary of inquiries, complaints or other administrative action. Educational programs are essential.

Finally, I think that the principles involved should be closeness to consumers and understanding of his needs, flexibility, and accountability.

[Statement follows:]

STATEMENT OF RICHARD J. FRANCIS, COMMISSIONER, MICHIGAN FINANCIAL INSTITUTIONS BUREAU

Senator Proxmire and other members of the Committee, my name is Richard Francis, and I am Commissioner of the Michigan Financial Institutions Bureau. I am pleased to have been asked to comment at these oversight hearings on consumerism.

We are at a very critical point in the evolution of consumerism. Both at the Federal and State level, we are searching for policies and programs that are responsive to consumers. We are also concerned about accountability for the effectiveness of our programs.

The consumer movement is taking a significant turn in the direction of emphasizing the need for an active competitive marketplace which provides the broadest range of services possible. Consumer groups are now reflecting a great deal of sophistication on such issues as redlining, electronic funds transfer, and bank structure competition. Historically, consumerists feel they were met with a stone wall when they attempted to articulate their frustrations on specific issues. The response was to seek an overkill which reflected itself in such regulations as the original form of the RESPA and the desire to put bankers in jail.

Our search, then, must be for the delicate balance between programs that are responsive to needs of the consumers and at the same time do not significantly add to the cost or unduly burden business. It is in the context of this new awareness of the meaning and the search by the Federal government and State governments for more effective programs that I express my support for your efforts to move into a generation of new policies and programs that serve consumers and at the same time recognize the need for profitable financial institutions.

SUGGESTED FOCUS OF CONSUMERISM

We should view consumerism programs first and foremost through the eyes of the consumer, i.e., the man on the street. Our experience in Michigan is that consumers have a high degree of frustration because they do not understand financial institutions and do not know how to deal with them. Very clearly, a significant percentage of the public does not understand the substantive difference between a bank, savings and loan association or a credit union, let alone the difference between a National bank and a State bank. Consumers of all kinds of financial services, including retail finance, tend to turn first to us as the State regulator when they have questions or need help. We cannot realistically expect consumers to understand the complex network of financial regulation.

Our focus should be on the realistic expectations of consumers and programs to meet them.

OUR VIEW OF REALISTIC EXPECTATIONS OF CONSUMERS

The following is a statement of how we in Michigan view the realistic expectations of consumers. They want:

(1) A broad range of services at fair and competitive prices.

(2) Adequate information in order to make a choice.

(3) Fair and responsive procedures within business. An example would be an ombudsman program.

(4) Quick, fair and inexpensive remedies provided by an understanding governmental agency.

GEOGRAPHIC AND POLICY CONSIDERATIONS

No Federal agency to my knowledge has an office in Michigan that deals directly with consumers. The Federal agencies are located as follows: Federal Trade Commission, Cleveland, Ohio; Comptroller of the Currency, Chicago, Ill.; Federal Reserve Board, Chicago, Ill.; Federal Home Loan Bank Board, Indianapolis, Ind.; Federal Deposit Insurance Corporation, Madison, Wis.; and National Credit Union Administration, Toledo, Ohio.

This diverse geographic network makes it impossible for a consumer to know where to turn in order to get responsive regulatory action.

My experience has also been that regional administrators for these agencies come and go and they do not feel any significant relationship to Michigan consumers. The Director of our Consumer Affairs Division is a career department employee. Also, Governor Milliken has directed me to be actively involved in matters relating to consumers.

When we sent a questionnaire on consumerism to all financial institutions in Michigan, one National bank declined to answer on the basis that we do not have "visitorial powers." When a National bank thinks that it is above it all and does not have to respond to a State Banking Commissioner on such a matter, then I think we have real problems.

THE ROLE OF THE STATE

The State has a significant role under its police powers in protecting its citizens. Many States have been progressive and assertive in this role. Because of the quiltwork pattern of financial institutions and regulatory agencies, I be-

lieve that the States are in the best position to develop responsive consumerism programs. This was recognized by George LeMaistre, Director of the Federal Deposit Insurance Corporation, in his recent speech before the Vermont Bankers Association. He stated:

"* * * Other areas where the states might appropriately assert supremacy are the areas of EFTS and consumer affairs. Recent efforts by state banking departments in both of these areas demonstrate the ability of state banking to assert positions of leadership. Needless to say, the case for this sort of federal deference to state regulation in any of these areas must be made to the congress and in my judgment should be made as aggressively as possible."

EFTS is a good example of the State being the focal point for regulation. It represents "a crossroads of commerce" in which the participants are banks, both State and National, savings and loan associations, both State and National, credit unions, both State and National, consumer finance companies, communications companies, systems providers, retailers and, most importantly, consumers. Each State has its own personality and can best address such issues as consumers rights, privacy, security, and sharing.

The State can fulfill its role through laws enacted by the Legislature, through administrative action and through examinations. Concern has been expressed about the possibility of some State laws directly overreaching and negatively impacting the growth of national institutions. It might be possible to provide for a safety valve.

Adequate funding is a key ingredient to effective State programs. I believe the only way this can be accomplished in an across-the-board program is for revenue sharing which obviously must contain safeguards for the State system.

My experience has been that our consumerism department had to be separated from the traditional examination department because that department very properly was preoccupied with concerns for safety and soundness. A consumerism division must be placed at a high policy position within an agency. In addition to enforcement, it has a significant role of policy and program development and communication with local consumer groups.

ECONOMIC ILLITERACY

We have found through our complaint procedure, through discussions with consumer groups and through discussions with financial institutions, that there is pervasive economic illiteracy. By this we mean that consumers do not understand the basic nature of everyday financial transactions as well as their rights and responsibilities in dealings with financial institutions. They do not understand the reasons for the denial of credit or the impact of their failure to pay their debts. Assuming a willingness on the part of the public to learn, the responsibility for addressing the problem should rest with our educational systems and financial institutions. Special attention must be given to helping consumers understand the implications of their practical everyday financial dealings.

COST BENEFITS UNDERSTANDING

The credit union movement which was very instrumental in the development and growth of consumer programs is now expressing a very loud concern over the costs and burdens involved in compliance with consumer programs. I feel it is important that we analyze the cost benefits involved in all consumerism programs. The cumulative impact of a volume of forms, cost of gathering data and the cost of special counsel has become significant. It is beginning to impact the profits of organizations and ultimately the charge for services. This cost may be legitimate, however, our decisions must be made in the context of a total awareness of the impact.

Also, we need to develop less cumbersome and complex programs for smaller institutions. This might include exemptions, prior approval forms, and programs of assistance.

RECENT DEVELOPMENTS IN FEDERAL AGENCIES

In the preparation of my testimony, I noted three recent Federal programs that are significant. They are the Federal Deposit Insurance Corporation and Comptroller's program to identify discrimination in mortgage lending, the Comptroller's program for full compliance with consumer protection laws through examination efforts, and the Federal Reserve's proposed rule in regard to equal credit opportunity. Each of these represents a well considered and progressive move.

SUMMARY

(1) Consumerism programs must focus on the consumer who is frustrated because of the complexity of the regulatory framework and the pervasive economic illiteracy.

(2) The States have the key role to play in developing and coordinating consumer programs that are responsive to the needs of their citizens. Revenue sharing is essential to this objective.

(3) Federal regulatory agencies should be required to coordinate their consumerism programs with a designated State agency. This could be the Financial Institutions Commissioner or the State Consumer Commission.

(4) States should have a "representative of their system" on a joint coordinating committee at the Federal level. This might also be accomplished best through the Division of Consumer Protection that could be a part of a Federal Banking Commission. This was a suggestion of mine in my testimony before this committee at the March 1, 1976, hearing on the Federal Bank Commission Act.

(5) A statement of policy on consumerism should be developed at both the Federal and State level. It should consider the balance between programs for consumers and profitability. It should be based on competition and availability of services rather than on excessively rigid and voluminous regulations.

(6) If the States are to assume their responsibility for consumers, then the States and organizations representing them must address this issue.

(7) Current consumer issues should be identified so that members of the public, business and regulators can assess needs and priorities.

(8) Programs for accountability must be developed in order to obtain public confidence. This could include publication of the summary of inquiries, complaints and administrative action.

(9) Education programs must be developed so that when a person leaves school he understands his basic everyday financial transactions.

(10) Finally, consumers programs must be developed on a set of principles that includes closeness and understanding of consumers, flexibility and accountability.

The CHAIRMAN. Thank you very much, Mr. Francis.

As I understand it, Mr. Quinn has arrived with a distinguished former member of this committee, a Senator whose advice and counsel we always cherish.

Senator Hathaway.

STATEMENT OF WILLIAM D. HATHAWAY, U.S. SENATOR FROM THE STATE OF MAINE

Senator HATHAWAY. I wasn't sure you would let me come back as a former member of the committee.

The CHAIRMAN. We are happy to have you.

We could use you right now.

Senator HATHAWAY. Especially on an occasion like this.

I am very pleased to have the opportunity to introduce to you, Mr. Chairman and the members of the committee, John Quinn, superintendent, Maine's Bureau of Consumer Protection.

John has worked very diligently to insure that Maine's consumer credit code has been vigorously enforced.

Prior to being appointed as superintendent, John served as the head of the consumer fraud division of the State attorney general's office, and while in this position he initiated a number of successful suits against land speculators and other unscrupulous merchants.

Also while serving in this capacity, John lobbied in the State legislature successfully for a more comprehensive statutory structure to deal with the recurrent problems in the area of consumer credit financing and was named the first superintendent of the resulting bureau created by that legislation.

I hope this committee will listen very carefully to what John has to say to you today.

I have had interest over the last few months in the problem he raises and, as a result of his writing to me about the problem, I brought it to the attention of the chairman who saw fit to call these hearings.

John's testimony will raise issues not unique to the State of Maine. If our various State legislators enact legislation to cope with recurring problems, it is important that our Federal regulatory bodies recognize the integrity of these State statutes.

When, as is the case here, Mr. Quinn's bureau is limited to performing inspections of State banks and must under Federal law defer to the Comptroller of the Currency to police national banks located in the State of Maine, it is imperative both to protect the consumers in the State and to be fair to all the banks located there that the Comptroller enforce the State's laws relating to national banks as vigorously and effectively as John's bureau does in the sphere of State banks.

Thank you very much, Mr. Chairman, for both calling these hearings and giving me this opportunity to introduce Mr. John Quinn to the committee.

The CHAIRMAN. Thank you very much, Senator Hathaway.

We are happy to have you, Mr. Quinn.

I understand you interrupted a long-looked-forward-to vacation at the Olympics to come down here, indicating a heroic interest in this matter.

You may go right ahead. Did you have a prepared sttaement, Mr. Quinn?

Mr. QUINN. Yes, somewhat.

The CHAIRMAN. Why don't you go ahead. We would appreciate it if you could condense it to about 10 minutes, if that is possible.

STATEMENT OF JOHN L. QUINN, SUPERINTENDENT, MAINE CONSUMER CREDIT ADMINISTRATION

Mr. QUINN. I would be happy to.

My statement, as such, is really reliance upon the earlier letter that I had submitted to the committee.

The CHAIRMAN. Fine.

Mr. QUINN. In that letter, I tried to set forth the problems that have arisen over the past 2 years during my tenure as the head of the bureau of consumer protection.

Back in August 1974, I as appointed superintendent of the bureau of consumer protection of the Maine Consumer Credit Code that has been recently enacted.

One of the first problems I ran into was an awareness that one of the statutes that had been preempted by the code, the State's usury statute dealing with loans of over $2,000 to consumers which had a 16-percent rate limitation, had been found to be in substantial violation in a number of State banks.

In talking with the examiners on my staff and with the personnel and the head of the banking bureau, it became clear that there was an obvious question as to whether or not substantial violations also existed in our national banks and whether they would ever be uncovered by the party charged with examining these banks.

At that time I contacted the people in the first region; as a matter of fact, I spoke directly to Mr. White, who is, and I believe still is, the regional counsel for the Comptroller.

I had an interesting discussion with the gentleman at that time.

As you know, the Comptroller is charged with the enforcement of our State consumer credit laws in the national banks. It was interesting to learn in my discussion with Mr. White that he didn't have the faintest idea of what the statute was.

The statute is referred to in our parlance in section 229 of the Maine Banking Code. Mr. White didn't know of the existence of section 229 and indicated that, if he was unaware of it, then his examiners were unaware of it and would I be kind enough to send him a copy of it.

I told him I would be happy to.

Since that time, up until a short while ago, I have been badgering the Comptroller to locate the violations and to notify the consumers.

We had heard at about the same time from various sources that within the national banks there were numerous violations as well.

In the State banks, though Maine is a small State, during the latter part of 1974, there were uncovered something in the area of $500,000 worth of consumer loans, which were in violation of section 229.

We had heard that a substantial number of violations also existed in the national banks.

We were further informed by several State-chartered banks that they felt it was an inequity that they should be brought to light on these charges when, in fact, national banks, which in some cases were part of the same holding companies, went scot-free.

Apparently their point was that so long as we couldn't enforce against everybody, then we should let everybody go.

Well, we persisted. We informed the consumers, through the banking superintendent, of their rights in a usury violation that none of these loans had to be repaid and in fact we voided them.

After a number of pieces of correspondence, which are set forth in the material that I sent to you, Senator, the Comptroller's Office persisted in claiming that no violations of this type existed.

Furthermore, they were doing a first-rate job of examination of the national banks and that they were sorry that we couldn't understand the length and degree to which they had gone to protect Maine consumers.

As time went along, we continued to hear small outcries from State bankers that a number of section 229 violations had occurred in the national banks and why couldn't somebody do anything about it.

So, we continued to write letters to the Comptroller. As you can see, it got quite voluminous after a while.

Finally, in August of 1975, about a year actually, in April of 1976 I wrote again and asked the same question I had asked on several previous occasions.

This time the Comptroller came back and said that yes, indeed, they had found some 76 such violations in Maine banks.

I will back up just a moment to point out that in August of 1975 we had written again. At that point, again, there were no violations.

So, somewhere along the line they discovered these violations and at that point they wrote to us and said that everything was fine.

So we write back and said, "Did you inform them of their rights in the same manner that the consumers who do business with State banks were informed?"

It was reported back to us by first region people that they didn't think that was quite necessary, the banks involved had taken care of that.

They had yet to this day to point out to us just exactly how those banks took care of it.

My imagination supplies me with a number of suggestions. I have not seen anything from the Comptroller's Office in the way of concrete evidence to know what they actually did.

I think this points up what has happened in Maine and quite possibly elsewhere.

That is, that you have a situation with the Comptroller wherein the Comptroller is charged with insuring the liquidity of the national banks in Maine and at the same time insuring that the National banks comply with the State and Federal consumer credit protection statutes.

Well, there is an inherent conflict there. It is classic in this particular instance because it is set forth in the correspondence between my office and the Comptroller's office.

They state flatly that, with respect to Maine consumer credit code violations, they have no intention of notifying consumers, while on the other hand when my examiner locates violations of the credit code in Maine, we hold a hearing and we notify the consumers of the violation and of their civil rights.

The Comptroller has on several occasions responded that that is impossible. They have every intention of maintaining compliance. It doesn't say how, but when they do find violations, they refuse to notify the consumers.

He gives as a reason the possibility that there might be a run on these banks. I didn't take that too seriously until I had read Comptroller Smith's response to you, Senator, with respect to the letter that I had sent.

The CHAIRMAN. Go right ahead.

That is just a quorum call.

Mr. QUINN. I thought perhaps my period was up.

The CHAIRMAN. No.

Mr. QUINN. Comptroller Smith indicates in his letter that they pay fully as much attention to compliance in the national banks on truth-in-lending and the State consumer credit protection laws as they do with any other aspect of the banking statutes, including liquidity.

If that is true—and I have no reason to doubt Mr. Smith's words—then I would say that the national banks are probably in a very sorry state because we know for a fact, and I am sure that a number of people here at this table can attest to that, that there are not or have not been any examinations in national banks in compliance with truth-in-lending until quite recently, from, I would say 1970 until 1975.

Well, until late 1974 there were no examinations in truth-in-lending compliance in Maine that we could see.

In late 1974 and early 1975 it appears that there was some effort made, presumably I would assume from the work of this committee in the past, to review for some sort of compliance.

But we had situations where our State bank examiners would be doing an examination of a bank—I guess I will skip that point for a later time.

I don't want to get into that right now.

The point is that there has not been examination. The recent surge within the first national region is the work of one gentleman who has been assigned to that task.

I would suggest that, while it does not require a large staff on the Comptroller's part to maintain compliance with truth-in-lending and State consumer protection laws, one man for the first region is perhaps overstating his prowess somewhat.

The extent of their examination, even at this point in time, is at the questionnaire level. They sent out and received information back on questionnaires.

They have since that time set up reporting sheets for the examiners to utilize as they see fit.

I would suggest, and I think the examinations themselves on the Comptroller's part would bear this out, that, first, up until early 1975 you will not see any reference to truth-in-lending violations or compliance violations in any of the banks in Maine and, secondly, since that time, the State and Federal consumer protection laws are given only token surface treatment.

Again, that goes back to the conflict that you have with a bank examiner, a classic liquidity bank examiner checking for compliance with State consumer protection laws.

The two are in conflict. When push comes to shove, in the cases that I have seen, the bank's liquidity is uppermost in the mind of the Comptroller.

The CHAIRMAN. Thank you very much, Mr. Quinn.

Our next witness is Mr. McCaffrey.

STATEMENT OF JAMES A. McCAFFREY, DEPUTY ADMINISTRATOR, OKLAHOMA DEPARTMENT OF CONSUMER AFFAIRS

Mr. McCAFFREY. Thank you, Senator, it is my pleasure to appear and testify concerning the activity of the three Federal agencies in the State of Oklahoma. I wish to first indicate a little bit of background about our department in Oklahoma.

We are an exempt State from truth-in-lending enforcement, except with regard to federally chartered institutions.

We are also a member of a 10-State organization called American Conference of Uniform Consumer Credit Code States Administrators.

Our work in Oklahoma is in tandem with the State Banking Department. Our department regulates the consumer finance industry directly. The State Banking Department examines all State and chartered institutions. At this time there are 18 member State chartered banks in Oklahoma which are examined by the State examiners; 727 State chartered banks which are examined by the FDIC and in conjunction with our State Banking Department; there are 208 federally chartered banks which are examined by the comptroller.

Soon after our exemption was granted in 1970, we undertook the task of enforcing the truth-in-lending law in the State of Oklahoma with regard to all creditors. Pursuant to that authority, we contacted the various Federal agencies, including the FDIC and Comptroller for the purpose of working out some solutions in order that we may assist them or they may assist us, whichever, in order to bring about true enforcement of truth-in-lending for creditors in Oklahoma.

I filed with the committee a series of letters from our department to these agencies on behalf of the State department beginning back in 1970.

[Letters follow:]

OKLAHOMA DEPARTMENT OF CONSUMER AFFAIRS,
Oklahoma City, Okla., August 5, 1970.

Hon. WILLIAM B. CAMP,
Comptroller of the Currency, Treasury Department,
Washington, D.C.

DEAR SIR: The Uniform Consumer Credit Code was enacted in Oklahoma and became effective July 1, 1969. The Federal Reserve Board subsequently found that "Disclosure Provisions" of the Code were similar to those of the Truth In Lending Act and pursuant to Section 123 of the Act, The Board exempted certain credit transactions from regulation and control by Federal agencies. However, this exemption did not cover Federally chartered institutions.

Section 6-104 of the Code (14a O.S. 6-104(5)) states in part: "The Administrator shall report annually . . . on the operation on his office, on the use of consumer credit in the State, on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making the report, the Administrator is authorized to conduct research and make appropriate studies."

In addition Section 6-105 states, "with respect to supervised financial organizations, the powers of examination and investigation (Sections 3-506 and 6-106) and administrative enforcement (Section 6-108) shall be exercised by the official or agency to whose supervision the organization is subject. All other powers of the Administrator under this Act may be exercised by him with respect to a supervised financial organization". In addition, Section 6-105(2) states in part, "The Administrator may request information about supervised financial organizations from the officials or agencies supervising them".

To carry our these directives and to obtain this information the State Bank Commissioner of Oklahoma at our request conducts specific examinations prepared by this Department in all State chartered banks, savings and loan companies, and credit unions. Upon completion, each examination is returned to this Department. A copy, of the examination is enclosed for your study.

In order to determine the availability of consumer credit as well as the degree of compliance of Federally chargered banks with the provisions of the Uniform Consumer Credit Code in Oklahoma, examination methods must be devised which will be mutually satisfactory. This would also apply to Federally chartered savings and loan companies and credit unions .

I would appreciate your suggestions as to manner and method by which this information may be determined on a regular basis.

Sincerely yours,

RICHARD L. WHEATLEY, Jr., *Administrator.*

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS,
Chicago, Ill., September 23, 1970.

NATHANIEL E. BUTLER, Esq.,
Educational Director, National Conference of Commissioners on Uniform State Laws, 1155 East 60th Street, Chicago, Ill.

DEAR NEIL: Thanks for sending me the Wisconsin correspondence concerning the attitude of the Comptroller of the Currency with respect to state law. I do not find it particularly startling. However, I do think that since it exists, we might give some thought to obtaining from the Comptroller of the Currency a statement of the policy of his office with respect to state consumer credit laws.

As I understand the typical bank supervisory policy, both state and federal, examiners are instructed to take exception to any violation of any law. Since the examiner's report is in effect the bankers report card, bankers generally make every effort to avoid any exceptions.

However, when exceptions do arise, action by the supervisor is generally limited to ordering correction of the practice in the future. Of course, if the violation results in continuing illegality, such as retention of an illegal asset, the bank may be ordered to dispose of it. Similarly, if violation endangers the institution, a cease and desist order may issue.

As to past violations to which an examiner takes exception, I do not understand that it is customary for the supervisor to order any action. Rather, he leaves enforcement to private action in cases where private rights have been violated. And, of course, this is especially true in a case where the bank maintains that its conduct is proper under the law.

In the Wisconsin case, the bank maintained that its conduct was proper. Commissioner Doyle disagreed, but that does not mean to me that the bank was acting arbitrarily. In case of disagreement as to the meaning or applicability of the law, it seems only proper to me that the parties be relegated to the courts. I should think that both the Commissioner and the Attorney for the estate would have had standing to raise the issue and if they were really concerned, I think they should have done so.

In any event, I fail to see how any possible amendment to Section 6.105 could constitutionally confer on either the Comptroller or State Administrator power to reach this kind of a problem out of court in the case of a national bank.

I suggest the possibility of asking for a statement from the Comptroller only because this is an example of complaints periodically received to the effect that the Comptroller customarily disregards state laws in his examination procedures. I do not believe that this is true and I think he would be willing to say so.

Cordially,

HAROLD E. READ, Jr.

STATE OF WISCONSIN,
OFFICE OF COMMISSIONER OF BANKING,
Madison, Wis., April 15, 1970.

Senator WALTER J. CHILSEN,
Chairman, Advisory Committee on the Uniform Consumer Credit Code, Wausau, Wis.

Representative KYLE KENYON,
Chairman, Advisory Committee on the Uniform Consumer Credit Code, Tomah, Wis.

GENTLEMEN: Consideration should be given to revising Section 6.105(3) of the UCCC relating to the powers of administrator with respect to financial institutions.

This Department received a complaint from Senator Lorge and also from the attorney of an estate involving the failure of a national bank to refund the unearned portion of the interest as required under Section 138.05(2) (a) as well as the unearned portion of the credit accident and health insurance premium as required under our credit insurance laws when the $2,367.72 loan was paid in full by the insurance company. The insurance company in paying the death claim paid the national bank the full amount of the interest of $361.18, the full amount of the credit life and credit accident and health insurance premiums of $106.54 as well as the proceeds of the loan of $1,900.00. Section 138.05(2) (a) requires that $341.68 of the interest be refunded and the insurance laws require that the accident and health premium of $53.27 be refunded.

When the attorney of the estate called upon the bank to refund the above amount totaling $394.95, they refused to even give him a payoff figure stating that their position "as a matter of policy was, that no refunds would be made to the deceased's estate or his widow and took the further position that this was completely within their prerogative because the insurance was written for the benefit of the bank." This Department contacted the Regional Office of the Comptroller of the Currency in Minneapolis and was advised by the Regional Administrator Mr. Bushman:

"We have completed our investigation of the matter set out in your letter and have concluded that this is a matter of private right to which no direct assistance may be given by this office."

This complaint was also investigated by the United States Senate Committee on Banking and Currency. They were advised by the Acting Comptroller of the Currency, J. T. Watson, on February 25, 1970:

"While we disagree with the position of the bank in the dispute and have so advised the bank by letter, we do not feel that under applicable law we have the authority to take the action you request. This controversy between the bank and the estate involves interpretations of the note and the credit life insurance contract, under the terms of which the note in question was paid by the life insurance company. The contract, having been made in Wisconsin is governed by the Laws of the State of Wisconsin and there is no substantive Federal statute involved in the case. The Financial institutions Supervisory Act of 1966, commonly referred to as the 'cease-and-desist' power, was drafted jointly by the four Federal banking agencies for the purpose of providing additional enforcement remedies to use in problem bank and S&L situations. Up until that time the remedies available to the banking agencies, such as suspension of charter or deposit insurance, were considered too drastic to be used effectively. There was no intention on the part of the drafters of the bill to confer any jurisdiction which had not existed before in any area of substantive law. *Certainly there was no intention to set up a Federal system of administrative courts to deal with specific money claims by customers against individual banks.*

We think that every reference to the term 'unsafe and unsound practice' found in the legislative history of the 1966 legislation will indicate that the phrase was used in the sense of practices jeopardizing the *safety or soundness of the bank or S&L involved* and not in the broader sense of the general public interest. To adopt the latter construction would give the Federal banking agencies powers to enforce their assessment of the public interest probably greater than that of any Federal agency . . . to do otherwise would, in our opinion, involve a drastic departure from the usual concepts of the jurisdiction of State courts and Federal regulatory agencies."

My purpose in setting forth the obstinate position taken by the Office of the Comptroller of the Currency in refusing to require a national bank to comply with the laws of the State of Wisconsin is justification for the State of Wisconsin to insist that the Credit Code of the State of Wisconsin be administered by the State and not by a Federal official whose chief counsel has advised them that it is not the function of their office to protect the public's interest unless it would jeopardize the safety or soundness of the bank or savings and loan involved.

In considering any exemption to a supervised Federal financial organization, I believe that the Legislature of the State of Wisconsin is seriously jeopardizing the rights of the borrowing or purchasing public.

Inasmuch as this matter will be discussed at our next meeting, I am taking the liberty of sending a copy of this letter to each of the members of the Advisory Committee.

Respectfully submitted,

JOHN F. DOYLE, *Supervisor.*

P.S. In the event that you would care to review copies of the correspondence I have in my file which are addressed to or which have emanated from the Office of the Comptroller of the Currency, I will make them available to you.

OKLAHOMA DEPT. OF CONSUMER AFFAIRS,
November 3, 1970.

Mr. FREDERIC SOLOMON,
Director, Division of Supervision and Regulation, Board of Governors, Federal Reserve System, Washington, D.C.

DEAR MR. SOLOMON: In regard to your letter concerning reports to the board, we would certainly be pleased to furnish the information to which you refer. In addition this information will be readily available to us and will not be difficult to compile.

I might make one further suggestion. As a part of our annual report to the Governor and legislature we intend to furnish the information to which you refer and also intend to specify categories of violations, thus indicating areas where creditors seem to be having problems.

As a part of the report it would not be difficult to relate our experience since the granting of the exemption, however I do not feel that there was any change whatsoever. Examinations, enforcement and education were all being carried on by this Department before and after the exemption, and Federal regulatory bodies were not, and are not now doing anything in regard to Truth in Lending. This is especially true in regard to federally chartered institutions in Oklahoma.

Sincerely yours,

RICHARD L. WHEATLEY, JR.,
Administrator.

DEPARTMENT OF CONSUMER AFFAIRS,
Oklahoma City, Okla., December 9, 1970.

Mr. JOHN D. WILLIAMS,
State Bank Commissioner, Lincoln Office Plaza, Suite 12, Oklahoma City, Okla.

DEAR JOHN: Pursuant to our discussion of December 7, 1970, I respectfully request that the State Banking Department follow the guidelines proposed herein as your staff conducts examinations to determine that State Chartered banks, savings and loan companies, and credit unions are complying with the provisions of the Uniform Consumer Credit Code and the Rule of the Administrator of Consumer Affairs.

(1) It is our view that the purpose of the examination of creditors by an enforcement agency is to establish a base for such administrative action as may be appropriate in the circumstances rather than to serve as a direct representative of an individual customer's interest. It is compliance with the law that we think should be sought by enforcement agencies—not the imposition of sanctions. Sanctions should be imposed, however, in the event of individual consumer complaints to the enforcement agency.

(2) When, upon a regularly scheduled examination of consumer credit transactions, the percentage of error exceeds 10% but is less than 30%, the examiners of the State Banking Department shall examine and complete an analysis of all consumers credit transactions of the institution. If the percentage of error exceeds 30%, the Department of Consumer Affairs shall be notified. Whereupon an examiner of the Department of Consumer Affairs shall complete the examination in accordance with the directives of the Administrator.

(3) Upon completion of an examination whether conducted by the State Banking Department or the Department of Consumer Affairs, or both, that part of the examination designated "Uniform Consumer Credit Code" including analysis of consumer credit transactions shall be forwarded to the Department of Consumer Affairs. It shall then be the responsibility of the Department of Consumer Affairs to prepare a formal report based on the examination specifying therein all requirements the subject lender must meet. The original report and a copy of the examination shall be forwarded to the creditor, a copy of the report and examination shall be forwarded to the State Banking Department.

(4) It shall be the responsibility of the Department of Consumer Affairs to insure that all requirements set forth in the report are met by the creditor.

(5) In the event of consumer abuses caused by willful conduct or lack of due care, calling for administrative or civil action, or criminal prosecution, the Department of Consumer Affairs will first present formal written charges to the State Banking Department requesting such action as the Commissioner of Banking may deem appropriate under the circumstances.

Sincerely yours,

RICHARD L. WHEATLEY, JR.,
Administrator.

OKLAHOMAS DEPT. OF CONSUMER AFFAIRS,
December 9, 1970.

Mr. MICHAEL DOMAN,
Regional Administrator of National Banks, 1401 Elm Street, Suite 4800, Dallas, Tex.

DEAR MR. DOMAN: Recently John D. Williams, Commissioner of Banking for Oklahoma, and this Department established certain guidelines and an understanding of the comparative roles of each department relating to examination of State chartered institutions to determine and enforce compliance with the provisions of the Uniform Consumer Credit Code and the Rule of the Administrator (the substantive provisions of Regulation Z).

Disregarding the status of Federally chartered institutions, the transactions entered into in Oklahoma are with Oklahoma consumers who are entitled to the

protections afforded by the provisions of the Code. The specimen examination attached can be successfully used to determine the degree of compliance and to indicate errors in regard to maximum charges allowed under Oklahoma law.

I take the liberty of enclosing a letter to Mr. Williams which sets forth examination guidelines and an understanding of the cooperative effort which the State Banking Department and the Department of Consumer Affairs have entered into in an effort to insure compliance.

I respectfully request your comments on this arrangement, as well as your feelings as to a similar arrangement between your agency and this Department.

If you disagree with these methods, please be good enough to reply as to alternatives to the end that Oklahoma consumers receive the same measure of protections in transactions involving Federally chartered creditors that they receive in transactions involving State chartered or licensed creditors.

Sincerely yours,

RICHARD L. WHEATLEY, JR.,
Administrator.

FEDERAL DEPOSIT INSURANCE CORPORATION,
Dallas, Tex., December 16, 1970.

Mr. RICHARD L. WHEATLEY, Jr.,
Administrator, Department of Consumer Affairs,
Oklahoma City, Okla.

DEAR MR. WHEATLEY: We have your letter of December 9, 1970, regarding the cooperation of this office with your department and, needless to say, we shall be glad to consider any proposals that will promote this end.

We are aware of the liability that may accrue to insured banks for failure to adhere to the provisions of the Uniform Consumer Credit Code and so are very interested.

Inasmuch as you have an understanding with the Commissioner of Banking with whom we have a very effective working arrangement, this should take care of any problems which are disclosed in State chartered institutions as they are examined by the State Banking Department. We examine State nonmember banks but do not examine State member banks, so there is no point in duplicating its efforts in this regard.

In the case of lenders who are National banks, which we do not routinely examine, we suggest that you communicate with Mr. Michael Doman, Regional Administrator of National Banks, 1401 Elm Street, Suite 4500, Dallas, Texas 75202.

Sincerely,

QUINTON THOMPSON, *Regional Director.*

DEPARTMENT OF CONSUMER AFFAIRS,
Oklahoma City, Okla., January 27, 1971.

Mr. BURFORD B. LANKFORD,
Regional Director,
205 West Ninth Street, Austin, Tex.

DEAR MR. LANKFORD: The Department of Consumer Affairs and the Administrator are charged with the implementation and enforcement of the Uniform Consumer Credit Code in Oklahoma. In addition, I have adopted as a rule the substantive portion of Regulation Z promulgated pursuant to the Federal Consumer Credit Protection Act. Further, Oklahoma has been granted an exemption by the the Federal Reserve, and as a result thereof is responsible for the regulation and control of consumer credit transactions in Oklahoma. However, the Federal Reserve expressly reserved control and supervision of federally chartered lending institutions to various federal agencies.

I have no desire to infringe upon the jurisdiction of any federal agency, nor to examine or investigate federally chartered institutions, except where Oklahoma law would clearly require such action. I do have a duty, however, to determine whether or not Oklahoma consumers receive at least the same protection when dealing with federally chartered institutions as they receive when they deal with state institutions.

Would you be good enough to forward to me information regarding steps taken, if any, to insure that federally chartered credit unions are complying with the provisions of Truth-in-Lending as well as the Consumer Credit Code.

Information which has come to me from officers of many federally chartered lending institutions indicates that little regard is being paid to both of these laws. Because of this, I urgently suggest that steps be taken toward compliance for two reasons: (1) Truth-in-Lending is the law of the land and the Uniform Consumer Credit Code is the law of Oklahoma and both laws must be followed, and (2) continued disregard of these laws will place federally chartered lending institutions in the position of a sitting duck for class action litigation.

Sincerely yours,

RICHARD L. WHEATLEY, Jr.,
Administrator.

OKLAHOMA CONSUMER AFFAIRS DEPT.,
January 26, 1971.

Hon. J. L. ROBERTSON,
Vice Chairman, Board of Governors, Federal Reserve System, Washington, D.C.

DEAR GOVERNOR ROBERTSON: I wish to respectfully express my concern about compliance of Federally chartered, Oklahoma lending institutions with the provisions of Regulation Z and The Uniform Consumer Credit Code.

I have previously written the Comptroller and the Regional Comptroller concerning this matter. To date I have not received a reply. Copies of these letters are attached. I have also taken the liberty of enclosing my letter to John D. Williams, State Bank Commissioner for Oklahoma setting forth our understanding of the manner and method of co-operation between our respective departments.

I understand fully that supervision of Federally chartered lending institutions is expressly reserved to Federal agencies and I have no interest in infringing upon the jurisdiction of these agencies. I am concerned about Oklahoma consumers and the protection of their rights as set out in the Code and the Administrators Rule (Regulation Z). Experience with State banks, as well as statements made to me by officers of national banks, indicates that for all intents and purposes Truth-in-Lending is being ignored in Federally chartered lending institutions in Oklahoma.

I sincerely urge your attention to this matter so that Oklahoma consumers can receive the same protections when dealing with Federally chartered lending institutions as they receive when dealing with State chartered institutions.

Sincerely yours,

RICHARD L. WHEATLEY, Jr.,
Administrator.

DEPARTMENT OF CONSUMER AFFAIRS,
Oklahoma City, Okla., January 27, 1971.

Mr. JAMES W. MCBRIDE,
Supervisory Agent, Tenth Federal Home Loan Bank District, Topeka, Kans.

DEAR MR. MCBRIDE: The Department of Consumer Affairs and the Administrator are charged with the implementation and enforcement of the Uniform Consumer Credit Code in Oklahoma. In addition, I have adopted as a rule the substantive portion of Regulation Z promulgated pursuant to the Federal Consumer Credit Protection Act. Further, Oklahoma has been granted an exemption by the Federal Reserve and as a result of thereof is responsible for the regulation and control of consumer credit transactions in Oklahoma. However, the Federal Reserve expressly reserved control and supervision of federally chartered lending institutions to various federal agencies.

I have no desire to infringe upon the jurisdiction of any federal agency, nor to examine or investigate federally chartered institutions, except where Oklahoma law would clearly require such action. I do have a duty, however, to determine whether or not Oklahoma consumers receive at least the same protection when dealing with federally chartered institutions as they receive when they deal with state institutions.

Would you be good enough to forward to me information regarding steps taken, if any, to insure that federally chartered savings and loans, as well as those who are insured by the Federal Home Loan Board, are complying with the provisions of Truth-in-Lending as well as the Consumer Credit Code.

Information which has come to me from officers of many federally chartered lending institutions indicates that little regard is being paid to both of these laws. Because of this, I urgently suggest that steps be taken toward compliance for two reasons: (1) Truth-in-Lending is the law of the land and the Uniform

Consumer Credit Code is the law of Oklahoma and both laws must be followed, and (2) continued disregard of these laws will place federally chartered lending institutions in the position of a sitting duck for class action litigataion.

Sincerely yours,

RICHARD L. WHEATLEY, Jr.,
Administrator.

FEDERAL HOME LOAN BANK BOARD,
Topeka, Kans., February 3, 1971.

Mr. RICHARD L. WHEATLEY, Jr.,
Administrator, State of Oklahoma, Department of Consumer Affairs, Oklahoma City, Okla.

DEAR MR. WHEATLEY: We have received your January 27, 1971 letter regarding the enforcement of Regulation Z and the Consumer Credit Code.

First, although there has been an education period since the laws first came into effect, we have not found a disregard for the laws.

All insured savings and loan associations in Oklahoma are examined regularly by Federal examiners. Each examination includes an analysis of compliance with Regulation Z or the Uniform Consumer Credit Code. Noncompliance is reported and appropriate changes in procedure are required. The Department of Banking receives copies of reports and correspondence with regard to state-chartered insured associations. At the next examination, there is a follow-up to determine that necessary changes have been made.

If, as you indicate, you learn of institutions which are disregarding these laws, we will appreciate learning their identity. A prompt investigation will be conducted and, if necessary, corrective action taken. We will, of course, keep the source of our information confidential.

Sincerely,

JAMES W. MCBRIDE,
Supervisory Agent.

NATIONAL CREDIT UNION ADMINISTRATION,
Austin, Tex., February 5, 1971.

RICHARD L. WHEATLEY, Jr.,
Administrator, Department of Consumer Affairs, State of Oklahoma, Oklahoma City, Okla.

DEAR MR. WHEATLEY: As you have stated in your letter of January 27 our organization has been designated as the enforcing agency of the Consumer Credit Protection Act (the Truth in Lending Act) with respect to Federal credit unions. It is our policy to examine each Federal credit union, including those in Oklahoma, once each calendar year. It is our practice to determine at each examination that each Federal credit union is complying with the provisions of the Act and the Federal Reserve Board Regulation Z in the same manner that the credit union must comply with other appropriate laws and rules and regulations.

In determining whether the credit union is complying with all facets of the Truth in Lending Act our examiners analyze the procedures followed by the credit union, the advertising practices, the procedures around the disclosure statements, and other related factors. In those rare instances where we find a credit union not following all of the requirements of Regulation Z we insist upon appropriate and immediate corrections and we remind the officials of the civil and criminal penalties that could result from nonconformance. We have not had a case in Oklahoma where a credit union refused to comply with the provisions of the Consumer Credit Protection Act. If we should find such a case, however, we would not hesitate to take whatever action would be necessary on our part to bring about compliance with the Act.

We have three examiners permanently stationed in Oklahoma and others who work there from time to time. All of them are thoroughly familiar with the requirements of the Consumer Credit Protection Act and Regulation Z. We do not believe that Federal credit union officials can say that our organization is giving little regard to Regulation Z as stated in the last paragraph of your letter.

Very truly yours,

BUFORD B. LANKFORD,
Regional Director.

FEDERAL RESERVE SYSTEM,
BOARD OF GOVERNORS,
Washington, D.C., February 8, 1971.

RICHARD L. WHEATLEY,
Administrator, Department of Consumer Affairs,
Oklahoma City, Okla.

DEAR MR. WHEATLEY: This is to acknowledge your letter of January 26, 1971, concerning the compliance of Federally chartered institutions within the State of Oklahoma with the provisions of the Federal Truth in Lending Act and Regulation Z. We are concerned about your allegation.

Since we do not have direct enforcement authority over these institutions, we have referred your letter to the National Credit Union Administration, the Federal Home Loan Bank Board and the Comptroller of the Currency for their comments. When these comments are received, we shall contact you further.

In the meantime, it would be helpful if you could refer any complaints concerning specific Federal institutions to the appropriate Federal agency.

Sincerely,

J. L. ROBERTSON.

DEPARTMENT OF CONSUMER AFFAIRS,
Oklahoma City, Okla., March 23, 1971.

Mr. ROBERT BLOOM,
Chief Counsel, Comptroller of the Currency, Treasury Department, Washington, D.C.

DEAR SIR: In order to establish the relationship between the Department of Consumer Affairs and the Office of the Comptroller of Currency, as their responsibilities relate to the Consumer Credit Protection Act (Truth in Lending) and the Uniform Consumer Credit Code as adopted in Oklahoma, jurisdiction, authority and responsibility must initially be established.

In this regard, Section 6–104 of the Uniform Consumer Credit Code provides as follows:

"(1) With respect to supervised financial organizations, the powers of examination and investigation (Sections 3–506 and 6–106) and administrative enforcement (Section 6–108) shall be exercised by the official or agency to whose supervision the organization is subject. All other powers of the Administrator under this Act may be exercised by him with respect to a supervised financial organization.

(2) If the Administrator receives a complaint or other information concerning noncompliance with this Act by a supervised financial organization, he shall inform the official or agency having supervisory authority over the organization concerned. The Administrator may request information about supervised financial organizations from the officials or agencies supervising them.

(3) The Administrator and any official or agency of this State having supervisory authority over a supervised financial organization are authorized and directed to consult and assist one another in maintaining compliance with this Act. They may jointly pursue investigations, prosecute suits, and take other official action, as they deem appropriate, if either of them is otherwise empowered to take the action."

In addition, the exemption granted by the Federal Reserve System to the State of Oklahoma provided, in part, as follows:

"(c) *Oklahoma.* Except as provided in § 226.12(c), all classes of credit transactions within the State of Oklahoma are hereby granted an exemption from the requirements of Chapter 2 of the Truth in Lending Act effective June 1, 1970 with the following exceptions

(1) Transactions in which a federally chartered institution is a creditor."

Section 1–102(2)(d) provides:

"(2) The underlying purposes and policies of this Act are

"(d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interest of legitimate and scrupulous creditors;"

With this in mind, I am certain that Oklahoma consumers may still avail themselves of the debtor's rights and remedies provided by the Uniform Consumer Credit Code, even when dealing with a federally chartered institution. There should be no question that Article 5 of the Consumer Credit Code, as well as the other articles, grant to consumers additional rights and remedies which are

not granted to them by the Consumer Credit Protection Act or Regulation Z. Those would include, but not be limited to, restrictions on deficiency judgments in Consumer Credit sales; unconscionability; the right to rescind on real estate transactions, which is supplemental to the federal right of rescission; the right to receive refunds where excess delinquency charges, deferral charges or other finance charges are imposed; the right to receive a rebate on prepayment; the right to receive a rebate of unearned insurance premiums on prepayment; the protection of the restrictions against charging of attorney fees on loans or sales where the amount financed is less than $1,000; rights regarding notice of purchase of retail installment contracts and the right to take advantage of Section 2–404 of the Uniform Consumer Credit Code relating to the assertion of defenses and to take advantage of the nonexistence of the holder in due course doctrine; as well as other rights which would inure to them as a result of a diligent, consumer oriented examination.

The primary problem is in regard to cooperation arising when the examining agency of the federal government feels that its authority is limited only to those responsibilities granted to the agency under the Consumer Credit Protection Act. The question then being, is the federal agency responsible to assure that state law is enforced in behalf of the consumer in the individual transaction, in addition to federal requirements.

The Oklahoma Banking Department is currently conducting intensive examinations of state chartered banks, savings and loan associations and credit unions. The examination is then delivered to this Department and an examination report is prepared and the requisite enforcement is effected. Through these examinations, it has been positively determined that bankers have many problems in regard to compliance with Truth in Lending and the Uniform Consumer Credit Code. These problems result in excess charges from improper computation of annual percentage rate, in both loans and purchase of dealer paper; excess charges in unauthorized insurance; excess charges in delinquency charges and deferral charges; failure to refund all unearned charges upon prepayment; failure to refund unearned insurance premiums upon prepayment, consolidation or refinancing. In addition, and especially in the area of deferral of installments, we have found that bankers simply are not disclosing the method of imposition of charges for deferral, resulting in both excess charges and patent disclosure violations. I am positive that this situation exists in national banks, as well as state banks.

I am deeply concerned over the following dual problems resulting from the lack of diligent examination:

(1) Excess charges, as outlined above, are occurring constantly, resulting in a disservice to Oklahoma consumers, who are entitled to compliance with the law by national banks.

(2) Lack of diligent examination, which daily exposes national banks to tremendous liability for continuing patent disclosure violations, as well as excess charges which must someday be refunded and could very well result in extreme financial loss for the banks themselves. A very serious situation of which bankers are apparently unaware.

The Commission on Consumer Affairs, as well as the Administrator and staff of the Department have no intention of usurping or encroaching on the jurisdiction, authority or responsibility of the Comptroller. We do insist, however, that steps be taken to guarantee to Oklahoma consumers the same protection when dealing with federally chartered institutions as they now have when dealing with state chartered institutions.

We will be glad to assist in any way possible to determine that these rights are enforced.

Sincerely yours,

RICHARD L. WHEATLEY, Jr.,
Administrator.

DEPARTMENT OF CONSUMER AFFAIRS,
Oklahoma City, Okla., April 5, 1971.

Mr. ROBERT BLOOM,
Chief Counsel, Comptroller of the Currency,
Treasury Department, Washintgon, D.C.

DEAR SIR: Thank you for the opportunity that Herbert Branan and I had to meet with you, Mr. Michael Doman and Mr. R. P. Parise on Tuesday, March 23rd, in Dallas, Texas, which came about as a result of my letter to the Comptroller August 5, 1970, and my letter to Mr. Doman December 9, 1970.

I appreciate your introductory remarks regarding our mutual problems, your indication that a discussion of these problems would be timely and beneficial to all parties. I also agree with you that the problems are primarily those which I outlined in the letter which I delivered to you at the time of our meeting on March 23rd.

To reiterate, the primary problem is this: How will the rights and remedies vested in Oklahoma citizens under the Uniform Consumer Credit Code, which are in excess of those granted by the Truth in Lending Act, be properly enforced on behalf of Oklahoma citizens when they deal with national banks. Regulation Z, Part 226, promulgated by the Federal Reserve Board, under the authority of the Consumer Credit Protection Act, 15 USC, 1601 FF (Truth in Lending) expressly provides:

"(c) *Oklahoma*. Except as provided in § 226.12(c), all classes of credit transactions within the State of Oklahoma are hereby granted an exemption from the requirements of Chapter 2 of the Truth in Lending Act effective June 1, 1970, with the following exceptions:

(1) Transactions in which a federally chartered institution is a creditor;"

I am cognizant of the jurisdiction and authority of the office of the Comptroller. I hope the Comptroller recognizes that I also have a duty to see that Oklahoma law is enforced.

The secondary problem is my concern that you and your staff recognize the serious nature of violations of the Uniform Consumer Credit Code and Truth in Lending as they affect national banks. Quite frankly, I was surprised at Mr. Parise's attitude when he stated that it would probably take a few class action suits against national bankers before they really became concerned about compliance, and that the Regional Administrator of National Banks could not adopt a paternal attitude toward national banks. Enforcement by consequence, or if you please, the use of a class action as an educational tool is drastic and serious and every step should be taken to see that such liability is avoided. I was also concerned by the statement that the Administrator of National Banks had no duty to educate regarding the legal liability of national banks I presumed this as a matter of course regarding banking matters Perhaps there has been some change.

You indicated that you would have to discuss and study with your staff regarding the interrelationship of Oklahoma and federal law. I would like to direct your attention to a letter from the Board of Governors of the Federal Reserve System to the Administrator of the Department of Consumer Affairs, dated May 8, 1970, part of which appears as follows:

"In taking such action, the Board determined that the classes of transactions for which exemptions were granted are subject to regulatory requirements substantially similar to those imposed under the Truth in Lending Act and Regulation Z and that there was adequate provision for enforcement. The Board in making its determination, did not consider the remainder of your statute, the Uniform Consumer Credit Code, which as you know, goes beyond the fields of disclosure and rescission, *except to satisfy ourselves that no other provisions of that statute would contradict or nullify the disclosure and rescission provisions*. Accordingly, this action by the Board cannot be construed as an endorsement of the Uniform Consumer Credit Code."

This would indicate that the Federal Reserve at least has found that no conflict exists between the Consumer Credit Protection Act and the Uniform Consumer Credit Code.

In my opinion, time is of the essence because national banks are continually exposing themselves to liabilities, if in fact such liabilities do exist, when they ignore Oklahoma law as applicable to their consumer credit transactions. I look forward to hearing from you as early as possible.

Sincerely yours,

RICHARD L. WHEATLEY, Jr.,
Administrator.

DEPARTMENT OF CONSUMER AFFAIRS,
Oklahoma City, Okla., April 5, 1971.

Hon. DAVID HALL,
Governor, State of Oklahoma,
State Capitol Building,
Oklahoma City, Okla.

DEAR GOVERNOR HALL: Pursuant to our meeting last Wednesday, I am forwarding to you copies of my correspondence with the Comptroller of the Currency and with Governor J. L. Robertson, Vice Chairman of the Federal Reserve System. I have no correspondence from the Comptroller, as this particular level of the bureaucracy refrains from putting anything in writing.

I want to reiterate my position in regard to national banks so that there will be no misunderstanding. I am not attempting to usurp or encroach upon the jurisdiction and authority of the Administrator of National Banks. Our examiners cannot receive fees for examinations of national banks and we do not have the time or sufficient manpower to conduct such examinations. I do feel a duty to make certain that Oklahoma citizens receive the same protections under the Uniform Consumer Credit Code when they deal with national banks as they receive when they deal with State chartered institutions. I am not convinced, at this point, that national banks in Oklahoma are complying with the Uniform Consumer Credit Code which grants many more rights to Oklahoma citizens than Truth in Lending.

The lack of compliance should in no way be construed as a reflection on national bankers, as their attitude toward learning the law has been exemplary. The fact remains that experience has shown us that only a diligent examination can point out to bankers areas of violations.

A secondary problem, and one which has more meaning to the national bankers themselves than to this Department, is the fact that because of violations which are occurring daily, national banks are continually exposing themselves to liabilities through class action lawsuits. If these types of actions are brought, the dollar amounts involved will be quite large.

This Department has a duty to continue to educate all Oklahoma citizens whether they be creditors or consumers, however, the lack of cooperation from the Comptroller of the Currency in this matter is distressing.

If you have any further questions regarding this situation, please do not hesitate to call upon me. I will keep you advised of any further developments.

Sincerely yours,

RICHARD L. WHEATLEY, Jr.,
Administrator.

THE ADMINISTRATOR OF NATIONAL BANKS,
Washington, D.C., April 15, 1971.

Mr. RICHARD L. WHEATLEY, Jr.,
Department of Consumer Affairs,
Oklahoma City, Okla.

DEAR MR. WHEATLEY: This is in reference to your letter dated April 5, 1971, and our meeting in Dallas on March 23, 1971, on the subject of the administrative enforcement of the Oklahoma Consumer Credit Code. You have expressed serious doubts about the extent of compliance by national banks in Oklahoma with the provisions of the Oklahoma UCCC.

This is to confirm the advice given to you in Dallas by the undersigned, Regional Administrator Doman and Regional Counsel Parise to the effect that this office has responsibility and jurisdiction over the administrative enforcement of the Federal Truth in Lending Act for national banks. Prior to the effective date of the federal act July 1, 1969, this office, in cooperation with the staff of the Federal Reserve Board worked out a check list for use by bank examiners in determining compliance with the TIL act. All of our examiners have continuously, since the effective date of the act, been instructed on the provisions of the act. Wherever violations are found, they are written up in the examination report, called to the attention of bank management and necessary follow-up procedures from both the regional and Washington offices are carried out in order to obtain correction. In the rare case of the discovery of a willful violation, the matter is forwarded to the Justice Department for possible prosecution.

In addition to the above field enforcement program, we maintain a group of attorneys in Washington to investigate and to take appropriate action on complaints received from the public concerning alleged violations of TIL.

We believe that the above program of administrative enforcement fully answers your concern with regard to those provisions of the Oklahoma UCCC which parallel the TIL act. Such provisions of the Oklahoma UCCC are not technically applicable to national banks since the exemption from the federal act granted by the Federal Reserve expressly excluded federally chartered institutions. Therefore, the federal act remains in effect for national banks, and we shall continue to enforce said act with regard to Oklahoma National banks.

You have also expressed serious concern about possible violation of the other provisions of the Oklahoma UCCC by national banks. As we stated in Dallas, this presents a more complicated and difficult problem for this office to deal with administratively. Mr. Parise's statement about class-action suits in this regard, I am sure, did not reflect any lack of interest on our part in compliance with any aplicable state law on the part of national banks. His remark reflected a belief which I share, that it would be impractical for our office to undertake to administratively enforce the detailed provisions of every state statute which may be applicable to national banks. This is especially true in cases where the legislature has provided an elaborate set of civil remedies for violations of the state statute.

There are also substantial legal questions involved, in our opinion, as to the applicability to national banks of some provisions of the Oklahoma UCCC. Obviously, this office does not have jurisdiction to finally determine these legal questions and Mr. Parise's remark was also directed at the desirability of having the courts resolve such questions.

Your quotation from the letter of the Federal Reserve to you dated May 8, 1970, we do not think is revelant to the issue of the applicability of the non-disclosure related provisions to national banks. The Board's finding that no provisions of the Oklahoma UCCC contradict or nullify any of the provisions of the Federal Truth in Lending Act does not appear directed at the national bank applicability question. That issue, as we see it, is the extent to which provisions of a state statute governing lenders conflicts with the provisions of the National Bank Act (12 U.S.C. 85 and 86).

In conclusion, may I assure you of our interest in ascertaining that national banks observe all applicable laws, both state and national, and that we stand ready to investigate any consumer complaints reaching this office, whether forwarded directly or by your office.

Sincerely,

ROBERT BLOOM, *Chief Counsel.*

FEDERAL RESERVE SYSTEM,
BOARD OF GOVERNORS,
Washington, D.C., May 12, 1971.

RICHARD L. WHEATLEY, Jr.,
Administrator, Department of Consumer Affairs,
4545 North Lincoln,
Oklahoma City, Okla.

DEAR MR. WHEATLEY: I appreciated your recent visit and your having sent me copies of your consumer education material. That material and the outline of educational activities in your letter of April 23, 1971, suggests that you can be justly proud of the job being done in Oklahoma. I have seen the film you sent us, along with "There Ought To Be A Law," both of which effectively present the arguments for the Code.

In further reference to your letter of January 26, 1971 concerning the compliance of Federally chartered institutions within Oklahoma with the provisions of the Federal Truth in Lending Act and Regulation Z we have contacted the office of the Comptroller of the Currency, the Federal Home Loan Bank Board, and the National Credit Union Administration about your concern. I have examined Mr. Bloom's letter to you dated April 15, 1971, and Mr. James W. McBride's of January 27, 1971, concerning the activities of the Federal Home Loan Bank Board in enforcing the Act, and have received reports on the matter from the Federal Home Loan Bank Board's Chairman and the Administrator of the National Credit Union Administration. All of these agencies are committed to strict enforcement of Truth in Lending, and all have requested that you aid them in their efforts by furnishing whatever information you have concerning institutions under their jurisdiction which are not fully complying with Regulation Z. You might be interested to know that in an effort to insure that examiners are adequately policing Truth in Lending compliance, the banking agencies, in a coordinated effort, have recently emphasized the importance of thorough Regulation Z examinations to all Federal examiners. We are confident that our efforts will promote a high degree of compliance, and I do hope that you will aid us by bringing any instances of noncompliance within your knowledge to the attention of the appropriate agency.

With regard to the problem of the treatment of Vendors Single Interest Insurance raised in your letter of March 11, 1971, I am not sure what I can add to my previous letter to you of January 6, 1971, on the subject. It is certainly a two-sided question, as indicated by the difficulty we had in finally determining our position, expressed in interpretation § 226.404 as amended August 1, 1970. We are troubled by the very points raised in your letter. Nevertheless we believe that our present position most closely reflects Congressional intent and accordingly are not inclined to change it.

It was a pleasure seeing you, and I appreciate your courtesy in bringing your concern with regard to the enforcement of the Code in Oklahoma to my attention.

Sincerely,

J. L. ROBERTSON.

STATEMENT OF RICHARD L. WHEATLEY, JR., ADMINISTRATOR OF CONSUMER AFFAIRS FOR THE STATE OF OKLAHOMA BEFORE THE NATIONAL COMMISSION ON CONSUMER FINANCE

Mr. Chairman, ladies and gentlemen of the Commission: The Commission has asked for a statement covering the following subjects regarding Truth in Lending: (1) the adequacy of staffing as it affects our department's capacity to fulfill examination and enforcement responsibilities under the Oklahoma Truth in Lending Act; (2) a general description of our department's Truth in Lending examination and enforcement procedures, including sample check lists and examination reports; (3) a brief summary of any problems encountered by our department in examining and enforcing Truth in Lending; (4) any suggestions our department may have as to how the Truth in Lending law might be improved; and (5) a description of any arrangements for the referral of complaints and violations that our department has with other federal or state regulatory agencies responsible for enforcing Truth in Lending and whether such arrangements are effective.

The Commission has also asked for a statement covering enforcement of state consumer credit protection laws by the agencies given responsibility for such laws.

My statement is as follows:

The State of Oklahoma was the second state to adopt the Uniform Consumer Credit Code. It became effective July 1, 1969. The State of Oklahoma was the second state to receive an exemption under Truth in Lending, of control by federal regulatory agencies of certain consumer credit transactions in Oklahoma. The exemption became effective June 1, 1970. A copy of the Code as adopted in Oklahoma and a copy of the amendment to Regulation Z granting the exemption are attached and market Exhibits 1 and 2. You are aware that the exemption was granted after a finding by the Federal Reserve Board that disclosure requirements of the Code were substantially similar to the disclosure requirements of Truth in Lending.

At this time, the Department of Consumer Affairs is not adequately staffed. This is due to a lack of vision and state finances. I now feel that with an increase of four; a lawyer, examiner, educational assistant, and a secretary; a more optimum job could be accomplished.

At this time the Department employs (1) Administrative Assistant, (1) Deputy Administrator, (1) General Counsel, (1) Director of Education, (1) Field Investigator, (4) Field Examiners, (4) secretaries, and (1) Administrator.

Beginning June 1, 1971, we employed two law students to operate our mobile education center for the summer, and a law professor as a consultant for the summer.

The basic staff as listed, is almost adequate to conduct regular scheduled examinations of the 489 licensed lenders (consumer finance companies) and regular, but random, examination of a portion of the estimated 8,000-10,000 non-lender creditors (retailers, auto dealers, acceptance companies etc.).

Because the Department of Consumer Affairs is a separate state agency, a cooperative agreement with other state agencies was arranged as directed by Section 6-105 of the Code. This agreement clearly sets forth the jurisdiction of each regulatory agency.

Cooperative examination of 236 state chartered banks, 29 state chartered savings and loan associations, and 60 state chartered credit unions are carried out in the following manner:

Examiners of the State Banking Department conduct and complete written examinations (see Exhibit 3) which are forwarded to the Department of Consumer Affairs, where an examination report is prepared and returned to the creditor bank (see Exhibit 4). This report clearly sets forth violations and demands for adjustments or whatever action is necessary to gain compliance with the Code and Truth in Lending provisions. The understanding between the Administrator of Consumer Affairs is in writing (see Exhibit 5) and is strengthened by the fact that the Bank Commissioner is an ex officio member of the Commission on Consumer Affairs, the body responsible for general consumer credit enforcement policy in Oklahoma.

State Bank examiners and examiners from the Department of Consumer Affairs have employed joint examinations in the past year. However, as the expertise of the bank examiners regarding Code and Truth in Lending provisions has increased, it has not been necessary for Consumer Affairs examiners to enter state chartered institutions for examination purposes. The preparation of the examination report by the Department of Consumer Affairs is sufficient verification of bank examiner activity to gain compliance and effect implementation of the Code.

If a state regulatory agency fails to exercise its authority, with resultant damage to a consumer, the Administrator has the power and authority to take action designed to protect the rights of the consumer. Even though the Administrator could not proceed administratively against the creditor complained of, and for example, revoke a charter, he could bring a civil action such as an injunction, an action for excess charges, or attempt to set aside an alleged unconscionable agreement.

Written questions are required to be answered as a part of each examination. These include questions relating to Truth in Lending and the Code. (See Exhibit 4, and Exhibit 5). The questionnaires are submitted to managing officers and office managers. Their answers are compared to the actual computations in the analysis of loans, and analysis of rebates, deferral charges, and insurance charges. That is, the examiners carefully recompute actual transactions, checking for annual percentage rate, term, amount, amount of rebate, deferral charge or rebate of unearned insurance premium or finance charge. Actual disclosure statements are screened for disclosure violations such as failure to state annual percentage rate and finance charge, to properly authorize an additional charge for credit life, or to deliver a written notice of the right to rescind.

All violations are noted in the examination report, the written examination of the office manager or managing officer of the bank, savings and loan association or credit union, and compared to the examination of actual transactions. If, for example, the lending officer says he is complying with the sections regarding Right of Rescission, and the examination reveals that no rescission is in fact given, both these facts are pointed out in the report and the pertinent sections cited. This report is then forwarded to the office and management for disposition.

The examination form and content for both licensed lenders and state chartered lending institutions are substantially the same and are all prepared by the Department of Consumer Affairs. Department examiners also conduct regular examinations of non-lender creditors. A check on open end disclosure transactions is relatively simple, involving only a check of monthly billing practices and the disclosure statement. A more extensive examination of creditors engaging in closed end transactions is made, however, checking for term, computation of rates and charges, as well as disclosure violations. Such an examination of Sears, for example, would resemble a lender examination.

The great majority of creditors desire to comply, the main problems being teaching them how to disclose, compute and rebate, and determine that their forms contained no patent disclosure violations. However, in some instances it has been necessary to bring revocation proceedings where the examination indicated a high degree of disregard for the law. Also, in other cases we were unable to enforce the law administratively and brought a civil action against pawn brokers to determine if this transaction is subject to regulation.

I have no suggestions to improve Truth in Lending. We do have some disagreement with the Federal Reserve Board in the following areas:

(1) Treatment of Vendor's Single Interest Insurance;
(2) Identification of finance charge in transactions ostensibly made for cash;
(3) Disclosure requirements of credit unions on imposition of charges for delinquency.

In regard to enforcement of state consumer protection laws by other agencies, specifically, federal regulatory agencies; I would make the following statements.

The application of the Code to federal chartered institutions, and specifically debtors rights, is the same as its application to state chartered or licensed institutions. (See Section 6–105 of the Code and for further treatment, the article "A Gentle Warning" appearing in *The Oklahoma Banker*, attached.)

The exercise of these debtors rights in regard to a federally chartered institution is different since the Administrator has no authority to examine a federally chartered institution. Notice of a violation can come to the attention of the Administrator through the initiative of an individual consumer filing a complaint with the Department. If all consumers involved in transactions with federally chartered institutions, which violated Oklahoma law (i.e., the Code "overage" exceeding Truth in Lending requirements) were aware of violations and exercised their vested rights, we wouldn't be so much concerned. However, we believe that only a small percentage of these complaints are filed. Experience shown by examination of state chartered or licensed lenders indicates that the examination procedure results in significent refunds to consumers which would not occur if based solely on receipt of individual consumer complaints. We believe that examination by the federal agencies for "overage" violations would result in increased and significant consumer protection. Methods of enforcement and verification are currently being explored.

Secondly, the Code is balanced legislation, and we are interested in the continued ability of all creditors to extend credit on an equal footing. No one should have an advantage or be placed at a disdvantage. Experience shown by examination of state chartered and licensed lenders indicates that violation of state law will be discovered by examination. Such discovery and preventive action on the part of the creditor prevents further and/or continuing violations which could result in exposing the lender to great liability under state law.

Establishing procedures to effect the goals set forth above with an entirely different level of government is different than establishing procedure with a sister state agency. The current stage to which we have progressed is indicated by the attached correspondence with the Administrator of National Credit Unions, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board and the Comptroller of the Currency.

Thank you.

Mr. IRA M. MILLSTEIN, JUNE 29, 1971.
Chairman, National Commission on Consumer Finance, 1016 16th Street, N.W., Washington, D.C.

DEAR MR. MILLSTEIN: I appreciate the courteous treatment afforded to Deputy Comptroller Watson and the other officials of this office at the hearing of the Commission last Wednesday. At the close of our testimony you requested that the Comptroller confirm to you in a letter his willingness to cooperate with state officials in the enforcement of state consumer protection laws as they apply to national banks.

I am happy to confirm to you our desire to cooperate with the states on this matter. Perhaps the quickest way of accomplishing this would be for each state to supply us with a copy of the checklist, instructions and any other written material used by state examiners in checking state-chartered banks for compliance. This could be followed by meetings between the state official charged with enforcement and our regional administrator for the state in question. Lastly, informal sessions between the state examiners and some of our own examiners as to the details would undoubtedly be helpful.

Upon receipt of the transcript of our testimony, we shall be glad to supply the Commission with the other items requested by Mrs. Sullivan and other Commission members.

Sincerely yours,

WILLIAM B. CAMP,
Comptroller of the Currency.

DEPARTMENT OF CONSUMER AFFAIRS,
Oklahoma City, Okla., July 8, 1971.

Hon. WILLIAM B. CAMP,
Comptroller of the Currency, Treasury Department, Washington, D.C.

DEAR MR. CAMP: On Wednesday, June 22, 1971, Mr. Justin Watson, Deputy Comptroller, in testimony before the National Commission on Consumer Finance, stated that it was the desire of the Comptroller to receive from the states, checklists concerning the states' consumer credit protecion laws, and to sit down with the representatives of the respective states to discuss methods of insuring enforcement of these consumer protection laws in national banks.

Accordingly, I am enclosing several copies of a checklist covering present consumer protection laws in Oklahoma under the Uniform Consumer Credit Code. These laws are in addition, or if you please, supplemental to Truth-in-Lending. You will notice the checklist is broken down into (1) provisions relating only to sales contracts assigned to the lender, (2) provisions relating only to loans made directly by the lender, and (3) provisions applying to both purchased sales contracts and loans.

You will also notice that the checklist not only includes the points to be checked, but also a brief synopsis of the Oklahoma law involved on the point for your convenience. To the extent present Oklahoma law is amended or supplemented, of course, modified or additional items would have to be covered in the checklist.

It might be finally noted that the Oklahoma Uniform Consumer Credit Code, for this purpose, applies to exactly the same transactions covered by Truth-in-Lending; the only difference being, as alluded to above, that the Oklahoma law contains requirements for such transactions beyond disclosure. It is these requirements, which are covered in the checklist.

As you may recall, information in substantially this form was sent to you in August, 1970, as well as checksheets for use in the analysis of loans, rebates, insurance, etc.

Please review this information at your earliest convenience. As soon as you have done so, we will be available to meet with your representative to discuss how and when procedures can be introduced to guarantee that Oklahoma consumers receive the same protection of rights when dealing with federally chartered institutions as they do when dealing with state chartered institutions.

Sincerely,

FRED H. MILLER,
(For Richard L. Wheatley Jr., Administrator.)

THE ADMINISTRATOR OF NATIONAL BANKS,
Washington, D.C., July 15, 1971.

Hon. JOHN D. WILLIAMS,
Bank Commissioner, Oklahoma City, Okla.

DEAR MR. WILLIAMS: At the recent hearings of the National Commission on Consumer Finance, several witnesses and Commission members maintained that as a result of the inaccessibility of national banks to state examiners, such banks were being subjected to less administrative enforcement of state consumer protection laws than other lenders. The Commission requested and we agreed (in the attached letter) to undertake a matching enforcement program in each state. Accordingly, we would appreciate it if you would supply us, at your earliest convenience, with a copy of whatever checklists or other written materials presently are being used by your examiners or other state officials in the enforcement of any consumer protection laws applicable to banks in your state, other than provisions which are duplicative of the requirements of the federal Truth-in-Lending Act.

As we indicated to the Committee, our Regional offices undoubtedly will be calling upon you for assistance and guidance in setting up the program for your state.

Please be assured of our desire to take whatever administrative action is necessary to see to it that each national bank in your state is familiar with and in compliance with the applicable state statutes.

Kindly address replies to Mr. Frank Ellis, Chief National Bank Examiner, Office of the Comptroller of the Currency, Main Treasury Building, Washington, D.C. 20220.

Sincerely,

WILLIAM B. CAMP,
Comptroller of the Currency.

DEPARTMENT OF CONSUMER AFFAIRS,
Oklahoma City, Okla., December 5, 1973.

Re previous correspondence with the Office of the Comptroller.

GAIL W. POHN,
Asst. Chief Counsel, Office of the Comptroller of the Currency, U.S. Treasury Department, Washington, D.C.

DEAR MR. POHN: It was a pleasure meeting with you and your representatives at our recent meeting in Denver, Colorado. You will recall that you requested that I send to you copies of the correspondence that I had between this Department and the Comptroller of the Currency and the regional office in Dallas. Enclosed you will find such correspondence which speaks for itself.

At our meeting at Denver, I hand delivered to you the forms and check lists utilized by our Department with regard to the examination of supervised lenders in Oklahoma. However, recently we have undertaken a project of restructuring our examination procedure. As soon as the project is completed I will be glad to supply you with a complete packet of our material.

I was happy to report to our Administrator that our meeting in Denver was very rewarding and that Oklahoma could look forward to renewed cooperation with the Office of the Comptroller and the respective regional offices.

Sincerely,

JAMES A. MCCAFFREY,
Deputy Administrator.

THE ADMINISTRATOR OF NATIONAL BANKS,
Washington, D.C., December 17, 1973.

Mr. JAMES A. MCCAFFREY,
Deputy Administrator, Department of Consumer Affairs, Oklahoma City, Okla.

DEAR MR. MCCAFFREY: Thank you for your kind letter of December 5, 1973. It was most enjoyable and informative meeting with you and the other UCCC officials in Denver. I trust that this will be the beginning of future cooperation between the states and the Comptroller's Office in the area of consumer affairs.

The Comptroller's Office is committed to the enforcement of consumer credit protection laws as it has never been previously. Comptroller Smith has gone on record in testimony before Congress and in speeches before banking groups committing the Office to the enforcement of these laws. I am taking the liberty of enclosing the Comptroller's prepared testimony before Mrs. Sullivan's subcommittee on Consumer Affairs of the House Committee on Banking and Currency. As I mentioned in Denver, the staff is in the process of preparing recommendations to the Comptroller pursuant to the establishment of an enforcement program. Our meeting in Denver was but one of a number of such meetings with various state officials in an effort, not only to open lines of communication, but the bring together the best ideas and programs at the state level of enforcing consumer credit laws.

I would be most appreciative of receiving a copy of your updated examining procedures upon completion. I trust you will feel free to contact the Comptroller's Office on any matter of mutual interest and concern.

Very truly yours,

GAIL W. POHN,
Assistant Chief Counsel.

OKLAHOMA STATE BANKING DEPARTMENT

UNIFORM CONSUMER CREDIT CODE

Name of bank: Date of examination:
City: County: Oklahoma

Note: Answers to the following questions are based upon the results of a selected sampling, upon statements made by bank's management regarding procedures and policies, and upon observations by the examiner. In the case of negative answers, details are provided and management's promised remedial action noted.

Item	Yes	No
1. Is the bank correctly determining finance charges and properly handling excludable charges?		
2. Is the bank properly computing annual percentage rates?		
3. If the bank extends open-end credit, are correct disclosures being provided?		
(a) Before the 1st transaction is made on a new account?		
(b) When required periodic statements are rendered?		
4. Is the bank providing correct disclosures on credit other than open-end?		
5. With respect to any consumer paper purchased by the bank or held by it as collatoral, are the disclosures made therein correct?		
6. Are all disclosure statements completely filled in before signing?		
7. On prepayment of a precomputed loan, is the rebate properly computed?		
8. On transactions involving refinancing or consolidation, is the rebate properly computed?		
9. Is the bank properly computing and making the rebate on credit life cancellation on pre-payment loans?		
10. Is the insurance provided the creditor evidenced by an individual policy?		
11. Is the bank properly observing rescission rights on both direct and indirect paper?		
12. Based on available information, is the bank:		
(a) Making correct disclosures in its advertising?		
(b) Making proper oral disclosures of annual rates?		

ANALYSIS

Type of loan	Number examined	Number of errors	Percent of errors	Amount
508-A				
508-B				
2-201				

Comments:

Mr. McCaffrey. These statements which are reiterated by the Comptroller and to a lesser extent by the FDIC and the Federal Reserve indicate facts which are perfectly relevant today. The fact is that the majority of the Federal agencies are not enforcing for truth-in-lending in our State in nationally chartered banks.

There have been arguments and statements made before the National Commission on Consumer Finance by the Comptroller and these other agencies, but primarily by the Comptroller, that truth-in-lending enforcement at least was being conducted in all States and that State consumer protection laws were at least being paid attention to by those examiners. Our experience and the correspondence which I filed with the committee will reflect that this is necessarily more perceived than real. We have found simply to the contrary.

What is of major importance, however, are the comments by the counsel before the Comptroller back in 1970 and 1971 which indicate the philosophy of the Comptroller at that time, Mr. Camp, that apparently to achieve compliance with truth-in-lending it would be necessary that a few class actions be filed against national banks, that it was not the role of the Comptroller to set forth the posture of paternistic attitudes toward national banks and, indeed, our efforts in the area of seeking compliance with truth-in-lending were not warranted because of the exemption or the preemption by the federally chartered institutions.

After receiving these representations of present and future compliance, we met with the assistant counsel for the Comptroller in Denver in 1973, at which time all the 10 credit code States met with the examiners and the counsel for the Comptroller in order to give to them our forms and statement of our procedures which we use a specialty check for truth-in-lending and other consumer protection laws. All this information was gratefully received by the Comptroller. Representations were made in the first part of 1973 that all of these systems would be observed and spun into their own organization and they would, indeed, become a reality.

Without holding our breath too long, we observed that indeed these changes did not come and even today we have found, as a result of looking through our own records concerning the types of complaints that have been received on national banks in our State, that if any of these procedures had been implemented, the type and nature of these truth-in-lending type complaints would not have existed—I mean simple things as disclosure and authority of insurance, excess charges—and that, indeed, if truth-in-lending is not complied with, then what about the State consumer protection laws?

I am reminded of the testimony by Mr. James Smith, the present Comptroller, concerning his activities by the Comptroller's Office and his testimony before the National Commission on Consumer Finance. There are representations that not only is truth in lending being complied with, but the truth-in-lending compliance will be sought out in the future and that, indeed, consumer type protection laws as such will be adhered to. The fact is these things are not being done.

I also had the occasion to talk with a number of bankers in Oklahoma and some bankers who own State banks and national banks. Their comments were very impressive. In the first place, most of these bankers, indeed, all of them, indicated that truth-in-lending compliance was ignored. Contrast that to the State banking department's activities in the State chartered institutions and banks, where truth-in-lending compliance and the U(3) (c) efforts for enforcement were extensive. That contrast begins to become more focused in those national banks which are not visited by our State people in any way.

The obvious upshot is that if truth-in-lending is not being enforced, neither is the State law.

With regard to whether or not any of these consumer affairs departments within any of these agencies is a reality, I have no personal knowledge that they are. I do have a comment concerning the fact that if the consumer is in a position to wish to have the accessibility to those differentiations of those agencies, how they find out how to get there, the truth is they don't know and they will never know and they will only now know if they contact our officials, the State officials. Our position is that at this time we cannot examine these national institutions because of the preemption. In the beginning, requests for cooperation were made, but they refused to discuss the matter. That evolved into statements being made that they inspect for compliance and that banks were doing a good job and were in compliance.

They were safe in making these statements because we had no way to check them out, except through the type of complaints we received from the average consumer.

With regard to the activities on enforcement by these various agencies, particularly with the Consumer Protection Act and, indeed, the State consumer protection type laws, I must say that, unfortunately, these likewise are not being done.

I wish to point out that in 1974 and finishing in 1975, the Comptroller spent a good deal of money on a Haskin's & Sells report proposing a complete revamp of the Comptroller's operations in enforcement.

I wish to point out to the committee that nowhere in that report is truth-in-lending mentioned or indeed any systems of training, manual or anything, perceived by that accounting firm as being a part of the Comptroller's organization.

Whether or not this sort of thing need be kept on to follow it through, our view is that truth-in-lending enforcement is indeed a specialty, that it is by its very nature different from the checks for liquidity and solvency. Certainly, the federally chartered institutions have a sufficient amount of regulatory activity going on in that area and, as stated back in 1970 and which is relevant today, in Oklahoma we have no interest in encroaching on that field. We only seek to do what we feel is our responsibility, and that is to see that in reality there is truth-in-lending enforcement.

We feel that, as already has been suggested, the exemption be expanded to the States who have been granted exemptions for truth-in-lending enforcement in parallel with State consumer protection laws as being an adequate and satisfactory solution to this problem.

As long as Congress continues to crank out consumer-type legislation, the result will be more of compounding the problem rather than its solution, the States being more accessible, being already set up to gear for this type of specialty.

The educational part of it is something which hasn't even been discussed with regard to enforcement of truth-in-lending. Indeed, the entire emphasis is upon what do we do after the violation, not before. No preventive measures, nothing has been done on the Federal level to achieve any sort of education in the area of consumer credit. There has been a good deal of lip service, but nothing has come through. In Oklahoma, we have had this kind of an ongoing education program that is second to none. We feel also in Oklahoma that the attitude that apparently Congress has and will continue to have is that various Federal agencies, such as the FTC, should be given broad substantive rulemaking powers in the area of consumer credit. Our view and warning is that this is a total and unequivocal mistake. The fact is that the rulemaking power has been given to the wrong agencies. If there are going to be rulemaking powers, and indeed substantive ones, then the agencies which control banks, who regulate banks or who at least are supposed to, should be given the job of creating those rules.

I cite for you, for example, the unfair credit practices rule which has been promulgated by the FTC.

Our view, which is reflected in correspondence which is before you and filed with the committee, reflects that nothing has changed in the last 6 years. We request, and indeed plead, for some assistance from Congress to alleviate this as a problem and to give to those deserving States which have satisfactory and modern consumer credit laws the opportunity so that they can enforce for these types of laws to the exclusion of the liquidity and solvency checks in order that, as a reality, truth-in-lending can once and for all be complied with.

Thank you.

The CHAIRMAN. Thank you very much.

Our final witness this morning is Mr. Irvin Parker.

Mr. Parker?

STATEMENT OF IRVIN D. PARKER, ADMINISTRATOR, SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS

Mr. PARKER. Thank you, sir.

I am speaking on behalf of the American Conference of Uniform Consumer Credit Code States. There are not many of us, but we are bound together in presenting the unified position which I hope to present in the next few minutes. The States are Oklahoma, Utah, Idaho, Colorado, Wyoming, Kansas, Iowa, Maine, Indiana, and South Carolina.

These States have all enacted substantially the uniform consumer credit code between 1969 and 1974. You will note that is the same period, roughly, in which the Federal Government has also been actively involved in attempting to rectify consumer problems in the credit area.

The organization, that is the national conference which I will refer to as ACUCCCS, is committed to, and in fact directed in its statute to unify efforts across the country to the extent that the States adopt the code, to unify our efforts to protect the consumers, to make these efforts relatively uniform so that consumers can better be educated as to the economic factors of the marketplace and as to their rights and responsibilities in the marketplace; and likewise so that businesses can comprehend their responsibilities and obligations in the marketplace.

Of course, we are directed also to correlate these State efforts with efforts of the Federal Government. We are not considering ourselves as an exclusive organization. Reading from one section of our code as to the purposes of the law, we are to "conform the regulations of consumer transactions to the policies of the Federal Consumer Protection Act and to make uniform the law, including administrative rules, among the various jurisdictions."

I have been listening to the statements made by the other people on this panel. I have not heard any statements that were inconsistent with statements that I have heard generally among all of the members of these uniform consumer credit code States. They all seem to have had the same experience that has been related here.

I have had little personal experience enforcing lending laws. In South Carolina, we have enacted the uniform code in two parts. The first part in 1974 deleted those aspects of the code that dealt with the lending business.

Consumerism, I would emphasize, is not simply a Federal phenomenon. As I implied in my statement, between 1969 and 1974 the States have also been active in consumerism. Not only the code States, but other States which have not enacted the uniform code as such, have substantially the same provisions. Consumerism is a viable of States' legislative activity now, just as it is on the Federal level, and for the same reasons. The people got tired, asked for solutions, and began to get them on the Federal and the State level. I have no doubt that they will continue to get action on the State level if the States are in fact allowed to operate in this area.

Code States and others, as has been demonstrated, have moved into and are capable of dealing with these problems of local citizens and local problems which really, in my opinion, and in the opinion of the conference, are beyond the capability of a centralized policing and enforcement procedure.

It has been my experience, in working with the development and enactment of the code in South Carolina and in other States that many more States would have moved substantially farther in this direction than have done so if we did not have to contend with this problem of preemption the various Federal laws which have come out over these years.

We have frequently been asked by leaders of our communities, "Why should we move for State enactment of the Uniform Consumer Credit Code and thereby saddle ourselves with two sets of conflicting regulations and two sets of administrators examining our operations and otherwise interfering with business?"

That is a very valid observation and a problem for the businesses and communities and it is a very sad situation for the reasons that have been set forth here this morning; that is, that you have Federal laws pre-empting State enforcement of laws which cannot be enforced by the Federal machinery that is set up to do it. Consequently, we have laws, but we have no protection for consumers, or no substantial protection. Consumer protection, it must be recognized, is both a national and a local problem which can best be handled by close cooperation between the State and the Federal agencies.

The position of the American Conference of Uniform Consumer Credit Code States, therefore, in substance is simply that consumer credit protection is both a Federal and a State problem. Neither can do everything that is needed, both can assist. What is needed is a differentiation and a clear differentiation of responsibilities along lines of what works best for consumers and for the businesses who serve the consumers.

It has been clearly demonstrated that the total preemption attitude of the Federal Government and Federal agencies is unworkable and, in my personal opinion, an absurdity.

States should be the primary enforcing arm of both State and Federal consumer protection laws without respect to the charter which a particular lender may have. As I have noted in my written statement, it should be observed, and I think we frequently forget, that a nationally chartered institution is national only in terms of its charter. Its organizers are basically local entrepreneurs. Its depositors are local citizens. Its borrowers are local citizens. It influences and is influenced by local politics and economic and social conditions and, therefore, in its entire lending operations to consumers it is a purely local concern. Certainly, the integrity of the national financial institution is a Federal concern.

But we submit that this should not and need not preclude State enforcement agencies from simply looking at individual consumer

credit contracts and determining whether these local people, bank operators, are complying with State law or Federal law.

Laws which can be locally enacted should be encouraged by the Federal Government, as was recognized by your Commission on Consumer Finance. Laws which can be locally enforced should be locally enforced and where the Federal Government must have exclusive access, it should enforce both the State and the Federal laws alike, and just as vigorously.

Some examples of the problems that I have had some experience with, if you will permit me: My staff attorney has recently dealt with a problem involving the Equal Credit Opportunity Act. I will not identify the person or the institution involved, but I would like to read from a memorandum to the file that my attorney made concerning this problem:

> I returned Mrs. Blank's call this morning. She wanted to inform me that she spoke with and received a call from the Home Loan Bank Board of Atlanta and later spoke with Joe Abernathy at the Board. She called to determine what progress was being made on her complaint and what the process was for handling such complaints. She asked for a copy of a statute and guidelines and was told that they thought that they could come up with copies of these for her, but they were not sure. She got the impression that they had not set up any procedures for processing Equal Credit Opportunity Act complaints, even though they spoke about many complaints they do receive. She was not sure whether the complaints they normally receive concerned the Truth in Lending Act or the Equal Credit Opportunity Act, but in any event, they did not have any procedure to handle Equal Credit Opportunity Act complaints.

This is a note for the file that my staff attorney made regarding a complaint that we are attempting to resolve or help a consumer get resolved. These notes were made May 12, 1976, before I knew there was a hearing or I was supposed to participate in a hearing and make a statement.

The South Carolina Legislature, in completing the enactment of the consumer code, came to the conclusion that it ought to exempt from the uniform consumer code credit unions for the simple reason that the National Credit Union Administration had taken the position firmly that certain regulatory provisions of the consumer credit code cannot be applied to Federal credit unions. Two-thirds of our credit unions in South Carolina are Federal credit unions and the legislature took the position it simply would be unfair and unworkable to try to enforce this law against the State credit unions when it was not going to be enforced or the same requirement be made with respect to the Federal institutions. Therefore, to the detriment of the consumers, all credit unions are exempt entirely from the application of the uniform consumer credit code in South Carolina.

One final demonstration. Friday, when I was advised that I was supposed to speak for the American Conference before this committee, I called a local national bank to try to find out some information about how consumers can get relief from problems involving a nationally chartered institution, in particular a national bank.

The gentleman to whom I spoke is an intelligent banker with many years experience in a national bank. He is a highly placed officer in that bank and, indeed, was extremely active in our efforts to pass the lending portion of the Uniform Consumer Credit Code. When I left South Carolina yesterday afternoon at 4:30, he had not yet found out. He left a note that when he does he will advise me.

I have stated the position of the American Conference of Uniform Consumer Credit Code States is first of all, that the States should not be preempted from this vital concern for their citizens and, where it is necessary, if it is, in some areas, to preempt State enforcement, certainly the Federal Government should enforce the laws diligently and equally against all institutions so as to preserve the competitive situation as well as the consumers interests.

If the Federal Government is going to set up a situation where States are preempted from enacting laws or enforcing laws, then I believe the Federal Government must consider the possibility of setting up a central complaint handling system as well as a central regulatory agency so that at least everybody can find out who it is and where it is and how you contact them to get problems solved or to inquire as to what laws are applicable and what the consumers' rights are with respect to those.

I would like to, if I may, Senator, have just 1 more minute.

The CHAIRMAN. I appreciate it if you would wind up in about a minute.

We have another witness and I would like to ask some questions of the panel.

Mr. PARKER. All right, sir.

I would like to look at what South Carolina has done as an example which I believe is worth mentioning. In addition, to enforcing the Uniform Consumer Credit Code, our legislature provides a department of consumer affairs to receive complaints from the consumers of all kinds of complaints arising out of the production, promotion and distribution of consumer goods or services, to try to bring about a voluntary resolution of these problems and, where that is not possible, to refer that problem ourselves to the appropriate State or Federal agency for enforcement of any State or Federal law.

The consumers, therefore, regardless of their problem, will be able to call the Department of Consumer Affairs with a well-publicized toll-free number and get assistance.

Thank you.

[Statement follows:]

STATEMENT OF THE AMERICAN CONFERENCE OF UNIFORM CONSUMER CREDIT CODE STATES, PRESENTED BY IRVIN D. PARKER, MEMBER OF ACUCCCS AND ADMINISTRATOR OF THE SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS

On September 16, 1975, the American Conference of Uniform Consumer Credit Code States (ACUCCCS) submitted to the Federal Trade Commission a comment in opposition to its proposed Trade Regulation Rule on Credit Practices. Because the rationale of our opposition to the Credit Practices Rule is equally pertinent to the subject under consideration, we are attaching a copy of that letter as a part of this statement, for consideration by this Committee. We particularly invite your attention to a quote on Page 2 from the Report of the National Commission on Consumer Finance as follows:

". . . the Commission urges as its first choice the adoption of state laws designed both to assure fair treatment of all consumers and to give all credit grantors equal opportunity to compete. Failing this, the Commission's second choice is to urge Federal Legislation to accomplish this goal. *Enforcement however, is too broad to assign other than to the states, perhaps with Federal monitoring* (Emphasis added)."

We are not prepared to present much demonstrative evidence on the issue of whether the various Federal regulatory agencies are diligent in enforcing consumer protection laws with respect to chartered lending institutions. Such evidence is largely available only in the consumer loan records of such institutions

and, as such, is unavailable to us. Our own enforcement experience, however, and comments from State examiners, conversations with responsible officials of those lending institutions and lawyers for such institutions, along with our own observations of violations of various consumer protection laws and obstacles of consumers in lodging complaints, convinces us that Federal enforcement is substantially deficient. These conversations and observations reveal that many lenders, as well as the attorneys advising them, do not have a working knowledge of the requirements of such laws as the Truth In Lending Act, Fair Credit Billing Act, Equal Credit Opportunity Act, Fair Credit Reporting and the Uniform Consumer Credit Code. Such ignorance of these laws by those persons would seem to us ample circumstantial evidence that not much is required by the Federal agencies.

It is not our contention that Federal agencies don't care. We merely observe, as did the National Commission on Consumer Credit, that enforcement of consumer credit protection laws is too broad and too local in nature "to assign other than to the States." (See reference above to report of National Commission on Consumer Credit.)

The Federal Government created a national banking system to enable it to implement and manage national economic policies. *To assure the financial integrity of these institutions*, it was and is necessary to maintain a national regulatory system. Such regulatory system, however, did not originally contemplate and is not now capable of individual consumer credit transactions for compliance with various consumer protection laws. The regulatory mission was protection of the *institutions* from mismanagement. Nor does it now appear to us either necessary, desirable or feasible to assign to that (Federal) regulatory system responsibility to protect individual citizens from the persons who run those institutions.

Let it not be forgotten that a "National" bank is national only in terms of its charter. It is organized, generally, by entrepreneurs of the State in which it operates. Most of its depositors are local residents. Its officers, directors and employees are local residents, it lends primarily to local residents. It influences and is influenced by local economic and social policies. It is only logical that a local elected or appointed government official will have a far greater interest in and ability to resolve problems which might arise between local borrowers and local lenders than would a Federal civil servant whose only contact with the State is frequently the lenders whom he visits every year or two.

Moreover, only in our wildest dreams could we really expect consumer borrowers to identify and locate the appropriate person in the Federal system to file a complaint with. If he is reasonably sophisticated he might know whether his bank, for instance, is a State or national bank. But he would require the assistance of a financial expert to determine whether it is a "State Member Bank" or a "Non-member Insured Bank". If he gets that information he can readily determine from his copy of regulation Z whether he should call the Comptroller of the Currency in Washington, D.C.; the Federal Reserve Bank "serving the area in which the State member bank is located" or the Federal Deposit Insurance Corporation Supervising Examiner "for the District in which the non-member insured bank is located." But even Regulation Z does not tell him what State or town the appropriate Federal Reserve Bank or Federal Deposit Insurance Corporation Supervising Examiner is in. Assuming that he can communicate well with the long distance telephone operator and get through the maze of office telephone answerers before his three minutes are up he might reach a person who will listen to his complaint, provided he still remembers what he was originally upset about. No one seems to know what happens to a complaint which gets this far.

The simple fact is that ordinary citizens do not know and frequently cannot find out how or where to register a complaint or make an inquiry about a practice of a chartered lending institution. Complaints ultimately reaching State consumer affairs' offices indicate that consumers frequently attempt to lodge such complaints with State and Federal legislators, Better Business Bureaus, Chambers of Commerce, Ralph Nader, Public Service Commissions, the Federal Trade Commission and a variety of other better known State and Federal entities. At a recent hearing in one of the Code States a national bank executive with more than 30 years experience related that in his entire banking career he had known of only a couple of complaints being referred or inquired about by the Comptroller of the Currency.

The Uniform Consumer Credit Code states, as well as many non-code states, now have regulatory agencies with substantial consumer protection responsibilities and expertise in consumer credit. Our effective enforcement of our states' consumer protection laws in the absence of equal Federal enforcement, is creating unequal competitive factors between state and federally chartered lending institutions. This flies in the face of the guiding principal of the dual regulatory system and obstructs the worthy objective set forth in the Report of the Commission on Consumer Credit (quoted above).

The American Conference of Uniform Consumer Credit Code States (ACUCCCS) respectfully submits that:

(1) Federal enforcement of consumer protection laws affecting lending institutions is inadequate, unnecessary and unfeasible; and

(2) States are capable of handling these purely local matters without prejudice in any way to the integrity of financial institutions or to the duality of the State and Federal financial system.

We, therefore recommend that:

(A) State regulatory agencies be given clear authority to enforce state consumer protection laws with respect to all extenders of consumer credit and in the same manner, without reference to type of charter or license held by the creditor,

(B) Federal consumer protection laws be written so that they may be enforced by state officials against all persons; *or in the alternative,*

(C) *A Single Federal Agency* be given responsibility to receive and enforce or have others to enforce all state and federal consumer protection laws along with adequate staff and facilities, including a nationwide toll free telephone network to take complaints, answer inquiries and, in general, assist consumers in resolving their problems within the context of the various laws and regulations pertaining thereto.

We would emphasize that the alternative is recommended only as a last resort because we do not believe such a system could ever be as effective as local enforcement, and the monumental cost of such a federal agency would be unwarranted in view of the fact that states could accomplish these ends largely with existing enforcement agencies.

AMERICAN CONFERENCE OF
UNIFORM CONSUMER CREDIT CODE STATES,
September 19, 1975.

Special Assistant Director for Rule Making, Federal Trade Commission, Washington, D.C.

DEAR SIR: This letter is written pursuant to the solicitation for comment concerning your proposed Trade Regulation Rule on Credit Practices. In our opinion, the proposed rule should not be adopted.

The American Conference of Uniform Consumer Credit Code States had its beginning in 1972 and now has a membership of ten states. The Uniform Consumer Credit Code has been adopted in the following states: Oklahoma and Utah in 1969; Colorado, Idaho, Indiana, and Wyoming in 1971; Kansas in 1973; Iowa, Maine, and South Carolina in 1974.

The objective of this Conference is to achieve harmony, understanding and cooperation through communication between Administrators in other jurisdictions in enforcement of the Uniform Consumer Credit Code. The Conference strives to achieve consistency of purpose, policy, and provisions of the Credit Code.

We feel the Code has had an impact on the development of Consumer Credit law through the efforts of the states in which the Code has been adopted. Many provisions in the Federal Truth in Lending Act and the Federal Reserve Board's Regulation Z are traceable to the Uniform Consumer Credit Code. The National Consumer Protection Act and, later, the Model Consumer Credit Act, although taking extreme consumer positions, follow the structure of the Uniform Consumer Credit Code. In 1971, Congress enacted for the District of Columbia comprehensive consumer legislation drawn in part from the Uniform Consumer Credit Code. In 1972, Wisconsin enacted similar legislation based upon the Uniform Consumer Credit Code and the National Consumer Protection Act.

Adaptations of the Uniform Consumer Credit Code provisions have been enacted widely in credit laws of many states. The home solicitation sale provision is perhaps the best illustration.

The National Commission on Consumer Finance was authorized under Title IV § 404(a) of the Consumer Protection Act "to study and appraise the functioning and structure of the consumer finance industry, as well as consumer credit transactions generally." It issued its Report on December 31, 1972. The Report contained some 100 recommendations intended to improve the consumer credit marketplace. Over 40 of these recommendations were intended exclusively for implementation by federal statute; for example: amendments to the Truth in Lending Act and to the Bankruptcy Act. Of the 60 or so recommendations requiring state action, at least 15 related to matters entirely outside the scope of the Uniform Consumer Credit Code; for example: branch banking and enforcement of antitrust laws. Of the 45 remaining recommendations, the Uniform Consumer Credit Code, Working Draft No. 4 and Working Draft No. 5 and the Final Draft, 1974, substantially implement the National Commission's recommendations. Thus, the Uniform Consumer Credit Code reflects a conscious and, it is believed, successful effort to incorporate into a single comprehensive code the majority of the recommendations of the National Commission on Consumer Finance that were intended for implementation by state action.

Enactment of the Code in the ten states in this Conference and the proposed enactment in other states abolishes the crazy-quilt, patchwork welter of prior laws on consumer credit and replaces them with a single new comprehensive law providing a modern, theoretically and pragmatically consistent structure of legal regulation designed to provide an adequate volume of credit at reasonable cost under conditions fair to both consumers and creditors. Upon its enactment, no longer would credit regulation within a state consist of a maze of separate uncoordinated statutes governing the activities of different types of creditors in disparate ways. All creditors dealing with consumers would be covered by the same statute. Under this Act, the total consumer credit process—from advertising through collection—would be within the scope of regulation, with variations in the law based on functional differences in the types of transactions rather than on the types of creditors involved.

The provisions of the proposed rule by the F.T.C. parallels only a small number of the recommendations by the National Commission on Consumer Finance. Further, the Uniform Consumer Credit Code, in the various forms already adopted, and covered by the proposed F.T.C. Rule. Therefore, it seems to this Conference that the basic gist of the proposed Administrative Rule is to deal with the job of regulation of the credit industry, and is rendered unproductive and unnecessary when such job is either already adequately dealt with under state statute, or is indeed available to all states through the Uniform Consumer Credit Code, Final Draft, 1974. It also appears to this Conference that unless the responsibilities of the states to adopt realistic legislation governing the credit industry significantly fails, then and only then would it be proper for any Administrative Rule to be adopted. Your rule should not be adopted, if for no other reason than, historically, state authorities, pursuant to a state statute, have alone been able to achieve enforcement of credit laws and adequate protection of the consumer. This is contrary to the record of enforcement by the F.T.C. under the provisions of the Federal Trade Commission Act and Trade Practice Rules. In fact, enforcement abilities generally of the F.T.C. are lacking in every state in this Conference. In addition, federal preemption might lead to a total lack of enforcement of the standards which you intend to impose.

The National Commission on Consumer Finance has urged choices of priority in state versus federal activity. In its Report, the Commission specifically stated, on Page 4, as follows:

". . . the Commission urges as its first choice the adoption of state laws designed both to assure fair treatment of all consumers and to give all credit grantors equal opportunity to compete. Failing this, the Commission's second choice is to urge Federal legislation to accomplish this goal. Enforcement, however, is too broad to assign other than to the states, perhaps with Federal monitoring." (emphasis added)

This Conference officially urges the Federal Trade Commission not to adopt this proposed rule unless it can be shown that the states significantly fail to alleviate their own problems concerning the credit industry. We submit the reality of the enactment of modern and realistic credit legislation in these ten states and the favorable experience on behalf of the consumers and the suppliers of credit in those states as proof that the F.T.C. need not adopt this rule. Unless the Federal Trade Commission can demonstrate that this or any other proposed Administrative Rule can do *more* than state statutes such as the Uniform Consumer Credit Code, the making of laws should remain the prerogative of duly elected officials and not administrative appointees.

Sincerely,

JOHN MICHAEL BRASSEY,
Chairman, Legal Advisory Committee.

The CHAIRMAN. Thank you very much.

I want to thank you experts for giving us what I think is really an appalling story of lack of enforcement of the law.

We are all supposed to respect the law and obey the law, but it is obvious that there is not even an attempt on the part of those responsible for enforcing consumer credit laws to us.

We have had a number of shocking illustrations here of violations of State law, violations of the Federal law, no action by the Federal agency, no cooperation by the agency with the State enforcement bodies.

I can tell you that we will certainly write to the appropriate agency and get from them their response, chapter and verse, on each of the specific examples that you have given us, and we will let you know what their responses were and the followup on them.

The example that you gave, Mr. McCaffrey, in the story you told of a conspicuous lack of truth-in-lending enforcement is particularly surprising and shocking.

I got the impression from what you said, Mr. McCaffrey, and some of the rest of you, too, that the Federal Government should simply turn enforcement authority over to the States.

Mr. MCCAFFREY. That is correct.

The CHAIRMAN. And let the States do the job. It might work very well in Oklahoma or in other States that are represented here, but would that be a responsible result in all 50 States?

Mr. MCCAFFREY. It is difficult for me to say on behalf of all the States.

In relationship to the fact that in Oklahoma and nine other States there is sufficient machinery to check for enforcement in this specialty area.

There would be an encouragement on behalf of the balance of the States if it became apparent that they would be given the opportunity to check for compliance with their law, to enact these pieces of legislation.

Even in Oklahoma, the various Federal agencies to a lesser and greater degree do a better job. Perhaps it could be fairly said that the Federal Reserve Board does a much better job than any of them.

Then maybe coming down the scale with the FDIC and finally at the bottom the Comptroller.

This gradation destroys the competitive nature of any State law that may be enacted. If it were brought in tune with some sort of competitive status, then I think it would be a reality that some of these other States could enact similar legislation as the credit code States have, and indeed some of the other States on this panel, so that these things would be possible.

The CHAIRMAN. But it sounds as if, if you follow that philosophy, the Federal Government ought to get out of consumer protection entirely and leave it to the States.

You are not saying that, however; are you?

Mr. MCCAFFREY. Only to those States which can demonstrate that they have adequate enforcement and adequate laws to cover that area.

The CHAIRMAN. Who is going to determine that? Are you going to let the Comptroller determine whether the States have adequate authority to enforce the laws?

Mr. MCCAFFREY. I feel the Comptroller should be the last asked.

The CHAIRMAN. But they are responsible, you see, for the national banks.

Mr. MCCAFFREY. That is true for the national banks.

The CHAIRMAN. Then what agency?

If not the Comptroller, what agency would be able to determine whether or not the States have the enforcement machinery and the will to enforce the truth-in-lending law, for example, with respect to the national banks?

Mr. MCCAFFREY. As it sits now, with the Federal Reserve.

The CHAIRMAN. But the Federal Reserve doesn't have jurisdiction over the national banks; the Comptroller does.

Mr. MCCAFFREY. Only for enforcement purposes, but for the drafting of the truth-in-lending regulations, the granting of an exemption and the exemption process is available already with the Federal Reserve.

I think that they, in discharge of that duty, are doing the type of job that the Congress indicated.

The CHAIRMAN. Then would you say the Federal Reserve would have the ability, the will, and the capacity to determine whether or not the State had the capability of enforcing the truth-in-lending laws?

Mr. MCCAFFREY. At least it would be based on precedent.

The CHAIRMAN. It just seems to me that there is something unique, and I can't find a precedent and the staff can't tell me about a precedent for the Federal Government passing laws and then telling the States to enforce the laws.

Maybe there are some. The staff tells me we did something like that with mobile home standards, but it hasn't legally gone into effect.

At any rate, it is rather rare. It would seem that there is a logical association between the determination of a body to pass a law and then for that same level of government to enforce it.

Mr. MCCAFFREY. As it stands now, Mr. Chairman, the Federal Reserve promulgates the regulations and the FTC endorses them, and the other agencies enforce it.

In fact, the enforcement end of it is falling flat.

The regulations are certainly being promulgated.

The CHAIRMAN. I know it doesn't work. We don't deny that. We wouldn't debate that for a minute. You are 100 percent, absolutely right. We know that.

At least it is not working as well as it should.

The question is whether this is a solution for the Federal Government to pass laws and then to say that the States and the local governments can carry them out or the State can carry them out.

Mr. QUINN. Excuse me, Mr. Chairman, could I make one small comment?

The CHAIRMAN. Yes.

Mr. QUINN. My own belief is that it is not necessary to turn it over to the States.

I have no particular desire to. I have my hands full with my State banks.

The answer, however, that I think would arise is that once my examiners enter a national bank for compliance with the Maine Consumer Credit Code, obviously the same transactions that we would be reviewing are the same onse that potentially will have the truth-in-lending violations.

I think that the Federal agency charged with compliance is obviously going to know this and the house will be very clean before we get there.

I would have to assume that, if that is not the case in the first 6 months, it will certainly be the case thereafter because obviously we would have the ability to report widespread infractions and noncompliance, if they existed, to this very committee.

I think that that is the sort of thing that would bring about compliance in the long run.

I have to agree and I know, for instance, that some States in New England are not as strict about enforcement in truth in lending.

The CHAIRMAN. The history of consumer credit legislation is very, very recent. One of the principal provisions, of course, was the truth-in-lending law that was passed in 1968 after the Commonwealth of Massachusetts pioneered their own law.

It was the first State that did it, however. Other States didn't do it.

In the Fair Credit Reporting Act, Oklahoma was the only State in the Union that had any legislation. This was weak and, from everything we could determine, it wasn't enforced at all, so it was pretty hard to do it because the credit reporting agencies were outside of Oklahoma.

Georgia had the biggest one, of course. So, in those areas, particularly in credit reporting, we had to have a national law to make it really effective.

There was no initiative. There was no comprehensive effort on the part of the States to do the job.

So, the Federal Government had to step in.

Now we are being told that these consumer credit bills that we passed are not being enforced and I think you are highly responsible, able people. I think you are undoubtedly speaking the truth.

You are telling us, however, that we should turn over the enforcement to the States, and the logical conclusion would be to turn over the whole thing.

Mr. MCCAFFREY. Mr. Chairman, I suggest, first, that the process be examined to separate liquidity and solvency compliance from this particular area and specialty area concerning consumer credit.

If that is done first, then if an agency is created within the Federal Government to specialize in that area, it would seem to me the next couple of steps would be to allow those deserving States which already have a machinery set up with educational programs, with enforcement activity ongoing, because of the substance of the State law, it would just seem to us to be more efficient to do that.

The CHAIRMAN. And you would rely on the Federal Reserve to make that determination?

Mr. MCCAFFREY. In relying upon precedent, that would be one immediate solution.

Ms. GREENWALD. Could I say that I wasn't testifying that I wanted the State to examine national banks in this area.

What I was saying was that I thought it should be made abundantly clear to the Federal regulatory agencies that when a State has filed with the Federal Reserve for its law not to be preempted or in other

ways it is clear that a State law had not been preempted, then it is the job of the Federal regulatory agency to assure compliance with that law.

We have found at the Federal Home Loan Bank Board a more intransigent position than that of the Comptroller. The Comptroller may not enforce it, but at least he gives the lipservice to it that he is supposed to be doing so.

The Federal Home Loan Bank Board says we are not supposed to be.

It seems to me what we are asking is that when a law is not preempted it is not premepted for any institution in the State, and it doesn't matter, really, so much who enforces it but that it is clear that it is supposed to be enforced, that an equal level of consumer compliance is being expected in that State from all financial institutions.

The CHAIRMAN. Actually, these hearings were supposed to be primarily directed at the three bank regulatory agencies and the commercial, and not the Home Loan Bank.

The case you made with the Home Loan Bank is the most devastating of all.

What you are saying there is that the State passed legislation and that they want to enforce it in the State and the Home Loan Bank Board said these are Federal institutions under Federal jurisdiction, forget about it. They are not going to be enforced against these agencies because they are Federal agencies.

Ms. GREENWALD. Or they can voluntarily comply.

The CHAIRMAN. So, you have gone to court and asked your attorney general to bring suit.

Ms. GREENWALD. Against the institutions that are violating the law, that is right.

The CHAIRMAN. When was that suit?

I imagine it will be a long time before we get a conclusion on that.

Ms. GREENWALD. I am not sure.

The CHAIRMAN. At any rate, when was the suit brought?

Ms. GREENWALD. The papers were filed with the Attorney General about a week ago. We went back and decided after all these letters that by July 1 they had to comply.

We got no forms filed, so we went to the Attorney General and said, "Nobody has filed with us."

The CHAIRMAN. The Home Loan Bank Board at any rate took the position; is this correct?

Ms. GREENWALD. That is right. We gave you some of their correspondence.

The CHAIRMAN. I want to make sure I understand. The Home Loan Bank Board took the position that their Federal savings and loans were not subject to State jurisdiction?

Ms. GREENWALD. That is right.

Mr. FRANCIS. Mr. Chairman, there is an interesting case in the Supreme Court now on preemption involving meat inspection and State standards versus Federal standards. I think we might get an interesting declaration fairly soon from the Supreme Court on this very issue.

The CHAIRMAN. I would be astounded if there could be any finding that the State was unable to protect its borrowers or depositors in a Federal institution located in their State.

Is that the position taken by the Home Loan Bank Board?

Ms. GREENWALD. Yes, it is.

I am saying that if it were made clear, and they obviously don't see the law that way, that they should be enforcing these laws, then that in a sense would satisfy our State criteria.

I still feel that I don't see what their problem is with these spot checks. If it turns out things aren't going right, we would simply inform the Home Loan Bank Board.

They cite the U.S. Code, say that no one but a national examiner can walk into nationally chartered institutions.

I don't see how that is really so different than our walking into a jewelry store and saying, "We would like to look at all your consumer credit transactions."

The CHAIRMAN. Could you suggest language or could any of you witnesses suggest language to make clear the bank agency's obligations to enforce State laws?

Ms. GREENWALD. We would be happy to work with your staff on that.

The CHAIRMAN. Will you do that?

Ms. GREENWALD. Yes.

Mr. FRANCIS. Mr. Chairman, there is a distinction. One is that I don't think any of us are suggesting that we want to examine national banks and Federal agencies.

No. 2, we are not saying that Congress——

The CHAIRMAN. Sure you do. Don't you have to examine them to some extent if you enforce the law?

Mr. McCaffrey said he felt that you should be allowed to do it.

Mr. FRANCIS. I will get to that. The other is that the State has its own right to pass laws to protect its consumers.

The state of the law, the state of the art and the state of belief is such that we cannot reach Federal financial institutions with our State laws.

That is what California was confronted with in its redlining laws, and so on. Then in my statement I talked about how can we communicate and know what the Federal agencies are doing.

In other words, if they were forced to get together with the State commissioner or State consumer agency once a year and say, "We have had so many of this kind of complaint, this is what we are finding, you are finding a lack of communication there."

That is the important thing that is being said at this table. There ought to be some accountability by the Federal agency if they are in fact enforcing State laws as to how it is working.

I don't think we want to get inside of that.

The CHAIRMAN. It is more than a lack of communication, though.

It is just a lack of action. The laws aren't being enforced. In Massachusetts, for instance, Commissioner Greenwald has testified that there apparently isn't any misunderstanding.

The Home Loan Bank Board knows what the score is. They just don't go ahead and do it.

Mr. FRANCIS. To me, that is a statement of congressional policy.

As a matter of policy you coordinate with the State to be involved in compliance with State law.

The CHAIRMAN. How do you determine what items are legitimate consumer protection items?

For example, some States argue that sharing of EFTS terminals is a consumer protection item. Isn't this really more marketing than consumer protection?

Ms. GREENWALD. Yes, it is.

Mr. FRANCIS. That depends upon your view of consumerism. If consumerism is dealt with in a narrower sense, such as the escrow account, the answer is not. If it viewed in a broader sense of the market making services available, which is where I think we should view it, well these other specific issues, then I think it is consumerism.

The CHAIRMAN. What I understood from what Commissioner Greenwald and Mr. McCaffrey and others are contending is whether it is consumer protection or not, there is a State law and the State has the right to enforce it if the Federal Government does not enforce it.

That is what we want to try and make clear.

Several years ago the National Commission on Consumer Finance recommended that State officials be empowered to examine federally chartered institutions for the limited purpose of determining compliance with State consumer protection laws.

Do you agree with that recommendation?

How could it be implemented?

For example, should the State officials conduct regular examination or rely on examinations by Federal examiners or what?

Mr. MCCAFFREY. Yes.

The CHAIRMAN. What should they do?

Should they make regular examinations?

Mr. MCCAFFREY. In our State, our State Banking Department in tandem with the FDIC and the Federal examiners do that already.

In our State the group that is outside of that cooperative effort are the banks which are nonmembers, federally chartered, and examined by the comptroller.

It seems perfectly feasible that why couldn't the comptroller do what the FDIC and the Federal Reserve examiners do?

I think it is obvious that they just simply don't want to breach it. They don't want to cross the line. Once the line is crossed, then we are in there and that must be bad for them.

With that precedent in mind, that is one method in which it can be done.

The CHAIRMAN. Let me run down the line and in about a half a minute each, if you can tell me what kind of resources and manpower you allocate from consumer protection, what priorities does the effort have in your office, starting with Mr. Quinn.

Mr. QUINN. In my office it is the priority. The examination shares a priority with consumer education and consumer credit.

We started out with five examiners 2 years ago. We now have one field examiner. This was done by the simple expediency of enforcing the law so that now when we——

The CHAIRMAN. How many examiners do you have altogether?

Mr. QUINN. One in the field.

One inside who is the so-called chief examiner, but now since he has only one examiner in the field and since compliance is so widespread, we are able to utilize him on a number of investigations.

The CHAIRMAN. Is that enough?

Mr. QUINN. I may have to beef it up to two come this fall. But, I am hoping not.

Mr. CONNELL. Senator, we have 11 people in our consumer credit division. They supervise the banks and other financial institutions with respect to truth in lending and also the small loan companies and debt adjustors.

We find that adequate within the State of Connecticut. To take on another 40 federally chartered institutions would be really no problem at all.

I believe that we should be examining the federally chartered institutions for compliance and then we should be responding to the public for consumer complaints over these federally chartered institutions.

We are also very active in the area of suggesting legislation across the entire spectrum of consumer protection, whether it be debt collection regulations, or unfair trade practices of any sort.

We would like to see the scope of the department extended across the entire field of consumer protection.

The CHAIRMAN. Mr. Francis?

Mr. FRANCIS. We have six examiners in our consumer finance division.

Our emphasis, though, is work on compliance. I do think in the financial institution and the depository area we are doing not as good a job as we could or should do.

I think it takes more specialization there. Our emphasis has been on complaints and trends or patterns that they set.

We had over 600 complaints last year. We have a very effective and responsive complaint procedure in communication with the general public so that we get those back in.

But we can beef it up.

Ms. GREENWALD. I have to begin by saying that all our examiners, the 160 examiners, all do compliance. They do mostly liquidity and solvency, but also the compliance.

Then we have eight truth-in-lending specialists who do truth-in-lending full time and 15 who do it on a part-time basis.

In addition, we also have a consumer complaint division with two full-time people who utilize at least 10 volunteers on a rotating basis to handle over 100 complaints a month.

I have learned here that from now on I guess we should keep track of the complaints against national banks rather than simply referring them over to the Comptroller.

So, I don't know how many we really would get if we kept track of the ones we get from the national banks.

Mr. MCCAFFREY. We have five field examiners and one chief examiner that actually concentrate only on the consumer finance industry.

The State banking department has a total of 21 examiners, but they check also for the liquidity and solvency of banks and other institutions. We count all of our staff, 17, of the departments being in the area of truth-in-lending enforcement.

With the addition of the examiners from State banking departments who do both without additional appropriations from our State it would not be possible for us to do any of these other things that were mentioned.

However, there have been some other suggestions with regard to fund sharing which I would think would be appropriate.

The CHAIRMAN. In other words, would you provide the enforcement if the Federal Government will pay for it?

Mr. MCCAFFREY. Perhaps so.

The CHAIRMAN. Mr. Parker.

Mr. PARKER. Our State department of financial institutions has a total of 12 examiners equally divided between bank examiners and financial company examiners.

Now that they are both coming under the same set of rules insofar as the consumer credit aspect is concerned and, of course the Federal requirement, it appears to me that both groups could be utilized totally in this area.

I cannot say that we wouldn't have to have additional examiners, but I believe the State of South Carolina would be interested in doing so to insure compliance.

The CHAIRMAN. I take it, then, that all of you feel you either have or could easily have sufficient enforcement personnel to do the job.

Is that right?

Then I would like to ask Mr. Quinn, did you see the response that Comptroller Smith sent to me?

Mr. QUINN. Yes, I did.

The CHAIRMAN. What is your reaction to that?

Mr. QUINN. I have two reactions: One is that I was interested in his refusal to comment on the charge that the Comptroller would not notify consumers when they found violations of the Consumer Credit Code as we are required by statute to do.

He refused to comment on that.

The second item was his response to our charge that a rather large national bank in Maine, which recently switched to a State charter, had never been examined for truth-in-lending prior to 1975 and that when they took their State charter in late 1975, even though they had been gone over with a fine-toothed comb by the Comptroller's people, they still did not understand how to give out a simple rescission notice.

They were giving rescission notice out to borrowers at the time they came in.

They might receive the disclosure statements 2 months later. That was the level of their understanding of the truth-in-lending.

Those are my two principal comments.

The CHAIRMAN. I understand that in your region, the Comptroller has been using experiments, or at least a novel procedure, to specially train examiners in consumer protection law.

How effective has that been?

Mr. QUINN. As effective as one man in the entire New England region could be, I suppose.

As I indicated, he worked with that particular bank and, though they did not indicate he told them this, they informed us, the bank officers in this particular bank informed us that there was nothing wrong with their rescission.

The CHAIRMAN. You mean they have one man inspecting all of New England?

Mr. QUINN. That is it. He is a very busy man. He does most of his work out of his office.

He sends out questionnaires. You cannot find blank APR's on the questionnaire.

The CHAIRMAN. What do you think if you had a number of people—if the Comptroller had a number of specially trained people?

Mr. QUINN. I have no doubt they could take care of truth in lending.

The CHAIRMAN. How many would they need, in your view?

Mr. QUINN. In the New England region I would say for a State like Maine, one person part of the year.

The CHAIRMAN. Is the New England region 10 or 15?

Mr. QUINN. I would say three or four at most.

That would be in the original statement. I would say in 2 years they could probably do it with one person.

The CHAIRMAN. When you are talking about reviewing national banks for compliance with the law, do you think that three or four could take care of that whole region?

Mr. QUINN. I am assuming, of course, that they do what we do when we find a violation. That is why I am down to one examiner now.

The CHAIRMAN. Commissioner Greenwald testified that they have eight people in Massachusetts doing nothing else there.

Mr. QUINN. What we do in Maine is when we find a violation of the truth in lending, by a recission notice we notify the consumer immediately that he has 1 year from the date that his transaction occurred in which to file his civil suit.

Then they notify the bank of the hearing date, which is probably about 2 weeks subsequent to that.

Any violations we find, we notify the consumer subsequently that there was a definite violation of their right. That has brought about universal compliance in the truth in lending in Maine.

That is why I am down to one examiner for the code and truth in lending.

It is a simple expediency of enforcing the law.

The CHAIRMAN. I have one final question.

I can't resist it.

Mr. PARKER. I would like to comment on the previous question you asked Mr. McCaffrey.

That was the question of how in fact would you go about having the States enforcing the Federal laws.

The position that I tried to take, and perhaps didn't make clear, is identically the position taken by the National Commission on Consumer Finance as follows. I outlined it in my report.

Enforcement can be done by the States perhaps with Federal monitoring. I think we can start with the presumption that if a State has the opportunity to do so it can enforce the law, and will.

Then when it is found that no one is enforcing it, of course, the Federal Government should enforce it.

I am not suggesting that even with State enforcement that the Federal Government shouldn't be able to enforce the law also. I am saying give the State a chance to see what it can and will do and, to the extent that it enforces this law, fine.

Any deficiency should be made up by the Federal enforcement officials.

The CHAIRMAN. The final question I have is this. As the author of the Truth in Lending Act, I am very concerned about its ineffectiveness from an entirely different standpoint.

That is, I do think that the purpose of the act was to inform the consumer as simply and vividly as possible. While to experts on consumer matters it may seem like a very simple form that is usually made available to the consumer, and to the bankers I am sure it may seem relatively simple, although they don't like the problem of going through it and putting it out.

What I would like to see is a truth-in-lending law that for most transactions simply had five words, "true annual rate finance charge." That is it.

It seems to me that if we could standardize that so that the consumer will just have those two simple facts, pretty soon you will get people really understanding the true annual rate, what it means, and the finance charge.

Those are the two things that it seems to me in the majority of transactions the consumer should know. When he is given a sheet that long he doesn't look at anything. Most people don't.

All the checks I have seen indicate that many consumers are just not getting the benefit of truth in lending because it is too complicated for most people to take the trouble to get into.

Do you have any observation on that?

Mr. PARKER. I would agree with that 100 percent.

In one of our functions, education, we are working very hard trying to figure out how you communicate this information to a consumer so he can protect himself.

The simpler, the better.

I think that would be very helpful.

Mr. FRANCIS. I think the simplicity is the key to what we are doing. I think we are getting so complex that the consumer is overwhelmed.

I do think there is a detailed analysis that can be handled by sophisticated consumer groups so that some of the breakouts should be known.

Much of the same thing is involved in security laws.

The CHAIRMAN. Even transactions that are so complicated that it takes time to explain them.

Mr. FRANCIS. A man on the street gets a piece of paper that has far less on it, but he understands it. But there may be more backup data behind it that you could look at if you wanted to.

I think one of the keys, as in the securities area could be here, too, is that if this backup data is available that sophisticated groups can come in and look at it and say that this is how that institution is treating the public.

So, you have two levels of look. One is for the man on the street and the other is for the more sophisticated. We have very sophisticated consumer groups.

The CHAIRMAN. I want to thank all of you very, very much for most helpful and thoughtful testimony.

[The following letter was received for the record:]

STATE OF CONNECTICUT,
BANKING DEPARTMENT,
Hartford, Conn., August 12, 1976.

HON. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing and Urban Affairs,
Washington, D.C.

DEAR SIR: Thank you for the opportunity to testify before the Senate Committee on Banking, Housing and Urban Affairs.

During the hearing you inquired how regulators of federally chartered institutions could be assured that a state authority was properly supervising consumer protection in a federally chartered institution. We believe that adequate precedence exists in the oversight system employed by the Federal Reserve Board in Truth in Lending enforcement. Before the Board approves the exemption it must determine that the laws of the state are sufficient to carry out the purposes of federal law, that the state has devoted the financial resources to the function and that the state agency has adequately trained personnel to conduct the activity. This same formula need only to be applied with respect to federally chartered institutions and other federal consumer protection laws. The accident of a federal charter should not preempt local jurisdiction over matters of legitimate local interest. Like local health laws, consumer protection laws are important local matters.

You also requested suggestions on how to reduce unnecessary bureaucratic weight of the federal truth in lending regulation. In this regard I have two suggestions, one rather easy to accomplish and the other somewhat more difficult.

The easier to effect is an exemption for small credit unions. Of the 172 state chartered credit unions in Connecticut, 120 are managed on a part time basis. This part timer is usually a company bookkeeper, a shop foreman or his wife. Credit unions, particularly the smaller operations, are not impersonal business organizations. They are a truly unique form of service enterprise comprised of people joined by a common bond, usually employment, membership in a religious organization or cohesive community. The credit union counsels its members on a personal basis and forebears on loan delinquencies when times are difficult. In smaller credit unions, because of the personal relationship between the credit union and its members, the truth in lending law serves no public purpose. Good professional public administration would demand a more refined application of this complex law.

The more difficult issue is how to simplify the present statutory labyrinth in which we find ourself. Enclosed is a copy or the original Connecticut Truth In Lending Law. Although, it addressed the basic interests of the consumer, it was superceded by the federal law. While it would be a bold tsep to pare back the present extensive statutory scheme, a more effective formula for consumer protection might be to combine stronger enforcement with a simpler statute that employed a case by case approach to unfair or deceptive credit practices.

I would be pleased to cooperative with your staff on these matters and I thank you for your generous consideration these past months.

Respectfully,

LAWRENCE CONNELL, Jr.,
Bank Commissioner.

Our final witness is Kathleen F. O'Reilly of the Consumer Federation of America.

Ms. O'Reilly, we have your statement, a 12-page statement, a very good one. We would appreciate it if you could summarize it and the entire statement will be put in full in the record at the end of your testimony.

STATEMENT OF KATHLEEN F. O'REILLY, ON BEHALF OF THE CONSUMER FEDERATION OF AMERICA

Ms. O'REILLY. Yes, Senator.

Good morning. I think enough of us know what the Consumer Federation is, so I won't go through a lengthy description of it.

On behalf of the Consumer Federation I want to take the time for a moment to discuss several areas.

We all talk a lot about regulatory reform, an important facet of it, so the Congress and the public can insure that the agencies are following the mandate given to them in specific pieces of legislation.

Because of our limited staff, CFA does not participate actively and regularly in all of the various agency proceedings, but we have had direct experience with the Federal Reserve Board in terms of the Equal Credit Opportunity Act, and the amendments.

I would like to share with you very briefly some of our concerns that have developed because of that experience and also to share some thoughts that I have in terms of having reviewed the annual reports submitted by all three agencies in March, some questions I raised that we hope would be raised in the following days when representatives of these agencies come before you or that detailed questions might be submitted to them so that we could have some answers.

One issue is that the term of when were these various consumer divisions created within each agency. That is by no means a barometer of how effective they are.

We wonder, for example, why it took the FDIC a full 15 months after the act before they even set up the agency. A second question that comes to mind is what is the structure of the Office of Consumer Affairs within each agency?

Is it buried somewhere down in the infrastructure so that it has no clout? Who does it answer directly to; in terms of what kinds of funding levels they get, what kind of staff backup, what kind of backing from the agency itself?

The only report that addressed this issue at all was the FDIC annual report.

It specified that the Office of Bank Consumer Affairs reports directly to the board of directors. Frankly, I don't know where the board of directors is in that hierarchy. But I think all agencies should explain where in the structure this very important office exists.

Much more important is the actual staff of the Office of Consumer Affairs.

The FDIC Improvement Act directed that they should establish a separate consumer affairs division, but it would seem instead of establishing them they may have actually just reshuffled other agencies.

Were new people who have an entirely bank background brought over to these various staffs?

For example, did the Office of Saver and Consumer Affairs simply become the office of saver? Who is heading up these various offices and what are their backgrounds?

It should be emphasized that traditionally these agencies have, under the language of their enabling statutes, be devoted to trying to ensure some banking practices.

But that by no means suggest that they are qualified or sensitive to a separate area. The FDIC staff includes a director, three consumer affairs specialists having a general background in law, bank examination, or a bank-related discipline, one research assistant and three clerical support personnel.

It would at least be interesting and probably very enlightening to read the résumés of this staff.

Do they have any direct experience with consumer protection? We submit that a general background in law, banking or bank-related discipline is not enough.

What about the Federal Reserve Board and the Comptroller, neither of which even indicated the size or nature of the staff of these offices of consumer affairs?

We are certainly not promoting lengthy staff reports and annual reports that will just be put aside. We think that the annual reports submitted by all agencies were brief in the extreme.

In terms of an office of compliance, we would suggest that all of these agencies should establish an office of compliance as the FTC has done so that there is more attention given to the area of enforcement rather than a reliance in sort of responding to consumer complaints.

There should be developed a very special sensitivity to finding out in areas why there aren't more complaints, do the bankers really know how to look for target areas?

In this connection, just before I testified in April at the Federal Reserve Board, at a preliminary hearing they were having with respect to the Equal Credit Opportunity Act amendments, I called Mr. Solomon, who is the assistant to the board of directors of that Office of Saver and Consumer Affairs, to question how the board has been enforcing the original Equal Credit Opportunity Act as to the thousand or so banks that are within its jurisdiction.

I was really amazed at the conversation because they have hired no new personnel whatsoever for enforcement of the Equal Credit Opportunity Act.

They are relying exclusively on their 550 bankers. When I inquired whether or not the bank examiner manual had been revised to reflect the new act, he said no, that they are working on it. They are working on it but the law has been there since January of 1974.

Then I asked in terms of the training of these bank examiners. I was amazed that nowhere in the written regulations are the requirements to be a bank examiner for the Federal Reserve Board.

There are no minimum number of hours in the classroom, no minimum number of hours in terms of experience. There is no necessity for either a legal or a banking background. It sounds more like a protege approach because someone sort of recommends someone else and they work under someone.

The whole thing is enormously vague. There are no spot checks in terms of their actual conformance and in terms of conflict of interest, Mr. Solomon pointed out, "We don't let any of these bank examiners examine one bank so often that it gets kind of cozy."

I said, "What is that target point?"

He responded, "We encourage they examine the same bank 2 years in a row."

I understand there might be no necessity to do that. But I asked, "Is 3 years sufficient to raise questions of potential conflict of interest," because it has been spending exclusively 3 years of time at one bank.

He said, "No, we look at it in terms of a case-by-case basis."

I said, "What criterion do you use?"

He didn't have any. Again, he was very vague.

When I asked, "How do you determine if they are adequately enforcing the law in terms of equal credit opportunity and the rest," he said, "We rely on comments from other people and reports."

So, once again, the fact that in 6 months, between October of 1975 and April of this year when the Equal Credit Opportunity Act regulation went into effect, in 6 months not even a suspicion of a violation had been reported by any of these bank examiners.

I asked Mr. Solomon if that raised any questions in his mind in terms of the adequacy of the bank examiners to spot violations. "No, it didn't." He thought this was evidence that there are no violations.

I found it very disturbing. I think we should ask what is the background of the bank examiners. What is being done to insure they know about the law, that they have a specific checklist or guideline to use?

I think the checklist and guidelines by any of these agencies should be submitted as an appendix to their annual reports.

We asked questions not only in terms of the Federal Reserve Board but in terms of all the other agencies.

Who in these agencies are asking the questions in terms of are the complaint levels reasonable in terms of violations that should be detected and is the staff adequate?

We looked at some of the other reports and we chose the Comptroller's report. It makes a sweeping statement about they have "evaluative criteria and measurement techniques designed for enforcing compliance," but they never described what these criteria were and the techniques.

They say that the examination report is being revised and the division is preparing comprehensive checklists and workpapers to examine for bank compliance with consumer protection laws.

We like to know are these documents now ready for the banking committee and the public. If not, why not?

What is taking so long? Again, we suggested all of this information be filed at least annually.

With respect to the FDIC, their report speaks of FDIC field examiners checking for compliance with consumer protection statutes during the course of regular examinations of insured State and nonmember banks which are generally conducted on an annual basis.

They go on to say that the examination procedures utilized in all States except three where the FDIC has, on an experimental basis, withdrawn from regular examinations of a number of insured State nonmember banks.

Again, we request whether bank examiners have been trained to detect violations of consumer protection laws and have their agency examiner manuals been revised?

We particularly want to know what is the logic for withdrawing from regular examination of a number of insured State nonmember banks. Are they regional States? Have particular States proven that they are able to enforce the law?

On page 5 of the FDIC annual report is a short but potentially significant statement. It says "a limited number of banks have been found to represent supervisory problems regarding their compliance with consumer protection statutes. These banks are, of course, receiving continuing followup attention by staff of the various regional offices. No cease and desist orders were issued against banks for violations of consumer protection statutes by the FDIC in 1975."

How many is "a limited number"? Are they talking about 3 banks or 300?

We also want to know what supervisory problems they are alluding to? What is their idea of followup attention? Is it just a letter that

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goes out every 30 days? Are they vigorously enforcing the law? Should these problems have been the base for a cease and desist order?

Many of the expressions in and of themselves have a very euphemistic ring to them. On the same score, the FDIC says that although it has authority to recommend to the Board of Directors policy statement and prepared regulations applicable to insured State-chartered nonmember banks for protection of bank customers, it has not deemed it necessary to do so. Why not?

It also has the authority to recommend special investigations and surveys related to bank customer matters. To date, no investigations or surveys have been proposed. Why not? There may be good reason why not. But the certainty is not evident from their annual reports.

We think they must be made to account for why these unauthorized actions have not been undertaken. The FDIC talks in terms of its liaison with consumer groups. We would like to know who the consumer groups are and what the extent of that communication was. We are not suggesting that just because these agencies have not conacted the consumer groups, they have not complied, but we think it should be explored a little further.

In terms of cost of regulation, we feel very strongly that when Congress or any agency speaks of cost of regulation they have a strange myopic vision. They do not demand efficient implementation when calculating that cost and do not offset that cost with the social cost of violation of the law.

When the FRB announced their April 27, 1976, preliminary hearing on certain issues related to the Equal Credit Opportunity Act amendments, we were baffled by the inclusion of issue No. 11 regarding "the cost of implementing the act and the impact of the act on the availability and cost of credit to the use of credit." Nowhere in the legislation is the FRB directed to make such an inquiry. In any event, the framing of that issue was loaded and one-sided in terms of how it considers "cost." It was an open invitation to industry to recite their constant assertion that regulations are prohibitively costly.

What was particularly ominous about the question was that it appeared to reflect the FRB's own narrow philosophy. Last fall it came to Senator Biden's attention that the FRB had requested a study on the cost of requiring statements of the reasons for credit denials. The study had been prepared by Professor Robert Johnson (consultant to the board) and his staff at the Credit Research Center of Purdue University. In response to Senator Biden's request for the study, Arthur Burns submitted a two page letter that included a three paragraph excerpt from the Johnson study.

Senator Biden had asked Chairman Burns to submit that study. The study came over in two pages of gloss that had all sorts of terms in there that were not really the incremental cost.

CFA submitted our own study. The study that came back was again like receiving footnotes to a term paper and never getting the paper. There were all sorts of assumptions unexplained within this methodology. The Federal Reserve staff made calculations based exclusively on information given to me by industry without specifying what segment of industry or how many people they had cited. We just hope this is not indicative of what we can expect from the Federal Reserve Board in terms of doing economic studies. We think they should be

questioned in terms of who are they getting to, and are they being open and subject to public scrutiny?

There is another example of cost, but I won't go into that, but it has to do with the issue that is right now very, very topical. That is section 202.6 of regulation B which was published on June 4. Again, we think that the Federal Reserve Board should explain why, in their preface in terms of explaining this new regulation, they haven't required creditors to furnish information re accounts in the name of each spouse. Maybe it was too costly and it may be unrealistic in light of existing technology. Where is the proof of that? They should come up with economic documentation of what the cost is and how it should be offset in terms of this regulation which will really get around the rule in a way that is very, very damaging to women.

Finally, I would like to bring up a practice that leaves us very, very unsettled. When we added as a witness on April 27 we were joined by a number of other witnesses, business representatives, people from womens' groups, and so forth. Subsequent to that meeting, on May 21, the Board issued—and I have a copy of it—a confidential draft, an advance draft of the regulations. It says "for discussion only and not for publication," to be a working draft marked "May 21, confidential."

This confidential draft was sent to some of the witnesses who appeared in April, but not to others. And it was submitted to people who had not even appeared.

We would like the Federal Reserve Board to explain under what process of procedure they determine who would get this confidential advance draft because it seems very strange, indeed. It goes against the grain of the type of governmental process we have all been working for. There seems to be no logical reason whatsoever why they would pick and choose among witnesses in terms of who would get this confidential draft. Needless to say, consumers did not get the draft and Bella Abzug did not get the draft. Yet, some people who did raised serious questions as to why they would. They supposedly appeared in an individual capicity, but looking down the list, we spotted some people who had formally been counsels to bankers and had bank cards, and so forth.

We think this really needs some explaining. If this is going to be the procedure of the Federal Reserve Board in the future, we would like to go on record as highly critical of it and it really is vehemently opposed by our group.

[The prepared statement of Kathleen F. O'Reilly follows:]

Statement of Kathleen F. O'Reilly, Legislative Director, Consumer Federation of America

Consumer Federation of America is a federation of 208 national, state and local non-profit organizations that have joined together to espouse the consumer viewpoint. CFA and its member organizations represent over 30 million consumers throughout the United States. Among our members are Consumers Union, publisher of *Consumer Reports*, 17 cooperatives and credit union leagues; 45 state and local consumer organizations; 66 rural electric cooperatives; 27 national and regional organizations ranging from the National Board of the YWCA to the National Education Association; and 16 national labor organizations.

We congratulate the Committee for scheduling these important oversight hearings. Repeated calls for regulatory reform have elicited numerous suggestions of appropriate avenues for accomplishing effective reform. One of the most sensible reform measures is the need for a pronounced recognition on the part of Congress that periodic and comprehensive oversight hearings are a must. It is one of the most practical ways to ensure that agency actions conform to the Congressional intent which was the driving force behind particular pieces of legislation.

The announced topic of these hearings is broad indeed. Because of CFA's limited staff resources, our ability to become actively involved in agency actions is very much curtailed. However, we have participated in recent Federal Reserve Board proceedings related both to the Equal Credit Opportunity Act and the amendments thereto. We would like, therefore, to share with you today some of the concerns we felt based on our experiences with the FRB.

First, however, we would like to submit a series of questions which were raised upon our review of the annual reports submitted by the major bank regulatory agencies in March of this year in accordance with provisions of the FTC Improvement Act.

The success of these oversight hearings will depend in large portion on: (1) the questions posed to representatives who will appear on behalf of the various banking agencies; (2) the persistence with which the Committee demands specific and comprehensive answers; and (3) the follow-up procedure utilized by the Committee to take appropriate actions as a result of the information secured at these hearings.

We urge the Committee to probe the following areas:

1. CREATION OF CONSUMER AFFAIRS DIVISION

The issue of when an office of consumer affairs was created in each agency is obviously not a barometer of the agency's sensitivity to or effectiveness in dealing with the enforcement of consumer protection laws or the handling of consumer complaints. One is nonetheless struck by the fact that the Comptroller of the Currency's office created such an office in March of 1974 which became operational in September of 1974. The Federal Reserve Board's office was established in August 1974, while the Federal Deposit Insurance Corporation did not establish such an office until April of 1975. Why, for example, should it take the FDIC a full fifteen months after the FTC Improvement Act was signed into law before they established the Office of Bank Customer Affairs?

2. STRUCTURE OF OFFICE OF CONSUMER AFFAIRS

Even more important is the question of where the office falls in the agency's bureaucratic structure. On this score the FDIC annual report specifies that the office of Bank of Customer Affairs reports directly to the Board of Directors. Where does the Board of Directors fall in the hierarchy of the FDIC? Does the office of Bank of Customer Affairs have sufficient clout in the agency to ensure adequate funds, staff and agency backing to do an effective job?

What about the offices created in the FRB and Comptroller's office? Are they buried deep in the agency infrastructure or do they report directly to the agency heads?

3. STAFF OF OFFICE OF CONSUMER AFFAIRS

Next is the question of their staffing. Was there truly the establishing of a separate consumer affairs division within the agency as directed by the FTC Improvement Act, or merely a reshuffling within the agency? Was, for example, the Office of Savers in the FRB simply transformed into the Office of Saver and Consumer Affairs? Were new people brought in or agency personnel specially trained in the area of consumer protection? As evidenced by language in the various enabling statutes the banking agencies have traditionally had the express purpose of assuring sound banking practices. It should not be assumed that they had the qualifications to take on an equally important but quite distinct perspective. What, for example, is the background of the heads of each of these offices? What is the staff size and composition?

The FDIC staff, according to their annual report, includes ". . . a director, three consumer affairs specialists (having a general background in law, bank examination, or a bank-related discipline), one research assistant, and three clerical support personnel." It would be at least interesting and probably enlightening, to read the resumes of this staff. Do they have any direct experience with consumer protection? We submit that a general background in law, banking, or a bank related discipline is not enough.

What about the FRB and Comptroller, neither of which even indicated the size or nature of the staff of these offices of consumer affairs? Should this not logically be included in an annual report?

4. OFFICE OF COMPLIANCE

The thrust and tone of the communications issued by the major banking agencies predominantly highlight complaint-handling. Without downplaying the role of a consumer complaint handling mechanism, we are nonetheless disturbed at the lack of emphasis on enforcement. Why have these agencies not established an Office of Compliance as was done by the FTC? There should definitely be such an office within each agency—an office which has a prosecutorial mentality and focus. What is so clear from the consumer complaint reports of each agency is that a complacent attitude of "all is well" can too easily develop in offices where the exclusive role is to merely respond to consumer-initiated complaints.

There should be a separate sensitivity encouraged—a sensitivity to the questions of whether consumers are sufficiently aware of the law, their rights, and the enforcement power of the agency so as to file complaints. The second practical question which requires special sensitivity and training is the issue of whether, for example, bank examiners have been adequately trained and motivated for detecting and suspecting violations.

In this connection, I personally spoke with Frederic Solomon, Assistant to the Federal Reserve Board and Director of the Office of Saver and Consumer Affairs, just prior to presenting testimony on April 27, 1976 before the Board of Governors at a preliminary hearing on the Equal Credit Opportunity Act Amendments. The FRB was soliciting advice on regulations to be promulgated pursuant to the Equal Credit Opportunity Act Amendments, and I thought it pertinent to discover what the FRB had been doing to enforce the original Act. I was unimpressed by what I learned.

Despite the FRB's lip service commitment to the importance of this legislation, *no* additional personnel has been hired by the FRB to carry out its enforcement. Instead reliance is made on the approximately 550 bank examiners who have examination jurisdiction over about 1000 banks. Six months after the bulk of the ECOA regulations had been in effect, the bank examiners manual has not even been revised to include a description of the law or instructions on how to detect violations. Bank examiners have been furnished with a copy of the law and the regulations, and some seminars have been held at the regional level, yet there is no assurance that all bank examiners were even required to attend these seminars.

If a bank examiner suspects a violation of the ECOA, a report is to be made to the regional vice president in charge of bank examination and a simultaneous notification to the Washington FRB Office of Saver and Consumer Affairs. Six months after the regulation became final, not one such suspected violation has been reported.

Who then within the FRB is asking fundamental questions like: 1) Why in six months have there been no reports of potential or real violations, no investigations, no doublechecks? 2) Why doesn't the FRB require that bank examiners spend a minimal number of hours in the classroom becoming acquainted with the new law? 3) Why doesn't the FRB test bank examiners on their knowledge of the law and their ability to detect violations? 4) Why hasn't the bank examiners manual been revised to reflect the ECOA? 5) Why doesn't the FRB require that bank examiners have backgrounds in law and accounting? 6) Why doesn't the FRB evaluate the performance of their examiners using a more stringent standard than the present system of merely reviewing the examination reports and conducting discussions with others in the field? Why doesn't the FRB spotcheck their performance by sending in a professional to fully reexamine a bank and compare the analyses? 7) Why doesn't the FRB establish a specific cut-off period to prohibit a bank examiner from examining the same bank so often as to create an obvious conflict of interest?

In light of the deplorable track record of the FRB in enforcing the original ECOA as to its own members, it is small wonder that we viewed with cynicism its invitation to offer suggestions as to how to eliminate discrimination under the ECOA amendments. We asked that it prove its sincerity with much more than words and hearings. We asked that it insist upon comprehensive enforcement of the law among its own. We urged that it stop relying exclusively on bank examiners whose orientation is toward ensuring the soundness of banks and is not geared toward protecting the credit rights of bank customers.

The FRB should set an example of its commitment to equal opportunity by establishing its own affirmative action hiring program. It is time to reverse the present situation in which only 6.7 percent of the officers of the twelve Regional Federal Reserve Banks are women, and where of the 1,042 persons who have ever been selected as Federal Reserve officials, not one has been a woman!

Let's look at the other agencies. The Comptroller report makes sweeping statements about "evaluative criteria and measurement techniques designed for enforcing compliance." What are these criteria and techniques? They say "the examination report is being revised and the Division is preparing comprehensive checklists and work papers to examine for bank compliance with consumer protection laws." It is now the end of July. Are these documents now ready for review by this Committee and by the public? If not, why not? As part of their annual report we would hope that they they would include copies of such checklists, etc.

With respect to the FDIC, their report speaks of FDIC field examiners checking for compliance with consumer protection statutes during the course of regular examinations of insured State non-member banks, which are generally conducted on an annual basis. They go on to say that the examination procedure is utilized in all States except three where the FDIC has on an experimental basis withdrawn from regular examinations of a number of insured State non-member banks. Again we question whether bank examiners have been trained to detect violations of consumer protection laws. Have their examiner manuals been revised to reflect the new laws and what is the logic for withdrawing from regular examination of a number of insured State non-member banks?

On page 5 of the FDIC annual report is a short but potentially significant statement: "* * * a limited number of banks have been found to represent supervisory problems regarding their compliance with consumer protection statutes. These banks are, of course, receiving continuing follow-up attention by staff of the various Regional Offices. No cease-and-desist orders against banks for violations of consumer protection statutes were issued by the FIDC in 1975."

How many is "a limited number"? What "supervisory problems" are being alluded to? What is their idea of "follow-up attention"? Should indeed any or all of these "supervisory problems" have been the basis for cease-and-desist orders? Frankly, the expression "supervisory problems" has a euphemistic ring to it.

On the same score, the FDIC says that although it has authority to recommend to the Board of Directors policy statements and prepared regulations applicable to insured state-chartered non-member banks for protection of bank customers it has not deemed it necessary to do so. Why not?

It also has the authority to recommend special investigations and surveys related to bank customer matters. To date, no investigations or surveys have been proposed. Why not?

5. LIAISON WITH CONSUMER GROUPS

The Comptroller and FRB reports do not even speak of communication with private consumer groups. We would like to see the names of those consumer groups and learn of the extent of that communication. CFA, the nation's largest consumer organization, has not been contracted by FDIC.

The Comptroller and FRB reports do not speak of communication with con-consumer groups.

6. COST OF REGULATION

CFA feels very strongly that when Congress or an agency speaks of "cost" of regulation they have a strangely myopic vision. They look at the bald cost to industry of implementing regulations. They do not demand efficient implementation when calculating that cost and do not offset that cost with the social cost of violation of the law.

When the FRB announced their April 27, 1976 preliminary hearing on certain issues related to the Equal Credit Opportunity Act Amendments, we were baffled by the inclusion of issue #11 regarding "The cost of implementing the Act and the impact of the Act on the availability and cost of credit to the use of credit." Nowhere in the legislation is the FRB directed to make such an inquiry. In any event, the framing of that issue was loaded and one-sided in terms of how

it considers "cost." It was an open invitation to industry to recite their constant assertion that regulations are prohibitively costly.

What was particularly ominous about the question was that it appeared to reflect the FRB's own narrow philosophy. Last fall it came to Senator Biden's attention that the FRB had requested a study on the cost of requiring statements of the reasons for credit denials. The study had been prepared by Professor Robert Johnson (Consultant to the Board) and his staff at the Credit Research Center of Purdue University. In response to Senator Biden's request for the study, Arthur Burns submitted a two-page letter that included a three paragraph excerpt from the Johnson study. It projected the incremental cost of mandatory statements at $40 million a year.

The ambiguities and unexplained conclusions of that study are incredible. The accounting method of those surveyed is not described. Sixty-three percent of the total cost projection was designated assessment/recognition time, a factor which obviously should not be attributed exclusively to mandatory statements of reasons.

Professor Johnson says, "* * * Several credit sources indicate that roughly one-third of their credit rejections are caused by adverse credit bureau reports." Just how many are "several"? Three? Three thousand? Were they bankers or retailers, large institutions or small business concerns?

CFA made its own Freedom of Information request for the entire Johnson study together with any other studies or reports prepared on the issue by or on behalf of the FRB. The five page Johnson study we received shed little light on questions of methodology we had raised earlier. It was as helpful as receiving the footnotes to a term paper and not receiving the term paper.

The one page except from the FRB staff memorandum "assumed that 10 percent of rejected applicants receive such a letter." It doesn't explain how the 10 percent figure was arrived at. Reference was made to "a form similar to the suggested one" without describing the "suggested form," and its conclusions were exclusively based on costs pro-rated by industry without an independent evaluation.

Is this the kind of cost analysis we can expect from the FRB? Will these methods be typical of the manner in which the FRB will rely on consultants to determine statistically sound credit scoring systems, negative scoring for the elderly, and the cost of implementation?

Will the FRB look at the total cost picture and also include increased cost efficiencies in credit offices which have not sufficiently reviewed their own credit processing? Will the FRB consider the incalculable "costs" inherent in credit discrimination such as: 1) the emotional anxiety suffered by victims of discrimination; 2) the economic loss to the victims, their families and society as a whole when credit discrimination contributes toward their inability to achieve their full economic potential; and 3) the cost of the inconvenience to those who cannot obtain even limited credit.

A more recent example is the proposed FRB amendment to Sec. 202.6 of Regulation B published on June 4, 1976. The present section requires creditors to furnish information concerning an account in the name of each spouse. The regulation was in recognition of the discriminatory situation in which women who even though they had contributed to or had their own credit accounts, were not listed in their own names. The inequitable and incongruous result was that women because they had no credit histories could not obtain credit. We agree with the analysis of the League of Women Voters of the United States:

"The proposed amendments to this section would require creditors to provide the information in a way which shows only the "participation of each spouse." It does not require that the account be listed in the names of both spouses. Thus the proposed amendments would sanction a practice made illegal by the current regulations: listing a joint account under only the husband's name with a designation that it is "joint." Without separate files for each spouse, the file would not be retrievable in the wife's name. The problem is further complicated by the fact that the Equal Credit Opportunity Act prohibits the creditor from inquiring about marital status when a woman applies for her own separate credit. Since it is unlikely that a woman seeking credit would know that the joint account is listed only in her husband's name, she would probably not supply that information. Because of these factors, under the proposed amendments a woman's own credit history would remain unretrievable. Even if a woman knows that it is necessary to give her spouse's name upon applying for credit, she may resent having to supply her husband's name for credit that she earned herself. As a result of those amendments, therefore, we believe that women would continue to be denied credit contrary to the letter and the spirit of the Equal Credit Opportunity Act."

What is particularly relevant to the point we are attempting to raise at today's hearing is the issue of cost. The preface to the regulations states that the maintenance of duplicate files ". . . *may* result in an increase in the cost of credit to the consumer." The Board further states that ". . . the requirements to provide access to the file by using either spouse's name *may* be unrealistic in ligt of existing technology." (Emphasis supplied.) How did they arrive at these "may" conclusions? What exactly would be the cost and how does that compare to the cost of discrimination which the Act is attempting to eliminate?

Finally, we would like to discuss a practice of the FRB which leaves us unsettled, to say the least. On April 27, 1976, CFA appeared as a witness before the FRB at a preliminary hearing on the Equal Credit Opportunity Act Amendments. On May 21, 1976, the FRB issued "Amended Regulation B, Working Draft No. 2, Confidential, For discussion only and not for publication." We learned that many of the witnesses who had appeared at the April 27, 1976, hearing received this confidential advance draft. Other witnesses, including CFA, had not received a copy. This raised serious questions in our minds as to who had received the confidential advance draft.

Accordingly, we filed a Freedom of Information request on June 14, 1976, requesting a copy of the names and addresses of individuals who had been asked by the Board's staff for comments on the confidential copy of the preliminary staff report. On June 25, 1976, the list was furnished, accompanied by a letter from Griffith L. Garwood, Assistant Secretary of the Board. He indicated that: "As you will note from the list, these individuals, although assisting the Board in their personal capacities, together have a wide professional background with affected groups. The advice of these individuals has been sought in advance of any draft being presented for review by the Board itself."

Our office contacted by telephone all witnesses who had appeared at the April 27th hearing. Three of those witnesses indicated that they had received advance copies of the draft even though their names were not included on the list submitted by the FRB under CFA's Freedom of Information request.

Why were some witnesses singled out for receipt of the advance draft and others excluded? Why would witnesses such as Representative Bella Abzug and CFA be excluded from receiving the advance copy? What criteria were used by the FRB in sending the advance confidential draft? We inquired as to the representative capacity of individuals on their list of recipients who were not identified by the group they represented. We were told by the FRB that names of those not otherwise affiliated (other than being listed by a law firm's name for example) were contacted because of their "individual" capacity. Nonsense! The list of "individuals" included, for example, a former attorney to a major credit card company.

Our interest in the issue of the regulations was obvious from our participation in Congressional hearings and the FRB April 27, 1976, preliminary hearing. Surely it cannot be because CFA would duplicate the participation of other groups. More than one woman's group was included; more than one senior citizens group was included; more than one national retail organization was included, etc.

All of these factors raise grave questions about the procedures being used by the FRB in soliciting public comment prior to the issuance of regulations. We urge this Committee to fully explore this and *all* issues we have raised today with representatives of the agencies who appear before you at these hearings.

The CHAIRMAN. Thank you very much, Ms. O'Reilly, for your very formidable and effective criticism.

You talk about the desirability of having people with backgrounds in consumer finance as bank examiners in enforcing the law.

Ms. O'REILLY. Or minimally a certain training.

The CHAIRMAN. Training is what you are going to have to have, because I don't think there are enough people in the country who have any real background in consumer finance. It is relatively new, as you know.

Ms. O'REILLY. But a minimum of hours in the classroom and a written examination to test their awareness of the law and their ability to spotcheck it, I think, is a minimum.

The CHAIRMAN. I think they are beginning to agree to that. At least they are coming in with the Comptroller who had just proposed that training all their examiners in consumer law and consumer finance and their responsibility with respect to enforcing the law. I think your suggestion is most appropriate.

I am very glad you brought up the Equal Credit Opportunity Act. I meant to bring that up with the panel, but, of course, such a big panel we didn't have much time to ask the questions we wanted. I have been apalled, as I am sure you have been, at the outrageous failure to enforce the 1968 act which has been on the books for 8 years, and there are no regulations and no recordkeeping and no enforcement. The only studies we have indicate gross violations of the law with discrimination, especially against minority groups, but also sex discrimination. I am glad that you emphasized that point.

I do think that it is desirable that the Federal Reserve Board do its best to find out the cost of implementing the legislation. I think your criticism that the cost of implementing legislation is not handled properly, they don't put it in its proper context, may be valid. But I think we ought to know the cost of this legislation.

Ms. O'REILLY. I have no problem with the cost. I think that if the cost is going to be calculated on a simple four-page study that has all sorts of unfounded conclusions, that a second opinion would be very valuable.

The CHAIRMAN. The fact is that they may be exaggerating, they probably are to some extent, but bankers and S. & L. people and others are concerned about the forms they have to fill out, the time they have to take, the time of the consumer, too, and we ought to know about it. We ought to have as much information about that as possible and do our best to hold that down. I am convinced it is not inconsistent to argue we ought to reduce the cost by making enforcement more effective.

Ms. O'REILLY. I think we should make it as effective as possible, but it is a matter that consumers have been traditionally known to pay attention to.

The CHAIRMAN. Has your organization had any experience with the consumer credit enforcement experience by the Comptroller?

Ms. O'REILLY. We have had no direct experience with the Comptroller and the FDIC. When we get telephone complaints on issues that smack of a violation of any of these laws, we do refer them to the various agencies. But we don't have a facility for followup and we don't have the facility for a specific recordkeeping on that score.

We are amazed at the number of calls we get from people who do not know what the law is and who have not been told what the current law is by representatives of their own local financial institution when they have gone to employer or retailer.

The CHAIRMAN. As far as the FDIC and the Comptroller or the Federal Reserve are concerned?

Ms. O'REILLY. We have no direct experience.

The CHAIRMAN. You don't have any experience with it?

Ms. O'REILLY. No; we are primarily involved in terms of policymaking at the legislative level and I, being the only one on the staff who does this, simply don't have the time. I would love to work on the agency level as well, but we don't have the people or the money to do it.

The CHAIRMAN. Do you think the Fed should have initiated investigation for the purpose of issuing regulations against banks in deceptive practices?

Ms. O'REILLY. I think that would be very valuable.

The CHAIRMAN. In what areas?

Ms. O'REILLY. In terms of all the consumer protection laws we are talking about now. Also that the whole deal of the method of calculation of the interest rates is a major sore point to a lot of consumers. The various balancing methods can be used to deceive the consumer in terms of which is the best balance method to go by. It makes it very difficult for them to shop among the various banking institutions. I think that the Cleveland consumer group put together a study which I think will be very helpful. That is the kind of thing that the Federal Reserve Board could get involved in in terms of simple consumer education, if nothing else.

The CHAIRMAN. You were here, I noticed, for at least part of the testimony of the prior panel. You have been critical of the ineffective enforcement actions by the Federal agencies. Do you think they should be stripped of this power and it should be delegated to the States?

Ms. O'REILLY. I have very serious problems with delegating it to the the States because the 50 States are certainly not uniform in their dedication to consumer protection. I think that some of the suggestions of the panelists in terms of certainly the State has consumer protection laws that meet or exceed the national standards and have demonstrated their ability to enforce it, that that might be sufficient.

I might say on that whole issue of preemption, one of the most disturbing parts of our appearing before the Federal Reserve Board in April was the business witness who appeared before me who took pains to say to the Board in terms of the preemption, "I want you to know that there is no legislative requirement that would indicate that the Congress meet in terms of the question of contrary to," Congress is contrary to an equal credit amendment means different than, in other words, it should be preempting all States' laws. I set the record aghast because there is nothing about that in the satute at all. They are not going to preempt State laws. I even assumed the Board of Governors would call him on that. Instead, they thanked him for enlightening them on this. They profusely thanked him, so when they resolve this question, they will have the benefit of his experience and his judgment of the law. There wasn't even a staff person who corrected him on that. So that sort of shook my confidence in whether the Board even understands the law.

The CHAIRMAN. The various banking commissioners seemed to think that the States should be allowed to enforce the law, provided they had the competence and the will. That sounds good and it could be good if we would enforce it. But who determines that? Would you rely on the Federal Reserve Board to make that kind of determination? They seem to be about the best of three, and they are pretty weak.

Ms. O'REILLY. I would suggest possibly—and this is off the top of my head because I have not given it considerable thought—maybe a joint approach. Maybe a committee composed of representatives of the Banking Committee and the banking institutions themselves, so that you have the input from both the executive and the legislative branches. I think there might be more accountability if that were the fashion in which it was used.

The CHAIRMAN. You mean have some staff person from the Banking Committee because with our duties here it would be difficult for a Senator to give that kind of attention and the time it would deserve. You have to have a staff person delegated for that, I presume.

Ms. O'REILLY. I don't know if there is any precedent for that. You may have actually a panel that is balanced representative between the legislative and executive branches and industry and the public. But I am not impressed enough to give that power. I think they would be all too willing to accede to the States, so it would be out of their hair.

The CHAIRMAN. Thank you very, very, very much. We appreciate your testimony. It is always very competent and helpful.

The committee will stand in recess until 10 o'clock tomorrow and we will resume hearings on these questions.

[Whereupon, at 12:20 p.m., the hearing was recessed, to reconvene Wednesday, July 28, 1976, at 10 a.m.]

[The following material was received for the record:]

STATE OF WISCONSIN,
OFFICE OF COMMISSIONER OF BANKING,
DIVISION OF CONSUMER CREDIT,
Madison, Wis., August 12, 1976.

Hon. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing and Urban Affairs,
U.S. Senate, Washington, D.C.

Re enforcement of consumer credit legislation.

DEAR SENATOR PROXMIRE: The following comments are submitted in response to your request of July 15, 1976, for a statement from this Office on areas of concern to the committee in evaluating the consumer protection activities of the Federal Reserve, the Comptroller, and the FDIC. In conversation with members of the committee staff, interest was expressed in the regulatory framework within which this Office enforces similar consumer protection legislation in Wisconsin. My comments will be directed primarily to that area.

The Office of Commissioner of Banking is responsible for the implementation of the Wisconsin Consumer Act, a comprehensive consumer code which affects all aspects of the extension of consumer credit. The Act incorporates the credit disclosure provisions of the Federal Consumer Credit Protection Act (Truth-in-Lending) and also establishes maximum finance charge rates, delinquency charge rates, deferral charge provisions, as well as rebates on finance charges and credit insurance premiums in cases of prepayment. In addition to regulating credit disclosures and the charges associated with extensions of consumer credit, the Act prohibits a number of practices including the use of cognovit notes, consumer liability for creditor attorney fees, the financing of relatively small balances over long periods of time, the use of balloon payments, and the like.

The Office of Commissioner of Banking, in addition to its regulation of state banks, also licenses loan companies. Routine examination of banks and loan companies to insure compliance with the Wisconsin Consumer Act by this Office is handled by the Division of Consumer Credit. The examination staff reviews the consumer loan portfolio of the institution and reports any irregularities. Since these examiners are responsible for ensuring compliance with consumer credit laws, they develop considerable expertise in this area. They are in a position to offer advice to loan officers and management in the field to correct problems quickly before the same error is repeated in a number of transactions. This Office has authority to and does commence civil suit either in the form of a class action or as a direct action by the Administrator for enforcement of the Wisconsin Consumer Act where substantial or repeated violations are observed. However, these comments are limited to the adjustments this Office requires of licensees and banks as an administrative matter based upon the examination process to obtain voluntary compliance in less serious cases. The description of each irregularity is followed by an outline of the corrective action the creditor is asked to take in lieu of any more formal enforcement proceedings. These remedial procedures apply to irregularities noted in retail installment contracts purchased by the regulated institutions as well as to direct loans made by them to consumers. A close examination of retail installment contracts ensures that these documents are reviewed more thoroughly by personnel in the financial institution before they are accepted.

1. No credit disclosures given.

a. Financial institution forwards customer a completed credit disclosure statement.

b. Financial institution offers to credit customer's account in the amount of $25.00 or the amount of the finance charge, whichever is less.

c. Customer may accept the adjustment by signing an affirmation forwarded by the institution. If the customer does not accept the institution is to rebate the entire finance charge.

2. Annual percentage rate or finance charge disclosure left blank.

a. Financial institution supplies missing credit disclosure to customer in writing.

b. Financial institution offers to credit customers' account in the amount of $100 or the finance charge, whichever is less.

c. Customer may accept the adjustment by signing letter sent by the financial institution. If customer does not agree, financial institution is to credit account in the amount of the finance charge.

3. Failure to complete any sale or loan disclosure other than finance charge or annual percentage rate such as deferred payment price, amount financed, or dollar amount of down payment.

a. Provide customer with missing disclosure in writing.

4. Annual percentage rate is higher or lower than the actual relationship of the finance charge to the amount financed for the term of the transaction.

a. Financial institution is held to the disclosed annual percentage rate or finance charge, whichever is lower. For example, if institution disclosed annual percentage rate as 8% when it meant to disclose the equivalent of $8.00 per $100 per annum, the institution would be held to 8% per annum on the declining unpaid principal balance.

b. Institution provides customer with written credit disclosures accurately reflecting the amortization of the transaction, and reducing either the annual percentage rate or the dollar amount of the finance charge in the appropriate amount.

5. Dollar amount of total of payments is greater than the monthly installment times the number of installments (amortization schedule).

a. Institution notifies customer of error in amortization schedule in writing.

b. If customer agrees to pay the total of payments disclosed, no adjustment is necessary.

c. If customer does not agree to the altered amortization schedule, the account is credited in the dollar amount of the finance charge.

6. Customer does not execute separate affirmation for credit insurance but receives credit insurance policy and is charged for the premiums.

a. Paid accounts-total credit insurance premium and applicable finance charge is refunded to customer.

b. Open accounts: (i) Customer notified credit insurance is not required for extension of credit and of absence of separate affirmation; (ii) customer advised that credit insurance can be obtained by execution of separate affirmation at this time; and (iii) Customer advised that if credit insurance is not requested the premium and applicable finance charge will be refunded at this time.

7. Customer did not sign affirmation for credit insurance and did not receive policy although charged for the premiums.

a. Paid accounts-total insurance premium and applicable refund if refunded to customer.

b. Open accounts: (i) Customer advised that credit insurance is not required as a condition of extension of credit and that separate affirmation was not obtained and policy was not delivered; (ii) Customer advised that if customer indicates desire for insurance it will be written only for the remaining terms of the loan or sale; and (iii) Customer advised that if credit insurance is not requested the premium and applicable finance charge will be refunded.

8. Finance charge exceeds maximum permitted under Wisconsin Consumer Act.

a. Finance charge is reduced to the maximum rate allowed.

9. Balloon payments—payments are not substantially equal in interval or amount.

a. Compute finance charge as if total of payments were amortized over the disclosed term in equal monthly installments.

b. Reduce dollar amount of finance charge to reflect the lower yield.

10. Creditor takes security interest in exempt collateral.

a. Creditor releases interest in exempt collateral.

11. Creditor fails to provide co-signer with Explanation of Co-Signer Obligation.

a. Creditor releases co-signer from obligation.

Compliance with credit disclosure requirements has increased dramatically as a result of the implementation of these adjustment procedures, each of which inures to the benefit of the customer affected by the irregularity. Institutions are much more likely to develop internal procedures which will police consumer transactions and make certain that disclosures are correct when they realize that regulatory agencies will take action in each instance of noncompliance. This Office reviewed irregularites found in examinations of banks and finance companies over a four month time period. It was found that the most frequent error was a miscalculation of the rebate of finance charges and credit insurance premiums upon prepayment. The next most frequent error was an under-disclosure of the annual percentage rate. In other words, the dollar amount of the finance charge for the term of the transaction was greater than the disclosed annual percentage rate would indicate. The third most frequent error was the failure to disclose either the annual percentage rate or the dollar amount of the finance charge.

Of the three agencies mentioned in your letter the only one with which this Office has any direct contract in the enforcement of consumer credit legislation is the Office of Consumer and Saver Affairs in the Federal Reserve Board. That office is responsible for officially interpreting Regulation Z implementing the Federal Consumer Credit Protection Act. This contact was extremely frequent during initial stages of enforcement of the Consumer Act until greater familiarity with Truth-in-Lending was acquired at this level. The staff of the Office of Consumer and Saver Affairs was of invaluable assistance in this regard and we continue to enjoy an extremely close and harmonious relationship. I have personally been able to obtain prompt answers to all but the most abstract questions placed before the Truth-in-Lending section and have, in all instances, received a thoroughgoing analysis of any inquiry I have made. Moreover, with their cooperation this Office has obtained compliance with Truth-in-Lending not only by credit grantors located in Wisconsin but also by credit grantors who do business on an interstate basis and who come to our attention as a result of complaints filed by individual consumers.

I am also enclosing for your reference a copy of our first annual report on the activities of this Office under the Wisconsin Consumer Act as it contains an explanation of our method of processing individual complaints together with a copy of our most recent report. I appreciate the opportunity to comment upon our efforts in this area and would be more than happy to respond to any additional questions any member of the committee or the staff may wish to raise.

Very truly yours,

ROBERT A. PATRICK,
Attorney.

Enclosure.

STATEMENT OF VERNON L. EVANS, ASSOCIATE GENERAL COUNSEL, NATIONAL CONSUMER FINANCE ASSOCIATION

The National Consumer Finance Association (hereinafter referred to as "NCFA"),[1] organized in 1916, is the national trade association of companies engaged in the consumer credit business. NCFA greatly appreciates the opportunity to present its views on the need for reconsideration of the Consumer Credit Protection Act in view of the highly technical and complex regulatory scheme which has developed under this Act.

In considering the current status of these laws and their implementing regulations, it is useful to begin with the most recent Annual Report to Congress on

[1] NCFA represents approximately 900 member companies operating more than 17,000 loan and finance offices throughout the United States. The membership of NCFA is diversified, ranging from single small loan offices to substantial nationwide chain organizations engaged both in the business of direct lending and the purchase of sales finance paper on consumer goods.

Truth in Lending of the Board of Governors of the Federal Reserve System. (January 3, 1976) In reviewing creditors' compliance with Truth in Lending over the past year the Board told Congress that:

"Based upon reports from eight other Federal enforcement agencies and five exempt States, the Board believes that substantial compliance with the written disclosure requirements of the Truth in Lending Act is being achieved. As has been the case in past years, the general consensus among the Federal agencies and the exempt States is that the larger creditors, who have access to legal counsel and who are thus better able to handle the complexities of the Act and Regulations, have the best record of compliance. The compliance record of the smaller creditors is not as good, but continues to improve as their knowledge of the Act increases. The enforcement agencies and the States generally feel that most violations of the Act are technical in nature, resulting from inadvertent error or a lack of understanding, particularly with regard to irregular complex transactions . . ."

This Report indicates that, in the opinion of the Board, creditors are generally complying with the provisions of the Truth in Lending Act and Regulation Z, particularly the large creditors who have a sufficiently staffed legal department to be cognizant of the nuances of the Regulations. We have no doubt that similar reports will be made about the Equal Credit Opportunity Act and Regulation B in the years to come.

If compliance levels are high, what then is the source of the problems with these laws and regulations that are generally conceded to exist? The Board's brief summary indicates two of the main sources: (1) Many creditors simply do not have the legal counsel and operational ability to continually review and change forms and procedures to keep pace with ever-changing regulations, administrative interpretations and judicial decisions; and (2) Most violations of the statutes and regulations are technical in nature, having nothing to do with the creditors' conscientious efforts to comply.

Even companies whose operating personnel are well trained and whose law departments are thoroughly knowledgeable cannot be assured of being in compliance given the uncertainties created by conflicting judicial decisions and regulatory opinions. The most recent example of such technical "violation" was decided by the United States Circuit Court of Appeals for the Fifth Circuit in the case of *Pollock* v. *General Finance Corporation* (No. 75-2017 July 16, 1976). The Court held that the defendant's failure to separately itemize the amounts of loan proceeds (presumably, the actual dollar amount received by the borrower) violated the Truth in Lending Act. It stated that "[a]lthough the debtor could have determined the amount of the loan by the simple arithmetic procedure of subtracting the total insurance charges from the total amount financed, we determine that the statute does not require a customer to perform this function . . ."

The opinion also indicates the Court's belief that Regulation Z does not require such a disclosure; and indeed there is a 1975 staff opinion letter which reinforces that belief. Nevertheless, the Appellate Court held the failure to "itemize" the loan proceeds to be a violation of the Truth in Lending Act.

In another recent case, *Allen* v. *Beneficial Finance Co. of Gary, Inc.* (393 F. Supp. 1382, *affirmed* 531 F.2d 797) the Court decided that Regulation Z's requirement that disclosure be made in a "meaningful sequence" was violated by putting certain cost information in a subtractional sequence. The fact that a Federal Reserve Board staff opinion letter seemed to indicate that a subtractional order of disclosure is permissible under Regulation Z did not protect the creditor from liability.

These cases serve to illustrate the problem creditors face. In spite of the best efforts being made—at great expense and with the help of competent legal counsel—creditors are never sure whether they are in compliance with the laws and regulations.

These cases also indicate the judicial concern with adherence to technical requirements rather than the furtherance of the spirit of the laws.

Section 102 of the Truth in Lending Act (15 USCA 1601) states that "[i]t is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit."

In the seven years since the enactment of the Act, this laudable goal has been lost sight of. In those seven years there have been more than a thousand opinion letters from the Federal Reserve Board staff explaining what various provisions

of Regulation Z mean and many thousands of lawsuits regarding the Regulation, the interpretations and other court decisions. Much of this has little or no relationship to the informed use of credit by consumers.

While consumer finance companies, and other creditors, continue their efforts to comply, there is a growing belief that Truth in Lending does not aid the consumer in making meaningful comparisons of credit terms to any substantial degree.

The original form and intent of the Truth in Lending Act was to require the disclosure of cost information so that the consumer could comparison shop for credit. However, this credit cost disclosure law has evolved into law which requires disclosure of some of the terms of the consumer credit contract. The result can only be confusion on the part of the consumer as he attempts to determine his cost of credit. From the point of view of the creditor, the door is opened for arguable violations when selective disclosure of terms must accompany the basic cost disclosure requirements.

The time has come to review the statutes and regulations with a view toward determining whether they are fulfilling the intent of Congress—to help the consumer in the informed use of credit. In such a review by this Committee we believe there are several basic guidelines to keep in mind.

First, the statutes and regulations, and ultimately the information which the consumer receives, should all be kept as simple as possible. Federal Reserve Board Vice Chairman Stephen S. Gardner, in his letter of July 16, 1976 to the Chairman of this Committee observed that only a very limited number of credit terms are really helpful to the consumer in comparing and shopping for credit. These would include the annual percentage rate, the finance charge, the amount financed, and the repayment schedule. Indeed, further review may well disclose that these are the only terms that are really useful to the consumer. Creditors should not be required to disclose information that the consumer neither needs nor wants, information which may by its very quantity and complexity cause the more important information to be overlooked or ignored by the consumer.

Secondly, a review by this Committee should determine whether creditors need more help in their efforts to comply with the law and regulations. It is generally conceded that the vast majority of creditors are making an honest and conscientious effort to comply. Consideration should be given to the problems of compliance. When enacting an amendment to a statute more time should be allowed for the Federal Reserve Board to write whatever new regulations are needed, and for creditors to make whatever changes in procedures and forms are necessary. The problems that both the Board and creditors have had implementing and complying with the Equal Credit Opportunity Act indicate that one year may not be enough time.

Compliance would be faster and more widespread if creditors were given more effective guidance by the Board. The Board recently has adopted procedures implementing the provisions of Public Laws 94-222 and 94-239 which provide a defense for creditors who rely on interpretative letters of duly authorized officials of the Board in connection with Regulations B and Z. We believe it would also be helpful for the Board to develop model forms or portions of forms to be used by creditors. The use of such forms should not be required however. Creditors should be free to design their own forms to comply with the Regulations. But if they chose to use model forms approved by the Board, creditors should be protected from liability for alleged discrepancies between such forms and the Regulations.

Thirdly, the penalty provision of the Act should be reviewed. NCFA agrees with Vice Chairman Gardner's suggestion that this Committee should study the possibility of limiting the penalty provisions of the statutes to violations that actually interfere with the consumer's ability to make meaningful comparisons of credit terms.

While private actions are an important part of enforcement, the law should not be written in such forms as it is today, whereby it encourages suits which seek out technical statutory violations that have no relationship to the consumer's ability to shop for credit.

The basic information that the consumer needs should be stated in the statute of regulation and creditors should be required to disclose that information to the consumer. Once that is done however, creditors should be protected from further liability for technical violations which do not have any substantial effect on the consumer's ability to make meaningful comparisons of credit terms. The legal test of liability should be substantial compliance with basic disclosure requirements rather than strict adherence to myriad hyper-technical regulations and interpretations of regulations. It is the responsibility of Congress in writing the statutes and the Federal Reserve Board in writing the regulations to assure that creditors who comply with basic disclosure requirements are not required to defend themselves against accusations of technical violations in the courts which do not have the time or the necessary expertise to decide such issues.

NCFA hopes that this Committee will begin a thorough review of the Truth in Lending Act both in terms of what the original intent of Congress was in enacting the law and in terms of the problems that exist today. The members of NCFA, like most creditors in the country, want to obey the Truth in Lending law. The problems arise when creditors are unsure of what the law requires and how they can comply. We are ready to cooperate with the Committee and its staff in an effort to eliminate these problems and look forward to doing so.

OVERSIGHT ON CONSUMER PROTECTION ACTIVITIES OF FEDERAL BANKING AGENCIES

WEDNESDAY, JULY 28, 1976

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
Washington, D.C.

The committee met at 10:11 a.m., pursuant to recess, in room 5302 Dirksen Senate Office Building, Senator William Proxmire (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

Today is the second of 3 days of oversight hearings into the enforcement efforts by Federal agencies of the Freedom of Information Act. We heard yesterday some harsh criticism of these agencies. We heard they are not doing an effective job of consumer protection. This morning we will hear further on this subject from two organizations whose members are vitally concerned with the matter of compliance by bank regulatory agencies: The Consumers Union and the National Organization of Women.

Enforcement of consumer protection laws has another side, and that is the quality and content of the regulations to be enforced. I am very concerned about overly complex requirements in truth-in-lending.

I was, therefore, gratified that the Federal Reserve Board sent up to the committee limited recommendations for truth-in-lending amendments which I introduced last Friday in the Senate. The Board also suggested certain other areas where the act might be more substantially simplified; and I hope our final witnesses this morning will comment generally on these proposals.

These witnesses include Prof. Jonathan Landers, serving currently as a research scholar for the American Bar Foundation. Professor Landers is engaged in extensive study of the Truth-in-Lending Act and is in an excellent position to shed light on why that act is so complicated and how its provisions can be simplified.

Our final witnesses this morning will be representatives of creditors, creditors who every day must comply with truth-in-lending. These witnesses, too, I hope will be making constructive suggestions on how that legislation can be improved.

Our first witnesses this morning are Peter Schuck of Consumers Union and Linda Cohen of NOW.

Mr. Schuck, why don't you go ahead first?

STATEMENT OF PETER SCHUCK, CONSUMERS UNION

Mr. SCHUCK. Thank you, Mr. Chairman.

We are happy to be able to testify today concerning the enforcement by the banking agencies of the truth-in-lending law.

My prepared statement relates an incident which we have been involved in recently which I think highlights very dramatically the attitude that appears to prevail in the Office of the Comptroller with respect to enforcement of the act. I can't say whether the example which I am about to relate is typical or atypical of the attitudes of the other regulatory agencies.

One of the interesting things is that this instance would not even have come to light at all had I not been a member of the Advisory Committee of the Comptroller.

One suspects there are a great many similar incidents which do not come to light which we would be interested in knowing about which bear on this issue.

At a meeting of the Advisory Committee in early May, we learned through a report by one of the staff members of the Comptroller's Office that they had conducted a comprehensive examination which had revealed what they called, "an alarming degree of substantial noncompliance" with regulations by the surveyed banks. They were quite anxious that the banks improve their performance. They then went on to other subjects.

After the presentation had been made, I asked the staff member whether the results of the survey had been made public. He said that they had not been, that the information was confidential and could not be released. I pointed out that whatever the applicability of the Freedom of Information Act generally, it was clear that at least if the names of the banks were deleted, the act would not apply and that this information would be highly useful and informative to Congress and to the public generally.

He said no, the information was confidential; and at this point, the Comptroller interjected and said that if the names were deleted, he would be prepared to make the results public.

Shortly thereafter, I made a Freedom of Information Act request for the results of the survey. I have spent the last 3 months trying to obtain those results without success; and I would guess that we are going to have to file suit in the next several weeks under the Freedom of Information Act to obtain them.

First, they claimed certain exemptions under the Freedom of Information Act which seemed to us clearly inapplicable. The first was that the survey results were an interagency memorandum, which it clearly is not because the data comes from private parties.

Second, they claimed that it constituted an examination report exempted from disclosure under the Freedom of Information Act, exemption 8. That seemed to us inapplicable because that exemption was designed to protect the confidentiality of information which relates to solvency and financial integrity of banks, not information relating to compliance with consumer protection laws.

In my prepared statement, I relate the subsequent efforts we made to try to convince the Comptroller's Office to release this data. Most recently, they have taken the position that not only do those exemptions apply, but three other exemptions apply, none of which I think you would find persuasive.

Finally, they argue that title 12, United States Code, section 481, protects the confidentiality of this kind of compliance information.

Not only does section 481 not say anything at all about disclosure of this kind of information; section 481 empowers the Comptroller to publish examination reports where a bank does not accept the suggestions or recommendations made by his office subsequent to an examination.

Far from supporting the maintenance of secrecy of this data, it in fact supports our allegation that the information ought to be disclosed.

As I indicated, we are still trying to get this data and will probably have to bring suit.

On July 8, I and Jonathan Brown of the Public Interest Research Group met with the Comptroller. We questioned him further about the nature of this survey. It turns out that a few of the violations at least, which they had uncovered, were in their view quite substantial, involved a lot of money and had occurred over a considerable period of time.

These were patterns of noncompliance about which they were quite concerned. I asked them whether they had informed the consumers who were victimized by these practices of what they had found. They indicated that they had not. I asked them whether the statute of limitations had run on the private remedies provided by the act, and they indicated that it probably had run.

We then asked them what kinds of remedial action they hoped to take, if they succeeded in negotiating compliance with these banks. They indicated that they simply hoped to effect a repayment of the overcharges by the banks. Therefore, there would be no penalty.

What is most striking about this pattern of enforcement is that it really is not enforcement at all. It is calculated, I think, to weaken the deterrents that are built into the act. The act, as you know, relies on two principal enforcement mechanisms. The first is administrative penalties, administered in this case by the Comptroller's Office. They have greatly weakened that deterrent by engaging in protracted and secret negotiations with the banks, by eschewing any effort to impose a penalty for these very substantial violations—in their own words—and by assuring that no public attention will be focused on banks that in fact have failed to comply with the law.

The second remedial mechanism—private remedies—provided under the act has also been essentially vitiated by this conduct. They have not informed the victimized consumers of what they have found. They have maintained secrecy. They have allowed the statute of limitations to run on the private remedies in the act.

The act, it seems to me, provides all sorts of protections to defendant banks against liability for technical violations of the act, including the bona fide error defense and 15-day correction period. I see no reason why the Comptroller could not make his findings public without being unfair to the banks and without breaching the confidentiality of borrowers.

One analogy which comes to mind is the Consumer Product Safety Act, which in section 6(b) permits the Commission to publicize its findings of lack of safety so long as it does so in a manner calculated to be fair to all parties.

In sum, the Comptroller's office does not appear to have applied nearly as much imagination to figuring out ways to protect consumers from apparent violations of the act as it has to figuring out new arguments for protecting apparent violators from the administrative and private remedies established by Congress.

This committee should press the new Comptroller to make public the results of all truth-in-lending compliance surveys and reports in a timely fashion, and in a way that protects the borrowers' confidentiality and is fair to the banks.

Consideration should also be given to extending the statute of limitations applicable to violations of the act. The regional offices of the bank regulatory agencies should follow the lead of many local consumer groups and conduct regular surveys by telephone and in person, officially and posing as consumers of compliance by local banks.

Finally, if these hearings produce evidence that the enforcement efforts of the other bank regulatory agencies are as weak as the Comptroller's appear to be, the committee should seriously consider removing enforcement authority from these agencies and placing it in the Federal Trade Commission.

The FTC, of course, has substantial expertise in the enforcement of truth in lending against nonbank creditors and would be free of the kind of regulatory ambivalence to which the bank regulatory agencies are so subject.

Thank you.

[The prepared statement of Peter H. Schuck follows:]

STATEMENT OF PETER H. SCHUCK, REPRESENTING THE CONSUMERS UNION OF UNITED STATES, INC.

Mr. Chairman and Members of the Committee: I wish to thank the Committee for inviting Consumers Union[1] to testify at these oversight hearings concerning the enforcement of the Consumer Credit Protection Act by the Federal bank regulatory agencies. As you may recall, Consumers Union was one of the early advocates of truth-in-lending legislation and we retain our interest in its vigorous enforcement.

It is for this reason that we wish to bring to your attention a dismaying instance of secrecy, sluggishness, and desultory truth-in-lending enforcement by the Comptroller's Office. I cannot say whether this example is typical or atypical of the activities and attitudes of the bank regulatory agencies, for I have not investigated this subject generally. This particular instance came to my attention in my capacity as a member of the Comptroller's National Advisory Committee, and I submit it to you for whatever light it may throw on the subject of these hearings.

During a meeting of the Advisory Committee in early May, a member of the Comptroller's staff mentioned that "a comprehensive examination" by their office had revealed "an alarming degree of substantial non-compliance" with Regulation Z by the surveyed banks, and indicated to the Advisory Committee (virtually all of whom were bankers) that the office was exhorting the national banks to "try to tighten up your controls".[2] I asked the speaker whether the results of this survey had been made public and he said that they had not been. When I asked the reason, he responded that the information was confidential. I pointed out that whatever confidentiality arguments might be made concerning some of this information, it was clear that at the very least, a summary of the survey

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[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide information, education, and counsel about consumer goods and services and the management of the family income. Consumers Union's income is derived solely from the sale of *Consumer Reports*, other publications and films. Expenses of occasional public service efforts may be met, in part, by nonrestrictive, noncommercial grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports*, with its almost 2 million circulation, regularly carries articles on health, product safety, marketplace economics, and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

[2] Transcript of May 3, 1976 National Advisory Committee meeting, p. 18.

results, without the names of banks, should be made public, particularly since the Act was designed so as to rely upon considerable private enforcement. At this point, the Comptroller, Mr. Smith, interjected to assure me that he would have no objections to releasing the findings, so long as no bank names were divulged.[3] Subsequently, the Office informed me that the survey had been conducted by means of letters from the regional offices to banks, which elicited written submissions by the banks, which were then analyzed by the Comptroller's Office.

On May 21, I submitted a formal request for the submissions which the banks had made, as well as the Office's analysis of those submissions. I explicitly requested the names of the banks. On June 7, my request was formally denied on the basis of exemptions 5 and 8 under the Freedom of Information Act, relating to interagency memoranda and "examination, operating, or condition" reports, respectively. I was also informed that since the noncompliance had turned up from "a localized test examination of the banks involved" which was neither a random nor statistical sampling of all national banks, "the results cannot be justly extrapolated to the national banking system as a whole" and that it would therefore be "unfair to single out these individual institutions for a subjective disclosure."

In my administrative appeal, dated June 9, I pointed out that exemption 5 did not apply, since the documents were not interagency memoranda but were received from private parties outside the agency and that exemption 8 did not apply, since that exemption was designed to protect information concerning the banks solvency or confidential financial condition, not information concerning the banks' violations of law. In addition, I stated that even if the Comptroller had the legal right to withhold the documents (which, in our view, he does not), the purposes of the truth-in-lending law would be served by a discretionary disclosure of the documents, and that the fact that the survey results could not necessarily be extrapolated to the entire system was a wholly inadequate reason for secrecy.

On July 2, the Comptroller's Office again denied my request citing three new exemptions, ignoring the arguments and authorities which I had cited, and directing my attention to 12 U.S.C. § 481, stating that "it appears that the Office does not have the unbridled discretion to release examination reports that you assert." 12 U.S.C. § 481, however, says nothing of the sort. It not only says nothing about withholding such reports from the public but in fact provides specifically that upon 90 days notice to a bank, the Comptroller may "publish" the examination report if the bank does not comply with the examiner's recommendations or suggestions within 120 days in a manner satisfactory to the Comptroller.

On July 8, I tried once again, pointing out that since our request did not extend to either the identity of bank customers or to any details of the financial transactions, but only to the names of the banks and the extent of their noncompliance with the law, the confidentiality argument was a red herring and certainly could not justify the wholesale and generalized withholding of the documents. I therefore requested the more particularized justification of nondisclosure that is required by law. *Vaughn* v. *Rosen*, 484 F.2d 820, 826–28 (D.C. Cir. 1973) *cert. denied* 415 U.S. 977 (1974). I have not yet received any response to my July 8 letter.

Several weeks ago, I and Jonathan Brown, of the Public Interest Research Group met with the Comptroller and some members of his staff. In response to our questions, they informed us that nearly all of the banks. which had been surveyed had been found to be in non-compliance,[4] that they deemed many of the violations to be "technical", but that a few of the violations had apparently occurred over some period of time and involved a great deal of money. They indicated that they were attempting to persuade the offending banks to repay the overcharges, but some of the banks, including some with substantial violations, continued their refusal to make restitution. I asked whether the Office had informed the victimized consumers of its findings, and was told that it had not. I then asked whether the statute of limitations had run on these violations while the Comptroller was secretly negotiating with the banks. The answer was "Prob-

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[3] *Id.*, p. 22.

[4] See also, letter dated March 1, 1976 from James R. Smith, Comptroller of the Currency, to Senator Joseph R. Biden, Jr., stating that "the number of violations noted in formal reports of examination since 1969 is substantial . . .".

ably". Mr. Brown inquired whether the restitution that the Comptroller's Office envisioned was simply restitution of the difference between what the consumer paid and what he or she should have paid; the answer was "yes", thus implying that no penalty for non-compliance was to be imposed.

What was perhaps most striking to me about this meeting was how pleased and proud the Comptroller and staff were of these efforts. They honestly believed that they were engaged in vigorous enforcement of the law and were protecting the rights of consumers. Indeed, they stated that they were upgrading their examination process to detect more such violations in the future.

I submit that the pattern of conduct by the Comptroller's Office that I have just described is not law enforcement at all, but is likely to have the effect of weakening the deterrents to violations of the law by protecting banks from the consequences of their violations. The Consumer Credit Protection Act relies for its enforcement principally upon administrative penalties meted out by the Comptroller's Office and other banking agencies, and private civil remedies invoked by victimized consumers. The protracted negotiations which have occurred (and continue to occur) with banks that have apparently engaged in systematic and substantial violations of the law make a mockery of the administrative deterrent envisaged by Section 108 of the Act. Similarly, the secrecy that shields banks from adverse publicity in the case of substantial violations weakens those deterrents. This is particularly true when the agency, even if successful in its negotiations, will not penalize the offending bank but will simply restore it to the position it would have been in had it not violated the law. An enforcement policy like this diminishes the incentive to comply with the law.

Moreover, by failing to inform the victimized consumer of what the agency has found, the Comptroller has extracted the only remaining tooth in the enforcement "bite" that Congress built into the Act. Congress recognized that private enforcement must be the mainstay of the Act, and to that end provided important private remedies in Section 130 of the Act including statutory minimum and punitive damages, statutory class actions, and statutory reimbursement for attorneys' fees and costs. Yet the Comptroller, by withholding his findings from the public—and particularly from the borrowers whose rights were violated—has allowed the statute of limitations on those rights to expire. Certainly, there is no legal bar to such disclosure; indeed, 12 U.S.C. § 481 contemplates this kind of disclosure [5] in precisely this kind of situation. Certainly, the Act provides all sorts of protection to the bank, such as the "bona fide error" defense and the 15-day correction period, and it is at least as feasible for the Comptroller or the bank to inform the public (or at least the victimized borrower) about apparent violations of truth-in-lending law in a manner that is fair to all parties as it is for the Consumer Product Safety Commission to inform the public about apparently unsafe products. See Section 6(b), Consumer Product Safety Act.

In sum, the Comptroller's Office does not appear to have applied nearly as much imagination to figuring out ways to protect consumers from apparent violations of the Act as it has to figuring out new arguments for protecting apparent violators from the administrative and private remedies established by Congress. This Committee should press the new Comptroller to make public the results of all truth-in-lending compliance surveys and reports in a timely fashion, and in a way that protects the borrowers' confidentiality [6] and is fair to the banks. Consideration should also be given to extending the statute of limitations applicable to violations of the Act. The regional offices of the bank regulatory agencies should follow the lead of many local consumer groups and conduct regular surveys by telephone and in person, officially and posing as consumers of compliance by local banks. Finally, if these hearings produce evidence that the enforcement efforts of the other bank regulatory agencies are as weak as the Comptroller's appear to be, the Committee should seriously consider removing enforcement authority from these agencies and placing it in the Federal Trade Commission. The FTC, of course, has substantial expertise in enforcement of truth-in-lending against non-bank creditors and would be free of the kind of regulatory ambivalence to which the bank regulatory agencies are so subject.

The CHAIRMAN. Thank you very much, Mr. Schuck.

[5] In fact, 12 U.S.C. § 481 contemplates disclosure, under such circumstances, of the *entire examination report*, not simply the portion to which the Comptroller objects.

[6] In the Comptroller's survey described above, the banks were encouraged to delete the names of borrowers when filling out the questionnaire.

STATEMENT OF LINDA M. COHEN, NATIONAL ORGANIZATION FOR WOMEN, ARLINGTON, VA.

Ms. COHEN. The National Organization for Women has taken an active role in instigating and insuring the passage of the Equal Credit Opportunity Act and has been actively involved in the promulgation of regulations to implement the ECOA and the recent amendments to the act.

NOW's testimony will be restricted to comments on our experience in dealing with the Federal Reserve Board in its role of drafting regulations to implement the act.

We shall additionally comment on two roles which we contend that the board should be involved in; namely, oversight of education and enforcement under the act.

To begin with, we believe that the responsibility for insuring that consumers' interests are protected was not one which the board desired to undertake.

In fact, the priority goal of the board is to assure the financial integrity and stability of financial institutions. In controversial situations, the board is accustomed to considering the effects of a given set of alternatives from a strictly "financial results" point of view. Such a role has been consistent with the board's overriding purpose.

In delegating to the board responsibility for insuring that consumers' interests are adequately protected under the ECOA, Congress gave the board a responsibility that the board was not accustomed to, since in its usual role the board has concerned itself strictly with the effects of an action on banking, fianance, and the economy in general.

Almost inevitably, the issue that has arisen in debating whether a proposed regulation should be finalized, has been whether the cost of implementation of the regulation by creditors was not too expensive to be justified by the benefit derived by consumers.

NOW has found that the board has consistently been more easily persuaded by arguments concerning the costs that would be incurred by creditors than it has by arguments of benefit to consumers. We attribute this phenomenon to a number of separate factors.

First, we believe that the board has been unable to temper its responsibility for the solvency of banks with the need for important consumer protection measures.

Second, the board is accustomed to considering the pros and cons of an issue primarily through a study of budgetary and statistical analyses.

While we agree that such analyses are relevant, we believe that it is every bit as important for the board to comprehend and consider consumer protection concerns as it is for them to consider costs to the creditor.

In addition to its traditional bias in favor of financial concerns, the board is hampered by a genuine lack of understanding of consumers' concerns.

Having never dealt with most of these concerns before, the staff working on these issues often lack a background which would enable them to comprehend the intricacies of the consumer viewpoint.

These same people, however, have usually had extensive experience in dealing with the creditors' viewpoint and are therefore considerably better able to comprehend the creditors' position and concerns.

This problem is compounded, through no fault of the board, by the relative inequality of resources of the creditors and the consumer representatives.

Most large creditors employ counsel and staff whose sole function is to perform research and analysis and prepare testimony for the creditor on laws and regulations that might adversely affect the creditors' interest.

These organizations allocate large amounts of money to such efforts. Most organizations representing consumers, on the other hand, have almost no budget to support such actions, and the large majority do not have even one full-time employee who is able to devote his or her full attention to how the same laws and regulations would affect consumers.

This gross disparity in resources results in the board's often receiving a great deal more input from creditors' lobbyists than from consumer representatives, and in the creditors' lobbyists being able to provide the board with more sophisticated and comprehensive data than consumer representatives are usually able to prepare.

NOW feels that the board should be cognizant of this disparity and should make every effort to remedy the disparity so that it has equal input on both sides of the question.

Yet the board has rarely if ever undertaken to perform a study or analysis "in house" on a hotly debated issue. Beyond this, the board has, in NOW's opinion, tended to accept creditors' positions and conclusions without conducting studies to determine if the statistics and/or conclusions are justified.

We urge that in order to fulfill its responsibility under this act, the board must be prepared to supplement and verify the input of both creditors and consumers' representatives by conducting its own independent research on important controversial issues.

One way in which the disparity in resources between consumer groups and creditors is exacerbated by the board is in the manner in which it has on occasion presented issues for comment.

At times, questions have been phrased in terms of providing the board with the results of extensive research which it is well aware that consumer representatives are unable to provide.

We suggest that in order to equalize the difference in resources and insure that the creditors' conclusions are not accepted without substantiation, basic research on important issues should be performed by the board itself prior to the promulgation of proposed regulations and that proposed regulations should be developed out of the board's own studies. At that point, consumer groups and creditors should be invited to comment on an actual set of proposed regulations rather than on an amorphous set of issues.

This procedure would serve to compel the board to make some tentative decisions based on the results of its own research and enable both consumer and creditors' representatives to be more useful to the board, since everyone's attention would be devoted to considering the impact of the proposed regulation.

NOW's experience has also indicated that the board in promulgating regulations under the ECOA, tends to view itself as a compromisor rather than a decisionmaker.

The board has frequently seemed considerably more intent upon working out a compromise that would appease both sides of an issue, than it has with coming up with the optimal solution.

We contend that the board has a duty to reach the conclusion that is most equitable in each situation, rather than attempting to take the action that will result in the least controversy.

The two remaining roles that we feel that the board should be more concerned with are education of the public in connection with their rights under the act and the enforcement of the act.

We see these two roles as complementary and their performance as vital to the integrity of the act. We believe that if consumers were adequately educated with regard to their rights under the act, more violations of the ECOA would be reported spontaneously, and enforcement of the act would become more effective and at the same time less burdensome for the agencies charged with this function.

The existence of what is potentially the most significant ECOA educational device has recently been threatened. The ECOA regulations presently provide that credit application forms must contain an "ECOA notice," which broadly sets forth the purpose of the act and informs the applicant of which agency is in charge of compliance for the creditor he or she is dealing with.

However, the latest set of proposed regulations promulgated by the Board in connection with the recent amendments to the ECOA, would require that the ECOA notice be provided only to rejected credit applicants.

This would eliminate the requirement that the notice be present on all application forms. The presence of the ECOA notice on credit application forms would be, in our opinion, one of the most effective devices imaginable to educate consumers who are involved in the use of credit, with regard to the existence and purpose of the act.

We believe that the promulgation of this proposed change, combined with the Board's failure to develop any viable educational program on the act, demonstrates its lack of concern with education as a vital issue.

NOW stresses that the ECOA is almost useless as a piece of remedial legislation if the public is not educated as to its content.

The Board has failed in its responsibility to set up a vigorous enforcement program under this act just as it has failed to develop a viable educational program.

In this regard, NOW believes that in order to bring the act to life, the Board must immediately take the initiative and spearhead a comprehensive ECOA education-enforcement program.

In addition, just as Congress recognized that funding for such purpose was necessary under the truth-in-lending law, we believe that Congress must now recognize the need for additional funding for education and enforcement under the ECOA.

Based on our foregoing comments, we consider it to be clear that Congress must make such an appropriation in order to support its obligation to the consumer and to fulfill the congressional intent in enactment of the ECOA.

Accordingly, NOW urges that this committee act promptly in formulating responsive legislation.

The CHAIRMAN. Thank you very much, Ms. Cohen.

[Complete statement of Ms. Cohen follows:]

STATEMENT OF LINDA M. COHEN, CREDIT TASK FORCE COORDINATOR THE NATIONAL ORGANIZATION FOR WOMEN

The National Organization for Women (NOW), with over 700 chapters representing every state and metropolitan area, is the largest feminist organization in the world. We are women and men who work actively to bring women into full participation in the mainstream of American society. The members of NOW are people who believe in the basic concept of equality for all.

NOW has taken an active role in instigating and ensuring the passage of the Equal Credit Opportunity Act (ECOA) and has been actively involved in the promulgation of regulations to implement the ECOA and the recent amendments to this Act.

NOW's testimony will be restricted to comments on our experience in dealing with the Federal Reserve Board (Board) in its role of drafting regulations to implement the ECOA. We shall additionally comment on two roles which we contend that the Board should be involved in; namely, oversight of education and enforcement under the ECOA.

§ 502 of the ECOA states ". . . Economic stabilization would be enhanced and competition among the various financial institutions and other firms engaged in the extension of credit would be strengthened by an absence of discrimination on the basis of sex or marital status . . ." Our experience has led us to believe that the Board does not consider this to be the case.

To begin with, we believe that the responsibility for ensuring that consumers' interests are protected was not one which the Board desired to undertake. In fact, the priority goal of the Board is to assure the financial integrity and stability of financial institutions. In controversial situations, the Board is accustomed to considering the effects of a given set of alternatives from a strictly "financial results" point of view. Such a role has been consistent with the Board's overriding purpose.

In delegating to the Board responsibility for ensuring that consumers' interests are adequately protected under the ECOA, Congress gave the Board a responsibility that the Board was not accustomed to, since in its usual role the Board has concerned itself strictly with the effects of an action on banking, finance and the economy in general. Almost inevitably, the issue that has arisen in debating whether a proposed regulation should be finalized, has been whether the cost of implementation of the regulation by creditors was not too expensive to be justified by the benefit derived by consumers. NOW has found that the Board has consistently been more easily persuaded by arguments concerning the costs that would be incurred by creditors than it has by arguments of benefit to consumers. We attribute this phenomenon to a number of separate factors.

First, we believe that the Board has been unable to temper its responsibility for the solvency of banks with the need for important consumer protection measures. We do not find this surprising, since the Board has been worrying about the financial integrity of banks for many years, whereas it has been called upon to concern itself with consumers' issues under the ECOA for only the last year. It must be recognized by Congress that it would be almost impossible for an agency that has concerned itself solely with financial matters since its inception, to be responsive to consumer interests overnight.

Second, the Board is accustomed to considering the pros and cons of an issue primarily through a study of budgetary and statistical analyses. While we agree that such analyses are relevant, we believe that it is every bit as important for the Board to comprehend and consider consumer protection concerns as it is for them to consider costs to the creditor. Yet the Board is more comfortable with cost figures than it is with the assertions put forth by consumer representatives concerning the effects a given action will have on the protection of a consumer's rights. It is a great deal simpler to convince a group of economists and bankers that it will be very costly for a creditor to implement a proposed regulation by showing them a projected cost figure, than it is to convince them that the benefit that the consumer would derive from such an action would be at least commensurate with the cost to the creditor.[1] The benefits of consumer protection just do not lend themselves to expression in numbers. Thus, when faced with an issue involving on the one hand, cost statistics put forth by creditors, and on the other, testimony presented by consumer representatives as to the effect an action would have on consumers, the Board will usually find it much easier to relate to, and assign importance to, the statistics.

In addition to its traditional bias in favor of financial concerns, the Board is hampered by a genuine lack of understanding of consumers' concerns. Having never dealt with most of these concerns before, the staff working on these issues often lack a background which would enable them to comprehend the intricacies of the consumer viewpoint. These same people, however, have usually had extensive experience in dealing with the creditors' viewpoint and are therefore considerably better able to comprehend the creditors' position and concerns.

This problem is compounded, through no fault of the Board, by the relative inequality of resources of the creditors and the consumer representatives. Most large creditors employ counsel and staff whose sole function is to perform research and analysis and prepare testimony for the creditor on laws and regulations that might adversely affect the creditor's interest. These organizations allocate large amount of money to such efforts. Most organizations representing consumers, on the other hand, have almost no budget to support such actions, and the large majority do not have even one full-time employee who is able to devote his/her full attention to how the same laws and regulations would affect consumers. The gross disparity in resources results in the Board's often receiving a great deal more input from creditors' lobbyists than from consumer representatives, and in the creditors' lobbyists being able to provide the Board with more sophisticated and comprehensive data than consumer representatives are usually able to prepare.

NOW feels that the Board should be cognizant of this disparity and should make every effort to remedy the disparity so that it has equal input on both sides of a question. Yet the Board has rarely if ever undertaken to perform a study or analysis "in house" on a hotly debated issue. Beyond this, the Board has, in NOW's opinion, tended to accept creditors' positions and conclusions without conducting studies to determine if the statistics and/or conclusions are justified. We urge that in order to fulfill its responsibility under the ECOA, the Board must be prepared to supplement and verify the input of both creditors and consumers' representatives by conducting its own independent research on important controversial issues.

One way in which the disparity in resources between consumer groups and creditors is exacerbated by the Board is in the manner in which it has on occasion presented issues for comment. At times, questions have been phrased in terms of providing the Board with the results of extensive research which it is well aware that consumer representatives are unable to provide. We suggest that in order to equalize the difference in resources and ensure that creditors' conclusions are not accepted without substantiation, basic research on important issues should be performed by the Board itself prior to the promulgation of proposed regulations and that proposed regulations should be developed out of the Board's own studies. At that point, consumer groups and creditors should be invited to comment on an actual set of proposed regulations rather than on an amorphous set of issues. This procedure would serve to compel the Board to make some tentative decisions based on the results of its own research and enable both consumer and creditors representatives to be more useful to the Board, since everyone's attention would be devoted to considering the impact of the proposed regulations.

Turning to a related issue, NOW's experience has indicated that the Board in promulgating regulations under the ECOA, tends to view itself as a compromisor rather than a decision maker. The Board has frequently seemed considerably more intent upon working out a compromise that would appease both sides of an issue, than it has with coming up with the optimal solution. We contend that the Board has a duty to reach the conclusion that is most equitable in each situation, rather than attempting to take the action that will result in the least controversy. We do not believe that the board has been operating satisfactorily in this regard.

The two remaining roles that we feel that the Board should be more concerned with are education of the public in connection with their rights under the ECOA, and enforcement of the Act. We see these two roles as complementary and their performance as vital to the integrity of the Act. We believe that if consumers were adequately educated with regard to their rights under the Act,

[1] In fact, the Board's overwhelming preoccupation with matters of finance is discernable in a recent request dated April 1, 1976, for comments regarding implementation of the recent amendments to the Act. One of the questions to be addressed by commentors was how much implementation would cost creditors. The question did not address itself at all to the benefits or detriments to consumers that would ensue from implementation of the regulation.

more violations of the ECOA would be reported spontaneously, and enforcement of the Act would become more effective and at the same time less burdensome for the agencies charged with this function.

The existence of what is potentially the most significant ECOA educational device has recently been threatened. The ECOA regulations presently provide that credit application forms must contain an "ECOA Notice", which broadly sets forth the purpose of the Act and informs the applicant of which agency is in charge of compliance for the creditor s/he is dealing with. However, the latest set of proposed regulations promulgated by the Board in connection with the recent amendments to the ECOA, would require that the ECOA Notice be provided only to rejected credit applicants. This would eliminate the requirement that the Notice be present on all application forms. The presence of the ECOA Notice on credit application forms would be, in our opinion, one of the most effective devices imaginable to educate consumers who are involved in the use of credit, with regard to the existence and purpose of the ECOA. We believe that the promulgation of this proposed change, combined with the Board's failure to develop any viable educational program on the ECOA, demonstrates its lack of concern with education as a vital issue. NOW stresses that the ECOA is almost useless as a piece of remedical legislation if the public is not educated as to its content.

The Board has failed in its responsibility to set up a vigorous enforcement program under the ECOA just as it has failed to develop a viable educational program. In this regard, NOW believes that in order to bring the ECOA to life, the Board must immediately take the initiative and spearhead a comprehensive ECOA education-enforcement program. In addition, just as Congress recognized that funding for such purpose was necessary under the Truth in Lending law, we believe that Congress must now recognize the need for additional funding for education and enforcement under the ECOA. Based on our foregoing comments, we consider it to be clear that Congress must make such an appropriation in order to support its obligation to the consumer and to fulfill the Congressional intent in enactment of the ECOA. Accordingly, NOW urges that this Committee act promptly in formulating responsive legislation.

The CHAIRMAN. I want to thank both of you for strong, vigorous statements. You both did a skillful job of abbreviating your statements.

Without objection the entire statements will appear in full in the record.

Mr. Schuck, I support your position emphatically. Secrecy should not affect the disclosure of information regarding compliance with the consumer protection laws.

You are right in making that distinction that it may imply and does imply the purpose of the provisions.

There are cases where it wouldn't be in the public interest to disclose information. That would not be in the case with respect to enforcement of the consumer protection laws.

I think you are right.

You also indicate, as I understand it, that the banks should be subject to a penalty, not simply a matter of telling whether there was a violation and doing nothing further.

Obviously, if you are going to deter future violations, you have to have an effective kind of law. I agree there.

Do you have any knowledge, Mr. Schuck, of what action the Comptroller has taken with regard to the violations that they have turned up in his survey?

Mr. SCHUCK. According to the Comptroller himself, they have been engaged in negotiations for many months with these banks. Some of them have complied; some of them refuse to acknowledge their obligations to make restitution.

He exhibited considerable frustration over some of the more substantial violations in which he had not been able to effect a restitution.

The CHAIRMAN. At any rate, all they have to do is make restitution. There is no incentive at all to comply with the law?

Mr. SCHUCK. That's right.

The CHAIRMAN. You clearly believe, as I have said, that the Comptroller should disclose violations both to the public and to the victimized consumer.

However, although you make a very strong case, this requirement that this disclosure be made is not explicit in the law now.

Should it be; and, if so, can you suggest how it should be done?

Mr. SCHUCK. As I have indicated, section 481 of title 12 is really quite an extraordinary provision in the sense that it compels the Comptroller to make the entire examination report public if the bank refuses to accept any recommendation or suggestion that the Comptroller's office may make, regardless of whether it is a substantial one or not.

The bank must comply in a manner satisfactory to the Comptroller. He has very broad authority now to publish. There is nothing that makes it mandatory for him to publish, except perhaps the Freedom of Information Act.

The CHAIRMAN. That's why I am asking you whether we should make it mandatory.

Mr. SCHUCK. I think that exemption 8 does and should make mandatorily disclosable all information of this type. I must say in candor, however, that the exemption 8 as written is not terribly explicit along those lines.

Our lawsuit, which I expect we are going to have to file, would be the first one to litigate the meaning of exemption 8, and I would like to see that clarified by legislation.

I think litigation is not the best way to do this. It should be clarified so that exemption 8 applies only to that information which if made public might trigger a serious lack of confidence among the public generally about the banking system generally.

The CHAIRMAN. You suggest that enforcement authority ought to be taken away from the Federal Reserve Board and given to the Federal Trade Commission.

Would you include the Fed's present authority to write regulations along with the authority to enforce the law?

Mr. SCHUCK. It seems to me that the Fed has a good deal of input to make into any regulations under truth-in-lending.

The ultimate authority, I think, could well be the Federal Trade Commission which has a great deal of experience in this area.

I didn't make that a flat recommendation, but rather urged that if these hearings develop the kinds of evidence that I think they will develop, that that be seriously considered.

It would be a major step to take. I think it should only be done if they know the agencies are failing in their job. If the Comptroller's office is any evidence, I suspect that that recommendation would hold.

The CHAIRMAN. It is pretty hard to achieve, though, especially in view of the argument you made that it would be very duplicative.

You have the regulatory agencies with the responsibility for examining and enforcing laws with respect to banking institutions.

Now, if you have another agency that comes along, that has another kind of responsibility, doesn't that create a confusion and a waste of enforcement capacity?

Mr. SCHUCK. That would depend upon the relationship that was worked out between the two agencies.

There certainly are precedents under existing law for that kind of split authority.

For example, in the area of food additives, the Food and Drug Administration sets tolerances for certain chemicals in food, for example, DES; whereas, the Department of Agriculture actually enforces those in the field.

I don't think the fact that it is in two agencies rather than one would necessarily be a bad thing. It would depend very much upon the kinds of cooperative arrangements that could be worked out.

The CHAIRMAN. Yesterday we had some of the most competent and successful State banking commissioners testify.

They argued that in their States—and they agreed it wouldn't apply to all States—they thought in their States the States ought to enforce truth in lending.

They suggested where the States are able to do the job, have the capacity, and the will, that they should have the authority to enforce truth in lending.

How would you feel about that?

Mr. SCHUCK. I don't think I am in a position to comment.

I don't know how well they are doing the job at present. I understand that in most States, the enforcement resources are simply not available to the States or they haven't made them available.

Federal authorities necessarily must fill that vacuum. To the extent that the States are in fact capable of it, I suspect that if a cooperative arrangement could be worked out with the Federal regulatory agencies, that would probably be a good thing.

The CHAIRMAN. You have a situation in Massachusetts, for instance, which had a truth-in-lending law which preceded ours.

They were the first. They made it possible for us to have a national truth-in-lending law. They have a large number of people enforcing the law; and they find that with respect to some Federal institutions, Federal savings and loans, for instance, that they are prohibited from enforcing the State law, protecting the consumer, by the Home Loan Bank Board, which is the Federal agency that has responsibility for Federal savings and loans.

That seems to me to be a most unfortunate situation.

They pass a law to protect the consumer and the Federal agency says, "Forget it: as far as we are concerned, you can't do that with respect to the Federal savings and loans."

Mr. SCHUCK. One partial answer to this problem, I think, is greater encouragement to private enforcement of this law.

Congress clearly intended that that be a major mechanism for redressing injuries under the Truth-in-Lending Act. I think that that could be encouraged if the secrecy that is now maintained by those regulatory agencies, which have access to the data, were terminated.

I think there would be enough incentive on the part of the private bar, and private citizens generally, particularly in view of the minimum damages that Congress has enacted, to pursue violations if they had the information to establish their case.

The CHAIRMAN. Let me ask you, Ms. Cohen, you don't seem to be as anxious to take enforcement away from the Fed or the other regulatory agencies, the Comptroller, the FDIC, as Mr. Schuck does.

Is that correct, that you are content or at least resigned to having major enforcement responsibility rest with the Federal agencies?

Ms. COHEN. I assume that at this point it is kind of late to consider giving it to another agency.

I think that I would have preferred that it be given to the Federal Trade Commission or the National Bureau of Consumer Credit to begin with.

At this point I think I am more interested in trying to make what we have now work.

The CHAIRMAN. You emphasize the need for education. I think that is a very good point.

What educational efforts have the Fed and other agencies made and what precisely should they do that they are not doing now?

Ms. COHEN. The Federal Reserve Board began working on a brochure which they intended to distribute in large quantities on the meaning of the Equal Credit Opportunity Act. It was to be written in lay language for the distribution to a majority of consumers rather than to creditors.

To the best of my knowledge, as of about a month or two ago, they had stopped work on that brochure.

The passage of the amendments to the act made it necessary to make some changes to the brochure. From that point on they never got back to working on the brochure as far as I know.

They got into drafting regulations to complement the amendments.

I think a brochure of that type would be very useful. I don't think they had gotten into education in any large way, that is, education of consumers. I think they have been concentrating on educating the creditors, which, of course, is very important. I am not underestimating the need for that.

I think that some of the ideas that I have heard from the Federal Reserve Board would not work. For example, they had an idea of passing out posters which would publicize the existence of the Equal Credit Opportunity Act. I don't think that that idea would be as useful as brochures and a campaign of sending people out to talk to as many consumers as possible, or as the Equal Credit Opportunity Act notice on application forms. Those types of things I think would be much more effective.

The CHAIRMAN. It seems to me the effective way to get education is to provide it when people actually go through the act of securing credit.

I think if you just get a group of consumers there and assume they are going to learn much, I think you are going to unfortunately be disappointed.

People are distracted; they have many other things to think about. Anything we can do when they borrow, at that point, there is made available to them a brochure, of something that gives them an opportunity to understand what their rights are and how they can shop for credit and what the true annual rate means.

I think anything of that kind would be very helpful.

Do you think enforcement would be enhanced if the banking institutions instituted separate examinations by separate examiners for bank compliance with consumer protection laws rather than have just the examiners who go in and go through the usual process?

Ms. COHEN. I would like to comment before I answer that, if I may, on your previous comment; that is, that it is most useful for the consumer to receive information on the act at the time they are applying for credit. I would like to emphasize that the Equal Credit Opportunity Act notice which is provided for in the regulations as they stand now would be on every credit application form basically and would provide information as to the basic purposes of the act and the compliance or enforcement agency.

That is why I thought that the proposed change in the regulation is so devastating, because only people who were denied credit would receive that notice at this time.

The CHAIRMAN. You make that point and make it very well, I think, in your statement.

Ms. COHEN. Thank you.

On the question that you just posed to me, I think that from what I understand, the examiners who are being sent to check compliance are not being educated adequately with regard to what to look for and how to monitor compliance. I am not knowledgeable enough in regard to exactly how these examiners work to say whether they should examine separately for compliance under the Equal Credit Opportunity Act, nor am I sure that this is necessary. What I think is necessary is that they be educated and that there be some effective compliance monitoring system development that they become aware of, so that we can actually have effective monitoring.

The CHAIRMAN. What do you think we should do to change the attitude of people who are responsible for regulation writing, education, and enforcement? Do they need a change in the law? Do they need more money? Do they need changes in personnel? What do you think is the most important thing we can do, or all those things?

Ms. COHEN. Well, I think it is necessary to provide money for education, for one thing. I also think that the people that I have met with in regard to the drafting of the regulations have often come from a creditor viewpoint background; and I don't think there is sufficient awareness.

The CHAIRMAN. That is the point Ms. O'Reilly made yesterday. The problem is it is difficult to get anybody with a consumer credit background. This is such a new field. It is only in the last 7 or 8 years we have had legislation on the national level, and very little on the State level.

I think about all we can do is take people with a credit background and provide training for them.

Ms. COHEN. I think that if some additional funding was provided which would enable the Federal Reserve Board to do more inhouse research, they would at least have the opportunity to review more carefully the consumer viewpoint on some of these issues.

The CHAIRMAN. Would you like to comment, Mr. Schuck?

Mr. SCHUCK. Yes; I think there is something else that could be done. About 4 or 5 months ago, we petitioned several Federal agencies making the argument that each of them possessed inherent authority to reimburse consumer, public interest, and small business groups who wished to participate in their regulatory proceedings where the groups could make a showing both of poverty and a showing that they—if properly funded—could make a useful contribution to the proceedings in order to flush out the administrative record on which these decisions are to be made.

Subsequent to that time, the Comptroller General issued an opinion in which he confirmed our view of the existing law, that is, that the agencies in fact possess that authority. That is the authority which Congress gave the Federal Trade Commission by statute.

I think the Federal Reserve Board, in particular, could use that kind of input from sources of information, values, and arguments from which it rarely hears.

I think the money is available. It wouldn't cost them a great deal. I think that properly administered, this could provide the kind of voice that your question goes to.

A model exists right now in connection with the Federal Trade Commission's section 18 authority. I think that it ought to be implemented by the banking authorities as well.

The CHAIRMAN. I want to thank both of you very much. Most helpful testimony.

Our next witness is Mr. Jonathan Landers, visiting scholar, American Bar Foundation, Chicago.

STATEMENT OF JONATHAN LANDERS, VISITING SCHOLAR, AMERICAN BAR FOUNDATION, CHICAGO

Mr. LANDERS. Mr. Chairman, thank you for inviting me to testify here. I do want to emphasize that my testimony here is my own and does not represent the views of any organizations with which I am affiliated.

We all know that something has gone amiss in the Truth-in-Lending Act.

The CHAIRMAN. May I interrupt you to say that we are honored to have you, Mr. Landers. You have a 25-page statement. If you read that statement, that is all we will be able to do this morning. I would appreciate it if you could abbreviate it in 7 or 8 minutes. We will put the entire statement in the record at the end of your testimony.

Mr. LANDERS. I understand, sir. We all know that something has gone amiss with the Truth in Lending Act. From the consumer's point of view the typical truth-in-lending statement is virtually inscrutable, ranging from 1 foot to 2 feet in length. From the creditor's point of view, it has become virtually impossible to formulate and devise a statement that is in full compliance, no if's, and's, or but's. From the public's point of view there is the specter of increasing amounts of litigation, increasing some 500 percent in the last 4 years. The present level of 2,200 Federal cases really understates the problem. There are a number of cases in State courts, both as original actions and as counterclaims. In addition, that Federal figure does not include cases which are never filed but are settled before being filed. And, the Federal litigation is concentrated in three districts. There are lesser, but substantial amounts in four or five others. If truth-in-lending cases were to be prosecuted with the same vigor in a number of districts, we might have 10,000 or 15,000 cases rather than the present 2,200 cases.

I think the problem is actually more serious than it appears to be. The question becomes how we got into this situation and what we can do about it. It seems to me we got into it for two basic reasons. One is that as the legislation developed, there was a shift from an emphasis on disclosing the cost of credit to an emphasis on selectively disclosing some of the underlying terms of the credit transaction.

The second reason that we are in this situation is because the truth-in-lending lawsuit has turned out to be the most effective remedy for consumer grievances of any type at all, including grievances that have absolutely nothing to do with truth in lending.

Let me elaborate briefly on those two points. Throughout the decade of the 1960's, when truth in lending was being considered, I think all the major proponents and opponents saw it as cost disclosure legislation. The consumer would get a statement of the cost of credit, the annual percentage rate, the finance charge. He would take that statement and decide whether to enter credit transactions and use that statement as the basis of shopping for credit.

In this way, the purposes of the act as set forth by the original Congress would be satisfied; presumably there would be more competition among credit grantors and consumers could use credit more effectively. However, there turned out to be a subtle shift in the disclosure legislation with the result that the final bill as enacted by the Congress provided for significant disclosures of the terms of the credit transaction, far beyond the cost disclosures themselves. In addition, these requirements of term disclosure became even stronger in regulation Z which added more requirements of term disclosure and even more requirements were added in various Federal Reserve Board interpretive rulings, and informal letter opinions.

So that on the one hand we had this shift over from credit cost disclosure to credit term disclosure. At the same time, there was somewhat of a shift in philosophy. The original philosophy was a very functional one. Consumers would get the disclosures and use them to decide on credit transactions.

But this shift over in philosophy was that now consumers would get the information and that the test would be sort of an "All relevant information" type of test. In other words, if one could hypothesize some way in which a consumer could use a particular disclosure, disclosure would be required even though it would not necessarily be used for comparative purposes or shopping purposes.

Now, let me just give one example of the problems that this caused. The original Truth in Lending Act provided for disclosure of default charges, and by this, I think it is generally agreed is included the typical $5 charge for missing a payment. Now, there have been between 50 and 100 cases in the Federal courts, perhaps even more, which have raised the question of whether the right of acceleration, that is the creditor's right to declare the full balance due, is a default charge. The argument can be made that this is much more serious from the consumers point of view than a $5 penalty, because it declares the entire obligation due. If the test is all relevant factors, this is obviously something that a consumer would want to know; and hence you have a large number of arguable violations.

Now, this shift from credit cost to credit term disclosure became significant in the light of the truth-in-lending suit as the most efficient and effective litigational tool for consumers, for any kind of grievance.

How do truth-in-lending cases originate? Our study suggests four basic ways that these cases originate. First, and most commonly, there is some sort of product related dispute between the creditor and the consumer. The merchandise may break down, there may be a failure to service, or there may be a misrepresentation alleged of some sort. It turns out that the truth-in-lending case is a more efficient remedy than a State law lawsuit on the underlying claim.

The second way these cases originate is in situations where consumers cannot pay their debts at all. Generally, they are being pressured by creditors, and they go to a lawyer, just to get the pressure off. The lawyer says, "Well, we can file a truth-in-lending case here, so that in this sense a truth-in-lending suit is serving as somewhat of a substitute for bankruptcy and insolvency relief. It is quite clear that the original Congress never intended truth-in-lending suits to be a substitute for bankruptcy, but this is the way they are being used.

The third way these cases originate is that there is some dispute on the credit terms although not necessarily the same dispute as gives rise to the lawsuit. Often the consumer thinks that his monthly payment was going to be lower than it actually is or has some other dispute.

The fourth way these cases originate is in suits by bankruptcy trustees. Under the Bankruptcy Act, it is likely that truth-in-lending claims pass to the trustee and ought to be prosecuted in a large number of cases. In fact, trustees have generally not been prosecuting these cases except in two or three judicial districts. There is really no statutory basis for this abstinence on their part; and again this could be another fruitful source of further truth-in-lending litigation.

Now, the reason I think that truth-in-lending lawsuits are the most efficient consumer remedy is because there are both substantive and procedural advantages of truth-in-lending cases as compared with State law cases. Substantively, truth-in-lending cases are simply easier to win than State law cases on contract or warranty claims.

In addition, there is the truth-in-lending provision for minimum damages which may go up to a thousand dollars; whereas the State law claims may be only a few dollars or a few hundred dollars.

Finally, there is the truth-in-lending provision for attorneys' fees. As a practical matter, it is impossible to prosecute small consumer claims without a provision for attorneys' fees.

Now, the procedural advantages are twofold: First, there is access to the Federal courts. Like it or not, consumers perceive the Federal courts as better for litigating consumer grievances than the State Courts.

In addition, the truth-in-lending case raises basically a legal issue that doesn't require any factual development so that you can have no factual investigation, very simpe pleadings, no discovery, and a decision on a motion for summary judgment rather than a full-scale trial.

Thus, a lawyer can win a truth-in-lending case with maybe 5 to 10 hours of time, whereas a State law contract case which involves factual issues may involve the expenditures of 50, 100, or more hours of time to win.

In addition, the Truth in Lending Act is so designed that defendants have a strong disincentive to litigate truth-in-lending cases. Part of this is caused by the fact that truth-in-lending cases can generally be settled for less than it will cost the defendant to win them.

In other words, take a case where the defendant estimates it will cost $1,500 to win a truth-in-lending case. The plaintiff offers to settle for $1,300, which includes some recovery for the plaintiff and some attorney's fees. There is a strong incentive to settle.

Now, that incentive becomes stronger if the defendant perceives that it has a 50 percent chance of losing the case on the merits. The result is that the defendants will litigate only the cases they are pretty sure of winning.

In addition, truth-in-lending lawsuits have what may be called an estoppel effect. Once a court decides that a particular form is in violation of the Truth in Lending Act, the effect is to declare all of the defendant's credit transactions to be in violation of the act, which may number a thousand, 10 thousand, or even more.

Now, it is true in a subsequent case the defendant may be able to relitigate the issue; but as a practical matter, that first adverse decision is usually decisive. Again, the defendants can't litigate really unless they are almost positive that they are going to win the cases on the merits.

Now, these two things, the shift from credit costs to credit term disclosure, plus the litigation advantages of truth-in-lending cases, caused the present explosion, for two basic reasons.

One is that the defendants have really cooperated in this process by very often using forms that are simply not close to compliance. If one takes a sort of de minimus reasonable level of compliance the forms put out by the Federal Reserve Board in 1969, I have seen forms in 1974 and 1975 that did not come close to that level. They contain many serious and obvious violations. But the second reason that the truth-in-lending case explosion occurred is because it was always possible in the vague area of term disclosure for a plaintiff to conjure up a theory upon which three might be a violation. It could always be argued that some term should have been disclosed which was not disclosed or that some term which was disclosed was modified by an undisclosed term and thus the disclosures were inaccurate.

What can we do about it? In my own view, we have to greatly simplify the Truth in Lending Act. Simplify it both from the point of view of the statement itself and the point of view of creditor compliance. It seems to me it is incumbent upon Congress to identify those disclosures which are crucial for consumers and to require that only those disclosures should be made.

I have included in my prepared statement a model truth-in-lending form which I believe includes the minimal amount of disclosure which is necessary for any consumer to compare the cost of credit.

Now, it is true that this statment leaves out a whole mass of disclosures that are required under the present law. In my way of thinking, the advantage of doing it this way is that this is a statement which creditors can be expected to get right and that consumers can use.

If simplified requirements such as these are adopted, it ought not to be necessary for an extensive administrative apparatus to deal with

questions and rulings and the like, and it also ought not to be necessary to have some sort of substantial compliance defense. Actually, having this administrative apparatus and the substantial compliance defense doesn't really get at the real problem. The real problem is that the act is simply too complicated. The remedy ought not to be, to leave in the complications and to sort of protect creditors. The remedy ought to be, to pass a statute which creditors can comply with and consumers can use.

Now, we would be leaving out virtually all of the term disclosures. In my view, this is not a very serious problem. The term disclosures generally relate to matters that consumers do not consider in deciding whether to enter a transaction. For example, a substantial number of the term disclosures relate to default provisions. Most consumers don't expect to default when they enter a credit transaction, and, therefore, when you devote a large portion of the truth-in-lending statement to default information, you really are providing information that is a very marginal utility to consumers. In addition, most of these disclosures are regulated at the State level and most of these term disclosures are included in the underlying contract between the parties. The question is not whether there ought to be disclosure. The question simply is whether it ought to be on the truth-in-lending statement or whether it ought to be simply on the contract.

Let me conclude by saying that in my talks with people I am frequently asked whether the Truth in Lending Act is effective. I think that my response has to be that no one really knows, because the original truth-in-lending concept of credit cost disclosure has in a very real sense not been tried.

I propose to get that trial underway.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. I couldn't agree with you more. I think you are absolutely right. I think one of the biggest weaknesses in in truth-in-lending right now is we don't provide the consumer with clear, simple, limited information he is going to look at and understand and use as a basis for making his credit decisions. That is what we ought to do.

I am the author of the original truth in lending bill. Paul Douglas did most of the work on it for 6 years. Then he left the Senate. I took it over and was author of it when it passed. Disclosure of the true annual rate was certainly our prime intent. I think it is not only a problem for the creditor in having a big sheet to fill out, taking additional time, but it is useless for most consumers when you have something, as you say, that is a foot long, or 2 feet long. I like that form you have on page 18.

As you indicate, even that can be simplified. I thought we ought to have just five words—true annual rate, finance charge, nothing else.

Perhaps it would be more helpful to have what you have, which isn't much more than that. You have amount financed, finance charge, insurance, which in many cases wouldn't be necessary as you say; it is optional.

Then you say, this total is payable in 36 monthly installments of $150, first installment due August 1, 1976, and the last due July 1, 1979; annual percentage rate, 16.2 percent. I think the great majority of consumers would be able to look at it and make a decision on that, far better than they do now.

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Mr. LANDERS. I think that is right, Mr. Chairman. To reinforce what you are saying, I think people tend to respond to too much disclosure not by selectively trying to pick out those terms which are most important, but by being so overwhelmed by the disclosure as to totally ignore them. Let me give an analogy from my law professor experience.

My own opinion is when you assign 70 or 80 pages for students to read, they get so overwhelmed by it they don't read any of it, instead of reading the first 20 or 30. I think that is a generally good rule of a person's behavior. If you give them too much, they simply ignore the whole thing rather than trying to figure it out.

Apropos of that, I think that in general we have to reduce the amount of paper that consumers are given at the time of credit transactions. If you have a consumer credit transaction, and you hand the consumer the truth-in-lending statement, and then the State law statement, and then another statement; you hand the consumer five or six pieces of paper, he is not going to read any of them.

I think we have to—and it is incumbent upon the Congress—to say these are the most important things and we are going to emphasize these things by giving the consumer this information.

It is not perfection, but it is useful.

The CHAIRMAN. How can you provide in some kind of a back-up way or some kind of way the terms without getting right down in the same bog that we have been in, the same confusing and complicated situation? Terms being important, of course.

They can be complicated. What would you do to make those at least available in one way or the other?

Mr. LANDERS. Mr. Chairman, the terms are currently available. They are on the printed contract. The whole dispute is to what extent terms which are on that fine print contract, which consumers get as part of the transaction, ought to be brought up into the truth-in-lending statement.

The CHAIRMAN. OK.

Creditors continually tell us of the burden truth in lending imposes upon them in terms of litigation. You assess the extent to which claims of violations of the act are frivolous, hypertechnical, or not based upon serious thoughts of the consumer?

Mr. LANDERS. I believe I can.

The majority of violations do not involve what I consider to be the two key disclosures: the annual percentage rate and the finance charge. The majority of violations involve what I call term disclosures.

Now, when one talks about frivolous litigation, one has to remember that consumers never go to a lawyer saying, "I have a truth-in-lending claim." The consumer simply does not know he has a truth-in-lending claim. The cases have to originate as something else. Now, you take a case—which I think is probably the most typical case—where a consumer purchases a washing machine that breaks down. His response is that he stops payment. The creditor either sues or threatens a suit. The consumer then takes the paper to a lawyer. The lawyer finds a violation in the contract term disclosure and brings a truth-in-lending lawsuit. Is that frivolous or is it not frivolous?

In a sense it is frivolous, because his real grievance is not the truth-in-lending claim. On the other hand, it is not frivolous in the sense that there may be a violation of the statutory rules and the plaintiff has a right to recover under the Truth-in-Lending Act.

If Congress is inclined to deter all litigation which involves violations of the Truth-in-Lending Act, but which are not the real grievance, it seems to me that there has to be a provision in the statute to allow consumers to recover only actual damages.

As a practical matter, there are no actual damages in probably 99.9 percent of the consumer credit cases under the Truth-in-Lending Act, because the consumer would not have made any different deal if he had gotten proper disclosure, assuming that is the test of actual damages. So, in a sense when you are dealing with this kind of disclosure legislation, a person is never going to be—or very rarely is going to be—damaged in the sense that somebody is damaged when he gets hit by a car.

In essence Congress has provided this remedy as an aid to encourage consumers to bring these kinds of lawsuits.

I would suggest, apropos of some of the testimony that the committee has heard earlier this morning, that probably one reason that the Federal agencies have been somewhat remiss in enforcing the statute is because there have been so many private actions. When one sees this increasing volume of private litigation, I think an administrator—especially since they have a great deal to do—might well take the position that the act is being enforced.

The CHAIRMAN. By and large is that private litigation constructive in your view?

Mr. LANDERS. I think the private litigation has generally resulted in creditors improving their forms. There is no question about that.

In my view, the improvement has been basically a negative factor. Creditors have responded to the litigation by simply putting more and more disclosures on. I have not seen it, but I am told that a lawyer drafted a truth-in-lending statement which is in full compliance and is 2 feet long. If that's the result of the truth-in-lending litigation, I am not sure it has been beneficial to consumers in the sense that consumers can use that information.

The CHAIRMAN. What we have to do is pass legislation that would provide for some simple disclosure and somehow protect the creditor so that in the event of a suit he won't feel that in order to protect himself, he would have to have a more elaborate kind of disclosure?

Mr. LANDERS. That is absolutely right. The reason in my view that this shift over from credit cost to credit term disclosure is crucial is because if you are talking about disclosing numbers, that ought to be pretty uniform from jurisdiction to jurisdiction. You don't have the vagaries of the English language to deal with. Creditors ought to be able to comply with a form, a set of requirements which leads to a form such as I have proposed without very much difficulty.

I think once you get into the area of selective term disclosure, you get into this response. The response of lawyers is, "Well, if they are held in violation, they put something else in; another violation, put something else in." Then you get a 2-foot-long statement.

The CHAIRMAN. You have read and analyzed, I assume, all of the literature and the studies on truth in lending. How effective in your view has this act been?

Mr. LANDERS. I think it has been only marginally effective. I think it is unfortunate that the area where truth in lending is most needed is the area where Congress paid the least attention to it.

Truth-in-lending disclosures are most important as the amount of the transaction goes up. Yet the Senate-passed bill exempted real estate transactions which are probably from the disclosure viewpoint most important. The House put it back in.

The real estate disclosures have not really been emphasized. I think that that is the area in which consumers are most likely to use the statute.

The CHAIRMAN. One reason for that is because the interest charged in real estate transactions has been reasonably uniform, fairly clear and simple and understood as compared with, say, the interest charged in buying furniture or buying appliances of various kinds.

We found, for instance, in our hearings back in the sixties, that people would be charged 50 percent, 100 percent, 150 percent interest and had no idea they were being charged that.

It was common. It wasn't just an occasional ripoff. It was the rule that buyers were charged 40, 50 percent in buying many things.

As far as real estate, when people go to buy a home, they might be charged these days 8½, 9, 9½ percent. Rarely is it anything higher or lower than that.

Mr. LANDERS. That is certainly true.

In the real estate area, there is still a problem with front-end closing costs, which are substantially different between different creditors. This is a real area where consumers can bargain. The dollar amounts are quite substantial.

If you have a purchase of a $400 washing machine, the difference between a 12 percent and an 18 percent APR, if the transaction was repayable over a year, it is only $12 or roughly $12. The average consumer simply is not going to shop for that $12 difference. First of all, he doesn't know whether he can get it or not. In these days of 60- to 65-cent gasoline and time being worth something, it just doesn't pay him to shop. What the consumer does in those cases is make some rough assessment as to whether or not he is getting a fair deal and leaves it at that.

It seems to me—and the studies, I believe, on this have confirmed this—that consumers behave very rationally; that as the amount of transaction goes up, they are more careful about shopping for credit.

I think that is something that one would expect.

The CHAIRMAN. Based on all your work, what's your recommendation to us?

Should we go amend the present law or go back to the drafting board and come up with new legislation?

Mr. LANDERS. I think it would be very difficult to amend the law as stated to produce a truth-in-lending statement as I have suggested.

I would be reluctant to see the Congress get into years and years of hearings. It seems to me that the original hearings established the basic premise that one ought to have credit costs disclosure.

I would not want to see that issue itself reopened. It seems to me that Congress could probably amend the statute to provide a more simplified form of disclosure without getting into the underlying policy issues; and in addition, Congress could probably resolve some of the most pressing present issues.

For example, let me just mention one other thing which I think continues to be a problem. The present truth-in-lending disclosures are

given to the consumer, in most cases, after, he is psychologically and morally committed to a deal. He shakes hands, sees the washing machine or the car; it is his. Lo and behold, he goes in the backroom of the office and there are disclosures. It seems to me that one cannot expect the disclosures to be fully effective when they are given after a person is already committed, psychologically and morally, to a particular deal.

If you want the disclosures to be effective, you have to give them before people decide, not after they decide.

The CHAIRMAN. Staff suggests that I ask you whether or not credit rates and terms should be posted inside the bank, inside the institution lending money?

Mr. LANDERS. I have no particular view on that. I don't think that that kind of posting is particularly effective, especially since the rates tend to be somewhat variable for different consumers.

Also, as a practical matter, in consumer credit transactions, rates tend to be a bit deceptive. There are frequently a variety of additional charges such as insurance, which are included within.

I don't see that as a particularly effective device. I don't see anything wrong with it, but I don't see that as the real solution.

[Complete statement of Mr. Landers follows:]

STATEMENT OF JONATHAN M. LANDERS, PROFESSOR OF LAW, UNIVERSITY OF ILLINOIS COLLEGE OF LAW AND VISITING SCHOLAR, AMERICAN BAR FOUNDATION

My name is Jonathan M. Landers, and I am a Professor of Law at the University of Illinois College of Law and a Visiting Scholar at the American Bar Foundation. As a Visiting Scholar at the American Bar Foundation, I have been engaged in a research project on the Truth in Lending Act. That research project has already resulted in two published papers in the American Bar Foundation Research Journal, one paper presently in the editorial process and to be published in October, and a number of other research efforts in various stages of completion. I want, however, to emphasize that this testimony and any conclusions are solely my own and do not represent the views of the Foundation or of any group with which I am affiliated.

The TIL Act has hardly been a complete success. As evidence, there is the sheer inscrutability of most TIL statements, and persistent creditor claims that it is impossible to devise TIL forms which comply with the statute and regulation. Then, too, there is the fivefold increase in TIL cases in the federal courts in the past four years; this increase taking place at a time when creditors were presumably becoming more familiar with the statute and its requirements. And, the matter may get worse: most TIL litigation is now concentrated in three districts—Northern Georgia, Connecticut, and Eastern Louisiana, with lesser but substantial amounts in four or five others. If TIL cases were to be as vigorously pursued in all districts, the number of federal cases might be 10 or 15,000 rather than the present 2,200.

It is clear that the original proponents of TIL did not foresee this situation, and it is necessary to ask how and why it developed and what can be done. Can TIL statements be simplified, and if so, what the costs? Can the number of lawsuits be reduced while still furnishing consumers with the basic protections afforded by the TIL Act? Such questions can best be understood if one understands how the present situation developed.

I. HOW THE PRESENT SITUATION DEVELOPED

In my judgment, the present predicament is the result of two basic factors. First, the fundamental shift of TIL from a credit cost disclosure law to a credit term disclosure law which required selective disclosure of some, but not all, of the terms of consumer credit contracts. Second, the emergence of the TIL suit as the most efficient and effective remedy for a vast number of consumer grievances and difficulties.

A. Background: The Shift from Credit Cost Disclosure to Selective Credit Term Disclosure

1. *TIL as credit cost legislation.*—It is well known that the late Senator Douglas was a major proponent of TIL legislation, but it is generally thought that he conceived of the idea shortly before the first TIL bill was introduced in 1960. In fact, the idea originated more than a quarter of a century earlier when then Professor Douglas was on the NRA Board of Fair Competition for the finance industry. At that time, he proposed that the Code provide for consumers to be given a true statement of the cost of credit and the annual percentage rate.

The notion that TIL was a credit cost disclosure bill permeated the eight years of hearings on TIL. Supporters of TIL argued that credit cost disclosure was necessary to enable consumers to compare credit costs and to decide whether to use credit or to take funds from savings or defer purchases, and to act as a contra-cyclical economic force. These arguments were relevant to the credit cost disclosure provisions of the bill. The credit cost focus was well recognized by the opponents of the bill who argued that the APR would be difficult or impossible to compute, that the finance charge could not be determined with precision, and that consumers would not understand the APR concept. The point is that the issue as presented to Congress originally was: should a bill be enacted to tell consumers the APR and finance charge on consumer credit transactions.

The perception of TIL as credit cost disclosure legislation is reflected in the statement of purposes in section 102 of the Act. It states the objectives of TIL as (a) enhancing economic stabilization; (b) promoting competition among credit grantors; and (c) permitting consumers to be aware of the cost of credit to compare terms and avoid the uninformed use of credit. This process would work as follows: consumers would get an accurate statement of the cost of credit. Having this, they could then decide whether credit was too costly or whether the cost was justified in terms of the benefits. Then, they could shop for the lowest cost among different creditors. Creditors, in turn, would compete with each other to offer the lowest possible credit costs, thus leading to lower credit costs for all consumers. Finally, consumer credit might act as a contra-cyclical economic force to promote the use of cheap credit in times of economic hardship thus facilitating an economic recovery. There is, to be sure, considerable question whether these exceptations were realistic, and whether the provisions themselves were effective to accomplish such objectives. Some of these are discussed in Part III. But ideally, the above model appears closest to the understanding of the enacting Congress.

In terms of these objectives, it is clear why the proponents envisioned TIL as, fundamentally, a simple statute. The credit decision would be made in terms of cost—that is, consumers would decide on credit once they know the cost. For this purpose, consumers needed relatively little information—the Annual Percentage Rate, the finance charge, the amount financed, and perhaps, the periodic payment. I say "perhaps" because one of the objectives of TIL was to get consumers away from using apparently cheap credit with small monthly or weekly payments by emphasizing the true cost of such "easy" credit. I suspect that most proponents thought of TIL as a statute enabling the consumer to compare the APR and the finance charge. Indeed, one basis for the arguments that the act was simple was the notion that it could not be that difficult to compute these two figures.

2. *The shift to credit term disclosure.*—A glance at a typical TIL statement reveals that the APR, finance charge, the amount financed, and the monthly payment are included among a large number of other disclosures, and even, partially submerged in these other disclosures. To be sure, the terms Annual Percentage Rate and Finance Charge must be more prominent than others, but in practice, this means slightly larger type. What are all these other disclosures: they are basically disclosures relating to the terms of the transaction, and to a lesser but significant extent, disclosure of the steps used in computing the amount financed and the finance charge. Thus, TIL is no longer a credit cost disclosure law, but has become a law which requires selective disclosure of some of the underlying terms and computational figures.

This process began in the act itself. Thus, the Act required disclosure of (1) the number, amount, and due dates of payments; (2) default, delinquency, or similar charges in the event of late payments; (3) a description of the security interest; (4) at least five separate disclosures to determine the amount financed and frequently subdisclosures for some of these steps; and (5) special disclosures relating to insurance.

The process continued in Regulation Z and FRB Interpretive Rulings, and the board not only expanded the term and computational disclosures, but added new requirements of terminology and presentation. For example, (1) computation disclosure included the deferred payment price (total price plus finance charge); (2) disclosure was required of prepayment penalties as well as the method of computing rebates for prepayment; (3) disclosure was required of the method for computing default or delinquency charges; (4) disclosure was required of the components of the finance charge and separate disclosure of so-called prepaid finance charges; the latter, apparently, to make sure such amounts were not included in the amount financed; (5) the statutory provision for disclosing the amount financed was complicated by an extremely confusing provision on required deposit balances and a number of ill-defined exceptions; (6) the term unpaid balance was used as a subtotal for cases in which there was a required deposit balance or a prepaid finance charge and in such cases, there were seven computational categories to determine the amount financed; in cases where there were no deposit balance or prepaid finance charge it was never clear whether the term unpaid balance, amount financed, or both applied to the amount of credit received by the consumer; and (7) interpretive rulings required disclosure of the term of insurance coverage, pick-up downpayments, and variable rate loans. To all this was added still another requirement: that the disclosures be clear, conspicuous, and in meaningful sequence. Now the volume of disclosures themselves presented somewhat of a contradiction, and interpretation of the regulation was further obscured by a board model form which was confusing in the extreme. There should be no wonder that creditors had trouble complying.

At the same time that the statute and regulation moved to credit term disclosure, there was a subtle shift in thinking about the objective of TIL to permit credit decisions in terms of cost. This new philosophy suggested that consumers had a right to know the important terms of their credit transactions; the new view was expressed in terms of disclosure of information consumers would want to know, and was reflected in court decisions which hypothesized a reason why a consumer might want to know this or that item of information. This "all relevant factors" approach differed markedly from the consumer shopping rationale because TIL disclosures were not tied in with a particular use for the information, and there were no boundaries for the creditor's obligation to disclose. Moreover, there was at least the suggestion that TIL might require disclosure of information which, while not directly relevant to the credit decision, might be useful if the transaction broke down. Such open concepts as provided useful or interesting information or transaction breakdown information, were to haunt courts and creditors attempting to decipher the Act's requirements.

B. The Effect of the Switch to Credit Term Disclosure on TIL Statements and TIL Violations

The shift from credit cost disclosure to credit term disclosure had a dramatic and devastating impact. Compliance was made many times more difficult since disclosure was not limited to the basic numbers which are the essence of all consumer credit transactions, but extended to some, but not all, of the operative contractual terms of the transaction. The problem was compounded because Congress and the board emphasized the credit cost disclosure provisions in formulating the disclosure requirements with the result that the term disclosure provisions were not as clearly designed or easy to apply. And, selective term disclosure resulted in more outright violations, and even more significantly, more arguable violations. The arguable violation standard is significant because this is likely to be the issue for a plaintiff considering a lawsuit: can a credible argument be made of a TIL violation which presents a sufficiently good probability of success to justify the litigation.

The reason term disclosure made compliance much more different is that term disclosure lacked the precision of meaning as the numerical categories. Creditors always used rather lengthy contracts, and the effect of TIL was to require some but not all of the contractual provisions to be broken out separately as part of the TIL statement. In addition, consumers might always argue that some provision in the contract modified or affected the terms which were disclosed so that further disclosure was required. Thus, short of including the entire contract on the disclosure statement, it is difficult to be sure what was included. Moreover, when courts considered the cases of term disclosure, they had no clear philosophic backdrop. If the "all relevant factors" philosophy applied, and the court thought a consumer might find the information helpful, disclosure might be required. And, the notion that TIL included disclosure of transaction breakdown information permitted creditable arguments for disclosure of much of the underlying credit contract.

Let me offer one example. TIL requires disclosure of default charges but it may be argued that any creditors' remedy in the event of default is a form of charge which should be disclosed. For example, it seems relatively clear that the authors of these provisions intended to cover a charge of $2.50 if the consumer is late in making a payment. But it may be argued that the creditor's right of acceleration ought to be disclosed under such a provision. Surely, such a right of acceleration is more serious from the consumer's point of view than the $2.50 charge, and is information which a rational consumer might want to know about. The result has been a vast amount of litigation on this precise issue.

The requirements of credit term disclosure and the computational disclosure had another, and equally detrimental, effect. The TIL statement became lengthy and unwieldly, and also, since more categories of information were being provided, there was a much greater chance of a creditor mistake. This latter point becomes especially important when it is remembered that many TIL statements are filled out in the store in the "heat" of the transaction.

Moreover, as credit term disclosure and computational disclosure became increasingly important, creditors often attempted to protect themselves by even more comprehensive and complete disclosure. This created the risk of still new violations. And, when creditors turned to the Board or its staff for assistance, the result was sometimes more required disclosures or more complex statements of the transaction.

Finally, the effect of term disclosure made board promulgation of model forms a doubtful enterprise. In its initial pamphlet on TIL, the Board did include a number of model forms. Then courts began to hold that some of the forms violated the act or regulation because of inadequate term disclosure. This is understandable because term disclosure simply does not lend itself to uniformity of statement. The result was that subsequent versions of the pamphlet have omitted the forms.

In short, the requirement of selective term disclosure and the all is relevant philosophy made compliance extremely difficult and the chance of a violation extremely high. When this was combined with certain litigational factors which encouraged TIL suits, the predictable result was a rapid growth in TIL litigation.

C. TIL Litigation

Although the TIL remedy provisions were designed to enforce the disclosure provisions, they have taken on a far different character. In many jurisdictions, they are the most effective remedy for consumer grievances of any type.

1. How TIL cases originate

It should be obvious that few clients come to a lawyer's office with an inkling that they have a TIL claim. To do so would require consumers to know the intricate provisions of the statute and Regulation Z, and except in the case of omitted disclosures, that the TIL statement did not comply. What, then, gives rise to TIL suits?

Four factors account for the predominate number of TIL lawsuits. First, if the credit transaction involves a purchase of goods and services, there is a dispute involving the product or service. For example, the consumer may claim a breach of warranty, breach of contract, failure to service, misrepresentation, failure of consideration, or the like. The consumer frequently responds to such problems by stopping payment of the underlying obligation. When the creditor either sues or threatens suit the consumer seeks legal help and a TIL lawsuit results because there is also a TIL violation and the TIL suit is the most effective remedy. Second, and much less often than the first, the consumer becomes dissatisfied with the credit terms of his contract. For example, the monthly payment may turn out to be higher than he thought, he may look at the contract and find that extra charges have been added, or the like. Again, the result is a TIL suit, although it may be for a TIL violation which is different than the consumer's actual complaint. Third, and perhaps almost important as product related cases, are situations where the creditor is being dunned or sued for a debt and simply cannot pay. He may have lost his job, become sick, become overextended, or the like. He seeks legal advice having heard of bankruptcy or simply to do something to take the pressure off. The lawyer then examines the contracts and determines that one way to take the pressure off—and maybe give a few

dollars to the consumer as well as pay his fee—is a TIL action. Thus, an affirmative TIL action is brought instead of a bankruptcy or insolvency proceeding. Fourth, TIL suits may be brought by bankruptcy trustees. A number of courts have held that TIL claims pass to the trustee. Indeed, there is reason to think that trustees have been extremely laggard in pursuing such claims. If trustees started prosecuting these claims with any degree of diligence, there could be several thousand additional cases each year.

It is doubtful that the Congress thought of TIL as a substiute for state substantive law in consumer transactions, let alone, as a statute to be used by consumers as an alternative to bankruptcy. But this is how it has been used. To be used in this manner, TIL had to be a more effective remedy than state law. In fact, there were strong incentives for plaintiffs to bring TIL suits, and a strong disincentive for defendants to litigate.

2. Why use TIL?

(a) *Substantive advantages.*—It should be apparent why consumers would prefer an affirmative TIL suit to a bankruptcy petition, but it is less apparent why consumers will prosecute TIL claims in lieu of state law product-related claims. The basic reason is that state law protecting consumers is usually much less favorable to the consumer than TIL. This Committee has previously heard of the frequent inability of consumers to enforce product-related claims under state law because of such legal rules as holder in due course, waiver of defenses, warranty limitations, the parol evidence rule (forbidding evidence of terms outside of the written contract), and damage limitations (the consumer's remedy is the difference between what he got and what he should have gotten—maybe only a few dollars). In contrast, TIL violations were easy to find and provided more substantial damage recoveries.

In addition, it is not an either/or situation because the consumer may bring the state law claim as well. But, because the TIL claim was the more viable one, it tended to have the strongest impact on settlements and litigation strategy. In fact consumers were winning TIL cases on the merits with some frequency.

(b) *Procedural advantages.*—Procedurally, there were two major factors stimulating TIL suits rather than state law suits. First, TIL suits could be brought in the federal courts. The fact is that consumers and their representatives perceive the federal courts as offering a better brand of justice than state courts. Federal judges are thought to be more willing to enforce the law as written and federal procedures are thought to be substantially better.

Second, TIL issues are primarily questions of law, and are thus amenable to minimal factual investigation, simple pleading rules, little or no pre-trial discovery, and decision on summary judgment rather than a full trial. Since amounts in consumer cases are small, the economies of suit suggest a TIL action rather than a state action on a product claim which may require detailed pleading of fraud allegations, substantial discovery, and a full-scale trial.

There was another procedural advantage in some districts in which it was held that the creditor's counterclaim on the underlying debt could not be brought in the federal courts because of jurisdictional limitations. In such courts, a TIL suit is risk free for the consumer, whereas an action in a state court could subject the consumer to liability on the underlying debt.

(c) *Attorney's fees.*—By definition, most consumer claims are small. The monetary amounts involved simply do not permit them to be economically prosecuted by attorneys. In such cases, attorney's fees would almost always exceed the probable recovery. But TIL was different because it provided attorney's fees for successful plaintiffs, and the amount was not related to the plaintiff's recovery. For example, in one well known case, attorney's fees of $20,000 were awarded on a $100 claim, and in many others, fees of several thousand dollars have been awarded even though the maximum damage recovery is $1,000. While plaintiffs' attorneys might make some judgment on the likelihood of winning (and thereby getting paid), if they thought they could win there was a strong incentive to use TIL. In contrast, a state law action was, practically, often out of the question for a private attorney.

3. Defendants' disincentives to litigate

The dynamics of TIL litigation suggest that it is frequently to the creditor's advantage to settle rather than to litigate even if he thinks he has a good chance of winning. Consider this case: a creditor is sued for $1,000 (the maximum recovery) in a case that he thinks he has a 75% chance of winning. He analyzes the risks and benefits as follows:

(a) If he wins, it will cost him $1,500 in attorney's fees: assuming a low hourly rate of $30, this buys 50 hours of a lawyer's time which is certainly a low estimate for litigation which may involve several court appearances, some discovery, and some legal research.

(b) If he loses, it will cost him $4,000: $1,000 in dames, $1,500 for plaintiff's attorney's fees, and $1,500 for defendant's attorneys' fees (on the same asumptions as above).

Now, plaintiff offers to settle for $1,300 which gives the consumer full recovery, and even pays the plaintiff's attorney a fair rate for the few hours of time which have been expended. Defendant notes that it will cost more to win than to settle and three times more to lose. This does not necessarily mean that every case will be settled. Instead, a defendant must litigate some cases to give any threat of an all out fight a semblance of credibility. But it does suggest a hard look at the risks in cases which the defendant has a substantial chance of winning. When the chances of winning decrease to 50% the incentive to settle becomes large indeed.

Indeed, this litigational imbalance of paying attorneys' fees for successful plaintiffs can lead to a form of strike suit litigation. In this, a plaintiff's attorney simply files a complaint alleging TIL violations in general terms without any notion of whether a violation has occurred. Before expending any substantial time, plaintiff offers to settle for a fraction of what it will cost the defendant to fight the case. In fairness, I have no hard evidence that this is taking place, but the economies suggest that it might occur.

The second disadvantage to defendant in litigating is the severe impact of a loss. Remember that the effect of a decision which holds that defendant's form is in violation is, in effect, to declare every single transaction in which that form was used to violate TIL. To be sure, the defendant may argue the issue again if raised, but if the case arises in the same district or before the same judge the chances of winning the second time around are small indeed. And, they may not be much greater in another district. As a consequence, the defendant has to weigh every case extremely carefully because of the risk that thousands or tens of thousands of contracts may be called into question. And, too, the defendant who litigates must be willing to accept the practical reality that the consequences of an adverse decision will almost always dictate an appeal to protect the form.

Again, this does not say that all cases will be settled. But, it cannot be denied that realistic defendants might frequently settle rather than fight.

4. Ability of plaintiff's to win TIL suits

Despite all of these procedural and substantive advantages, another ingredient was absolutely essential in making TIL suits viable. Plaintiffs had to win and have a reasonable chance of winning enough cases to make the possibility of a plaintiff victory realistic and necessary to contemplate. Two major factors operated to more than satisfy this requirement.

First, a number of creditors have used forms which are not even close to compliance. Thus, if one takes as a minimal standard for compliance the FRB forms which were promulgated in 1969 and available to all creditors, there have been widespread use of forms which do not approach this level. Indeed, in some cases this borders on an almost arrogant and wilful refusal to comply. In my own study of TIL cases, I have been amazed at the number of cases in which the forms left out clear and long-standing statutory requirements. These forms are not cases of arguable and technical violations, but cases of clear cut violations in which there is no substantial chance plaintiff will lose. That defendants frequently settle such cases should not be surprising.

But even creditors who have attempted to comply have run into the problem noted earlier—the virtual impossibility of complying in the area of term disclosure. Thus, it has been consistently possible for consumers to argue that some term of the contract should have been disclosed, that undisclosed terms modified disclosed terms, that the statement was confusing, or that some numerical computational element has been omitted. Even creditors who had attempted to comply found themselves subject to such arguments, and uncertain whether they would prevail. In short, the vagaries of term disclosure and an all is relevant philosophy worked in tandem with strong litigational advantages in TIL actions, to produce an ever increasing number of suits.

5. Summary

These factors suggest the reasons for the TIL explosion of cases. First, the increasing emphasis on contractual term disclosure made it relatively easy to

formulate disclosure issues. Second, the judges who had to decide these early cases, had no clear rationale upon which to act, and tended to say that, well of course, this or that might provide some information to someone under the circumstances, or anyway, the consumer might want to know it, and the result was a number of decisions which called into question thousands of credit contracts. Third, with the initial sweep of TIL litigation so successful, attorneys began to scan documents more carefully, and to be willing to bring cases with, perhaps, less obvious violations. Fourth, creditors frequently cooperated by using forms which were either clearly invalid, or sufficiently doubtful to make a successful TIL suit likely. The chances of finding a violation or arguable violation were high indeed.

II. SOME POLICY CHOICES

There is such a thing as too much disclosure—too much for consumers and too much for creditors. From the consumer viewpoint, disclosure reaches this level when more information is given to consumers than they can effectively use in the transaction. Thus, the more information offered, the less capable the consumer becomes of sorting it out, judging what is important, and using that in the credit decisionmaking process. Persons who are overwhelmed tend to disregard the disclosures entirely. Thus, the objectives of TIL are more compatible with an attempt to provide consumers with the most important information simply stated.

From the creditor's point of view, there is too much disclosure when, considering the nature of the transactions involved, creditors of goodwill who attempt to comply face a substantial risk of being held in noncompliance in ordinary and regular transactions. There is little question that this level has been reached.

In my view, TIL should return to its original purpose as a credit cost disclosure law, and should be radically simplified to serve this objective. By simplified, I mean both from the point of view of consumer understanding and creditor compliance. We must abandon the notion that TIL is a statute designed to disclose information which a hypothetical consumer might find helpful, or that TIL should be an omnibus litigation tool for consumer grievances. Instead, TIL disclosures should be those which are most useful to the ordinary consumer.

To serve this simplified objective, disclosure should only be required of: (1) the creditor's name;[1] (2) the annual percentage rate; (3) amount financed; (4) the finance charge; (5) the cost of optional credit life and credit accident and health insurance; (6) the total of payments; and (7) the number of periodic payments, period, and the date of the first and last payments. The statement might look as follows:

ABC Motors, 1234 First Street, Anytown, Anystate

Amount financed	$4,000
Finance charge	1,000
Insurance (this is optional and may not be required)	400
Total of installments	5,400

This total of $5,400 is payable in 36 monthly installments of $150. The first installment is due August 1, 1976, and the last is due July 1, 1979.

Annual percentage rate 16.2

I have received a copy of this disclosure statement

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Customers

I offer the following reasons to support this proposal:

First, this statement provides the essential information the consumer needs to shop effectively for credit on a comparative basis or to decide whether to enter consumer credit transactions.

Second, the information is not hidden in a mass of other disclosures. In my judgment, the more information that is provided, the less likely it is that the consumer will use any of it. The consumer's attention is diverted from any individual disclosure, and he becomes so overwhelmed by disclosures.

[1] In this connection, Congress or the board ought to resolve the question whether the assignee of a consumer contract is a creditor under the act.

Third, these items are standard from jurisdiction to jurisdiction, and permit virtually identical disclosures by different types of creditors in different types of transactions. Moreover, this commonality should permit the board to promulgate model forms which are in compliance, and should minimize the need for supplemental FRB opinions or interpretations.

Fourth, it should be considerably easier for small creditors to comply with a minimum of legal expense and effort.

Fifth, and not previously mentioned, are the modified insurance disclosures. There are two elements to my proposal. The cost of credit life and credit accident and health insurance should be excluded both from the amount financed and the APR because it tends to distort the disclosures regardless of which it is included within. Second, although the present optional test has both a substantive requirement of optionality and an evidentiary requirement of signature, there is no evidence that this evidentiary requirement is providing significant protection for consumers.[2] Much the same effect could be obtained under the suggested provision without the present complications.[3]

If the above are the benefits, what are the costs. And, are these costs significant?

First, virtually all term disclosures would be eliminated from the statement. To me, these are justified for both practical reasons and reasons relating to the objectives of TIL.

(1) In practice, it is impossible to define with precision which terms must be disclosed.

(2) Much of the term disclosure relates to the possible breakdown of the transaction and creditors' rights if that occurs.[4] But, most consumers do not expect their transactions to break down and the vast majority do not break down. Thus, we devote considerable space to information which is largely irrelevant in the decision-making process. Despite its effective irrelevance, this information takes up a substantial part of the TIL statement, and substantially detracts from the other disclosures. Similarly, except in real estate transactions, consumers do not contemplate prepayment and such terms are not significant in the decision-making process. But stating the rules accurately is extremely difficult.

(3) The technical terms of the contract tend to be relatively standardized and do not lend themself to either comparison shopping or effective bargaining. This is because the economic effect of the terms is small and consumers may be expected to shop or bargain on the key items—the finance charge and the APR. In this connection, the National Commission on Consumer Finance noted that credit cost decisions were much less important to consumers than product related decisions and consumers thus emphasized product shopping.

This same argument can be made in connection with credit shopping, viz., that if consumers do shop for credit they will compare what is most important—the cost—and not a variety of subsidiary terms. To me, the notion that consumers would shop because of a $2.50 late charge is absurd.

(4) Many of the term items are regulated by state statutes, and disclosure provides little or no additional protection to consumers. If creditors systematically violate the state provisions, they should be enforced by state authorities.

(5) The terms will be disclosed in the contract between the parties. Thus, the issue is not disclosure vel non, but rather, where the disclosure should be—on the TIL statement or in the contract.

(6) In sum, the basic choice is between providing a large volume of information which may be marginally useful to an occasional consumer at a cost of complicating the TIL statement for all consumers. I would avoid this cost.

Second, virtually all the computational disclosures would be eliminated from the statement. My belief is that there were not really intended to provide consumer information as much as to make sure creditors got the other disclosures—principally the amount financed and the finance charge—correct. And, these same computations are usually provided on a bill of sale or other document. Moreover, the consumer can always ask about them. We cannot assume on the one hand that the consumer is going to be sufficiently sophisticated to use the present intricate TIL statement without help and bargain with creditors over

[2] Many creditors still are reporting "insurance penetrations" of between 95 and 100%.

[3] By the same reasoning, liability and property insurance will be included in the amount financed unless the consumer does not have the option of obtaining his own coverage. This does not appear to be a significant problem area warranting further disclosures.

[4] If consumers are to use the TIL statement to determine their rights of the transaction breaks down, then the present statement is poorly suited to this end. It does not inform consumers of what post-transaction recourse they have to withhold payment or obtain other relief.

the credit terms and at the same time be afraid to ask creditors how they arrived at figures in the contract. While requiring extensive computational disclosures may deter violations by a few creditors, it does so at the price of intelligibility of the statement. Finally, if there is really cause for concern, the Act could give the consumer the right to request a statement of how the amount financed was determined.

Third, the requirement of finance charge itemization will be eliminated. While itemization may alert consumers to the presence of charges which he might bargain away or shop to eliminate the key comparison factor is the total finance charge. The original Congress apparently thought consumers could make it without itemization, and the benefits of simplicity for all outweigh the benefits that a few may derive from getting this particularized information. Moreover, the present provisions are unfair in that they presumably require itemization by creditors who contract with outside parties for services but not by creditors who internalize their costs.

It should be noted that since itemization was required by the board, this is presumably a step that can be taken by regulation.

Fourth, the prepaid finance charge and required deposit balance concepts should be eliminated. The former was designed to make sure that creditors did not include such amounts in the amount financed, and creditors should be able to do it without separate computation. Moreover, the board has virtually conceded that specifying such charges serves no disclosure function and that the concept has no economic significance. Similarly, the elimination of the required deposit balance is possible by defining the amount financed in terms of the amount of credit of which the consumer has actual use. There is no need for this extra computational step.

These are both FRB concepts and can presumably be eliminated by regulation.

Fifth, security interests will no longer have to be described or disclosed. Consumers generaly realize that there is a security interest in items purchased in a credit sale, and little purpose seems served by disclosure. Moreover, the description of the security interest is normally couched in technical language which is not comprehensible by most consumers. In addition, the taking of security is increasingly covered by state statutes which limit the available security and prevent the taking of excess security. Finally, there is no indication that consumers bargain over security. Thus, the benefits from the present provision tend to be ephemeral.

Sixth, consumers' ability to use TIL as a litigation tool will be sharply curtailed because there will be many fewer violations or arguable violations. It may be that the present system satisfied some rough sense of justice if creditors who violated TIL committed other anti-consumer practices, but this was not the intention of TIL. Moreover, it was an extremely inefficient method for consumers since it did not help the vast number of consumers who did not sue but were faced with complex TIL statements and was grossly unfair to creditors who found it virtually impossible to comply. Moreover, the impact was selective: only those persons who sought legal representation and whose lawyers knew about TIL could use it to achieve such rough justice.

In this connection, one advantage of simplification is that it should curtail the need for an extensive administrative apparatus to deal with questions, and a doctrine of substantial or good faith compliance which is being proposed as a way out of the present situation.

I have doubts about proposals to give administrators the power to issue opinions answering uncertainties because these generate further questions over the precise scope of the administrator's power, and whether a particular transaction was fairly presented for decision. In addition, a doctrine of substantial compliance is difficult to apply and may lead to more litigation. And, if the Act is too complex for reasonable compliance by creditors, then such a doctrine simply ignores the underlying problem and does so in a manner which is unfair to consumers who are still confronted with hypertechnical TIL statements.

III. SOME CONCLUDING OBSERVATIONS

My testimony has attempted to analyze the reasons for the great complexity in the TIL rules for closed end credit, and has made some suggestions for revision. I have not, however, discussed open end credit and this is because the rules appear to be more workable, or at least, there is a much smaller volume of reported cases and creditor complaints. This is not to say that the rules are perfect: the typical open end statement has so many numerical categories of information that it takes a substantial amount of time just to figure out what information is being conveyed. But from the creditor's viewpoint, the similarity of transactions between different jurisdictions and the absence of a need to make substantial term disclosures have permitted a relatively high level of compliance.

In addition, I have not mentioned some of the areas of TIL which probably need some attention. For example, the timing of closed end disclosure permits disclosure to be made after the consumer is psychologically and morally committed to a particular transaction. Open end disclosure statements emphasize the APR and not the method of determining the balance. Yet APR's tend to be the same among different creditors, and significant differences exist in methods for determining the balance. Such information is probably more important to consumers than the APR. We need to be more precise in defining the line between open and closed end credit since there is some evidence that creditors who have traditionally used closed end credit to sell big ticket items are switching to open end accounts. This shift may become a stampede if a number of creditors perceive the open end method to present fewer TIL risks. But, an open end account does not state the finance charge at all, and states only a nominal APR. It may be that creditors should not be permitted to use open end accounts for purchases of more than a certain amount. The sale of insurance continues to be a problem area, but my own view is that this cannot be dealt with unless there is to be a revision of rate ceilings on consumer transactions at the state level. When the creditor's normal market power is reinforced by a rate structure which sets rates below market levels and permits the sale of insurance outside of the rate structure, it may be expected that most consumers will purchase insurance. Moreover, consumers have no information to judge the value of coverage, and the amounts seem relatively small thus encouraging the purchase. When most consumers wind up purchasing coverage, the only thing I find surprising is that both regulatory and legislative bodies seem to think that something is wrong. Finally, the persistent problem of burying probably makes finance charges as stated by sellers frequently inaccurate and prevents direct comparisons between sellers and direct lenders.

On a more basic level, the question may be asked whether TIL is worth it. My response is that it is impossible to tell because it has not, in a real sense, been tried. By my testimony today, I hope to hasten the day when that trial begins.

The CHAIRMAN. Thank you very much.

Let me say, gentlemen, if you could abbreviate your statements, we would appreciate it.

STATEMENT OF LEONARD O'CONNOR, VICE PRESIDENT, FIRST NATIONAL BANK OF BOSTON, ACCOMPANIED BY JAMES RICE

Mr. O'CONNOR. Thank you, Mr. Chairman.

In your letter to the Consumer Bankers Association, you listed three general areas in which you would like our comments.

We believe that it would be more appropriate for the Federal agencies to comment regarding the operation of the Consumer Affairs Division.

Therefore, we will restrict our comments to the last two items in your letter; namely, the nature and extent of the implementation and agency enforcement of consumer credit protection statutes and the need for simplification of the Consumer Credit Protection Act.

Turning to agency enforcement, as this committee is aware, during the past year, the Office of the Comptroller has been conducting a special program in the New England region to test a new consumer protection examination.

My bank has been subject to two of these examinations. For the information of the committee, I would like first to describe generally what the auditors look for when reviewing our bank for compliance

with consumer protection laws, and then I will give specific examples of the comments they gave to us regarding our operations in different areas.

The first of these examinations was conducted during June of 1975 by a representative from the regional administrator's office in Boston and coincided with the regular examination of the bank.

The purpose of the examination was to monitor the bank's compliance with a variety of consumer protection statutes and regulations.

The examination was to include checks for compliance with regulation Q, regulation Z, and the applicable Massachusetts general laws.

The examiner was provided with a work area and samples of all forms distributed to customers, including applications, loan agreements, periodic statements, disclosure forms, and other miscellaneous forms received by our customers. The audit procedure consisted of an extremely close and detailed inspection of all these forms for overall compliance.

On several occasions the examiner also requested to examine various internal operating procedures in order to test their compliance.

In addition, a telephone survey was conducted among all of our banking offices in order to test proper disclosure of rates on consumer loans. I might add that this survey noted 100 percent compliance.

As mentioned previously, I would like to cite some examples of the findings of these auditors.

I might add that the examiner dealt not only with the consumer loan operation, the marketing area, real estate mortgages, time and demand loans to individuals which in our bank are handled by another area.

It also included a statistical sampling for clerical errors.

There were no substantive errors found in either one of these examinations. For the most part, all parties involved agreed that the errors were of a highly technical nature, due in most part to confusing statute and implementing regulations.

One example of a minor noncompliance was a brochure entitled "Account Opener Kit".

This is used to open checking and savings accounts. The brochure described one long-term savings account as being "keyed to money market rates". This was inadvertent error. The rate payable in the brochure was fixed. So, the brochure was corrected.

In the area of mortgage loans, the then existing mortgage agreement provided for a late fee for payments made more than 15 days late.

A periodic statement is mailed out on a monthly payment date. The periodic statement did not disclose the date by which payment must be made in order to avoid late charges. This also was corrected by clarification.

As a result of a statistical sampling of closed-end installment loan disclosures, it was found that through clerical errors a small percentage of the disclosure forms rendered on secured loans failed to identify the property subject to the security interest properly.

A retraining program and closer monitoring of the clerical personnel involved was promptly instituted.

Folowing the submission of a written report by the examiner to the bank, an oral discussion was held in order to obtain agreement as to the various discrepancies noted in the report.

For the most part, it was agreed that all of the examination findings were valid and that changes in forms or procedures were called for in order for the bank to be in full compliance.

During June of 1976, again in conjunction with the normal bank audit, a second consumer protection examination was conducted.

This audit was basically conducted in the same format as the first, however, the examination concentrated on followup in order to determine that prior-mentioned errors had been corrected.

Every one of the deficiencies determined to exist in the first audit had been corrected by the time of the second audit.

It might be noted that this second examination also included tests for compliance with fair credit billing and equal credit opportunity which became effective after the first audit.

We feel that the two consumer protection audits conducted at the First National Bank of Boston have been most beneficial to our bank.

Despite ongoing review by legal counsel, the complexity of various regulations sometimes produces oversights at the operational level.

The outside review of all forms and procedures for compliance appears to be quite desirable from the standpoint of all banking institutions.

Over the past several months, I have had two opportunities to address members of the Massachusetts Bankers Association Consumer Credit Group concerning the purpose and scope of consumer protection audits.

On both occasions, following my presentation, I was approached by members of the group seeking information as to how one goes about having or requesting a consumer protection audit.

For the most part, these requests were from smaller banking institutions which typically do not have easy access to legal counsel, on an ongoing basis.

In summary, we see great benefits to all banking institutions and consumers from an ongoing consumer protection examination procedure under the present format.

In fact, in order to eliminate the potential for any future cases of noncompliance we have assigned one individual on a full-time basis whose sole function is to review and update all consumer loan forms to insure compliance within various statutes and regulations.

The second question which you posed to us was regarding the simplification of the Consumer Credit Protection Act.

While on the surface such a request would be simple, we have found after a great deal of study and consultation with many experts, trying to discern what information should be provided to the consumer upon application, for credit is confusing and, at times, contradictory.

We do not believe that in these hearings there is any need to reiterate the information which was presented to this committee during its oversight hearings on Qui Tam, which showed clearly how the Truth in Lending Act was being abused by various plaintiff's attorneys.

We would like to turn to the larger issue of how truth in lending should be simplified.

Our suggestion is that the committee, in conjunction with the Federal Reserve Board, industry and consumer groups, should set a priority of four or five items which should be disclosed to the consumer when applying for credit.

After these priority items have been disclosed, we would suggest that if the consumer wants additional information regarding other charges that might be assessed against him, that this informaiton be disclosed upon request to the creditor.

With regard to the priority items, we believe that the following four items should always be disclosed in credit transactions: (1) The monthly payment; (2) the total amount to be paid; (3) the dollar finance charge; (4) the annual percentage rate.

We would like to make it very clear to the committee that we believe these four terms, especially the finance charge and annual percentage rate, should be defined in such a manner as to allow flexibility in the credit market.

We would urge the committee to carefully and precisely define what elements will go into these charges.

Under the present system, certain elements must or must not be included. This is subject to which Federal judicial district the creditor is located. This uncertainty must be removed.

If a formula such as this were developed, a great deal of the nuisance litigation would be ended, and the consumer would be served by having a better method of measuring the charges for credit when shopping among various lenders.

At this time, we would also like to endorse the proposal by the Federal Reserve Board to your committee which would limit the penalty charges of the Truth-in-Lending Act to violations that actually interfere with the consumer's ability to make meaningful comparisons of credit.

We feel that the intent of truth in lending was for the consumer to be able to shop for credit by comparing credit terms, and this should be the focal point for any public or private enforcement activity.

A review of the developments in the administration of the Consumer Credit Protection Act would not be complete without a reference to the FTC's regulations on the holder-in-due-course doctrine and waiver of defense provisions.

Acting after the passage of the FTC Improvements Act, but without following the procedures required by it, FTC has prohibited sellers from using waiver of defense provisions in their contracts with consumers, and it has proposed a comparable regulation for nonbank creditors and FRB has proposed a similar regulation for banks.

We disagree with the substance and the provisions of these regulations, and we disagree with the procedures used by the FTC.

We urge the committee to hold legislative hearings on proposals to correct this situation.

One final point we would like to make with regard to the disclosures that various Federal and State acts that are required to be made by the lender.

From the initial truth-in-lending disclosures in 1969, there has been a proliferation of required disclosures. We find that disclosures on equal credit opportunity, fair credit billing, fair credit reporting, FTC holder-in-due-course, as well as numerous other disclosures, have simply deluged the consumer with paper.

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I sincerely doubt that the consumer appreciates all of these disclosures, and I think, at best, the effects are minimal.

We feel that, for the most part, many of the disclosures are either unnoticed by our customers or simply too confusing for the average consumer to understand.

We doubt that the ongoing disclosure of various items of information contribute much to the education of the average consumer, but after a time has a deadening effect—exactly the opposite intent of the law.

For example, despite the fact that the address for mailing billing error inquiries is clearly displayed on our periodic statements, over 40 percent of our written inquiries are received at the improper address.

We feel that the required full initial disclosures prior to the consummation of a transaction should be sufficient with an option for the customer to obtain additional information upon request.

Obviously, much further discussion must occur before any recommendations concerning the simplification of truth-in-lending may be adopted.

We at the Consumer Bankers Association, through our membership, stand ready to provide further information and support in this effort.

[Complete statement of Mr. O'Connor and additional material follows:]

STATEMENT OF LEONARD F. O'CONNOR FOR THE CONSUMER BANKERS ASSOCIATION

I am Leonard F. O'Connor, Assistant Vice President, First National Bank of Boston, Massachusetts. I am the Officer in Charge of the Consumer Finance Department of the bank. Accompanying me today is Drew V. Tidwell, Legislative Representative for The Consumer Bankers Association. The Consumer Bankers Association is composed of banks which have a special interest in instalment lending. At the present time, our Association represents commercial banks which have over fifty percent of the instalment lending outstandings in the United States.

In Senator Proxmire's letter to the Association requesting that we appear, he listed three general areas in which you would like our comments. We believe that it would be more appropriate for the federal agencies to comment regarding the operation of the Consumer Affairs Division. Therefore, we will restrict our comments to the last two items in your letter; namely the nature and extent of the implementation and agency enforcement of consumer credit protection statutes and the need for simplification of the Consumer Credit Protection Act.

Turning to agency enforcement: As this Committee is aware, during the past year, the Office of the Comptroller has been conducting a special program in the New England region to test a new Consumer Protection Examination. My bank has been subject to two of these examinations. For the information of the Committee, I would like first to describe generally what the auditors look for when reviewing our bank for compliance with consumer protection laws, and then I will give specific examples of the comments they gave to us regarding our operations in different areas.

The first of these examinations were conducted during June of 1975 by a representative from the Regional Administrator's office in Boston and coincided with the regular examination of the bank. After presenting proper identification as an authorized examiner, the examiner briefly explained the purpose and scope of the examination he was about to conduct. He explained that the purpose of the examination was to monitor the bank's compliance with a variety of consumer protection statutes and regulations. The examination was to include checks for compliance with Regulation Q, Regulation Z and applicable Massachusetts General Laws.

The examiner was provided with a work area and samples of all forms distributed to customers, including applications, loan agreements, periodic statements, disclosure forms, and other miscellaneous forms received by our customers.

The audit procedure consisted of an extremely close and detailed inspection of all of these forms for overall compliance with the statutes and regulations.

On several occasions the examiner also requested to examine various internal operating procedures in order to test their compliance. In addition, a telephone survey was conducted among all of our banking offices in order to test proper disclosure of rates on consumer loans. I might add that this survey noted 100 percent compliance.

As mentioned previously, I would like to cite some examples of the findings of these auditors. The examiners dealt not only with the consumer loan operation, but also with marketing, real estate mortgages, time and demand loans to individuals and included a statistical sampling for clerical error rates on disclosure forms.

In the marketing area, an example of one requested change was a brochure entitled, "Account Opener Kit." The brochure described particular long-term savings accounts as being "keyed to money market rates." This was an inadvertent error; the rate payable in these deposits is fixed. And so, the brochure was corrected.

Another area which needed correction was our disclosure procedures on our First Check Credit Account. Prior to the examination, disclosures for these loans were made initially on the loan agreement itself. On a separate sheet of paper, delivered to the customer at the same time, the monthly minimum payment was disclosed. Regulation Z requires that all initial disclosures be made on a single written statement. Therefore, our First Check Credit agreement was modified to include the minimum monthly payment.

In the area of mortgage loans, the then existing mortgage agreement provided for a late fee for payments made more than 15 days late. A periodic statement is mailed out monthly on which the disclosed due date is the agreed monthly payment date. The periodic statement did not disclose the date by which payment must be made in order to avoid late charges. This also was corrected by clarification.

As a result of a statistical sampling of closed-end installment loan disclosures, it was found that through clerical errors, a small percentage of the disclosure forms rendered on secured loans failed to identify the property subject to the security interest properly. A retraining program and closer monitoring of the clerical personnel involved was promptly instituted.

Time notes to individuals were occassionally written for a floating rate tied to prime. We had been using obsolete disclosure forms which stated a fixed rate with no mention of the floating rate. Just as soon as this was noted, the notes were redesignated to include the provision for floating rates.

Following the submission of a written report by the examiner to the bank, an oral discussion was held in order to obtain agreement as to the various discrepancies noted in the report. For the most part, it was agreed that all of the examination findings were valid and that changes in forms or procedures were called for in order for the bank to be in full compliance.

During June of 1976, again in conjunction with the normal bank audit, a second Consumer Protection Examination was conducted. This audit was basically conducted in the same format as the first, however, the examination concentrated on followup in order to determine that prior-mentioned errors had been corrected. Every one of the deficiencies determined to exist in the first audit had been corrected by the time of the second audit. It might be noted that this examination also included tests for compliance with Fair Credit Billing and Equal Credit Opportunity which became effective after the first audit.

We feel that the two consumer protection audits conducted at the First National Bank of Boston have been most beneficial to our bank. Despite on-going review by legal counsel, the complexity of various regulations sometimes produces oversights at the operational level. The outside review of all forms and procedures for compliance appears to be quite desirable from the standpoint of all banking institutions. Over the past several months, I have had two opportunities to address members of the Massachusetts Bankers Association Consumer Credit Group concerning the purpose and scope of consumer protection audits. On both occasions, following my presentation, I was approached by members of the group seeking information as to how one goes about having or requesting a consumer protection audit. For the most part, these requests were from smaller banking institutions which typically do not have easy access to legal counsel. In summary, we see great benefit to all banking institutions and consumers from an on-going consumer protection examination procedure under the present format.

In fact, in order to eliminate the potential for any future cases of non-compliance, we have assigned one individual on a full-time basis whose sole function is to review and update all consumer loan forms to insure compliance to various statutes and regulations.

The last question which you posed to us in your letter was that regarding the simplification of the Consumer Credit Protection Act. While on the surface such a request would be simple, we have found after a great deal of study and consultation with many experts in the field of law and economics, that trying to discern what information should be provided to the consumer upon application for credit is confusing and, at times, contradictory. We do not believe that in these hearings there is any need to reiterate the information which was presented to this Committee during its oversight hearings on Qui Tam, which showed clearly how the Truth in Lending Act was being abused by various plaintiff's attorneys.

Since the Committee can easily discern these problems, we would like to turn to the larger issue, of how Truth in Lending should be simplified. Our suggestion is that the Committee, in conjunction with the Federal Reserve Board, industry and consumer groups, should set a priority of four or five items which should be disclosed to the consumer when applying for credit. After these priority items have been disclosed, we would suggest that if the consumer wants additional information regarding other charges that might be assessed against him, that this information be disclosed upon request to the creditor.

With regard to the priority items, we believe that the following four items should always be disclosed in credit transactions. They are the monthly payment, the total amount to be paid, the dollar finance charge and the annual percentage rate. From my experience in the field, I find that most consumers are most interested in knowing the monthly payment. Secondly, they are concerned with the finance charge and the annual percentage rate. We believe that knowing the total amount paid under the contract will be useful to the consumer in shopping for credit. We should like to make it very clear to the Committee that we believe these four terms, especially the finance charge and annual percentage rate, should be defined in such a manner as to allow flexibility in the credit market. The present problems with regard to these items is that litigation regarding such matters as itemization of finance charges and disclosure of acceleration clauses has led to questions in determining what constitutes proper annual percentage rate or finance charges.

Therefore, we would urge the Committee to carefully and precisely define what elements will go into these charges. Under the present system, whether certain elements must or must not be included, is subject to which federal judicial district the creditor is located. This uncertainty must be removed. Other items such as late payment fees, rebates, acceleration charges and security interests would be disclosed by the creditor's upon request. If a formula such as this were developed, a great deal of the nuisance litigation would be ended, and the consumer would be served by having a better method of measuring the charges for credit when shopping among various lenders.

At this time, we would also like to endorse the proposal sent by the Federal Reserve Board to your Committee which would limit the penalty charges of the Truth in Lending Act to violations that actually interfere with the consumer's ability to make meaningful comparisons of credit. We feel that the intent of Truth in Lending was for the consumer to be able to shop for credit by comparing credit terms, and this should be the focal point for any public or private enforcement activity. Furthermore, the other suggestions contained in the Board's letter would end much of the unnecessary litigation in this area.

A review of the developments in the administration of the Consumer Credit Protection Act would not be complete without a reference to the FTC's regulations on the holder-in-due-course doctrine and waiver of defense provisions. Acting after the passage of the FTC Improvements Act, but without following the procedures required by it, FTC has prohibited sellers from using waiver of defense provisions in their contracts with consumers, and it has proposed a similar regulation for banks. We disagree with the substance and the provisions of these regulations, and we disagree with the procedures used by the FTC. We urge the Committee to hold legislative hearings on proposals to correct this situation.

One final point we would like to make with regard to the disclosures that various federal and State acts that are required to be made by the lender. From the initial Truth in Lending disclosures in 1969, there has been a proliferation of required disclosures. We find that disclosures regarding Equal Credit Opportunity, Fair Credit Billing, Fair Credit Reporting, FTC Holder-in-Due-Course, as well as numerous other disclosures, have simply deluged the consumer with paper. I sincerely doubt that the consumer appreciates all of these disclosures, and I think, at best, the effects are minimal.

For example, on my bank's Master Charge periodic statement, we make the following disclosures: (1) annual percentage rate; (2) daily periodic rate; (3) dollar finance charge; (4) address for mailing billing error inquiries; (5) address for mailing payments; (6) explanation of our policies regarding the same-day crediting of payment; (7) the Fair Credit Billing short form notice; (8) explanation of how the finance charge is calculated; (9) the Massachusetts Careless and Erroneous Billing Errors Disclosure; and shortly we will be adding a recently adopted Massachusetts State disclosure regarding the disposition of credit balances.

We feel that, for the most part, many of the disclosures are either unnoticed by our customers or simply too confusing for the average consumer to understand. We doubt that the on-going disclosure of various items of information contribute much to the education of the average consumer, but after a time has a deadening effect—exactly the opposite intent of the law. For example, despite the fact that the address for mailing billing error inquiries is clearly displayed on our periodic statements, over 40 percent of our written inquiries are received at the improper address. We feel that the required full initial disclosures prior to the consumation of a transaction should be sufficient with an option for the customer to obtain additional information upon request.

Obviously, much further discussion must occur before any recommendations concerning the simplification of Truth in Lending may be adopted. We at The Consumer Bankers Association, through our membership, stand ready to provide further information and support in this effort.

THE CONSUMERS BANKERS ASSOCIATION,
Washington, D.C., August 30, 1976.

Hon. JAKE GARN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR GARN: On behalf of Leonard F. O'Connor, Assistant Vice President of the First National Bank of Boston, I would like to respond to the questions which you submitted in writing to him.

First I will respond to the questions concerning conflicts between state and federal consumer protection laws.

Question 1. One source of concern in the truth in lending disclosure has been the conflict between State and Federal law. The drafters of the uniform consumer credit code and the Federal Reserve Board have suggested that the Federal law preempt the State law and the States enact laws and regulations similar to the Federal model. Would you care to comment on this?

In the area of preemption of state law, we believe that the states have a vital interest in regulating consumer credit transactions. However, when the Congress decides to act, then any state law that is inconsistent or ambiguous should be preempted. A procedure we would suggest would be that when Congress enacts a new law, such as the Equal Credit Opportunity Act, all other state laws on the subject are immediately preempted. However, a state can petition the Board of Governors of the Federal Reserve System, and upon a showing that the state has a substantially similar law and the means to enforce that law, then the state law would prevail. Furthermore, if the state law provided more protection to the consumer and this additional protection did not conflict with any policy of the Congressional enactment, then the portion of the state law which provided greater protection would stand. The Board of Governors would decide whether or not the conflict was such that it frustrated the Congressional intent by allowing the state law to prevail.

Question 2. A suggestion made by some of the State bank commissioners who testified yesterday is that the enforcement authority for consumer credit protection laws be given to the State. Some would also empower the State examiners to examine national banks for violations of the State consumer credit protection laws. Would you comment on this proposal?

While we do not object to states' enforcement of consumer credit protection laws in institutions that are chartered and examined by the state, we believe that this is a basic federal prerogative with regard to institutions chartered by the federal government. Furthermore, in light of the fact that all of the federal banking agencies have now established offices of consumer affairs as required by the Moss-Magnuson Act and are beginning new training programs for their examiners to be sure that they are qualified to examine for consumer credit protection violations, we believe that it would be inadvisable for Congress, at this time, to mandate this change. If, after two or three years of experience under this new system, problems still exist, then maybe the subject should be reopened.

We believe that national banks should be examined by national bank examiners for violations of state law. Our testimony has clearly shown that when the federal agencies do act in this area, they are capable of requiring federally chartered institutions to comply with both federal and state consumer protection laws.

Question 3. Has it been your experience that the Federal bank examiners do not examine for violations of State credit protection laws including State usury laws?

As we pointed out in our testimony, the federal examiners who conduct the consumer credit examination examine for violations for both federal and state law. Again, we would emphasize that the Congress should see how the new system works before making any changes in this area.

Question 4. You have stated that you must give multiple disclosures in your forms which are not meaningful to the consumer. Would you be good enough to file an example of these multiple disclosures with the committee?

Attached to this statement is a copy of the material you desired.

Next I will respond to the questions that you asked relating to Holder-in-Due-Course.

Question 1. During the past few months, the primary topic of concern to the banking industry has been the recent FTC Holder-in-Due-Course ruling. Have you noticed any appreciable effect this rule has had on consumer lending?

Yes. Contact with our members has shown that many have either completely eliminated or severly curtailed their dealings with home improvement dealers. Furthermore, used car dealers have found it more difficult to receive financing, and certain new car dealers who are thinly capitalized have found financing more difficult. Also, our members are very hesitant and some have absolutely refused to take on new businesses which do not have a track record. The general effect of this rule has been to encourage many banks to completely drop out of the three-party paper market.

Question 2. What have been the problems encountered by the banking community in attempting to comply with the rule?

A major problem with the rule is vagueness. Many of the definitions found in the rule, such as "purchase money loan," "business arrangement," and "referral" are very vague. It is almost impossible in reading the rule itself for an average man of average intelligence, who is also engaged in business, to determine whether or not he is covered by the rule. Furthermore, the liability of the banks has been substantially increased by this rule. One example is that banks will now have to be liable for any tort claims or product liability claims that could arise out of an action by the consumer. The Congress, when passing the Fair Credit Billing Act, specifically excluded lenders from liability for tort claims. However, the FTC has not seen fit to follow the Congressional mandate in this area.

Question 3. Does the FTC plan to issue any other regulation pertaining to consumer credit contracts?

There are three major rules which the FTC now has under consideration which directly affect the consumer credit market. First is the second part of the Holder-in-Due-Course rule which would directly apply its provisions to creditors.

Secondly, there is a used car rule which affects banks since it would regulate the disclosures made at the time the repossessed collateral, such as an automobile, is disposed of.

Finally, probably the most significant rule is that regarding unfair or deceptive acts and practices. This proposal contains 12 substantial elements which directly regulate consumer credit contract terms. They are proposals which would make it an unfair or deceptive practice to include any of the following terms in a consumer credit contract: a) a provision giving a cognovit note, confession of judgment, or power of attorney; b) any provision waiving an exemption from attachment or other processes on real property; c) any clause granting assignment of wages; d) any security agreement other than a purchased money note; e) any failure to specifically identify goods encumbered by a security agreement; f) if property is retaken, then the creditor must credit to the customer the fair market retail value for that property; g) any clause requiring the payment of attorney's fees in the event of default; h) any clause assessing late fees if they exceed the applicable finance charge; i) the creditor shall not communicate with the consumer's employer or any other person not liable for the debt; and j) a complete disclosure to the cosignatory of his liability under the contract and a granting to him of a three-day right of recession.

Question 4. Do you have any recommendation as to assure that the same disastrous effects do not flow from these proposed rules?

We believe that the FTC is the inappropriate agency to regulate consumer credit contracts. The staff and the Commission do not have any expertise in this area and have shown a complete disregard for the impact their poorly drafted and ill-considered rules have on the consumer credit market. Therefore, we suggest that the authority to declare an act unfair or deceptive in consumer credit contracts be transferred from the FTC to the Federal Reserve Board. We believe that the Board is anxious both to protect the consumer, as well as that the rules are understandable and realize the impact it will have in the marketplace.

Question 5. Do you have any views regarding the law making function exercised by the FTC under its authority to declare consumer contract provisions unfair and deceptive?

We believe that our views on this matter are best expressed in a presentation which I made recently before the Graduate School of Consumer Banking on this topic. There I fully discussed the public policy aspects of the FTC's law making procedures. You will find a copy of that presentation enclosed.

If you desire any additional information regarding these responses, please do not hesitate to contact us. The Consumer Bankers Association appreciates this opportunity to appear before your Committee and discuss these two very important issues.

Sincerely,

DREW V. TIDWELL,
Legislative Representative.

Enclosures.

THE REMARKS OF DREW V. TIDWELL AT THE GRADUATE SCHOOL OF CONSUMER BANKING, ON WEDNESDAY, AUGUST 11, 1976

Last week at this time you heard Mr. David Williams of the Federal Trade Commission giving his views with regard to the Commission's activities. I would like now to give you my views as to the recent actions taken by the Commission.

Specifically, I would like to turn my attention to the recent Federal Trade Commission rule regarding preservations of consumer claims and defenses. This rule which abolished the hold-in-due-course doctrine, raises serious concerns regarding the proper place for the Federal Trade Commission in our federal system of government. Specifically, I am very concerned by the power of an appointed five-member commission to promulgate rules having the effect of law without any effective guidelines from Congress. Such raw rule-making power involves broad social issues. This power has now been used by the FTC to override State legislation and even decisions of the Congress.

This holder-in-due-course rule may well be the first of what I feel will begin numerous exercises of the Commission's inappropriate power. The regulation expands lenders' liability for a merchant's performance. This type of change in the relationship between consumers, merchants, and lenders involves broad questions of political and social policy which used to be the sole province of the Congress. I was taught in grammar school, college, and later in law school that in our system of government the determination of major social policies has been reserved to the Legislative Branch in most situations, and in those situations that are not reserved to the Legislative Branch have always been reserved to the courts in interpreting our Constitution. Our traditional system of checks and balances has always given to the administrative agencies the responsibility to write regulations to carry out specific legislative policy.

An excellent example of this in the consumer credit field is Truth in Lending. Here the Congress stated that all consumers should be granted standardized consumer credit disclosures. Congress then mandated to the Federal Reserve Board the power to fill in the intricacies of the statute's language and resolve any ambiguities. However, this whole regulation was written within some very carefully constructed parameters and guidelines set by the Congress.

In very marked contrast the only standard which the FTC must follow is that of what is "fair" or "deceptive". I feel, particularly with regard to the fairness standard, that there is no standard at all.

Essentially, we are faced with a subjective analysis of five non-elected commissioners and their staffs as to what should be considered fair.

Furthermore, there are no bounds as to the FTC's authority. Frankly, under the power which the FTC is now acting, it could regulate all aspects of a consumer credit transaction up to the amount of rates you charge. In my considered opinion, this authority by the FTC is profoundly restructuring our federal system of government as it relates to the exercise of power between the federal government and the States and the Congress and administrative agencies. In our opinion such a restructuring has profound implications and the possibility of a grave abuse of power.

The concept of democracy is based upon the theory that the people, through their elected representatives determine what is fair. In the Congressional system of government, all interested parties and diverse segments of the public are examined and usually a majority concensus is reached. We do not find this to be the situation with the FTC. Here we have five non-elected members, who are not responsible to the people by administrative fiat, making laws. While we will admit in certain rule-making procedures our concept of democracy is overrun by the need for effective administration, we believe that this is justifiable when the Congress has delineated clearly and specifically policy guidelines. However, in the present Holder Rule and other proposed rules being considered by the FTC, we believe that Congressional expertise is at least equal to, if not better than, that of the administrators. In our opinion the subordination of democratic principles to authoritarian centralized law-making is without justification. If this authority had been used in any other area but consumer protection, the Congress would be in a mad scramble to regain its lost perogatives. It is exceedingly ludicrous to watch a Congress, which was supposed to be working to return the power of government to the people's representatives, sit idly by and allow its power to shape major social policies be usurped by administrative agencies in the name of consumer protection. This rule concerning preservation of consumer claims and defenses clearly illustrates the problems of giving the FTC unparalleled power to preempt State law. The area addressed by this rule has been considered by over 41 State legislatures. These legislatures have adopted significant modifications to the traditional holder-in-due-course doctrine. Also, the Congress has enabled legislation imposing on credit card issuers liability for merchants performance under certain circumstances.

The FTC promulgation in this matter is a complete variance to all State laws and Congressional policies on this issue. The FTC has completely disregarded the years of careful study by legislators, economists, and legal scholars.

While I do not know the solution to this problem, I believe that some curtailment of the FTC powers is needed to preserve our federal system of checks and balances. As an initial move, I believe that Congress ought to immediately take steps to review the authority given to the FTC and place some type of check upon them.

THE FIRST NATIONAL BANK OF BOSTON

BOSTON, MASSACHUSFTTS 02110

If all information pertaining to a new or refinanced loan is not available on the date of this statement, some of the information furnished may be estimated. If credit is finally approved by the Bank and this transaction is consummated, final figures may be slightly less than the finance charge, total of payments, monthly payment amount, and last payment indicated here. If any of these figures are higher than those indicated here, final figures will be forwarded to you prior to the due date of the first instalment.

☐ NEW OR REFINANCED LOAN
NOTE: A check in the "E" box indicates an estimated item.

A. BASE AMOUNT . . . . $______ E
B. TYPES OF COVERAGE and PREMIUMS OF INSURANCE FINANCED
______ $______ E
Customer will choose the person through whom the insurance is to be obtained.
C. FILING OR HELP GUARANTEE FEE . . . . $______ E
D. AMOUNT FINANCED (A+B+C) . . . . $______ E
E. FINANCE CHARGE . . . . $______ E
F. TOTAL OF PAYMENTS (D+E) . . . . $______ E
G. If credit is finally approved by the Bank, this transaction will be consummated and the FINANCE CHARGE will begin to accrue on the date when the BASE AMOUNT is disbursed.
DATE ______ E
H. NUMBER OF MONTHLY PAYMENTS ______
I. MONTHLY PAYMENT DATE ______ E
FIRST PAYMENT DUE ______ E
J. MONTHLY PAYMENT AMOUNT . . . . $______ E
Last Payment to be . . . . $______ E
K. ANNUAL PERCENTAGE RATE . . . . ______ %

L. A security interest has been granted to the Bank in the following described property:

______

and in certain other property as more fully described in a security agreement executed by and a copy of which has been or will be furnished to the customer. The security agreement grants to the holder a security interest in presently-owned and after-acquired property and secures repayment by the customer of the Total of Payments (Disclosure Item F). Standard bank right of set-off against deposit balances secures loans.

M. A delinquency and collection charge may be charged on each payment which shall become and remain in default for a period of 15 days, in an amount equal to five cents for each dollar of such payment, or $5.00, whichever is less.

N. An extension fee may be charged on any amount extended for the period of extension at a rate not in excess of the ANNUAL PERCENTAGE RATE. A delinquency and extension charge may not be made with respect to the same period of delinquency.

O. Reasonable costs of collection, including reasonable attorney's fees may be charged to effect collection of amounts not paid when due.

P. If the obligation of the customer is prepaid, there shall be rebated a fraction of the finance charge computed under the square of the months method. Unpaid fines may be deducted from the rebate. (An explanation of the square of the months method appears on the reverse side.)

☐ EXTENSION OF PAYMENT

Account Number ______

Unpaid Balance Extended $______

Extension Fee $______

In ______ 19______ you will resume monthly payments on the date and in the amount originally agreed upon.

BY: (Authorized Official) DATE

No. ______ *LOAN AND SECURITY AGREEMENT* Amount $______

Control No. ______ CONSUMER NOTE Date ______

The undersigned (jointly and severally, if more than one and each herein called "Borrower") promise(s) to pay to the order of The First National Bank of Boston (herein called "Bank") at Bank $______ (herein called the "Total Debt") in ______ successive monthly instalments of $______ each (except for the final instalment which may be slightly more or less in order to make up the balance of the Total Debt) beginning ______ 19____, and remaining instalments on the same day of each month thereafter until the Total Debt has been paid in full, together with delinquency charges of five cents for each dollar of any instalment in arrears more than fifteen days (up to a maximum of $5.00 for any delinquent instalment) and, except as provided for below with respect to secured loans, reasonable costs of collection, including reasonable attorneys' fees.

If this Agreement does not provide for a non-possessory security interest in consumer goods, then upon default in the payment or performance of any obligation provided for herein and as long as the default continues, or if Bank deems itself insecure, Bank *may*, without notice or demand, declare all obligations hereunder immediately due and payable.

If this Agreement provides for a non-possessory security interest in consumer goods, then if Borrower fails to timely make any payment required to be made hereunder or if the collateral is sold or taken by another creditor or if the insurance protecting the collateral is terminated, Bank will mail Borrower a default notice advising Borrower of the default and of Borrower's rights under Chapter 255 of the General Laws of Massachusetts, which governs repossession of the collateral. If within 21 days after Bank mails such default notice, Borrower has not paid Bank the amount Borrower owes hereunder, Bank may declare the entire unpaid balance owed to Bank under this Agreement payable immediately and take possession of the collateral. If Borrower does not pay Bank on or before the 21st day following such default notice and Bank incurs reasonable expenses (including reasonable attorneys' fees) to try to collect the balance and Bank refrains from taking possession of the collateral, Borrower will pay Bank for those expenses in addition to the unpaid balance. If Bank takes possession following a default and the delivery of such default notice and Borrower owes Bank $2,000 or more at the time pursuant to this Agreement, Borrower will pay Bank reasonable costs of storage and repossession in addition to the balance remaining after sale of the collateral.

If the Total Debt is paid in full before maturity, a prepayment allowance in accordance with the square of the months method will be made.

Any sums credited by or due from the Bank to any Borrower may at any time be held as collateral for the payment or performance of the obligations provided for herein of such Borrower to Bank. Regardless of the adequacy of collateral, Bank may apply such sums against amounts which are due and payable hereunder. Every Borrower assents to any extension of time of payment or any other indulgence by Bank, to any substitution, exchange or release of collateral and/or to the release of any other Borrower. As used herein "collateral" means any sums or property referred to above or on the reverse side hereof securing the Total Debt. In the event of a transfer hereof the assignee of any holder shall have all the rights of the Bank. The Bank is authorized to fill in any blanks with appropriate figures and information. In the event of any conflict between the provisions of this Agreement and any applicable law, the provisions of this Agreement shall be deemed modified to comply with applicable law.

This Agreement is subject to the additional provisions dealing primarily with collateral set forth on the reverse side hereof, which additional provisions are hereby incorporated by reference.

______ (Co-Maker) ______ Signer

______ (Co-Maker) ______ Joint Signer

CF 82 (Rev. 7/76)

EXPLANATION OF THE SQUARE OF THE MONTHS METHOD

The following example explains how the Bank determines the finance charge rebate using the square of the months method. Assume a customer enters into a transaction having a precomputed Finance Charge of $100 and providing for repayment of the Total of Payments in twelve equal consecutive monthly instalments with the first instalment due within two months from the date that funds are disbursed. Now assume that the debt is prepaid in full before the third instalment is due. To determine the finance charge rebate, the Bank would multiply $100 by a fraction equal to $\frac{9 \times 9}{12 \times 12} = (\frac{81}{144})$. The "9" in the fraction represents the number of full monthly periods being prepaid; the "12" in the fraction represents the number of full monthly periods originally planned. This multiplication ($\$100 \times \frac{9 \times 9}{12 \times 12}$) results in a finance charge rebate of $56.25 for the customer.

LOAN AND SECURITY AGREEMENT – ADDITIONAL PROVISIONS

Insurance premiums, if any, paid by Bank and included in the Total Debt are:
(Describe type of coverage)

________________________ Premium $________
________________________ Premium $________
________________________ Premium $________ $________

To secure payment of the Total Debt, Borrower hereby grants to Bank a security interest in the property described below together with all accessions thereto. ________________________

Description *Make* *Model No.* *Serial No.* *Engine No.*

The above collateral is bought or used primarily for ☐ personal purposes ☐ business purposes; and if checked here ☐ is being acquired with the proceeds of the loan evidenced hereby, which proceeds Bank may disburse directly to the seller of the collateral. If any of the collateral is a fixture, it is to be affixed to real estate located at ________________________ of which real estate the owner of record is ________________________

The Borrower shall not sell, remove or further encumber any of the collateral, shall be responsible for all loss thereof or damage thereto, shall keep the same in good order and repair, shall procure insurance on the collateral and shall at any time perform other acts and furnish the Bank information, all as the Bank may reasonably request for its protection hereunder. Without obligation on its part, the Bank may, if the Borrower fails to do so, place insurance for its reasonable protection and the Borrower shall reimburse the Bank on demand for any amount expended therefor. The Bank shall have with respect to collateral, in addition to all other rights and remedies and except as otherwise provided by applicable law, including Chapter 255 of the General Laws, the remedies of a secured party under the Uniform Commercial Code.

The CHAIRMAN. Thank you very much, Mr. O'Connor.
Mr. Schober?

STATEMENT OF MILTON W. SCHOBER ON BEHALF OF THE AMERICAN RETAIL FEDERATION

Mr. SCHOBER. Mr. Chairman, the remarks of the American Retail Federation are divided into two general categories: legislation and regulation.

With respect to the legislative considerations, as a threshold observation, we feel that Congress in many cases has passed laws entirely too general and delegated far too much regulatory authority to the agency responsible for implementing the act.

It is almost as though the Congress has said, "Go and sin no more, and we hereby designate the Board of Governors of the Federal Reserve System to define sin."

Neither the Board, the Federal Trade Commission, nor any other executive agency, nor members of their respective staffs are directly accountable to the people of this country.

When Members of Congress are selected by the people, we feel that the people are entitled to expect them—their elected representatives—to pass the laws of our land.

We urge that the Congress resist the temptation further to delegate legislative powers.

However, where it is the opinion of Congress that delegation of regulatory authority is genuinely needed, we urge that Congress afford the agency to which such power is given ample time in which to consider the subject matter and conduct the necessary hearings in order to promulgate an adequate and timely regulation.

By way of example, we cite the problems which creditors faced in 1975 when the Federal Reserve Board was given only 12 months in which to promulgate regulations under the Fair Credit Billing Act and Equal Credit Opportunity Act.

Both acts involved novel approaches to Federal regulation and required a substantial amount of the staff time, public comment, and Board consideration before regulations could be finally promulgated.

As a result, one of the regulations was issued 53 days before its effective date, and the other only 12 days before its effective date.

Neither period was anywhere near adequate for retailers—indeed, any creditors we know of—to train personnel to comply with the respective acts or to adapt forms and procedures to assure compliance.

We recommend that in the future Congress set the effective date of any act as complex as truth in lending, fair credit billing, or equal credit opportunity at least 2 years after date of enactment.

Furthermore, just as the retail industry needs a reasonable leadtime to implement new regulations, it also needs time to prepare, print, and put into use new forms.

Just this year, creditors faced massive forms changes to meet an April 30 deadline under the Fair Credit Billing Act Amendments to regulation Z, and another set of equaly significant forms changes on June 30 under regulation B.

Further changes in forms and procedures will be necessary under provisions of regulation B which become effective on November 1, 1976.

We urge the Congress to impose a statutory limitation of one form change per year and require at least 6 months advance notice of the substance of any such change. We feel that it would be reasonable to require that any regulatory provision involving a change in forms be promulgated by June 30 to become effective no earlier than the following January 1.

Thus, those upon whom the forms requirements were imposed would have 6 months in which to design the necessary forms, have them printed, train personnel to use them, and get them in place ready to use by the effective date.

Once a year is enough; more frequent changes not only involve tremendous costs, but also increase exposure for inadvertent violations, with no significant benefit to consumers.

Finally, the Truth in Lending Act desperately needs simplification. Our invitation to appear here at these oversight hearings came so recently that we have not had the opportunity to prepare detailed recommendations for simplification.

However, we point with approval to the views of the Board of Governors of the Federal Reserve System expressed in the Vice Chairman's letter to Senator Proxmire of July 16 to the effect that "only a limited number of terms seem to be genuinely helpful" in assisting a consumer "to make meaningful comparisons of credit terms."

Such comparisons are, after all, the express purpose of the Truth in Lending Act, section 102. Those terms, the Board said, were annual percentage rate, finance charge, amount financed, and the repayment schedule.

By way of general recommendations, we submit that this committee should undertake promptly a detailed review of the Truth in Lending Act with a view toward limiting the requirements of the act which are subject to civil penalties for violation to a disclosure of those four elements of a credit transaction.

In the alternative, the Federation suggests that Congress introduce, by amendment to the act, the doctrine of "substantial compliance," under which a creditor would not be subject to civil penalties if that creditor, with respect to a transportation, were in substantial compliance with the act and regulation Z.

By way of regulatory recommendations, the most pressing need creditor, with respect to a transaction, were in substantial compliance with the act and regulation Z.

Retailers want desperately to comply with the law and just want to be told how to do it. However, the Federal Reserve Board will not give a formal approval of any truth in lending disclosure forms or other statements.

The Federation deems it to be an unconscionable abandonment of regulatory responsibility to promulgate a regulation as complex as regulation Z is and then fail or refuse to advise creditors who are subject to its civil and criminal sanctions whether their forms are in compliance with the regulation.

ARF recommends that the Board publish a series of approved, but not required, forms, and until that is accomplished that the Board promptly undertake a program of official forms approval or denial of approval with reasons therefor, for creditors subject to the act.

Moreover, in the past creditors have had a great deal of difficulty in obtaining prompt response from the Federal Reserve Board to inquiries about regulatory interpretations other than forms.

For example, I, personally, on behalf of clients, filed an official request for an interpretation of regulation Z in October 1974 and another on a different subject, still under regulation Z, during the following month. Neither has received a response.

We noted with approval a recent amendment to both regulations B and Z which obligates the Board, upon receipt of a request for an official interpretation of either regulation, either to give a responsive answer within 15 business days after receipt or within that period of time give written notification of when such a response can be expected.

We applaud this regulatory requirement and feel that it may provide a measure of relief from the nonresponse problem which creditors now face.

Finally, with respect to regulatory improvements, we reiterate the need for more simplification. By way of example, we refer you to section 411 of Public Law 93–495 which amended a section of the Truth in Lending Act to require open end creditors to make the following disclosures on their periodic statements:

> The amount and date of each extension of credit during the period and a brief identification on or accompanying the statement of each extension of credit in a form prescribed by regulations of the Board sufficient to enable the obligor to identify the transaction, or relate it to copies of sales vouchers or similar instruments previously furnished.

By regulation, the Board has now proposed to implement that amendment—which ran five typeset lines—with an amendment to regulation Z which runs eight typewritten pages and is accompanied by an eight-page official explanation.

A copy of that proposal is attached to my statement, and I ask that it be included in the record of these hearings.

The CHAIRMAN. Without objection, that will be done.

Mr. SCHOBER. By way of summary, let me reiterate that retailers—indeed, I am sure, all creditors—want to comply with the law.

However, any such law should be capable of compliance, not just by the large creditors with access to lawyers trained in this special field, but by all creditors subject to its provisions.

While I cannot speak personally for any company, I feel that it is a safe assumption to say that none of the large, multistate retailers is going to be forced out of business by complex regulations.

They have, or have access to, the resources to comply. It is the small businessperson upon whom that complexity impacts the hardest.

It is the small businessperson most likely to abandon an in-house credit plan and go to bank and similar credit card plans, thus increasing concentration and decreasing competition in the consumer credit market place.

It is the small merchant who is paying proportionately the highest price for compliance with complex regulations, and it is the small merchant who is most likely to be damaged.

[Complete statement of Mr. Schober follows:]

PREPARED STATEMENT OF MILTON W. SCHOBER, ATTORNEY AT LAW, WASHINGTON, D.C., REPRESENTING THE AMERICAN RETAIL FEDERATION

Mr. Chairman and distinguished members of the Senate Committee on Banking, Housing and Urban Affairs, I am Milton W. Schober, special credit counsel for the American Retail Federation (ARF) on whose behalf I am appearing today. Membership in ARF is composed primarily of state and national retail trade associations which, through their members, represent over one million retail establishments.

The vast majority of retailers represented by ARF extend consumer credit in some form, and, therefore, are subject to one or more of the provisions of the Consumer Credit Protection Act. For this reason, the Federation deeply appreciates this opportunity to share with the Committee its views about regulatory problems which have developed under the Act.

While ARF's comments are directed principally toward Title I, Truth in Lending, because that Act has been in effect longer than Title VII, Equal Credit Opportunity, the legislative and regulatory policy considerations presented today should be considered applicable equally to both titles.

LEGISLATIVE CONSIDERATIONS

As a threshold observation, we feel that Congress in many cases has passed laws entirely too general and delegated far too much regulatory authority to the agency responsible for implementing the Act. It is almost as though the Congress had said: "Go and sin no more, and we hereby designate the Board of Governors of the Federal Reserve System to define sin."

Neither the Board, the Federal Trade Commission, nor any other executive agency, nor members of their respective staffs are directly accountable to the People of this Country. When members of Congress are selected by the People, we feel that the People are entitled to expect them—their elected representatives—to pass the laws of our Land. We urge that the Congress resist the temptation further to delegate legislative powers.

However, where it is the opinion of Congress that delegation of regulatory authority is genuinely needed, we urge that Congress afford the agency to which such power is given ample time in which to consider the subject matter and conduct the necessary hearings in order to promulgate adequate and timely regulations. By way of example, we cite the problems which creditors faced in 1975 when the Federal Reserve Board was given only 12 months in which to promulgate regulations under the Fair Credit Billing Act and Equal Credit Opportunity Act. Both Acts involved novel approaches to federal regulation and required a substantial amount of staff time, public comment, and Board consideration before regulations could be finally promulgated. As a result, one of the regulations was issued 53 days before its effective date, and the other only 12 days before its effective date. Neither period was anywhere near adequate for retailers—indeed, any creditors we know of—to train personnel to comply with the respective Acts or to adapt forms and procedures to assure compliance.

We recommend that in the future Congress set the effective date of any Act as complex and pervasive as Truth in Lending, Fair Credit Billing, or Equal Credit Opportunity at least two years after date of enactment.

Furthermore, just as the retail industry needs a reasonable lead time to implement new regulations, it also needs time to prepare, print, and put into use new forms. Just this year, creditors faced massive forms changes to meet an April 30 deadline under the Fair Credit Billing Act Amendments to Regulation Z, and another set of equally significant forms changes on June 30 under Regulation B, Equal Credit Opportunity. Further changes in forms and procedures will be necessary under provisions of Regulation B which become effective November 1, 1976.

We urge the Congress to impose a statutory limitation of one forms change per year and require at least six months advance notice of the substance of any such change. We feel that it would be reasonable for Congress, by amendment to the Truth in Lending Act and Equal Credit Opportunity Act, to require that any regulatory provision involving a change in forms be promulgated by June 30 to become effective the following January 1. Thus, those upon whom the forms requirements were imposed would have six months in which to design the necessary forms, have them printed, train personnel to use them, and get them in place ready for use by the effective date. Once a year is enough; more frequent changes not only involve tremendous costs but also increase exposure for inadvertent violations.

Finally, the Truth in Lending Act desperately needs simplification. Our invitation to appear at these oversight hearings came so recently that ARF has not had the opportunity to prepare detailed recommendations for simplification. However, we point with approval to the views of the Board of Governors of the Federal Reserve System expressed in the Vice Chairman's letter to Senator Proxmire of July 16 to the effect that "[o]nly a limited number of terms seem to be genuinely helpful" in assisting a consumer "to make meaningful comparisons of credit terms." Such comparisons are, after all, the express purpose of the Truth in Lending Act (Section 102). Those terms, the Board said, were annual percentage rate, finance charge, amount financed, and the repayment schedule. By way of general recommendation, we submit that this Committee should undertake a detailed review of the Truth in Lending Act with a view toward limiting the requirements of the Act which are subject to civil penalties for violation to a disclosure of those four elements of a credit transaction. In the alternative, the Federation suggests that Congress introduce, by amendment to the Act, the doctrine of "substantial compliance," under which a creditor would not be subject to civil penalties if that creditor, with respect to a transaction, were in substantial compliance with the Act and Regulation Z. A special committee of ARF is undertaking a review of the Act, and upon its completion in approximately three months, we will be glad to share our detailed recommendations with this Committee.

REGULATORY CONSIDERATIONS

By way of regulatory recommendations, the most pressing need facing retailers at this time is assurance that their forms are in compliance with the regulation. Retailers want desperately to comply with the law and just want to be told how to do it. However, the Federal Reserve Board will not give a formal approval of any Truth in Lending disclosure forms or other statements. The Federation deems it to be an unconscionable abandonment of regulatory responsibility to promulgate a regulation as complex as is Regulation Z and then fail or refuse to advise creditors who are subject to its civil and criminal sanctions whether their forms are in compliance with the regulation. ARF recommends that the Board publish a series of approved (but not required) forms, and until that is accomplished that the Board promptly undertake a program of *official* forms approval (or denial of approval with reasons therefor) for creditors subject to the Act.

Moreover, in the past creditors have had a great deal of difficulty in obtaining prompt response from the Federal Reserve Board to inquiries about regulatory interpretations other than forms. For example, I, personally, on behalf of clients, filed an official request for an interpretation of Regulation Z in October of 1974 and another on a different subject during the following month. Neither has received a response.

We noted with approval a recent amendment to both Regulations B and Z which obligates the Board, upon receipt of a request for an official interpretation of either regulation, either to give a responsive answer within 15 business days after receipt or within that time give written notification of when such a response can be expected. We applaud this regulatory requirement and feel that it may provide a measure of relief from the nonresponse problem which creditors now face.

Finally, with respect to regulatory improvements, we reiterate the need for more simplification. By way of example, we refer you to Section 411 of Public Law 93-495 which amended Section 127(b)(2) of the Truth in Lending Act to require open end creditors to make the following disclosures on their periodic statements: "The amount and date of each extension of credit during the period and a brief identification on or accompanying the statement of each extension of credit in a form prescribed by regulations of the Board sufficient to enable the obligor to identify the transaction, or relate it to copies of sales vouchers or similar instruments previously furnished."

By regulation, the Board has now proposed to implement that amendment—which ran five type-set lines—with an amendment to Regulation Z which runs eight type-written pages and is accompanied by an eight-page official explanation. A copy of that proposal is attached to my statement, and I ask that it be included in the record of these hearings.

By way of summary, let me reiterate that retailers—indeed, I am sure all creditors—*want* to comply with the law. However, any such law should be capable of compliance, not just by the large creditors with access to lawyers trained in this special field, but by all creditors subject to its provisions.

While I cannot speak personally for any company, I feel that it is a safe assumption to say that none of the large, multistate retailers is going to be forced out of business by complex regulations. They have, or have access to, the resources to comply. It is the small businessperson upon whom that complexity impacts the hardest. It is the small businessperson most likely to abandon an in-house credit plan and go to bank (and similar) credit card plans, thus increasing concentration and decreasing competition in the consumer credit marketplace. It is the small merchant who is paying proportionately the highest price for compliance with complex regulations, and it is the small merchant who is most likely to be damaged.

[Federal Reserve press release, May 12, 1976]

The Board of Governors of the Federal Reserve System today proposed several modifications to its Truth in Lending rules for identifying transactions charged to consumers using open-end charge accounts (such as charges on a credit card billing statement).

The principal proposal would amend that portion of the Board's Regulation Z implementing a law (Public Law 93-495) providing for minimum disclosure requirements on, such billing statements.

Comment will be received through June 18.

The "identification of transaction" amendments to Regulation Z became effective last October 28 (together with other amendments to Regulation Z implementing the related but separate Fair Credit Billing Act). Regulation Z implements the Truth in Lending Act, to which the identification of transaction law is an addition (as is the Fair Credit Billing Act).

As originally adopted, the rules for identification of transactions permitted creditors to continue to identify charges on open-end billing statements as they have been doing, until July 1, 1976. One requirement to be met beginning July 1 was that when other information is not available to identify a transaction, a number, or symbol (such as a voucher number) must appear on the billing statement.

Creditors—stating that they expect to be able in most cases to satisfy the basic identification disclosure requirements—have objected that the voucher number requirement would result in costly collection of data that they would use in only a few cases.

The Board therefore proposed an alternative procedure. Under the proposal, creditors unable to satisfy the basic identification of transaction requirements would be permitted to disclose such information as they have available. But they would be required to treat any resulting inquiry from the consumer as triggering the billing error procedures of Regulation Z. This would involve remission of any finance charges when the required information is not disclosed. Creditors would also be required, if they used this alternative, to furnish documentary evidence of the transactions without charge.

The proposals would also:

Provide that, when a transaction did not take place at a seller's fixed business location, an appropriate identifying designation may be used for transactions that take place by mail, by phone, at a customer's home or on a public conveyance, such as a plane or train.

In the case of purchases in a foreign country, allow the creditor to identify the transaction by date of debit, instead of date of purchase, and require the creditor to treat any resulting inquiry by the customer as triggering the billing error procedures of Regulation Z.

Require a more meaningful designation of a seller's name if it is abbreviated on a sales voucher in a way that makes identification difficult, or is encoded (as by a store number).

Since final action may not be taken on these proposals before July 1, the Board suspended the requirements that would have gone into effect on that date until further notice, but not later than September 1.

In requesting public response, the Board said that it would like in particular to receive comments or information concerning the following:

1. The impact of the proposed changes in the regulation on problems some consumers and creditors may have regarding transactions which occur in foreign countries.

2. Identification of any special or unusual types of transactions which may present problems of disclosure under the regulation as proposed, and which should be addressed at this time.

3. Problems involved in identifying purchases that are difficult to describe by departmental category (such as merchandise that might be bought at a variety or specialty shop).

4. Problems or suggestions consumers may have regarding identifying transactions on their open-end credit account statements in general.

The attached copy of the Board's proposed amendments to Regulation Z include a number of other proposed changes, of a technical nature, not related to identification of transactions.

FEDERAL RESERVE SYSTEM

[12 CFR 226, Reg. Z, Docket No. R-0036]

PART 226—TRUTH IN LENDING

DESCRIPTION [illegible] TRANSACTIONS; MISCELLANEOUS AMENDMENTS

On September 19, 1975, the Board published in the *Federal Register* amendments to Regulation Z setting forth disclosure requirements for identifying transactions reflected on open end credit account periodic statements and for other purposes (40 FR 43200). Since those amendments were adopted, questions have been raised which may require further amendment of the Regulation. Accordingly, the Board is publishing for comment these proposed amendments to Regulation Z which are intended to clarify certain requirements of the Regulation, add flexibility to the requirements as necessary, and insure that consumers are able to procure complete information regarding their open end credit accounts quickly and without undue expense. Although the proposed amendments would have some impact on so-called "country club" billing systems, their main effect would be on creditors who use the so-called "descriptive" billing systems.

Identification of transactions

Under the proposal the requirements for identifying transactions on open end credit periodic statements as required by § 226.7(b)(1)(ii) would be changed in the following ways:

1. To enhance the clarity of the text, a new § 226.7(k) would be added to the Regulation. This new section would contain the requirements for identifying transactions. Section 226.7(b)(1)(ii) would merely reference § 226.7(k) and require that the disclosures set forth therein be made.

2. Presently, § 226.7(b)(1)(ii)(D) requires that, after October 28, 1977, the creditor must provide a reference number or identifying symbol (such as a sales voucher number) which appears on the document evidencing the transaction in those cases in which the primarily required information is not available. Questions have been raised regarding the usefulness in many cases of such a number or symbol to the consumer and regarding the cost to creditors of instituting a capability to capture the number or symbol for potential transmission in all transactions when it may, in fact, be needed for only a few. The proposed amendment would permit a creditor, as at present, to provide an identifying number or symbol when any of the primarily required information is not available. Alternatively, it would permit the creditor to disclose only that information which is available and treat any inquiry regarding the description or identification of the transaction as a billing error and an erroneous billing subject to the provisions of § 226.14. Further, the creditor would be required to provide documentary evidence of the transaction without charge.

This addition to the Regulation is designed to provide an alternatvie to the requirement that an identifying number or symbol be provided when the primarily required information is not available. It is designed to insure a better and more complete description to the consumer without financial disadvantage, to provide creditors with an alternative to the costly requirement of developing the capability to provide a voucher number for all transactions and to supply an incentive for the creditor to provide a complete description in the first instance. The creditor remains obligated under the proposed language to maintain procedures reasonably adapted to procure the primarily required information.

3. The proposed amendment would provide an alternative similar to that discussed in paragraph 2 for the *transition period* provided to creditors to adjust forms, procedures, and computer programs which lasts until October 28, 1977.

The regulation as published on September 19, 1975, would have required the creditor to provide an identifying number or symbol when the information regarding the seller's name and address or description of merchandise or services purchased was not available. Further, it would have required the creditor to disclose the date of debiting the credit transaction to the customer's account when the primarily required date is unavailable. This proposal would allow the creditor the alternative of providing that information which is available to him while requiring the creditor to treat any inquiry regarding the identification of the transaction as a billing error and an erroneous billing when the primarily required information is not available. The proposal would retain the alternative of supplying the identifying number or symbol when primarily required information is not available during the transition period.

4. The language regarding the transition period for compliance, which ends October 28, 1977, has been changed in two other respects. First, the language has been changed to further clarify the fact that the alternatives provided in this section are generally available and that creditors do not need to institute procedures reasonably adapted to procure the information which will be required to be disclosed after October 28, 1977, in the first instance during this transition phase.

Second, by a separately adopted amendment of even date, the Board suspends the July 1, 1976, beginning date for the changeover to the transition period which is due to expire October 28, 1977. This is done, because the amendatory process may not be completed in time, without rescinding or repealing the entire § 226.7(b)(1)(ii). Consequently, the requirements currently imposed by § 226.7 (b)(1)(ii)(E)(3) will remain in effect until dates for the transition period can be established in accordance with the outcome of the amendatory processes. The Board will supply a new date to be not later than September 1, 1976, for the beginning of this transition period when this amendatory process is completed. This new date will take into account the added flexibility which may be added by these amendments when determining the lead time necessary for compliance.

5. The proposed amendments would also provide guidance regarding the disclosure of an address in certain types of transactions which are not encompassed within the usual scenario of a purchase made at a fixed seller location. Recognizing that it is often problematic to assign one address or designation which is helpful to customers in all situations. Where the transaction occurs, for example, by telephone or mail order, in the customer's home or at a non-fixed location, such as aboard a public conveyance, the proposed amendments would provide some flexibility. They would permit the creditor to (a) omit the address, which would be especially helpful in cases where supplying an address could, in itself, be misleading, or (b) supply an address or appropriate designation, such as "mail order," which, in the creditor's opinion, is helpful in identifying the transaction or in relating the transaction to a document previously furnished. Use of the disclosure provisions of this paragraph should not be for the purpose of evading or circumventing the Act or Regulation Z, however.

6. Guidance for disclosing the seller's name in certain cases is also provided by the amendment. It would permit the creditor to provide a more complete spelling of a seller's name which has been alphabetically abbreviated on the document evidencing the transaction.

Additionally, when a seller's name has been encoded in a way which is not meaningful to consumers (for example, where only a store number is supplied on a sales voucher), the creditor must provide the code symbol and a more complete spelling of the seller's name. This is intended to provide a basis for identifying the transaction if copies of sales vouchers are not retained or allowing the customer to relate the description to a sales voucher which he may have retained.

7. Proposed footnote 9d (footnote 7c as currently written) has been positioned within the regulation to indicate that all references to "the same person or related persons" in proposed § 226.7(k) are governed by the guidelines set forth in that footnote.

8. The language regarding the disclosure of an identifying number or symbol which appears on the document evidencing the transaction has been changed to indicate that such a number or symbol need be supplied only once even though more than one of the primarily required pieces of information may be unavailable.

9. Recognizing the difficulties of procuring the primarily required information for transactions in foreign countries, the amendment would (a) allow the creditor to disclose the date the amount of the transaction is debited to the customer's account and (b) use the error resolution procedure as discussed in paragraph (2) in all cases without the obligation to maintain procedures adapted to procure the information in every instance. This provision is meant to be permissive and a creditor may, of course, disregard it and fully comply with the requirements otherwise imposed by § 226.7(k).

Miscellaneous amendments

1. The proposal would amend § 226.7(b)(1)(iii) to provide that the date of crediting a payment or credit to the customer's account need not be disclosed in those situations where the failure to credit on any particular day will not result in the imposition of any finance charges or other charges upon the customer. This amendment is proposed in the belief that such a disclosure is of little or no value or economic concern to the consumer but does impose a substantial cost upon creditors to make the necessary changeover for their billing systems if they have not provided such a date heretofore. The requirement that payments to a customer's account be credited promptly, however, would not be changed or suspended thereby.

2. The proposal would amend § 226.7(c)(1) to clarify the Board's intent in its publication of September 19, 1975. The proposed language for § 226.7(c)(1) permits certain information to be disclosed other than on the face of a periodic statement provided that the totals of the respective debits and credits under each of the paragraphs referenced therein are disclosed on the face of the periodic statement. Concern had been expressed that the section, as amended by the September 19 publication, requires disclosure of a total of all purchases or other loan transactions and finance charges on the face of the periodic statement. This was not the Board's intent.

3. The proposal amends § 226.13(i) by adding a footnote to paragraph 4 specifically permitting a creditor to report disputed amounts under § 226.13(i) as "in dispute" but not as "delinquent." This is consistent with the treatment of credit reports under § 226.14 and avoids the implication that a creditor must have a dual credit reporting system which would have to reflect the different kinds of disputes that may be raised.

The Board invites written comment on the proposed amendments. In particular, the Board would like to receive comments or information concerning the following:

1. The impact of the proposed changes to the regulation on problems that some consumers and creditors may have regarding transactions which occur in foreign countries.

2. Identification of any special or unusual types of transactions which may present problems of disclosure under the proposed regulations and which should be addressed at this time.

3. The problems of creditors in describing on periodic statements property or services obtained from shelters providing a homogeneous merchandise line or property or services which are difficult to describe by departmental category, because purchases are made at a central cash register location or for other reasons. Any proposed solutions to those problems should be included.

4. The problems or suggestions consumers may have regarding identifying transactions on their open end credit account statements in general.

The deadline for receipt of written comments on the proposed amendments is June 18, 1976. Comments should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Comments should include a reference to Docket No. R-0036.

Pursuant to the authority granted in 15 U.S.C. § 1604 (1970) the Board proposes to amend Regulation Z, 12 C.F.R. Part 226, as follows:

1. To fully implement § 411, Title IV, Pub. L. 93-495, § 226.7(b)(1)(ii) would provide, and a new § 226.7(k) would be added, as follows:

§ 226.7 Open End Credit Accounts—Specific Disclosures

* * * * * * *

(b) Periodic statements required (1) * * *

* * * * * * *

(ii) The information required by § 226.7(k)

* * * * * * *

(k) *Identification of transactions* (1) Each extension of credit for which an actual copy of the document evidencing the credit transaction (which does not include a so-called "facsimile draft") accompanies the periodic statement on which the transaction is first reflected shall be identified by disclosing on the periodic statement, or on acompanying statement(s) or document(s), the amount of the transaction and either date of the transaction or the date the transaction is debited to the customer's account. (2) Each extension of credit for which an actual copy of the document evidencing the credit transaction does not accompany the periodic statement shall be identified by disclosing on or with the periodic statement on which the credit transaction is first reflected at least:

(i) The date on which the transaction took place,[9b] and the amount of the transaction; and

(ii) a brief identification[9c] of any property or services purchased for transactions in which the creditor and the seller are the same person or related persons,[9d] or the seller's name (as disclosed on the document evidencing the transaction provided to the customer) and the address (city and State or foreign country, using understandable and generally accepted abbreviations if the creditor so desires) where the transaction took place for transactions in which the creditor and the seller are not the same person or related persons.

(3) Notwithstanding the provisions of §§ 226.7(k) (1) and 226.7(k) (2), transactions involving nonsale credit, such as a cash advance or an overdraft or other checking plan transactions, shall be identified on or with the periodic statement upon which the transaction is first reflected by providing at least:

(i) An actual copy of the document evidencing the transaction which shows the amount of the transaction and either the date of the transaction, the date the transaction was debited to the customer's account or the date placed on the document or instrument by the customer (if the customer signed the document or instrument); or

(ii) A description of the transaction, which characterizes it as a cash advance, loan, overdraft loan, or other designation as appropriate, and which includes the amount of the transaction and the date of the transaction[9e] or the date which appears on the document or instrument evidencing the transaction (if the customer signed the document or instrument).

(4) (i) For any transaction for which any of the information required to be disclosed under §§ 226.7(k) (1), (2) or (3), as applicable, is not available the creditor shall disclose that information which is available and shall:

(A) Without affecting the customer's ability to make inquiry under § 226.14, disclose an identifying number or symbol which appears on the document evidencing the transaction given to or used by the customer at the time of or in connection with the transaction, which identifying number or symbol need only be disclosed once for any transaction; or

(B) Treat the absence of the information required by §§ 226.7(k) (1), (2), or (3), as applicable, as a billing error, as provided in §§ 226.2(j) and 226.14. If a customer submits a proper written notification of a billing error relating to the absence of such information and the information was, in fact, not disclosed as required by §§ 226.7(k) (1), (2) or (3), as applicable, the transaction shall be treated as an erroneous billing under §§ 226.14(b) and documentary evidence of the transaction must be furnished whether or not the customer requests it (despite the provisions of §§ 226.2(j) and 226.14(a) (2)), within the time period allowed in § 226.14 for resolution of a billing error, without charge to the customer.

[9b] With respect to transactions which are not billed in full on any single statement but for which precomputed installments are billed periodically, the date the transaction takes place for purposes of this paragraph shall be deemed to be the date on which the amount is debited to the customer's account.

[9c] For purposes of this paragraph, designations such as "merchandise" or "miscellaneous" shall not be considered sufficient identification of property or services, but a reference to a department in a sales establishment which accurately conveys the identification of the type(s) of property or services which are available in such department shall be sufficient under this paragraph. Identification may be made on an accompanying slip or by symbol relating to an identification list printed on the statement.

[9d] For purposes of paragraph 226.7(k) a person is not related to the creditor simply because the person and the creditor have an agreement or contract pursuant to which the person is authorized to honor the creditor's credit card under the terms specified in the agreement or contract. Franchised or licensed sellers of a creditor's product shall be considered to be related to the creditor for purposes of paragaph 226.7(k). Sellers who assign or sell open end customer sales accounts to a creditor or arrange for such credit under an open end credit plan which allows the customer to use the credit only in transactions with that seller shall be considered related to the creditor for purposes of § 226.7(k).

[9e] In cases in which an amount is debited to a customer's open end credit account under an overdraft checking plan, the date of debiting the open end credit account shall be considered the date of the transaction for purposes of this paragraph.

(ii) The provisions of § 226.7(k) (4) (i) shall not relieve the creditor of responsibility for maintaining procedures reasonably adapted to enable the creditor to obtain the primarily required informaton at the time the amount of the transaction is transmitted to the creditor for debting to the customer's account. (5) In any case in which a transaction occurs other than in a State:

(i) The creditor may disclose the date of debiting the amount of the transaction to the open end credit account in place of any other date required elsewhere in § 226.7(k); and

(ii) The provisions of § 226.7(k) (4) (i) (B) shall apply and the creditor need not maintain procedures reasonably adapted to procure the information otherwise required by § 226.7(k). (6) In complying with the disclosure requirements of paragraphs 226.7(k) (1), (2), (3), or (4):

(i) The creditor may rely upon and disclose the information supplied by the seller with respect to the date and amount of transactions for which the creditor and the seller are not the same person or related persons.

(ii) With regard to disclosing the seller's address where the transaction took place for purposes of § 226.7(k) (2) (ii), the creditor may omit the address or provide an address or other suitable designation which, in the creditor's opinion, will assist the customer in identifying the transaction or in relating the transaction, as reflected, to a document(s) evidencing the transaction previously furnished when no meaningful address is readily available because the transaction took place at a location which is not fixed (for example, aboard a public conveyance), or in the customer's home (in which case "customer's home" or a similar description is sufficieint) or because the transaction was the result of a mail or telephone order (in which case "telephone order," "mail order," or similar description is sufficient); provided that any such disclosure made or omitted shall not be for the purpose of circumvention or evasion of this Part.

(iii) (A) If the seller's name as required by § 226.7(k) (2) (ii) is alphabetically abbreviated or otherwise incomplete on the document evidencing the transaction, the creditor may provide a more complete spelling of the seller's name.

(B) If the seller's name as required by § 226.7(k) (2) (ii) is encoded other than by alphabetic abbreviation (for example, by number or symbol not meaningful to the customer) on the document evidencing the transaction, the creditor must disclose the encoded symbol as well as a more complete designation of the seller's name in terms understandable by customers.

(7) (i) As an alternative to the provisions of §§ 226.7(k) (1) through 226.7 (k) (5), from [date to be supplied upon completion of amendatory process] until October 28, 1977: (A) the creditor may disclose the date of debiting the amount of the transaction to the customer's account for the date of the transaction or the date placed on the document evidencing a credit transaction if, due to operational limitations, either such date is unavailable to the creditor for purposes of billing; and the creditor may disclose an identifying number or symbol which appears on the document evidencing the credit transaction given to or used by the customer at the time of or in connection with the credit transaction in place of the seller's name and address or description of the property or services purchased if, due to operational limitations, such information is unavailable to the creditor for purposes of billing; or (B) the creditor may identify the transaction by disclosing such information as is reasonably available and treating the absence of the information required by §§ 226.7(k) (1), (2), or (3), as applicable, as a billing error, as provided in §§ 226.2(j) and 226.14. If a customer submits a proper written notification of a billing error relating to the absence of such information and the information was, in fact, not disclosed as required my §§ 226.7(k) (1), (2), or (3), as applicable, the transaction shall be treated as an erroneous billing under § 226.14(b) and documentary evidence of the transaction must be furnished whether or not the customer requests it (despite the provisions of §§ 226.2(j) and 226.14((a) (2)), within the time period allowed in § 226.14 for resolution of a billing error, without charge to the customer.

(ii) The effective date of §§ 226.7(k) (1) through 226.7(k) (6) (i), inclusive, is [date to be supplied upon completion of amendatory process]. Until [date to be supplied upon completion of amendatory process], the creditor shall disclose the date of each extension of credit or the date such extension of credit is debited to the account during the billing cycle, the amount of such extension of credit and, unless previously furnished, a brief identification[9f] of any goods or services purchased or the extension of credit.

[9f] Identification may be made on an accompanying slip or by symbol relating to an identification list printed on the statement.

2. Section 226.7(b)(1)(iii) would be amended by the deletion of the period at the end thereof and the addition of the following: ", except that the date of crediting to the customer's account need not be provided if a delay in crediting does not result in the imposition of any finance charges, late payment charges, or other charges for that billing cycle or a later billing cycle."

3. Section 226.7(c)(1) would be amended to read:

(c) * * *

(1) The information required to be disclosed under paragraph (b)(1)(ii) of this section and itemization of the amounts and dates required to be disclosed under paragraph (b)(1)(iii) of this section and of the amount of any finance charge required to be disclosed under paragraph (b)(1)(iv) of this section may be made on the reverse side of the periodic statement or on a separate accompanying statement(s), provided that the totals of the respective debits and credits under each of those paragraphs are disclosed on the face of the periodic statement.

4. Section 226.13(i)(4) would be amended to add a footnote as follows:

§ 226.13 Credit card transactions—special requirements

* * * * * * *

(i) Right of cardholder to assert claims or defenses against card issuer. * * *

(4) If the cardholder refuses to pay the amount of credit outstanding with respect to the property or services which gave rise to the claim(s) or defense(s) under this section, the creditor may not report to any person that particular amount as delinquent until the dispute is settled or judgment is rendered.[15a]

By order of the Board of Governors, May 7, 1976.

[SEAL] THEODORE E. ALLISON,
Secretary of the Board.

TITLE 12—BANKS AND BANKING

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Z, Docket No. R-0036]

PART 226—TRUTH IN LENDING

DESCRIPTIONS OF TRANSACTIONS

By separate order of even date the Board has proposed amendments to § 226.7(b)(1)(ii) of Regulation Z for comment. These proposed amendments, should they be finally adopted, would change and clarify the requirements for identifying transactions reflected on open end credit periodic statements.

Because of the uncertainty which may be engendered by the pendency of that amendatory process and to provide enough timeto receive and evaluate public comment on that proposal, the July 1, 1976, beginning date for the transition period provided in § 226.7(b)(1)(ii)(E)(*2*) and the ending date for the transition period provided in § 226.7(b)(1)(ii)(E)(*3*) must be suspended. This is done herein without repealing or rescinding the entire § 226.7(b)(1)(ii). Consequently, the requirements currently imposed by § 226.7(b)(1)(ii)(E)(*3*) will remain in effect until dates for the transition periods can be established in accordance with the outcome of the amendatory processes regarding the proposed changes to § 226.7(b)(1)(ii). The new beginning date for the transition period shall be not later than September 1, 1976, and may be embodied in a corresponding section of any final regulation adopted pursuant to the proposals to amend this section.

In determining the new changeover date from one transition period to the other, the Board will take into account the increased flexibility which may be added by the proposed amendments when determining the lead time necessary for compliance.

In consideration of the foregoing and pursuant to the authority granted in 15 U.S.C. § 1604 (1970) the Board amends Regulation Z, 12 C.F.R. Part 226 as follows:

[15a] Nothing in this paragraph prohibits a creditor from reporting the disputed amount or account as being in dispute.

Section 226.7(b)(1)(ii) as presently written is hereby amended by the suspension of the July 1, 1976, date for the transition periods provided in paragraphs (E)(*2*) and (E)(*3*) thereof; provided that such suspension shall end not later than September 1, 1976.

By order of the Board of Governors, May 7, 1976.

[SEAL] THEODORE E. ALLISON,
Secretary of the Board.

The CHAIRMAN. Thank you very much, Mr. Schober.

Before I go to Mr. Myers, let me say Senator Garn regrets he is unable to be present. He has some questions he would like to direct to you gentlemen when you correct your remarks. And now, Mr. Myers.

STATEMENT OF G. ROBERT MYERS, CHAIRMAN OF LEGISLATIVE STEERING COMMITTEE FOR NATIONAL RETAIL MERCHANTS ASSOCIATION, CREDIT MANAGEMENT DIVISION; VICE PRESIDENT OF ALLIED STORES, ACCOMPANIED BY SHELDON FELDMAN, COUNSEL TO NATIONAL RETAIL MERCHANTS ASSOCIATION

Mr. MYERS. Good morning, Mr. Chairman.

I am G. Robert Myers, vice president, Allied Stores Corp., and I serve as chairman, Legislative Steering Committee of NRMA's Credit Management Division. I am accompanied this morning by NRMA counsel, Sheldon Feldman of the firm of Weil, Gotshal & Manges.

We appreciate the opportunity to appear before you today on behalf of the National Retail Merchants Association. NRMA is a national nonprofit trade association composed of over 3,000 members who operate more than 30,000 general merchandise and specialty retail stores across the country. NRMA's members account for over $85 billion in sales annually, although two-thirds of our members are small businesses with individual annual sales of under $1 million.

NRMA welcomes the opportunity to participate in these oversight hearings. While we understand that one of your principal concerns is the effectiveness of the existing regulatory scheme for enforcement of the various consumer credit laws, you are also concerned with the impact of these laws and their administration upon businesses extending credit. Specifically, we are here this morning to discuss the complexity of the regulations that have been enacted to implement these laws and to attempt to offer some constructive suggestions as to how this situation can be improved. In view of the fact that a great deal of industry testimony was devoted to problems incident to mounting civil litigation during the March 16 and 17 hearings on S. 3008, we will not repeat that discussion this morning.

At the outset, let me assure you that NRMA's members recognize that Congress is not the primary source of the problem. While there may be some exceptions, as a rule the legislative mandates have been relatively clear and they attempted to fairly balance the needs of consumers and the burdens upon creditors. While we may not always agree that the balance was properly struck, we have been given a fair opportunity for input on the congressional level and the results have not been unreasonable. The final product to be complied with, however, presents a far different picture.

My purpose is not to take your valuable time with a detailed recitation of how relatively simple statutory requirements have been turned into tortuous regulations. Just a few days ago, on July 15, the Federal Reserve Board's proposed regulations to implement the 1976 amendments to the Equal Credit Opportunity Act were made public. An 11 page press release summarizes the proposal, which itself consists of a 40 page summary of the proposed regulation that precedes 52 pages of the actual proposed regulation. Essentially, all of this implements requirements found in one statutory sentence, and even the individuals responsible for promulgation of these regulations have expressed concern about their complexity and volume. We hope that help is on the way.

In one complex area, disclosure on periodic statements of descriptive billing requirements, the Federal Reserve Board announced on May 12, 1976, the proposals to simplify its extraordinarily complex regulations, although it took 19 pages plus a 3 page release to describe this simplification effort.

The problems of complying with this ever-growing mass of regulation are compounded by two other considerations which have been mentioned before—civil litigation concerning basically technical deviations and the presence of an even larger body of State laws and regulations in the consumer credit area, many of which are substantially the same as the Federal requirements.

Since the lion's share of NRMA's membership is composed of small businesses, we are especially conscious of the adverse consequences these complex regulations have had upon those members. One such consequence is the abandonment of an in-house credit capacity. During the past few years, a growing number of our members have indicated that they felt compelled to discontinue extending credit, adopting instead third-party credit cards. Our members have indicated that compliance problems due to the complexity of the regulations and the tremendous civil liability exposure involved has been a primary reason for abandonment of their own credit facilities and we feel that these considerations have deterred others from entering the field.

The implications of stimulating greater concentration in the credit-granting marketplace are indeed serious and should be carefully considered by this committee. In addition to the anticompetitive consequences, this phenomenon is anticonsumer, as such concentration tends to exclude from the credit-granting market those who are lower on the socioeconomic scale and, to the extent that they do get credit, often it is on less favorable terms and at greater cost.

As I noted at the outset of my remarks, I am here to offer a few constructive proposals for improving the situation I have described. Since my purpose is to present these conceptually, I will leave the legislative draftsmanship to those endowed with talent.

1. *Simplification by statutory amendment.*—As the Federal Reserve Board recently pointed out in its 1975 Annual Report to Congress (see pages 277–281) there are a number of matters that are statutory in origin that needlessly cause creditors problems. These provisions, such as the requirement to disclose "default" charges, the type of security taken and the property taken as security when it is the same as the item purchased (see sections 128(a)(9) and 128(a)(10) of the Truth-in-Lending Act), are responsible for a great deal of confusion on the part of creditors and have generated hundreds of law suits that can only be characterized as efforts at harassment which are useless to

everyone except counsel for plaintiffs. It is recommended that immediate steps be taken to compile a list of these statutory provisions, using the Board's list as a guide, and thereupon take prompt steps to amend the Truth-in-Lending Act accordingly. Should there be any doubt at this point about identifying these provisions, we would be happy to assist in developing such a list.

2. *Preemption of similar State laws.*—NRMA believes that the benefits to be derived from an unequivocal preemption of all similar existing State laws in the area covered by the Consumer Credit Protection Act will outweigh any potential loss of protection to consumers. The situation we find ourselves in is becoming intolerable. In many areas—disclosure of terms, resolution of billing disputes, consumer reporting, and antidiscrimination laws—existing Federal provisions are being duplicated or supplemented by State requirements that seldom offer real additional benefits. Five volumes of one publisher's looseleaf service are devoted to summarizing these State laws and reviewing litigation involving them, and the list of States that add new laws or amend existing ones grows daily. The time has come for a thorough analysis of this problem, with particular emphasis on the desirability of achieving uniformity of Federal, State, and local regulations in the consumer credit area. Whether it is a small retailer who must wade through this mass of complex regulations without the benefit of a consumer credit lawyer at his side, or a large multistate retailer who must reconcile the many conflicts and resolve the many questions, the need for uniformity is as great as the need for simplicity. The present preemption approach of the various titles of the Consumer Credit Protection Act actually encourages the promulgation of additional State requirements, with ultimate benefits to consumers that are questionable at best. The current approach of preempting only those State laws which are directly inconsistent merely invites the States to alter their statutes in a manner which is all too often one of form over substance. The result is a confusing, complex and costly exercise which benefits no one. These costs generally must be reflected in increased prices of goods, rather than increased credit charges, and these costs are therefore borne by all, including cash customers. Another consequence of these increased costs, restricted credit extensions, adversely affects the marginal credit risk rather than the more affluent customer.

3. *Civil liability considerations.*—Much has been said recently in debating the merits of the current heavy reliance upon civil litigation, inluding class actions, for minor or technical violations of the Truth-in-Lending Act. During the recent March hearings, a record of 781 pages was developed dealing with an inquiry into qui tam and Federal Reserve Board procedures, and much of that record concerned the mass of civil litigation in which creditors are entangled. While it is neither realistic nor necessary to advocate abandonment of the basic theme that civil liability should attach for certain violations of the Truth-in-Lending Act, there is an urgent need to insure that the mechanism of civil enforcement is not abused. NRMA proposes that this can and should be accomplished by amending the Truth-in-Lending Act, and incorporating in other legislation that includes similar exposure, a provision which will eliminate liability for technical, minor violations.

There are two procedures of the Board which bear on this problem but do not solve it. The Board has adopted procedures implementing the provisions of Public Laws 94–222 and 94–239 which provide a defense to violation of regulations B and Z for creditors relying upon letters issued by duty authorized Board officials. The second procedure is under consideration and is illustrated in the proposed regulations under ECOA issued on July 15—the issuance of Board-approved sample forms which the creditor can rely upon in complying with regulations B and Z.

These measures may to some extent alleviate the problem. We do not, however, expect that either of these procedures will measurably reduce the volume of civil litigation or eliminate the complexity of the regulations. We therefore urge consideration of adopting an amendment limiting the monetary penalty provisions of the act to violations that in fact affect the consumer's ability to make meaningful comparison of the terms of the credit transaction. Substantive violations that involve disclosure of numerical amounts and terminology such as the annual percentage rate, the finance charge and the repayment schedule would give rise to civil liability, while other technical violations would be left to administrative treatment. While the question of which requirements are "substantive" and which are "technical" will in some cases be controverial, prompt action should not be avoided for that reason.

In summary, NRMA believes that more needs to be done to ease the burdens of compliance with the Truth-in-Lending Act and that adoption of the three approaches suggested this morning will not result in any diminished level of consumer protection.

Thank you for the opportunity to present these views.

The CHAIRMAN. I would like to thank all of you gentlemen very much.

I think there is a considerable consistency in all of the testimony, although you come to this subject from different viewpoints than some of the other witnesses do.

Everybody wants it to be simplified. I guess it can be simplified. I guess everybody would be better served if it were, creditor and borrower.

I think your proposals for doing that are most constructive and thoughtful. I would certainly ease the burden on the creditor, particularly a small businessman, as you point out, and make it far more efficient, much more effective for the customer.

Mr. O'Connor, you make a good case on your subject of the tough examination by the regional administrator's office. You think that examination was constructive and useful.

How many persons in your area have similar views? How widespread is this examination nationally?

Mr. O'CONNOR. I can't speak from any great deal of knowledge.

To my personal knowledge, I know of at least four or five others in the immediate area. In the New England area, I just have no idea.

The CHAIRMAN. In the immediate area, what is the experience?

Mr. O'CONNOR. Several local Boston banks, in addition to a Worcester bank I know of, have been examined. I think the reaction has been favorable from all of them.

The CHAIRMAN. Do you think it would be useful to have this program extended nationwide?

Mr. O'CONNOR. I do.

The CHAIRMAN. How long did the examination last?

Mr. O'CONNOR. The first one in June of 1975, my recollection is that it probably lasted 3 weeks, a little longer than that.

The CHAIRMAN. How many examiners were involved?

Mr. O'CONNOR. One.

The CHAIRMAN. How large is your bank?

Mr. O'CONNOR. The total bank itself is in excess of $8 billion.

The CHAIRMAN. How big?

Mr. O'CONNOR. Eight billion dollars.

The CHAIRMAN. If there was one man, how long did he spend?

Mr. O'CONNOR. Three weeks in our department, in the consumer loan operation.

The CHAIRMAN. How big an operation is that?

Mr. O'CONNOR. Approximately $160 million outstanding. The second examination was essentially shorter.

The CHAIRMAN. Was it the same examiner each time?

Mr. O'CONNOR. No. It was a different examiner. The second examination lasted approximately 10 days, I would guess.

The CHAIRMAN. What remedial steps did he take to correct any deficiencies?

Mr. O'CONNOR. In essense they were brought to our attention along with the appropriate citation from regulation Z or the applicable regulation.

A discussion was held and it was agreed that we would correct the deficiency.

The CHAIRMAN. Were individual consumers notified?

Mr. O'CONNOR. No, they weren't.

The CHAIRMAN. Do you think they should have been?

Mr. O'CONNOR. From the nature of the examples cited, no, although I think simplification and enforcement go hand in hand.

A highly technical violation, which in my mind does not influence the consumers' decision, probably should not be reported.

The CHAIRMAN. Why shouldn't it be reported?

Why shouldn't the consumer have a right to know if this has happened?

It won't affect the soundness of the bank in any way, shape, or form.

Mr. O'CONNOR. I guess, personally, I would have no problem with substantive violations being made known.

I guess my point is that it goes hand in hand with the simplification, four or five basic items we disclosed.

The CHAIRMAN. Did you hear Mr. Schuck's testimony earlier today?

Mr. O'CONNOR. Yes.

The CHAIRMAN. Do you agree or disagree with his position?

Mr. O'CONNOR. Portions of it—as I said——

The CHAIRMAN. He, of course, favored a vigorous disclosure program.

Mr. O'CONNOR. I personally can't see a great deal of benefit in disclosing a highly technical violation such as a form, the one form not saying the same thing as the other form.

The CHAIRMAN. I take it you are in agreement with Professor Landers with the suggestion that the number of items disclosed in truth in lending could be and should be substantially reduced?

Mr. O'CONNOR. Yes, I am.

The CHAIRMAN. Have you or your association ever studied the consumers use of truth-in-lending information? Are there any studies of what information the consumers want in your disclosure?

Mr. TIDWELL. Senator, we haven't done exactly a study along that line in preparation for these hearings, we reviewed other studies. They all seemed to be aimed at consumer awareness of the rate charged or consumer awareness of the finance charge. I believe that there probably is a need for a study to determine what the consumer is looking for. In consultation with bankers who have been in the lending field for a long time, they inform me that from their experience, most consumers are usually looking for what the monthly payment will be. This is the big item. They want to plan into their budget whether they can afford to make this payment.

The CHAIRMAN. That is what they want.

Mr. TIDWELL. We concur with you wholeheartedly that basically the total finance charge and the annual rate are the two most important elements that should be disclosed to the consumer.

The CHAIRMAN. Mr. Schober, you and others have introduced the adoption of substantial compliance so individual consumers cannot recover benefits for less significant violations. Would this leave these more technical violations really beyond control; only the banking agencies would police them and their track record doesn't seem to be very good, so far, especially the Comptroller.

Mr. SCHOBER. My own personal view is that the doctrine of substantial compliance tracks very closely with the Fed's recommendations.

There are four items which affect the consumers' ability to shop for credit. Those four should remain subject to civil sanctions.

The CHAIRMAN. Would the remainder constitute the bulk of the Truth in Lending Act?

Mr. SCHOBER. The remainder certainly is the bulk of the disclosure statement, Senator. I am not prepared to say the bulk of the act, because by the time you take in section 226.5 of the regulation, plus supplement 1 telling you how to compute the APR, you have taken up a lot of pages and a lot of words. Certainly, with respect to the length of the disclosure statement, those four items are a very small part in terms of square inches of space on the total statement.

The CHAIRMAN. Mr. Schober, the charge has been made that the so-called complexity problem has been brought on by the creditors themselves, by their insistence on too precise instructions. What is your answer to that?

Mr. SCHOBER. To some extent that is quite true, as the result of litigation or threatened litigation. For example, a recent amendment to the regulation, effective August 6—next week—issued by the Federal Reserve Board has caused a client of mine in an overabundance of caution to redraft and reprint all his forms in two States, with just 30 days notice. He has had to adjust all of his forms in those two States and use a more detailed form to comply with an amendment which was supposed to have simplified disclosures.

The CHAIRMAN. Your idea of substantial compliance would eliminate much of this because you would prevent litigation on technical matters; and that would make a simplification of the form feasible.

Mr. SCHOBER. Yes, sir.

Furthermore, if the Congress in its wisdom decided to leave what I consider to be these technical requirements in, but subject them to administrative sanctions, then we could live with that. It is the civil penalty, the threat of the litigation that is driving creditors and their attorneys to the detail in the disclosure.

The CHAIRMAN. You and Mr. Myers had kind of a different view on the guilt of the Congress. You gave us a pretty good working over. Mr. Myers was a little more kindly toward us. He did say he agreed with you, we had delegated authority too broadly. In general, he seemed to feel the shortcomings in administration were not fundamentally a problem of the Congress. The law was all right and the problem was not ours.

Mr. Myers spoke last. Would you like to indicate whether you find yourself in agreement pretty much with the way he modified his position or do you still disagree?

Mr. SCHOBER. Senator, I still think the laws are too general. One example that comes readily to this mind is section 411 of Public Law 93-495 regarding descriptive billing. It seemed to be a blank check for the Fed to write a regulation. There are other areas in the regulation I could pinpoint and would be glad to supplement the record. I am afraid that I cannot be dissuaded from my original statement.

The CHAIRMAN. Mr. Myers, would you want to respond at all further or do you feel your position on this is clear?

Mr. MYERS. I think the statement is adequate.

The CHAIRMAN. We are grateful to you for giving us a partial indication of your blessing.

You notice the anticompetitive effect, Mr. Myers, when small companies give up their credit plans in favor of bank cards. This argument has often been raised. Frankly, I am a little dubious about it. Do you have any data showing merchants gave up their own credit plans because of consumer protection legislation?

Mr. MYERS. I do not have any substantive numbers as such as I could put in the record. We do know there are substantial numbers of retailers that have given up their own credit plans. I think you will recall that the testimony of Mr. Salloom before Senator Biden's subcommittee, in this room, about a year ago, indicated the number of small concerns and their reasoning.

The CHAIRMAN. The bank credit card people claim they just have a much more efficient instrument, and the merchant does it because it is the efficient way to operate.

Mr. MYERS. I would completely deny that.

The CHAIRMAN. You would deny that completely?

Mr. MYERS. Absolutely.

Mr. SCHOBER. May I supplement that for a moment? If you look at the aggregate statistics published by the Fed every month. I think that would be an index of the shift from retail credit to bank credit cards. You will notice over the last 5 years credit extended by retail establishments is on a down curve.

The CHAIRMAN. No question about it. I just wondered about the reasons for it.

Mr. SCHOBER. Bank credit cards are on the upswing. I am not prepared to say it is 100 percent because of the complexity. I do think it is a factor that simply must be considered.

The CHAIRMAN. Mr. Myers, you urge that we totally preempt State law in this area. If we simplify the act, why should we preempt State law?

Mr. MYERS. I will leave this to counsel.

Mr. FELDMAN. I think, Senator, that amplification would not prevent States from doing what is the current trend, which is to supplement these Federal laws and impose additional liability for those minor deviations. Utah recently amended the equal credit opportunity notice by requiring creditors to make reference to the Utah regulator in the ECOA notice, which requires a national creditor to abandon the use of one uniform notice. That kind of thing is becoming typical.

The CHAIRMAN. Of course, some of the States feel that all we can do down here is to provide for the kind of least common denominator. Some feel that way. If they want to go ahead and provide more stringent protections for their consumers, why shouldn't they be permitted to do that? I disagree with that.

Mr. FELDMAN. It may be justified when the benefits are meaningful; but I think an analysis of the trend in State consumer reporting legislation, for example, would show that it is almost duplicative of the Federal legislation. In few instances have the States added really meaningful additional consumer protections.

The CHAIRMAN. How about enforcement of State law? Yesterday we had the testimony, very strong testimony, that the regulatory boards, especially Home Loan Bank Board, just were not enforcing the laws and especially weren't enforcing State law, and that they wouldn't let the State enforce their own State law with respect to Federal institutions that were under their jurisdiction.

Mr. FELDMAN. Retailers, I think, are not in a very good position to comment on this. They don't have that problem. They must comply with State laws and Federal; and beyond that, I think that the situation with financial institutions is beyond the scope of retailers experience.

The CHAIRMAN. Would it be better to try to refine the preemption formula already in the law so that the creditors and State officials would more easily know when a State law is preempted.

Mr. FELDMAN. Yes, I think that would be very helpful.

The CHAIRMAN. Incidentally, Mr. Myers, you offered to help develop a list of specific provisions in the act that might be deleted or amended. That offer is accepted. I hope you will stay in touch with the committee staff on that point.

Mr. MYERS. We will do that.

The CHAIRMAN. Gentlemen, I want to thank you very much for a very helpful testimony.

The committee will stand in recess until 10 o'clock tomorrow when we conclude hearings on this oversight.

[Whereupon at 12:06 p.m. the hearing was recessed, to reconvene Thursday, July 29, 1976, at 10 a.m.]

[The following material was submitted for the record:]

TRUTH IN LENDING ACT

SUMMARY OF CITATIONS TO DELEGATIONS OF REGULATORY AUTHORITY TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

§ 103(f) ". . . the Board shall, by regulation, apply [Truth in Lending and Fair Credit Billing] requirements to such card issuers to the extent appropriate."

§ 105 (General regulatory authority).

§ 106(d) ". . . items (are to be) itemized and disclosed in accordance with the regulations of the Board."

§ 106(d)(4) Disclosure is required of "any other type of charge . . . approved by the Board by regulation."

§ 107(a) "The annual percentage rate . . . shall be determined in accordance with the regulations of the Board."

§ 107(a)(1)(B) ". . . the rate [may be] determined by any method prescribed by the Board."

§ 107(b) ". . . if the Board determines that a rate so computed would not be meaningful . . . the annual percentage rate shall be computed on such other basis as the Board may by regulation require."

§ 107(c) "The annual percentage rate may be rounded to the nearest quarter of 1 per centum . . . under procedures prescribed by the Board."

§ 107(d) "The Board may authorize the use of rate tables or charts [with] . . . rates which vary . . . by such tolerances as the Board may allow."

§ 107(e) ". . . the Board may authorize other reasonable tolerances."

§ 121(a) "Each creditor shall disclose . . . in accordance with the regulations of the Board."

§ 122(a) "Regulations of the Board need not require [disclosures to be made in the order set out in the Act] . . . and may permit the use of terminology different [from that in the Act]."

§ 123 "The Board shall by regulation exempt" certain classes of transactions subject to similar state laws under certain conditions.

§ 125(a) Exercise of the right of rescission shall be made "by notifying the creditor, in accordance with regulations of the Board." The right to rescind shall be disclosed and the opportunity to exercise that right shall be provided "in accordance with regulations of the Board."

§ 125(d) "The Board may . . . prescribe regulations authorizing the modification or waiver" of the right of rescission.

§ 126(3) ". . . the Board may by regulation require" disclosure of § 127(b) items in closed end credit periodic statements.

§ 127(a)(5)(B) "The Board shall prescribe regulations . . . to carry out the purposes of this section."

§ 127(a)(8) Creditors must disclose "a statement [of billing error rights] in a form prescribed by regulations of the Board."

§ 127(b)(2) Creditors must disclose "a brief identification . . . of each extention of credit in a form prescribed by regulations of the Board."

§ 143(5) Advertising of open end credit shall set forth "such other information . . . as the Board may by regulation require."

§ 144(b) "The provisions of this section [relating to advertisements of closed end credit] do not apply to advertisements of residential real estate except to the extent that the Board may by regulation require."

§ 146 Advertisements of no finance charge credit shall be made "in accordance with the regulations of the Board."

§ 161(b)(6) ". . . a billing error consists of . . . any other error described in regulations of the Board."

§ 161(d) ". . . a creditor . . . may not . . . restrict or close an account [under certain circumstances] pursuant to regulations of the Board."

§ 163(b) The 14-day advance mailing of periodic statements "does not apply [in cases of] . . other excusable or justifiable cause, as determined by the Board."

§ 164 "Payments . . . shall be posted promptly . . . as specified in regulations of the Board."

§ 167(b) "Availability [of cash discounts not in excess of 5 per cent must be] disclosed . . . in accordance with regulations of the Board."

§ 171(a) "The Board is authorized to determine whether such inconsistencies [with state law] exist. The Board may . . . determine . . . [whether] such [state] law gives greater protection to the consumer."

§ 171(b) "The Board shall by regulation exempt" certain classes of transactions subject to similar state laws under certain conditions.

§ 182 "The Board may provide by regulation that any portion of the information required to be disclosed under this section may be given in the form of estimates."

§ 184(a) ". . . advertisement [of] any consumer lease [shall be] . . . in accordance with regulations issued by the Board."

§ 186(a) "The Board is authorized to determine whether such inconsistencies [with state law] exist. The Board may . . . determine . . . [whether] such [state] law gives greater protection and benefit to the consumer."

§ 186(b) "The Board shall by regulation exempt" certain classes of transactions subject to similar state laws under certain conditions.

OVERSIGHT ON CONSUMER PROTECTION ACTIVITIES OF FEDERAL BANKING AGENCIES

THURSDAY, JULY 29, 1976

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to recess, in room 5302 Dirksen Senate Office Building, at 10:08 a.m., Senator William Proxmire (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

We are going to have two segments in the hearings this morning. First we will hear from Mr. Michael Harper, the Center for Law and Social Policy.

Then we have a panel consisting of Philip C. Jackson, member of the Board of Governors, Federal Reserve System; Tom O'Neal, director, Office of Bank Customer Affairs, FDIC; and Thomas Taylor, Associate Deputy Comptroller.

Our first witness will be Mr. Michael Harper.

STATEMENT OF MICHAEL HARPER ON BEHALF OF THE CENTER FOR LAW AND SOCIAL POLICY, WASHINGTON, D.C.

Mr. HARPER. Thank you Senator.

The CHAIRMAN. I see you have a more detailed statement than you can probably deliver in 10 minutes. I suggest that you do your best to abbreviate it. We will place your entire statement in the record at the conclusion of your testimony.

Mr. HARPER. I appreciate the invitation to participate in your committee's important review of the consumer protection enforcement activities of the major bank regulatory agencies. I believe that congressional oversight of the manner in which these agencies fulfill that role is especially sensitive because of the historical nature of the agencies.

All of the bank regulatory agencies can be characterized as "sectoral" rather than "functional." That is, like the CAB or the ICC, they fulfill various functions regulating a particular industry, rather than fulfilling one particular function in the regulation of many industries, as for instance do the FTC, OSHA and the Consumer Product Safety Commission.

Agencies such as the FRB or the FDIC perforce become particularly close to the sector of the economy which they regulate. They must work closely with the component firms of that sector in order to insure the sector's smooth functioning and they must be somewhat dependent

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on the component firm's cooperation, if for no other reason than to obtain adequate timely information about the industry. This is not necessarily shocking or cause for periodic abolition of sectoral agencies. But when Congress entrusts new responsibilities to such an agency, the full discharge of which may force the agency to take positions unpopular with the industry which the agency regulates and with which it has developed some working relationship for other regulatory purposes, Congress must carefully oversee how that agency integrates its new responsibilities into its overall regulatory activity.

These remarks are probably particularly pertinent to situations in which Congress grants a certain type of regulatory authority generally to a functional agency, and reserves this authority for a particular industry to the sectoral agency responsible for that industry. Congress took this course in its passage of section 18(f)(1) of the amended Federal Trade Commission Act, reserving deceptive and unfair banking trade practice rulemaking authority for the Federal Reserve Board. Since I have made some attempt to monitor the Reserve Board's exercise of its section 18(f)(1) rulemaking authority, I would like to focus my testimony on section 18(f)(1).

As you are aware, and the Federal Reserve Board at least now seems to recognize, section 18(f)(1) imposes two separate and distinct obligations upon the Board. First, section 18(f)(1) obligates the Board to independently:

> Prescribe regulations to carry out the purpose of this section, including regulations defining with specificity such unfair or deceptive acts or practices, and containing requirements prescribed for the purpose of preventing such acts or practices.

Second, whenever the Commission promulgates rules defining unfair acts or practices outside the banking industry, the Board must promulgate substantially similar rules prohibiting similar unfair acts or practices within the banking industry within 60 days after the Commission's rules take effect, unless it makes certain affirmative findings.

On behalf of Consumers Union I have exchanged several letters concerning section 18(f)(1) with the Board's Office of Saver and Consumer Affairs, but our concerns have not been allayed and indeed have increased as a result of this correspondence, which I request be inserted into the record along with my testimony.

The CHAIRMAN. We will be happy to.

[Information supplied follows:]

CENTER FOR LAW AND SOCIAL POLICY,
Washington, D.C., October 22, 1975.

BOARD OF GOVERNORS
Federal Reserve System,
Washington, D.C.

DEAR SIRS: I am an attorney now working at the Center for Law and Social Policy, with an interest in consumer protection and in banking regulation.

I am specifically interested in the proposed rules on unfair credit practices which the Board issued on May 5, 1975 in response to similar proposed rules issued by the Federal Trade Commission on April 11, 1975. As you are aware, under the amended Federal Trade Commission Act, whenever the Commission promulgates rules defining unfair acts or practices outside the banking industry, the Board is obligated to promulgate substantially similar regulations prohibiting similar unfair acts or practices within the banking industry, unless it makes certain affirmative findings within sixty days after the Commission's rules take effect. I am concerned that the Board has not established adequate procedures to insure that it will effectively fulfill this obligation in the development of rules on unfair credit practices.

I have been advised by the Board's Fair Credit Practices Office that the Board has informally urged banks and banking associations to submit descriptions of credit practices in the banking industry and to participate in the adjudicatory hearings which the Federal Trade Commission will soon hold concerning its proposed rules. I understand that the Board's solicitation of bank participation has thus not been limited to the regular solicitation of public views in the Federal Register. I also understand that the Board has not decided to conduct an independent, staff investigation of bank credit practices similar to that which the Commission conducted over a two-year period concerning the practices of creditors other than banks.

Because of the failure to provide any means to develop independent information beyond that voluntarily submitted in response to the Board's Federal Register notice, the above procedures are likely to lead to the Board having an incomplete and perhaps distorted picture of banking industry credit practices relevant to the proposed rules. Moreover, this picture will not be able to be adequately filled in or clarified during the short sixty-day period in which the Board is required to act after the Commission's rules take effect.

There are at least two reasons why the Board's having to act without adequate information should be of concern to consumers who may be protected by regulations such as those proposed. First, the Board may decide on the basis of inadequate evidence that practices which the Commission has proscribed in its rules are not unfair or deceptive when engaged in by the banking industry. It would not be consistent with the amended Federal Trade Commission Act for the Board simply to conclude that the record before it was not adequate to justify extending the Commission's rules to the banking industry; but if the Board had failed to develop an adequate record, it might feel under some pressure from the banking industry to conclude that similar banking practices were for some reason not unfair or deceptive.

Second, without an independent investigation, the Board would probably find it difficult to adopt any rules which the Commission decided not to promulgate. Not only does the Board have a general responsibility to take affirmative action necessary for effective regulation of banking practices, but the amended Federal Trade Commission Act imposes a definite affirmative obligation on the Board to specify unfair or deceptive practices in the banking industry, regardless of whether the Commission does or does not act. It is therefore certainly consistent with the amended Act for the Board to adopt rules which the Commission had for some reason decided against.

The following action should therefore be taken:

First, the Board should immediately commence a study of banking credit practices relevant to the Board's proposed rules similar to that which the Commission conducted prior to the issuance of its proposed rules. The Board's staff should communicate with the Commission concerning the type of information which this investigation should develop.

Second, the Board should issue rules specifying the procedures which it will employ in the future in considering regulations on unfair and deceptive practices substantially similar to regulations promulgated by the Commission. The Board's procedural rules should provide that the Board will conduct an independent investigation of banking practices upon the issuance of proposed Commission regulations whenever the Commission has made such an investigation outside the banking industry and recommends that the Board conduct a similar study. These rules should also prohibit the Board from suggesting, as it seems to have done in this case, that any particular parties participate in the rulemaking proceedings without making the same invitation in the Federal Register to all interested parties.

I would be happy to discuss this matter with any Governor who may have particular responsibility in this area or with anyone else at the Board. In any event, I hope to hear how you decide to address the problems raised in this letter.

Sincerely,

MICHAEL C. HARPER.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
Washington, D.C., December 4, 1975.

Mr. MICHAEL C. HARPER,
Center for Law and Social Policy, Washington, D.C.

DEAR MR. HARPER: This is in response to your letter of October 22, in which you made recommendations concerning the administration of the Board's regulatory authority over unfair or deceptive acts or practices of banks. Specifically, you have suggested that (1) the Board undertake a study of banking practices relevant to the Board's proposed regulation on unfair credit practices, and (2) the Board issue rules specifying the procedure which it will employ in the future in considering regulations substantially similar to those adopted by the Federal Trade Commission on the subject of unfair or deceptive acts or practices.

It appears that a study of bank practices such as you suggest relating to the proposed Unfair Credit Practices regulation may be appropriate before issuance of final regulations on this subject. However, as you are probably aware, at this point there is still a great deal of uncertainty as to which practices will ultimately be addressed and how those practices will be affected by any final rule the Commission may issue. The hearings which the Commission has scheduled for early 1976 should highlight the many problems and concerns that the proposal has raised and may point out new or overlooked practices which might be addressed by any final rule. Therefore, if such an investigation is to be held, it would seem preferable to delay its commencement at least until after the Commission has held its hearings.

In response to your suggestion that the Board issue procedural rules for considering the issuance of regulations substantially similar to rules adopted by the Commission specifying unfair or deceptive acts or practices, the suggestion also may have merit, but it is believed that the Board should have more experience with developing and issuing such regulations before establishing such a procedure. Responsibility over unfair or deceptive acts or practices was only recently placed in the Board, and the proposed Unfair Credit Practices rule is the first practical experience the Board has had in this area. The Board's Rules of Procedure (12 CFR 262), which apply generally to the issuance of regulations by the Board, also apply to the issuance of regulations under the new responsibility. It appears that additional experience under the new legislation would be desirable in order to throw light on what new Board procedures, if any, may be appropriate with respect to this subject.

The Board appreciates your interest in this matter.

Sincerely,

JERAULD C. KLUCKMAN,
Assistant Director.

CENTER FOR LAW AND SOCIAL POLICY,
Washington, D.C., January 5, 1976.

Hon. ARTHUR F. BURNS,
Chairman, Federal Reserve System, Washington, D.C.

DEAR CHAIRMAN BURNS: I am writing on behalf of Consumers Union of United States, Inc.[1] concerning the Board's responsibilities under Section 18(f)(1) of the amended Federal Trade Commission Act.

By letter dated December 4, 1975, Mr. Kluckman of the Board's Office of Saver and Consumer Affairs has advised us that the Board has not commenced a study of bank credit practices similar to that which the Federal Trade Commission has conducted for creditors other than banks, and will probably only do so, if at all, after the Commission has held hearings on its proposed rules on unfair credit practices. Mr. Kluckman also advised me that the Board has no immediate plans to develop procedures for the consideration of regulations on unfair and deceptive bank practices which are authorized or required by the FTC Improvement Act.

[1] Consumers Union of the United States, Inc. ("Consumers Union") is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide information, education, and counsel about consumer goods and services and the management of the family income. Consumers Union's income is derived solely from the sale of *Consumer Reports* (magazine and TV) and other publications. Expenses of occasional public service efforts may be met, in part, by nonrestrictive, noncommercial grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports*, with a circulation of almost 2 million, regularly carries articles on health, product safety, marketplace economics, and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

Mr. Kluckman's response suggests that the Board does not fully appreciate the extent of its responsibilities under Section 18(f)(1) of that Act. This Section imposes two separate and distinct obligations upon the Board. First, Section 18(f)(1) *independently* obligates the Board to "prescribe regulations to carry out the purposes of this Section, including regulations defining with specificity . . . unfair or deceptive acts or practices and containing requirements prescribed for the purpose of preventing such acts or practices." Second, whenever the Commission promulgates rules defining unfair acts or practices outside the banking industry, the Board must promulgate substantially similar regulations prohibiting similar unfair acts or practices within the banking industry within sixty days after the Commission's rules take effect, unless it makes certain affirmative findings.

If the Board adheres to the views expressed by Mr. Kluckman, it cannot possibly fulfill adequately either of these responsibilities. The first provision of Section 18(f)(1) quoted above obligates the Board to regulate unfair or deceptive bank practices independently of what the Commission does or does not do. An independent Board investigation or rulemaking proceeding may indicate that Board regulations should be promulgated defining unfair acts and practices which the Commission has not even addressed or has addressed only tangentially.

The second relevant provision of Section 18(f)(1) requires the Board to respond within 60 days to rules promulgated by the Commission, a period of time that may be too brief to conduct a comprehensive investigation adequate to support promulgation of rules defining similar unfair and deceptive banking credit practices. Indeed, the Commission's own study of nonbank credit practices was conducted over a two-year period.

Even if, as Mr. Kluckman points out, the Commission's hearings highlight problems with the proposed rules or point toward other practices which should be addressed by any final rule, the Board would nevertheless be better able to gain from and contribute to such developments in the hearings if it has already commenced its investigation of the banking industry.

The proper time to initiate investigations of banking practices similar to practices of nonbank creditors covered by proposed Commission rules is merely one of the issues which should be addressed by the promulgation of procedures under Section 18(f)(1). Contrary to Mr. Kluckman's view, the Board's first experiences under Section 18(f)(1) are precisely the occasions on which precedents are lacking and established procedures are therefore most essential.

The importance of the Board's beginning to fulfill its responsibilities under Section 18(f)(1) was underscored on November 17, when the Commission promulgated its "holder in due course" regulation. 40 Fed. Reg. 53506 (1975). Under this regulation, it is an unfair or deceptive act or practice for a seller to accept as payment for goods or services the proceeds of any purchase money loan from a creditor affiliated with the seller unless the credit contract clearly states that the buyer may assert against any holder of the contract any claims and defenses which the buyer could assert against the seller. The Commission's promulgation of the rule was based on its determination "that it is an unfair practice for a seller to employ procedures in the course of arranging the financing of a consumer sale which separates the buyer's duty to pay for goods or services from the seller's reciprocal duty to perform as promised." 40 Fed. Reg. 53522 (1975).

The Commission simultaneously proposed to also define as an unfair or deceptive act or practice an affiliated creditor's acceptance of a consumer credit contract which did not preserve all the claims and defenses which the buyer could assert against the seller. The Commission explained its proposed amendment by stating that its investigation had given it reason to believe that many creditors were active participants in the practice of separating the buyer's duty to pay for goods or services from the seller's reciprocal duty to perform as promised, and that enforcement of the policy against such separation would be facilitated by encompassing creditors within its terms.

The Board should have established procedures which would specify appropriate responses from the Board to both the Commission's promulgation of the "holder in due course" rule and the Commission's proposal of the creditor amendment to the rule. The Commission's proposed expansion of its "holder in due course" rule to apply to nonbank creditors should cause the Board to propose a substantially similar rule to apply to bank creditors, unless the Board's independent investigation can support the affirmative findings specified by Section 18(f)(1).

The Board, moreover, should have procedures specifying appropriate responses to the promulgation of a Commission rule, like the "holder in due course" rule, which though not directly applicable to creditors relates to the fairness of bank credit practices or rests on a policy which could be better effectuated by regulations defining unfair or deceptive bank practices. These procedures would assist the Board in meeting its independent obligation to develop regulations defining unfair or deceptive banking acts or practices, in addition to rules substantially similar to ones promulgated by the Commission.

If the Board had developed appropriate procedures under Section 18(f)(1), the Commission's "holder in due course" rule, even as framed to apply only to sellers, would have prompted some investigatory response on the part of the Board. As you are aware, the share of consumer credit held by banks has been increasing over the last two decades and now stands at about forty-five percent. The Reserve Board could clearly facilitate implementation of the policy underlying the Commission's rule by promulgating a regulation which prohibited banks from accepting consumer credit contracts which did not state that the buyer could assert against any holder of the contract all claims and defenses which he could assert against the seller. Such a regulation would eliminate an important market for consumer credit contracts which separate the buyer's duty to pay for goods or services from the seller's reciprocal duty to perform. The Commission's holder in due course rule and the Commission's investigation supporting it also suggest that banks may be affirmatively participating with sellers in the separation of the buyer's duty to pay from the seller's duty to perform. *See* 40 Fed. Reg. 53507 (1975).

More than one year has passed since Section 18(f)(1) was enacted. During this time, while the Board failed to institute procedures necessary to implement that Section, the Federal Trade Commission has adopted and proposed rules to which the Board must respond. The Board cannot plead inexperience any longer, but must act now to fulfill its new statutory responsibilities.

Specifically, the Board should take the following action:

First, the Board should adopt procedures for the development of regulations under Section 18(f)(1) defining unfair and deceptive banking acts and practices. These rules should be in two parts. The first part of the Board's procedural regulations under Section 18(f)(1) should specify in what circumstances and in what manner the Board will independently regulate unfair banking acts and practices quite apart from those Board actions which are triggered by prior Commission action. The regulations should, for example, provide procedures by which consumers or consumer groups could petition the Board to consider unfair and deceptive practices regulations.

The second part should concern the Board's consideration of regulations on unfair and deceptive banking practices substantially similar to regulations promulgated by the Commission. Regulations under this part should, for instance, specify a period of time after the Commission has issued a proposed rule within which the Board must determine whether, if the Commission adopts the proposed rule, the Board would be required to promulgate a substantially similar rule; and, if so, issue such a substantially similar rule in proposed form, and specify when and how the Board will conduct an independent investigation of the analogous banking practices.

Second, the Board should immediately commence a study of banking credit practices relevant to the Board's proposed credit practices rules, 40 Fed. Reg. 19495 (1975), similar to the investigation which the Commission conducted prior to the issuance of its proposed credit practices rules.

Third, the Board should issue a proposed regulation which would define as an unfair or deceptive banking act or practice the acceptance of a consumer credit contract which did not state that the buyer could assert against any holder of the contract any claims and defenses which the buyer could assert against the seller of the goods or services financed.

Fourth, using the record developed by the Commission in its "holder in due course" proceedings as a starting point, the Board should commence its investigation of: (a) banks' acceptance of and collection upon consumer credit contracts which do not preserve buyers' defenses and claims against sellers; and (b) banks' participation with sellers in the separation of the buyer's duty to pay for goods or services from the seller's reciprocal duty to perform. In doing so, the Board should consider adopting a "holder in due course" rule applicable to banks without waiting for the Commission to expand its rule to nonbank creditors.

We hope to have an opportunity to discuss with the Board or its staff the matters raised herein. The Board has an important responsibility to consumers under Section 18(f)(1) of the amended Federal Trade Commission Act. The Board should act now to insure that it can discharge that responsibility.

Sincerely,

MICHAEL C. HARPER.

FEDERAL RESERVE SYSTEM,
BOARD OF GOVERNORS,
Washington, D.C., March 22, 1976.

Mr. MICHAEL C. HARPER,
Center for Law and Social Policy,
Washington, D.C.

DEAR MR. HARPER: Chairman Burns has asked me to respond to your letter of January 5, in which you expressed concern regarding the Board's activities under section 18(f)(1) of the amended Federal Trade Commission Act. Perhaps a brief review of the Board's actions thus far will be helpful in this regard. Since I believe that Mr. Jerauld C. Kluckman of this office has already responded to the particular issues raised in your previous letter of October 22, 1975, I will limit my remarks to those additional areas of concern mentioned in your letter of January 5.

Section 18(f)(1) imposes three distinct obligations upon the Board. In the area of regulatory action, the Act grants broad rulemaking authority to the Board to prohibit unfair and deceptive acts or practices by banks. Second, when the Federal Trade Commission prescribes a rule defining an unfair or deceptive practice under the Act, the Board is required, within 60 days, to issue a substantially similar rule applicable to the banking industry, unless it deems this inappropriate for one of the two reasons set forth in the Act. In addition to these two responsibilities that you noted in your letter, section 18(f)(1) directs the Board to establish a method for handling consumer complaints regarding bank practices and actions.

Although your letter does not mention this third requirement regarding the complaint procedure, we believe that any discussion of the Board's responsibilities under the Act must include this element, which the Board views as an essential concomitant to its regulatory functions under section 18(f)(1). Judging from the juxtaposition of these regulatory and consumer complaint responsibilities, it would seem that the Board's consumer complaint function was intended to serve as a partial basis for the implementation of its regulatory authority.

The Board has already designed such a consumer complaint procedure, which is now in operation throughout the Federal Reserve System. This procedure will serve a two-fold purpose. First, it will help to assure consumers of prompt and responsive action on their individual complaints with regard to banks. Second, it will provide the Board with the type of information required to apply the unfairness test set forth in the Act to all aspects of the relationships of banks with their customers. After an individual response is made to each complaint, a record will be maintained in a central file and classified according to such relevant categories as the type of practice and type of bank involved.

The Board's staff will regularly analyze this complaint record to determine whether patterns of abuse may be emerging. A significant number of complaints involving a particular bank practice or policy will call, of course, for further investigation that may lead to regulatory action. I understand that the Federal Deposit Insurance Corporation and the Comptroller of the Currency have instituted comparable consumer complaint procedures, and plans have been developed to provide the Board with any significant trends in such complaints that might suggest regulatory action. While the complaint procedure is certainly not the only investigative method that may be employed, we believe that the record that emerges from these complaints will provide a foundation for further action.

With regard to the Board's responsibility to issue substantially similar rules in response to rules promulgated by the Commission, the Board has already taken action on two regulations proposed thus far by the Commission. Although the Board is not required to act until a final rule is adopted by the agency, it was felt that delaying any Board action until that stage would deprive both agencies of the benefit of comments on the proposals from consumers and creditors. Thus, in April 1975 the Board published a proposed rule on creditor remedies that substantially mirrored a proposal issued by the Commission three weeks earlier. Our staff is currently analyzing more than 700 comments received by the Board on this rule. More recently, the Board has requested comments on a proposed regulation by the Commission that would prohibit nonbank creditors from taking or receiving any consumer credit contract unless all consumer claims or defenses are preserved. It is expected that the comments on this proposal will assist the Board in formulating its own position with regard to the application of the rule to banks.

The full implementation of section 18(f)(1) will necessarily be a continuing effort, given the broad scope of the authority and responsibility conferred by that section. I believe that the actions taken thus far by the Board demonstrate our efforts to fulfill the purposes of the Act and our intent to continue to do so in the future.

Sincerely yours,

FREDERIC SOLOMON,
Assistant to the Board and Director,
Office of Saver and Consumer Affairs.

CENTER FOR LAW AND SOCIAL POLICY,
Washington, D.C., June 8, 1976.

Hon. ARTHUR F. BURNS,
Chairman, Federal Reserve System,
Washington, D.C.

DEAR CHAIRMAN BURNS: On January 5 of this year I wrote to you on behalf of Consumer Union of United States, Inc. concerning the extent of the Board's unfulfilled responsibilities to consumers under Section 18(f)(1) of the amended Federal Trade Commission Act. I suggested that the Board was merely responding to rulemaking initiatives of the Commission and had taken little, if any, independent action to discharge its Section 18(f)(1) responsibilities to protect consumers from unfair and deceptive bank practices. Your eleventh hour May 5 letter to Chairman Collier and your accompanying staff memorandum urging modification and deferral of the Commission's new Rule on "preservation of Consumers' Claims and Defenses" indicate that the Board not only does not fully understand its consumer protection responsibilities, but also intends to participate in Commission rulemaking only in the Board's traditional role of representative of the banking constuency which it regulates.

As you know, the Board will itself have mandatory rulemaking responsibilities regarding the preservation of consumers' claims and defenses when the Commission extends its new rule to cover creditors as well as sellers. We hope that the orientation of your letter and staff memorandum does not suggest that these responsibilities will not be discharged in accordance with Congressional intent.

With the exception of one technical problem discussed on page 21 of the memorandum, the arguments and analysies presented in your letter and the staff memorandum are addressed to alleviating the impact of the Commission's Preservation Rule on creditors rather than making the Rule a more effective consumer protection device. The memorandum makes numerous arguments why the Rule should be restricted or even rejected completely. The memorandum does not generally attempt to suggest ways in which the Rule might be framed to accommodate some of the creditor concerns without sacrificing the Rule's purposes. The letter and memorandum pleaded for delay of the Rule's effective date because some of its boundaries might not be completely clear to creditors, even though: (1) the Rule as now promulgated is applicable only to sellers; (2) no punitive damages can be imposed unless knowledge or constructive knowledge of the deceptiveness of the particular practice is proven; and (3) realistically the Commission's limited enforcement staff can not be expected to initiate any formal actions against practices which are not clearly encompassed by the Rule's purposes as well as arguably by its technical terms.

A specific discussion of the staff memorandum highlights the extent to which the memorandum serves as a creditor advocate's brief against the Rule and fails

to provide objective analysis of the consumer interests for which the Board is responsible.

* * * * * * *

The memorandum's, as well as your letter's, primary concern is with the Rule's definition of "purchase money loan." The memorandum argues that this definition, if read technically, will require creditors to include the preservation notice in all their personal loan contracts, and that such a strict definition is the not necessary to serve the Rule's stated purposes. The memorandum stresses that a creditor can never be sure that a consumer, whatever his stated intentions, will not use the proceeds of a loan to purchase goods or services from a seller who generally refers consumers to the creditor or who is affiliated with the creditor. The memorandum concludes that a creditor must insert the preservation notice in all his personal loan contracts because of the chance that the loan will ultimately become a "purchase money loan" within the definition of the Rule. The memorandum argues that this is unreasonable because the definition was only meant to avert collusion between sellers and creditors to circumvent the Rule.

Even if the memorandum is correct that the definitional terms of the Rule are technically more encompassing than necessary, the memorandum clearly overresponds to any problem raised by the Rule's technical breadth. First, a definition of "purchase money loan" which may be read to encompass more loans than it is the purpose of the Rule to cover should not prejudice creditors. Creditors who do not use the preservation notice when the consumer borrower does not know whether he will use the proceeds to purchase goods or services from a related seller will risk little. As indicated above, the Commission staff can not be expected to enforce the Rule in situations to which it is not clearly applicable. And even if they attempt to do so, no punitive damages can be imposed if the creditor does not and could not have had knowledge that the conditions of the preservation notice were all met. 15 U.S.C. § 45(m).

Second, the memorandum's statement of the purpose of the definition of "purchase money loan" is too restrictive. The Commission included purchase money loans within the new Rule not only to cover cases of seller-creditor collusion, but also to cover cases in which independent creditors "have the same access to information as discount creditors" and can "obtain equivalent guarantees and endorsements from sellers which embody a repurchase obligations." 40 Fed. Reg. 53506, 53525 (1975). Regardless of any collusive relationship, whenever the creditor knows that the consumer-borrower will use the loan proceeds to purchase goods or services from a seller which regularly refers consumers to the creditor or with which the creditor is affiliated, the creditor is in a position to internalize the costs of the risk of seller misconduct. The creditor can, for instance, charge more for the loan or arrange general recourse or repurchase agreements with sellers which make regular referrals.

Third and most important, the memorandum's recommended response to what it alleges is an overly broad definition of "purchase money loan" weakens the Rule much more than is necessary to avoid the alleged overbreadth problem. The concerns raised in the memorandum under the headings "Definition of Purchase Money Loan", "Check Credit", and "Availability of Recourse Arrangements" could all be simply addressed by permitting creditors to show that they did not have knowledge and could not have had knowledge at the time the loan was made that the loan proceeds would be used to purchase goods of a related seller. This could be accomplished by adding at the end of the definition a clause such as "unless the creditor can show that at the time of the loan it did not have knowledge and could not have obtained knowledge, by making reasonable inquiry, that the proceeds would be so applied."

The staff memorandum recommends a narrowing of the definition of purchase money loan which would impose the notice requirement only on those loans made pursuant to some business arrangement or contract or pursuant to a referral which is itself made pursuant to such a business arrangement or course of dealing. Depending on the interpretation given to "course of dealing", this definition might permit sellers and creditors to avoid the preservation notice by tacit understandings, the existence of which it would be almost impossible to prove. Creditors would have no incentive to seek some means of recourse from those sellers with which they have no formal association, but which nonetheless make regular referrals of consumers. Creditors could avoid the Rule simply by not questioning consumers concerning the intended use of the loan proceeds. The costs of seller misconduct would thus not be internalized in accordance with the Rule's purpose.

In sum, the staff memorandum suggests a major weakening of the practical force of the Rule in order to correct a problem which, given the purposes of the Rule and limited Commission enforcement authority and resources, is realistically of minor importance.

The memorandum's attention to and analysis of other issues also reflect a Board preference toward creditor representation rather than consumer protection pursuant to Section 18(f)(1). The memorandum recommends significant qualifications of the Rule which the Commission already has considered carefully and rejected as inconsistent with the Rule's underlying rationale and purposes. For instance, the memorandum recommends that consumers be required to "make a good faith attempt to resolve the problem with the seller prior to taking action against the creditor." This recommendation is inconsistent with the Commission's finding that creditors can better internalize the costs of seller misconduct. Acceptance of the recommendation would substantially affect the impact of the new Rule by conditioning the assertion of claims and defenses against creditors on what in most cases would be a very burdensome proof that a good faith attempt was in fact made. Noting this problem of proof and the usual consumer interest in making an initial attempt to obtain redress from the seller, the Commission explicitly rejected suggestions that the consumer be required to make written demand upon the seller before stopping payments. 40 Fed. Reg. 53506, 53528 (1975).

The memorandum also suggests limiting the time during which a creditor would be subject to claims and defenses, at least on large ticket items. However, the Commission, stressing the purposes of the Rule, has already rejected suggestions that limitations be placed upon the time in which defenses can be raised and upon the size of loans covered by the notice requirement. *Id.* at 53528. The memorandum's argument that time and size limits should be imposed reveals a complete insensitivity to the Rule's purposes. The memorandum emphasizes that a seller may go out of business during the lengthy term of a large loan leaving the holder of the credit contract the only guarantor of the goods or services. But seller disappearances occasion some of the most important situations in which consumers require the protection of the notice and in which the costs of seller misconduct are not internalized without the preservation of claims and defenses.

The memorandum advances other restrictions of the Rule without analysis of whether such restrictions would in any way weaken the Rule as a consumer protection resource. For instance, the memorandum simply assumes that agricultural credit is for some reason special and should not be included without a specific evidentiary record; no analysis of why the Rule's rationale does not apply to farm credit or of why the special treatment of farm credit under Truth-in-Lending is relevant to the Rule is set forth. Similarly, without supporting analysis, the memorandum pleads for a "clarification" of the coverage of leases which could act as a restriction of the Rule.

Finally, the memorandum seems to seek to confuse the meaning of the Rule and then argues that the effective date should be deferred because of this conclusion. The memorandum's discussion of the Rule's coverage of leases provides an example. In addition, the memorandum's suggestion that a "purchase money loan" may exist because of an arrangement between a creditor and a seller unrelated to the sale of goods or services to consumers is completely inconsistent with the definitional section of the Rule. A "business arrangement" is limited by definition to some arrangement "in connection with the sale of goods or services to consumers or the financing thereof." 15 C.F.R. 433.1(g). Notwithstanding any "[i]nformal discussions between the staffs of the Board and the Commission", "checking accounts" or "unrelated creditor loans to sellers" surely do not in themselves constitute a "business arrangement" under such a definition.

The Board should not of course be criticized for attempting to contribute to the development of a Rule which does not unduly disrupt this nation's credit industry. But is is surely inconsistent with the Board's responsibilities under Section 18(f)(1) of the amended FTC Act for that attempted contribution to be made in the farm of creditor advocacy.

Sincerely,

MICHAEL C. HARPER.

FEDERAL RESERVE SYSTEM,
Washington, D.C., July 19, 1976.

Mr. MICHAEL C. HARPER,
1751 N Street, N.W.
Washington, D.C.

DEAR MR. HARPER: I have received your letter of June 8 commenting on the Board's response to the Federal Trade Commission's Rule on Preservation of Consumers' Claims and Defenses. You refer particularly to my letter of May 5 to Chairman Collier of the FTC and the accompanying memorandum by the Board's staff outlining certain issues raised by the rule in its present form.

In the material submitted to the Commission, the Board and its staff expressed concern that the rule contains ambiguities that may render its implementation more difficult. The Board remains committed to minimizing the confusion and any adverse economic impact that may result from implementation of the rule. The Board's concern for the impact of the rule on the credit industry in no way conflicts with its long-standing commitment to consumer protection. Indeed, the Board would not be adequately fulfilling its responsibilities to consumers if it failed to consider the economic consequences of the rule. If creditor uncertainty over the scope and application of the rule contributes to higher costs and reduced credit availability, a serious commitment to the needs of consumers would seem to dictate some modification in that rule.

I appreciate your sharing with me your concern regarding this rule and the Board's response to it. I can assure you that the Board will continue to do everything possible to fulfill its responsibilities for consumer protection and the economy in carrying out the mandates of the Federal Trade Commission Improvement Act.

Sincerely yours,

ARTHUR F. BURNS,
Chairman of the Board of Governors.

FEDERAL RESERVE SYSTEM,
Washington, D.C., May 5, 1976.

Hon. CALVIN J. COLLIER,
Chairman, Federal Trade Commission, Washington, D.C.

DEAR CHAIRMAN COLLIER: I am writing to convey the Board's urgent concerns regarding the likely impact of the Commission's Trade Regulation Rule entitled "Preservation of Consumers' Claims and Defenses." Based upon numerous comments received from lenders and our staff analysis of this rule, we believe that the consumer credit business may be seriously disrupted if the rule goes into effect on May 14, 1976, as scheduled. Such disruption, if it occurs, could have harmful consequences for the economy.

The Board did not investigate the issue in detail or comment when the Commission initially proposed the rule because only sellers appeared to be affected and no regulatory action by the Board was required. When the Commission adopted the rule and also propsed an amendment to cover creditors, it triggered the Board's responsibilities under the Federal Trade Commission Improvement Act. Therefore, the Board on February 3 published for comment a substantially similar version of the Commission's proposed amendment relating to banks.

The Board received 1,080 letters of comment on this proposal, of which only 8 favored it. The adverse comments, many of which were quite specific in character, brought to the Board's attention the adverse ramifications of implementing the rule as written at present.

The most serious problems concern the definition of a "purchase money loan." The Board believes that the definition is overly broad and will create uncertainty about the applicability of the rule to several important categories of consumer credit. The rule as drafted will greatly complicate the signature loans that banks and other financial institutions commonly make to their most creditworthy applicants. The rule could also unduly complicate overdraft checking account systems, which millions of consumers are using today.

The Board is concerned also about the absence of any time limit on the duration of the creditor's liability. This may make creditors hesitate to offer long-term loans to finance home improvement projects or mobile home purchases. In addition, a creditor's liability for claims for personal injury and property damage arising from the goods or services purchased should be eliminated, as it is in credit card purchases under the Truth in Lending regulations.

I am enclosing a commentary by the Board's staff elaborating on these and other issues raised by the rule. The comments propose remedies to resolve many of the problems related to these issues, which we believe merit your serious consideration.

The Board is sympathetic to efforts to promote consumer credit terms that are fair to both borrowers and creditors. It appears to us that this goal would be served more effectively by issuing simultaneously the rule applying to sellers and the rule applying to creditors. Accordingly, the Board strongly urges that the Commission defer the May 14 effective date of the rule adopted for sellers so that the necessary clarifications and technical refinements can be considered for both rules.

Governors Jackson and Partee, on behalf of the Board, will be pleased to meet with you and other members of the Commission if further discussion of this important matter is desired. Of course, our staff will be glad to work actively with the Commission's staff in examining further our concerns regarding the Commission's rule.

Sincerely yours,

ARTHUR F. BURNS,
Chairman of the Board of Governors.

Enclosure.

COMMENTS OF THE STAFF OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM ON THE FEDERAL TRADE COMMISSION RULE ENTITLED "PRESERVATION OF CONSUMERS' CLAIMS AND DEFENSES" (16 CFR 433)

This memorandum comments on a proposal of the Federal Trade Commission to amend the rule it has adopted effective May 14, 1976. The adopted rule specifies, among other things, that it shall be an unfair or deceptive act or practice for a seller to accept the proceeds of any "purchase money loan" unless the consumer credit contract made in connection with the loan contains a prescribed notice that the holder of the contract is subject to all claims and defenses which the debtor could assert against the seller. The proposed amendment is an almost identical rule applying to extensions of credit by creditors. The Rule, as adopted, is sometimes referred to herein as the "Seller Rule," the amendment as the "Creditor Rule," and both together as the "Holder Rule." [1]

Staff believes that the Seller Rule may have a serious impact on many bank extensions of consumer credit. This follows from the rule's definition of the term "purchase money loan" to include loans where the proceeds are used by the customer to purchase goods or services from a seller who either refers customers to the creditor or is "affiliated with the creditor by common control, contract, or business arrangement." The possible scope of the term "business arrangement" and the provisions regarding "referrals" are such that banks do not know which loan contracts will have to include the notice to avoid placing a seller who accepts proceeds of the loan in possible violation. Banks are also unsure of their possible liabilities, should they decide to make such consumer loans under contracts containing the notice.

Under § 18(f) of the Federal Trade Commission Act as amended, the Board of Governors of the Federal Reserve System is required, with specified exceptions not discussed herein, to respond to the Commission's adoption of trade regulation rules by promulgating within 60 days after the effective date of such rules, substantially similar regulations applicable to banks. The Seller Rule was adopted pursuant to administrative proceedings begun prior to enactment of that Act and was not covered by this requirement. On November 18, 1975, in conjunction with the final adoption of the Seller Rule, the Commission issued the Creditor Rule for comment as a proposed amendment to the Seller Rule (40 *Fed. Reg.* 53530 (1975)). Under § 18(f) of the Federal Trade Commission Act, the Board may be required to adopt a rule similar to this amendment and applicable to banks.

The Holder Rule was published as the result of a Commission inquiry into certain abuses in the consumer credit field where consumers who had been sold defective goods and services found that their "duty to pay" had been separated from the "seller's duty to perform" by the utilization of certain abusive credit practices (Statement if Basis and Purpose, "Preservation of Consumers' Claims and Defenses," p. 13).

[1] Copies of the Seller Rule and proposed Creditor Rule are attached.

The Seller Rule as adopted and the Creditor Rule as proposed, however, will cover a much broader spectrum of consumer credit transactions than is necessary to prevent the abuses to which the rules are apparently directed. These include transactions (1) where there is no arrangement between creditor and seller relating to the credit extended and (2) where the creditor has no way of knowing—and the consumer may not even yet have decided—whether the proceeds of a loan will be used to purchase goods or services, and if so, from what seller. There will certainly be many transactions in which neither creditor nor seller will be able to determine whether the rule applies (or if it applies, whether the required notice has been used).

The remainder of the comments will be addressed to the proposed "creditor amendment" to the Commission's rule entitled "Preservation of Consumers' Claims and Defenses" (hereinafter referred to as the "Holder Rule").

I. THE DEFINITION OF "PURCHASE MONEY LOAN"

The Holder Rule addresses seller-originated credit (credit sales) and nonseller originated credit (direct loans). The rule is clear in its requirement that all consumer credit contracts taken by sellers must contain the "notice" preserving claims and defenses. Thus, any purchasers of such contracts will take them with full knowledge that they stand liable for the named seller's misconduct.

Similar certainty regarding which contracts must contain the "notice" and which sellers' conduct a creditor must stand liable for is not present in the portion of the rule which applies to nonseller-originated credit. Also, that portion of the rule appears to go much further than is necessary to eliminate the practices which were found to be unfair as outlined in the Commission's Statement of Basis and Purpose accompanying the rule. There is concern that the rule, as drafted, will impose substantial unfair hardships on banks and other direct lenders. A discussion follows of some of the problems which are likely to arise from the present definition of "purchase money loan."

Referrals

The Holder Rule defines "purchase money loan" as a consumer loan made to purchase goods or services from a seller who "refers consumers to the creditor." Permitting the simple fact of a seller referral to trigger the disclosures required by the rule is unwise. Generally, creditors have limited control over which sellers make referrals to them. As a result, the creditors may not know which sellers the rule requires them to police. Under the present rule, a transaction will require inclusion of the "notice" even when it involves a seller who makes as few as two referrals to the creditor, with or without the creditor's knowledge or permission.

Since seller referrals, with nothing more, can determine whether a loan is a "purchase money loan," in many situations the creditor's only way of determining whether a specific transaction must include the "notice" is to ask whether the customer was referred by the seller from whom he or she intends to buy. An affirmative answer requires the creditor either to include the "notice" in the contract or to decline to make the loan.

In many cases, a customer, assuming that the application is only for a personal loan, may not wish to state the purpose of the loan or where it will be spent. While it may not be true of other creditors, banks commonly make signature loans on the basis of a good credit rating. Many consumers will consider an inquiry as to how or where proceeds of a bank loan will be spent an invasion of privacy. Many banks have expressed concern that the rule as drafted will disrupt relations with preferred customers because it requires prying into customers' private affairs.

A similar problem arises where a consumer wants a direct loan in order to shop around before deciding where to make a purchase. The consumer may be perfectly willing to divulge the intended use of the loan, but the rule effectively requires that the consumer also know where the loan proceeds will be spent when the credit contract is entered into. This is an inconvenience, and the delay involved may prevent the consumer from getting the best buy.

The rule as drafted presents more profound problems in cases in which it is impossible for the creditor to determine whether the seller is a "referring seller." In many situations, asking the consumer if there has been a referral from a seller will not be sufficient to protect the creditor from inadvertent violations of the rule. The rule applies whenever a seller generally refers consumers to a creditor; there is no requirement that a specific customer have been referred, or that the referral be pursuant to some course of conduct or agreement between creditor and seller.

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The referral aspect of the rule creates problems even when the customer knows the seller's identity and the creditor knows that the seller makes referrals. Assume, for example, that the customer decides to make the purchase from a seller other than the referring seller after the "notice" has been included in the contract. The creditor will be liable for the conduct of *any* other seller who receives the proceeds because the "notice" is effective regardless of who the seller is. Likewise, if the customer informs the bank that the purchase will not be made from a referring seller and no "notice" is included, a subsequent decision to purchase from a referring seller will place the unwitting creditor in violation of the rule. Therefore, creditors may have to require their debtors to sign a statement indicating where they will use the proceeds or convert all their loan proceeds checks into payee-designated checks in order to insure against inadvertent violations.

From the foregoing, it would appear that one of the results of the Holder Rule may be to constrict the market for personal signature loans since creditors may not be willing to take the chance that loan proceeds will not be received by a referring seller. The other alternative available to the creditor would be to include the "notice" in all consumer credit contracts, thereby waiving holder in due course status and subjecting the creditor to all claims and defenses no matter who the seller turns out to be. This is an unreasonable burden to impose on creditors.

The broad scope of the referral aspect of the present Holder Rule may subject creditors to liability for the misconduct of sellers over whom creditors have no control. Control over sellers appears to be one of the rule's underlying assumptions since creditors must have some means of assuring that sellers respond to consumer problems. Under the rule as presently drafted, creditors will stand liable for misconduct of sellers over whom they have no control in cases where unsolicited referrals are made or where there is no arrangement between the seller and the creditor. The Commission's goal of eliminating seller misconduct from the market will not be achieved in such situations because sellers will have no incentive to respond to consumers' problems unless they depend to some degree on the creditors' financing. Thus the rule could result in creditor forfeitures (which merely shift the costs of seller misconduct from consumers onto the credit industry) or a substantial decrease in direct loan financing of sales.

It is recommended that the more difficult problems with the referral aspect of the rule be eliminated by providing that only those loans resulting from referrals made pursuant to some specific business arrangement or course of dealing between the creditor and the seller be considered "purchase money loans." Under such a revised rule, creditors could be certain of which sellers' conduct they were guaranteeing and could also be assured that a loan made to a consumer who was not referred to the creditor by a referring seller would not become a "purchase money loan" by virtue of subsequent action by the consumer. Also, since the business arrangement would be advantageous to the seller, the seller would have an incentive to respond to the creditor's requests that consumer problems be resolved.

The Commission's Statement of Basis and Purpose states that the referral aspect of the rule was intended to prevent the collusive use of vendor-related loans to avoid putting the "notice" in credit sale contracts (pp. 58–67). This goal would be accomplished by requiring that any loan made pursuant to a business arrangement between a seller and a creditor should include the "notice" because any collusive referral arrangement would constitute a sufficient business arrangement to bring the rule into operation.

In view of the fact that the Holder Rule preempts State laws and is likely to have a very widespread impact, care should be exercised to assure that the rule is no broader than is necessary to eliminate the practices which were found to be unfair. The limitation on the scope of the rule suggested above would not limit the effectiveness of the rule in preventing the practices which were found to be unfair and, at the same time, would eliminate most major problems raised by the referral aspect of the rule in its present form.

Affiliation by Common Control, Contract, or Business Arrangement

The second aspect of the definition of "purchase money loan" requires inclusion of the "notice" preserving claims and defenses when a consumer loan is made to purchase goods or services from a seller who "is affiliated with the creditor by common control, contract, or business arrangement." "Contract" and "business arrangement" are defined, in general, as any arrangement or course

of dealing "in connection with the sale of goods or services to consumers or the financing thereof."

Just as the referral aspect of the rule may be read as not requiring that a specific loan actually be made pursuant to a referral in order to be covered, the contract-business arrangement aspect of the rule may be read as not requiring that a specific loan actually be made pursuant to the contract or business arrangement between the seller and the creditor in order to require inclusion of the "notice." The only requisite is that a contract or business arrangement must exist between a seller and a creditor; where this is present, any loan made by the creditor, which is used to purchase goods or services from that seller, will be covered by the rule. Many of the same problems which were raised under the discussion of the referral aspect of the rule are also present in the contract-business arrangement aspect of the rule. For example, if a borrower, without being referred, applies to a bank for a direct personal loan with the intent to buy a refrigerator from a seller who has a business arrangement with the bank, the credit contract must contain the "notice." The rule also would provide that the loan would come within the scope of the rule if the consumer, at the point of application, had not decided where to purchase the refrigerator and later purchased from a "related" seller, or if the consumer, after indicating an unrelated seller, purchased from a related one. If the "notice" had not been included in the contract, a subsequent decision to purchase from a seller who was related would place the creditor inadvertently in violation of the rule. Conversely, if the "notice" was included, the creditor would stand liable for the misconduct of any seller chosen by the consumer, whether or not a business arrangement existed.

All creditors who make personal loans face these problems because, without adopting payee-designated checks, they have no control over the loan proceeds once the loan is made. As previously discussed, the effect of the rule could very well be to eliminate the traditional direct personal bank loan from the market. The rule would in effect require creditors to inquire into the "what for" and "where" of each loan and would necessitate the development of means of assuring that loan proceeds be spent only at the disclosed seller's establishment. The other creditors alternative would be to include the "notice" in all loan contracts and *hope* that the seller eventually chosen is reputable. Neither of these alternatives is desirable to creditors.

It is recommended that the problems indicated above be eliminated by drafting the rule so as to provide that each loan must be made pursuant to a contract or business arrangement concerning consumer financing between the seller and the creditor in order for it to come within the definition of a "purchase money loan." If the consumer indicated that a related seller had recommended the creditor, the "notice" would have to be included in the contract. The "notice" would not have to be included if the creditor was unable to determine the identity of the seller after a good faith effort to do so. As the Commission stated in its Statement of Basis and Purpose (p. 129), the rule is intended to prevent "concerted or cooperative conduct between sellers and creditors" directed as separating the seller's duty to perform from the buyer's duty to pay. This solution goes as far as is needed to eliminate the practices found by the Commission to be unfair.

The second major problem involving the contract-business arrangement aspect of the definition of "purchase money loan" concerns the type of contract or business arrangement that was intended to bring the rule into operation. The definitions provide that only those contracts and business arrangements which are "in connection with the sale of goods or services or the financing thereof" would bring a transaction within the scope of the rule. No further guidance is provided as to what type of contract or arrangement is contemplated. The types of abuses discussed in the Statement of Basis and Purpose, together with the definition, would lead one to the conclusion that "contract" and "business arrangement" refer to some agreement, understanding, or course of dealing pursuant to which the creditor supplies financing for consumer purchases from the seller. Informal discussions between the staffs of the Board and the Commission have indicated, however, that the Commission staff's interpretation of the rule is that any contract or business arrangement which "touches" the goods or services is sufficient to bring a loan made to purchase those goods or services within the definition of a "purchase money loan." Thus, the following types of arrangements, understandings, and procedures may qualify as "business arrangements":

1. checking account; 2. floor planning; 3. unrelated loan to the seller; and 4. unrelated loan to the seller where inventory of seller secures the loan. This interpretation seems to expand the rule's scope beyond the type of transactions which

the Commission found to be unfair. *It is recommended that the types of contracts or business arrangements which will bring the rule into operation be clarified.*

II. CHECK CREDIT

"Check credit" refers to credit extended pursuant to check overdraft plans. Informal discussions with Commission staff have indicated that the Commission had not intended the rule to reach check credit. Nonetheless, the definition of "purchase money loan" would encompass check credit when the proceeds of a check credit transaction are used to make a purchase from a referring seller or from a seller with whom the bank has the requisite contract or business arrangement.

Check credit transactions would appear to have no relation to any of the unfair practices which the rule was intended to address. No collusion can exist between the seller and the creditor in such transactions since neither the seller nor the creditor is aware that a credit transaction has occurred when a check which will overdraw the consumer's account is written. Even the consumer may not be aware that a credit transaction is taking place. Furthermore, because of delays inherent in the check clearing process, checks which were not expected to overdraw may do so and checks which the consumer thought would overdraw may not do so.

The Holder Rule as it relates to check credit would be unfair to banks which account for nearly all demand deposit accounts nationally. Banks have no control over where the proceeds of an overdraft check will be spent. Nevertheless, under the proposed rule factors totally beyond a bank's control will effectively compel the bank to accept liability for the misconduct of a seller who accepts a check or its proceeds.

Another operational problem arises in the case of check credit. Arguably, the consumer credit contract in cases of check credit is the check itself. If so, the "notice" would have to be printed on all checks used in overdraft accounts since the bank would have no way of knowing in advance whether any particular check would overdraw and whether the check or its proceeds would be used for a purchase from a seller who made referrals or had the requisite relationship with the bank.

It is recommended that the Holder Rule's definition section be amended TO specifically exclude check credit from the scope of the rule.

III. AGRICULTURAL CREDIT

The Holder Rule reportedly was not intended to extend to agricultural credit, but this type of credit is specifically brought within its scope by defining "financing a sale" as: "Extending credit to a consumer in connection with a 'credit sale' within the meaning of the Truth in Lending Act and Regulation Z." Credit sales under Truth in Lending include those for agricultural purposes. The definition appears to be an affirmative expression of intent to include agricultural credit sales within the rule's scope. The rule contains no similar affirmative indication that *loans* (as opposed to credit sales) for agricultural purposes come within its scope, but neither is there any indication suggesting the contrary interpretation.

It is questioned whether there is a need for the inclusion of agricultrual credit under the Holder Rule. There has been no indication that agricultural transactions have been subject to any of the practices found to be unfair by the Commission.

It is recommended that agricultural credit be exempted from the rules coverage until it has been demonstrated that agricultural transactions do involve abusive practices similar to those addressed by the Holder Rule.

IV. GOOD FAITH ATTEMPT TO RESOLVE THE PROBLEM WITH THE SELLER

It is recommended that a provision be included in the Holder Rule which would require that a consumer who has encountered problems with a seller's goods or services make a good faith attempt to resolve the problem with the seller prior to taking action against the creditor. A good faith effort at such a resolution would not impose an unreasonable burden on the consumer and would seem to encourage the most expeditious resolution of consumer problems. Normally, it is only after the consumer is unable to get any satisfaction from the seller that the creditor should be brought into the negotiations. In many situations a consumer will attempt to resolve the problem with the seller first, but this may

not always be the case. It should be noted that the holder in due course provision in the Fair Credit Billing Act preserving consumers' claims and defenses does contain a provision requiring a good faith effort by the consumer to resolve the problem with the seller.

V. TORT CLAIMS

The Holder Rule subjects holders of consumer credit contracts to all claims and defenses that the debtor could assert against the seller of the goods or services that were the subject of the contract. This includes any tort claims that the debtor may have. Congress, in § 170 of the Fair Credit Billing Act, specifically excluded tort claims from the types of preserved claims. Claims of this type have no relation to the type of unfair practices which the Holder Rule addresses, nor does there appear to be any valid reason for holding the creditor liable for problems which are traceable to the manufacturer of a product.

It is recommended that, in light of a specifically expressed contrary Congressional view regarding precisely the same issue, the Commission give consideration to excluding tort claims (or at least personal injury and property damage claims) from the type of claims that may be asserted by a consumer under the rule.

VI. LEASING

The Holder Rule is unclear as to its intended coverage of leases. Section 433.2 declares that any consumer credit contract in connection with a lease of goods or services must contain the notice. Yet the rule's definitions contain an indirect reference to leases based on the definition of "credit sale" under the Truth in Lending Act. This definition of "credit sale" applies only to those leases which are the functional equivalent of a "credit sale" because the "lessee will become, or for no other or for a nominal consideration has the option to become, the owner of the property" which is the subject of the lease (15 U.S.C. § 1602(g)). *It is recommended that the rule be clarified to indicate that only leases which are the functional equivalent of an extension of credit are covered.*

VII. AVAILABILITY OF RECOURSE ARRANGEMENTS

Under the Holder Rule as currently drafted, a creditor who makes a purchase money loan is subject to any claims or defenses that may be asserted against the seller. As previously discussed, the mere fact that a seller refers consumers to a creditor will bring any loan made by that creditor to finance a purchase from that seller within the scope of the rule. It is not necessary that such referrals may not occur pursuant to any business arrangement or understanding; they may occur totally on the initiative of the seller. If the consumer subsequently asserts a legitimate claim or defense against the creditor, the creditor will have no recourse against the seller to recover the loss. The creditor will not be able to exert any pressure on the seller to obtain reimbursement. Nor in this instance is it possible for the creditor to require a recourse agreement as a condition of an assignment of a consumer credit contract. Losses owing to seller misconduct would have to be absorbed by the creditor in this situation. *As previously recommended, this problem should be remedied simply by requiring referrals to be pursuant to a business arrangement or understanding in order for a loan made pursuant to such referrals to qualify as a purchase money loan.*

VIII. THE HOLDER RULE AND STATE LAW

Many States currently have laws in effect which limit the use of holder in due course status, although none appear to be as comprehensive as the Commission's proposal. It apparently is the Commission's intent that all these State laws be preempted by the rule. *It is recommended that the Commission's intent with regard to preemption of State law by the Holder Rule be clarified.*

Additionally, the Commisison rule will have to fit into the broad framework of each State's laws, and such interplay may pose many potential problems. An example of such State law difficulties concerns the problem of recourse arrangements of creditors with small lenders. The rationale behind the Holder Rule assumes that creditors and sellers will enter into some type of recourse arrangement so that creditors will not be required ultimately to bear the cost of seller misconduct. However, many States have "small loan" laws which prohibit *any* person from owing or *potentially* owing more than a statutory amount (the "small loan" limit) to a small lender. If a small lender enters into several purchase money loans for consumers' purchases from a specific seller and also has a recourse arrangement with that seller, the seller with *potentially* be liable to the small lender for an aggregate amount in excess of the small loan limit. These laws may prevent small lenders in some States from protecting themselves through recourse agreements with sellers as envisioned by the rule and the rule does not provide any other means for creditors to protect themselves.

It is recommended that attention be given to conflicts between the Holder Rule and State laws which, although not preempted, may affect the assimilation of the Holder Rule into State statutory frameworks.

IX. ECONOMIC IMPACT

The Holder Rule's Statement of Basis and Purposes indicates that the Commisison has given consideration to the reduction in the availability of credit and the increase in the cost of credit which are likely to result from the adoption of the Holder Rule. The Statement of Basis and Purposes suggests that a balancing test has been applied and that the Commission has determined that the benefits to accrue from the adoption of this rule outweigh the costs (p. 116). The rule's impact in the following areas may warrant further attention to determine whether the rule's adverse impact can be minimized without doing damage to the rule's effectiveness.

Large Ticket Items Involving Long-Term Loans

The application of the Holder Rule to the sale of large ticket items such as mobile homes and boats which are generally financed over a long period of time may cause a restriction in the availability of credit for such purchases. A creditor faced with the prospect of continuing exposure to liability over several years for claims and defenses assertible against the seller is likely to be hesitant about making such loans. The seller may go out of business during the term of the loan leaving the holder of the contract as the sole guarantor of the goods. Also, over the life of the loan contract there are apt to be problems arising with the goods which are caused by the passage of time rather than by any seller misconduct or product defect. While the rule does not subject the creditor to liability for such problems, the fact remains that the consumer may feel that the seller or the creditor should be liable and stop payment on the obligation. In that situation, the only way the creditor can force the consumer to resume payment involves the expense of taking the consumer to court. Toward the end of a long-term obligation, the amount remaining to be paid will probably be small and it may cost the creditor more to go to court than to write off the remainder of the obligation. The creditor on a long-term obligation must face this possibility as long as any money is owed on the obligation.

It is recommended that this problem be given further careful consideration before it is dismissed. One possible solution would be to limit the time during which a creditor would be subject to claims and defenses to a reasonable number of years.

Barriers to Entry

The adoption of the Holder Rule is likely to make it more difficult for new businesses to enter the market. Creditors may well be hesitant about buying consumer paper from a new business and may not enter business arrangements with a new enterprise because of uncertainty about that company's business practices. The very real possibility that the business may fail leaving the creditor as the only guarantor of any goods sold may also make creditors reluctant to finance credit sales by new businesses or take assignments of their consumer paper.

X. TECHNICAL AND OPERATIONAL QUESTIONS

Comments and telephone communications with affected creditors have raised numerous questions on the operation of and compliance with the rule. *It is recommended that the Commision attempt to answer as many of these questions as possible in order to facilitate compliance. It is suggested that this be done either by making clarifying modifications in the rule or by disseminating explanatory material on the rule.*

Among the questions raised are the following:

1. Concerning the "notice":

a. May the notice be on the back of the contract?

b. May the notice be stamped on the contract?

c. Must the notice be above the consumer's signature?

d. May the notice go on a separate page and be incorporated by reference?

One particularly troublesome question has arisen from creditors' uncertainty at the time of entering into a transaction as to whether the rule applies to that transaction. Creditors have asked whether they can include the "notice" in all consumer credit contracts and precede it with a provision such as the following: If this loan is a purchase money loan as defined in the rule, the following provision applies:

This rule does not specifically prohibit this type of provision, but the result of its use will be to severely limit the rule's effectiveness. A consumer will not be able to respond to a creditor's suit for payment simply by raising a valid defense which the consumer has against the seller, instead, the consumer will first have the burden of proving that the loan was a purchase money loan which will, in all probability, involve hiring an attorney. As a result, the expense of asserting a defense is likely to be more than the amount involved; consumers will not rely on the rule and it will be reduced to a nullity.

The use of such a clause is merely a response to the uncertainty in the rule regarding which transactions are covered by the rule. It is hoped that the Commission will revise the rule to add the necessary certainty. In any event, the use of a clause similar to the above-discussed should be prohibited and such prohibition made clear.

2. Regarding seller-originated paper, does the *value* of a trade-in constitute an amount paid by the debtor under the contract so as to be recoverable?

3. The definition of "purchase money loan" covers loans which are "applied in whole or substantial part, to a purchase of goods or services" from certain sellers. What constitutes a "substantial part" of a loan?

4. It is assumed that the Commission, by its use of the term "goods and services," intended to eliminate real property transactions from the scope of the rule. Is the rule intended to reach certain borderline property transactions such as:

a. Home improvement loans where the improvement will become real property but the loan proceeds are used to pay for materials and the builder's services?

b. Mobile home sales which are considered real property transactions in some States and personalty transactions in others?

SELLER RULE

"PRESERVATION OF CONSUMERS' CLAIMS AND DEFENSES"

Sec.
433.1 Definitions.
433.2 Preservation of consumers' claims and defenses, unfair or deceptive acts or practices.

Authority: The provisions of this Part 433 issued under 38 Stat. 717, as amended; 15 U.S.C. 41, *et seq.*

§ 433.1 Definitions.

(a) *Person.* An individual, corporation, or any other business organization.

(b) *Consumer.* A natural person who seeks or acquires goods or services for personal, family, or household use.

(c) *Creditor.* A person who, in the ordinary course of business, lends purchase money or finances the sale of goods or services to consumers on a deferred payment basis; *Provided,* such person is not acting, for the purposes of a particular transaction, in the capacity of a credit card issuer.

(d) *Purchase money loan.* A cash advance which is received by a consumer in return for a "Finance Charge" within the meaning of the Truth in Lending Act and Regulation Z, which is applied, in whole or substantial part, to a purchase of goods or services from a seller who (1) refers consumers to the creditor or (2) is affiliated with the creditor by common control, contract, or business arrangement.

(e) *Financing a sale.* Extending credit to a consumer in connection with a "Credit Sale" within the meaning of the Truth in Lending Act and Regulation Z.

(f) *Contract.* Any oral or written agreement, formal or informal, between a creditor and a seller, which contemplates or provides for cooperative or concerted activity in connection with the sale of goods or services to consumers or the financing thereof.

(g) *Business arrangement.* Any understanding, procedure, course of dealing, or arrangement, formal or informal, between a creditor and a seller, in connection with the sale of goods or services to consumers or the financing thereof.

(h) *Credit card issuer.* A person who extends to cardholders the right to use a credit card in connection with purchases of goods or services.

(i) *Consumer credit contract.* Any instrument which evidences or embodies a debt arising from a "Purchase Money Loan" transaction or a "financed sale" as defined in paragraphs (d) and (e).

(j) *Seller.* A person who, in the ordinary course of business, sells or leases goods or services to consumers.

§ 433.2 Preservation of Consumers' Claims and Defenses, Unfair or Deceptive Acts or Practices.

In connection with any sale or lease of goods or services to consumers, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice within the meaning of Section 5 of that Act for a seller, directly or indirectly, to:

(a) Take or receive a consumer credit contract which fails to contain the following provision in at least ten point, bold face, type:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

or, (b) Accept, as full or partial payment for such sale or lease, the proceeds of any purchase money loan (as purchase money loan is defined herein), unless any consumer credit contract made in connection with such purchase money loan contains the following provision in at least ten point, bold face, type:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICE OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HERUNEDER.

CREDITOR RULE

"PRESERVATION OF CONSUMERS' CLAIMS AND DEFENSES"

Sec.
433.1 Definitions
433.2 Preservation of Consumers' Claims and Defenses, Unfair or Deceptive Acts or Practices.

Authority: The provisions of this Part 433 issued under 38 Stat. 717, as amended, 15 U.S.C. Section 41, *et seq.*

§ 433.1 Definitions.[2]

(a) *Person.* An individual, corporation, or any other business organization.

(b) *Consumer.* A natural person who seeks or acquires goods or services for personal, family, or household use.

(c) *Creditor.* A person who, in the ordinary course of business, lends purchase money or finances the sale of goods or services to consumers on a deferred payment basis; *Provided* such person is not acting, for the purposes of a particular transaction, in the capacity of a credit card issuer.

(d) *Purchase money loan.* A cash advance which is received by a consumer in return for a "Finance Charge" within the meaning of the Truth in Lending Act and Regulation Z, which is applied, in whole or substantial part, to a purchase of goods or services from a seller who (1) refers consumers to the creditor or (2) is affiliated with the creditor by common control, contract, or business arrangement.

[2] The proposed amendment adds the italicized words and deletes § 433.2(b).

(e) *Financing a sale.* Extending credit to a consumer in connection with a "Credit Sale" within the meaning of the Truth in Lending Act and Regulation Z.

(f) *Contract.* Any oral or written agreement, formal or informal, between a creditor and a seller, which contemplates or provides for cooperative or concerted activity in connection with the sale of goods or services to consumers or the financing thereof.

(g) *Business arrangement.* Any understanding, procedure, course of dealing, or arrangement, formal or informal, between a creditor and a seller, in connection with the sale of goods or services to consumers or the financing thereof.

(h) *Credit card issuer.* A person who extends to cardholders the right to use a credit card in connection with purchases of goods or services.

(i) *Consumer credit contract.* Any instrument which evidences or embodies a debt arising from a "Purchase Money Loan" transaction or a "financed sale" as defined in paragraphs (d) and (e).

(j) *Seller.* A person who, in the ordinary course of business, sells or leases goods or services to consumers.

§ 433.2 Preservation of Consumers' Claims and Defenses, Unfair or Deceptive Acts or Practices.

In connection with *any Purchase Money Loan (as that term is defined in § 433.1) or*[2] any sale or lease of goods or services in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it constitutes an unfair or deceptive act or practice within the meaning of Section 5 of that Act for a seller *or a creditor*, directly or indirectly, to take or receive a consumer credit contract which fails to contain the following provision in at least ten point, boldface type:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Mr. HARPER. First, from all public evidence, the Board seems thus far to have exercised its section 18(f)(1) rulemaking responsibilities in only the most passive of fashions.

The most important piece of evidence is the Board's failure in the over 1½-year history of section 18(f)(1) to commence a single independent rulemaking proceeding. Indeed, there is no indication in the Board's 1975 annual report to Congress on the FTC Improvement Act or in any other public document that the Board's staff has even commenced any preliminary investigation of banking trade practices for the purpose of possible rulemaking. The Board's annual report, as well as their correspondence with my office, states that the Board's staff is instead sitting back and cataloging complaints filed by consumers and others to determine whether there is any discernible pattern of complaints against particular bank practices or policies.

The Board should take several additional steps in the immediate future. First, perhaps with congressional direction, it should assign staff on a full-time basis to the development of rulemaking proposals as well as the investigation of complaints.

Second, it should establish procedural regulations to encourage the submission of rulemaking petitions from consumers and consumer advocates. It should actively solicit such petitions.

The Board should also develop regulations similar to those of the Commission to provide for the funding of efforts of consumers and

[2] The proposed amendment adds the italicized words and deletes § 433.2(b).

consumer groups to contribute to the Board's section 18(f)(1) rulemaking.

Most importantly, the Board should commence as soon as possible a rulemaking investigation focused on a particular problem; the Board must begin placing its rulemaking procedures in operation, so that those procedures become part of its day-to-day workings.

The Board might also extract ideas for rules from such sources as its truth-in-lending experiences and past congressional hearings. Both sources, for instance, suggest that the Board should explore developing rules which would proscribe unfair and deceptive sales of credit life and disability insurance by creditor financial institutions. Furthermore, the Federal Reserve Board's comments to Congress in its 1975 annual report concerning the ineffectiveness of the truth-in-lending disclosure requirements regarding credit life insurance indicate the Board should be interested in considering a more substantive response to the problem. This is just an idea; but it is an example of the sort of idea that I think section 18(f)(1) should have, but has not yet caused the Reserve Board to generate.

The passive manner in which the Reserve Board has discharged its section 18(f)(1) rulemaking responsibilities is reflected not only in its failure to initiate any independent deceptive and unfair banking practices rulemaking proceedings, but also in its response to Federal Trade Commission rulemaking initiatives.

Since the passage of section 18(f)(1), the Commission has proposed two sets of rules—unfair credit practices and preservation of consumers' claims and defenses—which the Reserve Board recognizes would, if adopted, force the Board to adopt substantially similar rules within 60 days to apply to the banking industry. The main response of the Board to both proposals has been to solicit comments through Federal Register notification that the rules would force them to promulgate similar rules if they could not make certain affirmative findings. The Board, however, has not initiated any affirmative investigation.

This failure is cause for concern for several reasons. First, without an independent investigation, the Board may feel pressured to decide on the basis of inadequate evidence that practices which the Commission has proscribed in its rules are not unfair or deceptive when engaged in by the banking industry.

Second, the Board's failure to conduct any independent investigation concerning financial institutions' use of credit practices proscribed by proposed Commission rules would make it impossible for the Board to develop any rules which the Commission did not itself adopt. The Board thus ignores yet another channel through which it could begin to assert its own section 18(f)(1) rulemaking authority.

Finally, if the Commission's proposal of a rule does not prompt the Board to conduct affirmative, independent investigations of bank practices, the Board will be more likely to merely reflect in its own analysis the comments of banks submitted to the Board.

The Board's response to the Commission's preservation rule brings me to our second major concern—that the Board will view its section 18(f)(1) role as that of an advocate of the interests of the banking industry, with which it must work as a matter of course. This concern derives from the close working relationship the Board does and must have with the banking industry for other regulatory purposes and

from general reports that the Board was making some special efforts to urge banks to participate in Commission rulemaking proceedings.

That this concern was not misplaced was unfortunately underscored when on May 5 of this year Chairman Burns wrote Chairman Collier urging that the Commission modify and defer its new seller "preservation of consumers' claims and defenses" role. Chairman Burns' letter and the accompanying staff memorandum submitted to Chairman Collier, which should both also be placed in the record of this hearing, generally read like advocacy papers for the banking industry (see p. 181).

With the exception of one technical problem discussed in the memorandum, all the Board's arguments and analysis are addressed to alleviating the impact of the Commission's preservation rule on creditors; rather than to making the rule a more effective consumer protection device.

The memorandum does not generally attempt to suggest ways in which the rule might be framed to accommodate some of the Board's creditor concerns without sacrificing the rule's purposes.

I ask that my June 8 letter in behalf of Consumers Union to Chairman Burns, highlighting the extent to which the Board memorandum serves as a creditor's brief against the rule and fails to provide objective analysis of the consumer interests for which the Board is responsible be submitted into the record.

The CHAIRMAN. Without objection, that will be done (see p. 178).

Mr. HARPER. Since Chairman Burns was gracious enough to respond personally to this letter, I believe that his response should also be inserted in the record.

The CHAIRMAN. Without objection, it will be done (see p. 181).

The point is not that the Commission's preservation rule is above the criticism of anyone who is solicitous of the interests of consumers; that is, of course, not the case.

Nor is the point that the Board should not be protecting the smooth functioning of our Nation's credit system as well as the fair treatment of consumers within that system; of course, the Board must do the former as well as the latter.

The point is that the only major assertive public response of the Board to any Commission rulemaking initiatives, indeed the only assertive Board action relating to section 18(f)(1) has been an 11-hour attempt by Chairman Burns and the Board staff to advance arguments of the Board's regulated constituency in order to prevent the implementation of a rule which applies in its present promulgated form only to sellers and not to creditors.

I respectfully suggest that this does not bode well for section 18(f)(1) rulemaking responsibilities. I hope that this committee insures that this prediction is proved wrong.

In conclusion, I would like to reiterate some steps which the Reserve Board should take now to defeat the prediction.

First, it should develop section 18(f)(1) procedural regulations, including provisions to encourage public rulemaking petitions, and they should specify how the Board will make investigatory responses to FTC proposed rules.

Second, the Board should direct its staff to commence its independent rulemaking efforts immediately.

Significant consumer credit rules may take several years to develop. We can be assured that there will be more than enough delay after the process starts. Further delay in starting the process must not be accepted.

The CHAIRMAN. Thank you very much, Mr. Harper.

Mr. Harper, your statement discusses the Federal Reserve Board's action or inaction in implementing its rulemaking authority over the 1975 FTC Improvement Act.

You make some recommendations as to what the Federal Reserve Board should do. Are you really saying that you think that there was a mistake to vest rulemaking authority in the Fed?

Does their traditional position as a protector of bank solvency and as an agency for whom the banks are a prime client frustrate the ability to carry out consumer protection responsibiiities?

Mr. HARPER. I have testified before that there does seem to be some inherent contradictions, structural contradictions. I guess if I were drafting legislation, I would not draft it the way it was.

Of course, the historical reason is that the FTC Act exempted banks and other financial institutions from the purview of the Federal Trade Commission. That exemption was not changed in 1974.

The CHAIRMAN. Would you then change it, give the Federal Trade Commission jurisdiction to write the deceptive practices rules for the banks?

Mr. HARPER. Yes. I think it can be done and at the same time the Federal Reserve Board's and the bank regulatory agencies' comments could be solicited.

If that were the structure, then I think Chairman Burns' letter would have been fully consistent with the Board's position in the structure.

In other words, the FTC could have the final rulemaking authority covering banks and they could solicit comments from the bank regulatory agencies such as Chairman Burns' letter.

I think that would be consistent.

The CHAIRMAN. Former Governor, Vice Chairman Robertson of the Federal Reserve Board has proposed a banking commission, if we can enact legislation along that line, which would consolidate the authority of the Federal Reserve Board, the Comptroller, the FDIC.

Do you think if we passed legislation of that kind that such an agency would be in a stronger position than the Fed is to do the job, be more likely to make a significant difference?

Mr. HARPER. It could, I think, if the responsibilities—I would be interested in hearing the views of Mr. Jackson on this—if the responsibilities of the Federal Reserve Board of working with the banks on monetary control and some of its nonregulatory responsibilities, if they were kept with the Federal Reserve Board; and you took and placed in the banking commission just the bank regulatory functions and kept FDIC for insurance.

I think then the banking commission's position, vis-a-vis the banking industry, would not have to be so much of being a partner with them, trying to cajole them in order to get them to respond to monetary initiatives.

Perhaps it would be a better situation.

The CHAIRMAN. We had very impressive testimony on the first day of these hearings 3 days ago from the various banking commissioners of some of the States that have done a good job.

They asked that the States be empowered to enforce these matters. They said that the States would be ready to do it, and the Federal Government is doing almost nothing; the Federal Reserve Board is doing a little, but the Comptroller is doing nothing; and the Home Loan Bank Board following a policy, with respect to savings and loans, of not only doing nothing but refusing to let the States enforce their own protection laws for consumers with respect to the Federal S. & L.'s saying the States had no jurisdiction over the Federal S. & L.'s and they could violate the State laws to their heart's content, and there is no way the States could protect their own citizens who were depositors in those S. & L.'s located in Massachusetts, for example.

Mr. HARPER. I don't see how anyone solicitous of consumers' interests would speak against the States' involvement, as long as that involvement did not constitute preemption of the Feds.

The CHAIRMAN. What they argued was that we should let the States, to the extent the States have the will and the competence, take over full enforcement of the Federal law; not of State laws only, but Federal laws.

Mr. HARPER. In a manner similar to the OSHA State plans?

The CHAIRMAN. Yes.

Mr. HARPER. I guess I am a little skeptical of that. I see no reason why they can't both be in the area. There is simply no reason why the States can't be given the responsibility and their resources be utilized and the Federal Government agencies be held in the background.

They can assert themselves at any point if they feel the States are not adequately doing it. I see no reason for a total preemption.

There is no reason why the Federal agencies can't be active with an oversight role and step in if any particular State failed.

The CHAIRMAN. They acknowledged that while some of the States are vigorous that other States are [illegible] passive, where you have no real interest.

Some have not demonstrated an [illegible] in enforcing consumer protection laws.

Mr. HARPER. I think in one State you might have a strong bank commissioner, and 2 years later a weaker one might come in. You don't want any preemption of the Federal Government. Each Federal agency must be able to come in freely.

The CHAIRMAN. You note that the only apparent response of the Fed to the holder-in-due-course rule issued by the FTC is Chairman Burns' letter and the accompanying staff memorandum, both of which you characterized as defending the interests of the banks.

Hasn't the Fed also issued its own proposed rule similar to the FTC's proposal to extend the present rule to creditors?

To your knowledge, is the Fed not following up its own proposal with an investigation?

Mr. HARPER. To my knowledge, it is not. That knowledge may be wrong. To my knowledge—and my knowledge comes from responses to letters which I have sent and to reading the Board's annual report and other documents that have been made public.

I hope that I can be corrected on this.

To my knowledge, there has been no initiation of an independent investigation.

There has been solicitation of comments from the banking industry and from other interested parties; but, I know of no independent investigation.

As I understand, what they did was state in the Federal Register that if the creditor part of the rule is adopted, which it hasn't been yet, they will have to respond.

Therefore, they have asked for comments to be sent both to them and to the FTC.

That is my understanding.

The CHAIRMAN. What in your view is the source of the problem with the Fed? Is it a matter of inadequate staff, inadequate resources in this area? Is it a matter of attitude, or is it a matter of both?

Mr. HARPER. I really don't know. I was talking just before the hearing about the staffing. The Federal Reserve has tremendous responsibilities, as you well know, both within and beyond the consumer protection area.

It is just impossible for me to say whether their staff is large enough or whether it is a question of will.

My view is that the section 18(f)(1) rulemaking authority is very important and ultimately can protect the consumers, at least in some areas, more than disclosure requirements such as truth in lending, and that it should be given very high priority by the Federal Reserve Board.

Problems that can only be addressed through a lot of paperwork and very indirectly by something like truth-in-lending disclosure can be addressed much more directly by substantive rules which the Reserve Board is empowered to develop under section 18(f)(1).

I would give it very high priority. Whether or not it is a staffing problem or not, it doesn't seem to me in the past year and a half that they have given it a high priority relative to other things.

The CHAIRMAN. Let me ask a question aside and apart from what we have been discussing.

We have had a lot of criticism, and it has been my feeling that consumer protection laws, especially truth in lending, resulted in forms that are far too complicated, detailed; that they are a burden on the creditor and that they are a hopeless maze for most consumers.

A few expert people who know a lot about credit can gain a lot from them. The majority of people are just not either interested or able to get the kind of information they would get from a simpler form.

There has been some sentiment expressed by witnesses here, and it has been my feeling that we can, even though we have to sacrifice some of the details, the backup information, have a far shorter, briefer, more comprehensible revelation to the consumer than we have at the present time.

The finance charge, true annual rate, period in most cases.

What is your reaction to that?

Mr. HARPER. I can't profess to be an expert. My reaction might not be as negative as some other "self-professed" consumer advocates.

I believe, as I just indicated, that, regarding some issues, truth in lending tries to have the creditor say in fine print, I am doing something I shouldn't be doing—most consumers are not sophisticated enough to appreciate that.

Many of these issues could be covered by more substantive rules which would not require complicated disclosure but would just state that the creditor could not engage in certain practices.

I think credit life insurance, which you have yourself held hearings on and are familiar with, is such an issue.

I mentioned the Reserve Board has been unhappy, they say, with the disclosure requirements on this issue. I think that is an area where rather than requiring more detailed disclosure of how much fair bargaining there was—they suggest giving the consumer 60 days to retract—just require that the bank or the creditor act as a fiduciary and not take an unreasonable profit and don't have him disclose what the background is. Make it very simple.

Realistically, we all know—and any legal service attorney who is being honest with you, a consumer attorney who is being honest will verify—that truth in lending is used for counterclaims and defenses on collections.

It is a tool and one of the only tools that consumer debtors have had to defend themselves in these kinds of suits. All the cards have always been in the creditor's hand. Truth in lending has given a few cards to the borrower.

That is——

The CHAIRMAN. That sure wasn't the purpose, I can tell you as the author of the bill. The purpose was to give the consumer information so he could shop for credit intelligently, so you had real competition in credit, so the consumer could know when he borrows from one person at 6 percent and then borrows from another at 10 that the 6 was lower than the 10.

Before, he didn't have any idea because of all of the complicated ways of expressing what the rate was and also so he would know what his finance charge was so he would know what he is paying in credit in addition to what he is buying.

Mr. HARPER. I think he could be given better cards by rules such as the Federal Trade Commission's proposed fair trade practice rules.

If substantive rules like those are implemented and backed up by Congress—because they will be challenged, if they are passed, and you can't just give the general rulemaking authority to the FTC and not expect to not have to back it up.

If those are backed up, I think you have a much better system than trying to do these other things through the backdoor.

The CHAIRMAN. Thank you very, very much.

Your testimony has been most helpful.

[Complete statement of Mr. Harper follows:]

STATEMENT OF MICHAEL C. HARPER, CENTER FOR LAW AND SOCIAL POLICY

I appreciate the invitation to participate in your Committee's important review of the consumer protection enforcement activities of the major bank regulatory agencies. The consumer interest in fair treatment in the credit industry continues to increase as the importance of consumer credit and the variance in the forms which it assumes continues to expand in our economy. Because of the large role which financial institutions play in the consumer credit industry, the federal banking agencies must play a critical role in the protection of consumer interests and legal rights.

I believe that Congressional oversight of the manner in which these agencies fulfill that role is especially sensitive because of the historical nature of the agencies. All of the bank regulatory agencies can be characterized as "sectoral" rather than "functional." That is, like the CAB or the ICC, they fulfill various functions regulating a particular industry, rather than fulfilling one particular function in the regulation of many industries, as for instance do the FTC, OSHA and the Consumer Product Safety Commission. Agencies such as the FRB or the FDIC perforce become particularly close to the sector of the economy which they regulate. They must work closely with the component firms of that sector in order to insure the sector's smooth functioning and they must be somewhat dependent on the component firms' cooperation, if for no other reason than to obtain adequate timely information about the industry. This is not necessarily shocking or cause for periodic abolition of sectoral agencies. But when Congress entrusts new responsibilities to such an agency, the full discharge of which may force the agency to take positions unpopular with the industry which the agency regulates and with which it has developed some working relationship for other regulatory purposes, Congress must carefully oversee how that agency integrates its new responsibilities into its overall regulatory activity.

These remarks are probably particularly pertinent to situations in which Congress grants a certain type of regulatory authority generally to a functional agency, but reserves this authority for a particular industry to the sectoral agency responsible for that industry. Congress took this course in its passage of Section 18(f)(1) of the amended Federal Trade Commission Act, reserving deceptive and unfair banking trade practice rulemaking authority for the Federal Reserve Board. Since I have made some attempt to monitor the Reserve Board's exercise of its Section 18(f)(1) rulemaking authority, I would like to focus my testimony on this aspect of the bank regulating agencies' consumer protection responsibilities.

As you are aware, and the Federal Reserve Board at least now seems to recognize, Section 18(f)(1) imposes two separate and distinct obligations upon the Board. First, Section 18(f)(1) obligates the Board to independently "prescribe regulations to carry out the purposes of this section, including regulations defining with specificity such unfair or deceptive acts or practices, and containing requirements prescribed for the purpose of preventing such acts or practices." Second, whenever the Commission promulgates rules defining unfair acts or practices outside the banking industry, the Board must promulgate substantially similar regulations prohibiting similar unfair acts or practices within the banking industry within sixty days after the Commission's rules take effect, unless it makes certain affirmative findings.

We were concerned that because of the sectoral nature and history of the Federal Reserve Board, the Board would not discharge these responsibilities as effectively as the FTC can be expected to discharge its own Section 18(f)(1) mandate. On behalf of Consumers Union I have exchanged several letters concerning Section 18(f)(1) with the Board's Office of Saver and Consumer Affairs, but our concerns have not been allayed and indeed have increased as a result of this correspondence (which I request be inserted into the record along with my testimony).

Our concerns were and are of two types. First, we are concerned that the Board will not affirmatively participate in unfair and deceptive banking trade practices rulemaking. Second, we are concerned that the Board will view its Section 18(f)(1) role as that of an advocate of the interests of its sector, the banking industry, and will thereby serve as a governmental adversary of the FTC in its efforts to expand consumer credit protections. Unfortunately, we have seen evidence that both concerns are warranted.

First, from all public evidence, the Board seems thus far to have exercised its Section 18(f)(1) rulemaking responsibilities in only the most passive of fashions. The most important piece of evidence is the Board's failure in the over one and one half year history of Section 18(f)(1) to commence a *single* independent rulemaking proceeding. Indeed, there is no indication in the Board's 1975 Annual Report to Congress on the FTC Improvement Act or in any other public document that the Board's staff has even commenced any preliminary investigation of banking trade practices for the purpose of possible rulemaking.

The Board's Annual Report, as well as their correspondence with my office, states that the Board's staff is instead sitting back and cataloguing complaints filed by consumers and others to determine whether there is any discernable pattern of complaints against particular bank practices or policies. I guess we can all assume that no pattern has yet merged because no further investigation has been announced. The Annual Report states that the Board staff is reviewing

possible regulatory action as to advertising of "free checking", but then suggests there is really little cause for concern because the banking industry is itself beginning to address the problem.

If the Board continues to rely on the complaint process as the sole basis for any independent Section 18(f)(1) rulemaking initiatives, it may be several years before this Committee and American consumers will see any evidence that the Board considers this part of its Section 18(f)(1) responsibilities to be worthy of the Board's full attention. The Board should take several additional steps in the immediate future.

First, perhaps with Congressional direction, it should assign staff on a full time basis to the development of rulemaking proposals as well as the investigation of complaints. Second, it should establish procedural regulations to encourage the submission of rulemaking petitions from consumers and consumer advocates. Moreover, it should actively solicit such petitions by complaint responses and other mailings, and should index all complaints fer public information to assist those seeking support for a petition. The Board should also develop regulations similar to those of the Commission to provide for the funding of efforts of consumers and consumer groups to contribute to the Board's Section 18(f)(1) rulemaking. The Comptroller General has ruled that such funding is within the authority of federal agencies other than the Commission. Most importantly, the Board should commence as soon as possible a rulemaking investigation focussed on a particular problem; the Board must begin placing its rulemaking procedures in operation so that those procedures become part of its day-to-day workings.

It is not difficult to set forth examples of possible Section 18(f)(1) rules. On March 6, 1975 Chairman Burns testified before a House subcommittee that publication and/or mandatory posting of certain interest rate information by regulated banks would be very useful to consumers. On September 23 1975 Peter Schuck of Consumers Union wrote Chairman Burns suggesting that the Board utilize its Section 18(f)(1) authority to impose a requirement on all Federally-regulated banks to post loan interest rates on their premises. Though Mr. Schuck has continued to attempt to move the Board to action through written and oral communications, we are still waiting for the Board to propose regulations.

The Board might also extract ideas for rules from such sources as its Truth-in-Lending experiences and past Congressional hearings. Both sources, for instance, suggest that the Board should explore developing rules which would proscribe unfair and deceptive sales of credit life and disability insurance by creditor financial institutions. Such a rule might take a form suggested by the FTC's new holder-in-due course rule. It could require every contract of sale of credit life or disability insurance by a creditor to include a clause stating that the creditor is acting as the borrower's fiduciary and agent by arranging for the sale of the insurance and is receiving only a verifiably reasonable commission or rebate from the insurance company to cover his transaction costs and a profit proportionate to that obtained on the loan itself. Hearings held in the last decade by both this Committee and the Antitrust Subcommitee suggest the need for such a regulation. Furthermore, the Federal Reserve Board's comments to Congress in its 1975 Annual Report concerning the ineffectiveness of the Truth-in-Lending disclosure requirements regarding credit life insurance indicate the Board should be interested in considering a more substantive response to the problem. This is just an idea; but it is an example of the sort of idea that Section 18(f)(1) should have, but has not yet, caused the Reserve Board to generate.

The passive manner in which the Reserve Board has been discharging its Section 18(f)(1) rulemaking responsibilities is reflected not only in its failure to initiate any independent deceptive and unfair banking practices rulemaking proceedings, but also in its response to Federal Trade Commission rulemaking initiatives. Since the passage of Section 18(f)(1), the Commission has proposed two sets of rules ("unfair credit practices" and "preservation of consumers' claims and defenses") which the Reserve Board recognizes would, if adopted, require the Board to adopt substantially similar rules within sixty days to apply to the banking industry. The main response of the Board to both proposals has been to solicit comments on the rules through Federal Register notification that the rules would force them to promulgate similar rules if they could not make certain affirmative findings. The Board, however, has not initiated any affirmative investigation of the banking industry to develop a record which would support application of the rules to the banking industry.

This failure is cause for concern for several reasons. First, without an independent investigation, the Board may feel pressured to decide on the basis of inadequate evidence that practices which the Commission has proscribed in its rules are not unfair or deceptive when engaged in by the banking industry. As I stated in my first letter to the Board:

"[i]t would not be consistent with the amended Federal Trade Commission Act for the Board simply to conclude to justify extending the Commission's rules to the banking industry; but if the Board had failed to develop an adequate record, it might feel under some pressure from the banking industry to conclude that similar banking practices where for some reason not unfair or deceptive." [1] Sixty days is itself surely too short of a time for the Board to develop an investigatory record to avert such pressure. The Commission spent over two years investigating the nonbank credit industry preliminary to the proposal of each set of its new creditor rules.

Second, the Board's failure to conduct any independent investigation concerning financial institutions' use of credit practices proscribed by proposed Commission rules would make it impossible for the Board to develop any rules which the Commission did not itself adopt. The Board thus ignores its own Section 18(f)(1) rulemaking authority. Finally, if the Commission's proposal of a rule does not prompt the Board to conduct any affirmative independent investigation of bank practices, the Board will be more likely to merely reflect in its own analysis the comments of banks submitted to the Board.

In response to our letters, the Board's Office of Saver and Consumer Affairs has advised us that an investigation relating to the "unfair credit practices" rules may be conducted after the Board is informed by developments in the Commission's hearings on these rules. This response does show some sensitivity to our concern, but it should also be recognized that the Board would be better able to gain from and contribute to developments in the Commission's hearings if it has already commenced its investigation of the banking industry.

In any event, given the finalization of the Commission's seller "preservation of consumers' claims and defenses" rule the form of the creditor rule is not dependent upon any future hearings. The Board therefore has no justification for not immediately completing the Commission's investigatory record regarding how financial institutions' practices would be affected by the creditor rule.

The Board's response to the Commissions' preservation rule brings me to our second major concern—that the Board will view its Section 18(f)(1) role as that of an advocate of the interests of the banking industry. This concern derives from the close working relationship the Board does and must have with the banking industry for other regulatory purposes and from general reports that the Board was making some special efforts to urge banks to participate in Commission rulemaking proceedings. That this concern was not misplaced was unfortunately underscored when on May 5 of this year Chairman Burns wrote Chairman Collier urging that the Commission modify and defer its new seller "preservation of consumers' claims and defenses" role.

Chairman Burns' letter and the accompanying staff memorandum submitted to Chairman Collier, which should both also be placed in the record of this hearing, generally read like advocacy papers for the banking industry. With the exception of one technical problem discussed in the memorandum, all the Board's arguments and analysis are addressed to alleviating the impact of the Commission's preservation rule on creditors; rather than to making the rule a more effective consumer protection device. The memorandum does not generally attempt to suggest ways in which the rule might be framed to accommodate some of the Board's creditor concerns without sacrificing the rule's purposes. I ask that my June 8 letter in behalf of Consumers Union to Chairman Burns highlighting the extent to which the Board memorandum serves as a creditor's brief against the rule and fails to provide objective analysis of the consumer interests for which the Board is responsible be submitted into the record. Since Chairman Burns was gracious enough to respond personally to this letter, I believe that his response should also be inserted in the record.

The point is not that the Commission's preservation rule is above the criticism of any one who is solicitous of the interests of consumers; that is of course not

[1] The Board's Annual Report to Congress does state that "with respect to the 'unfair credit practices' rules in preparation for developing the Board's comments to the Commission, Board staff has been studying the practices addressed by the proposal with reference to the unfairness analysis applied by the Commission and alternative approaches. . . ." The exact nature of the Board's study is not clear from this statement, but it does not seem to include the affirmative development of a record for rulemaking purposes.

the case. Nor is the point that the Board should not be protecting the smooth functioning of our nation's credit system as well as the fair treatment of consumers within that system; of course the Board must do the former as well as the latter. The point is that the only major assertive public response of the Board to any Commission rulemaking initiatives, indeed the only assertive Board action relating to Section 18(f)(1), has been an eleventh hour attempt by Chairman Burns and the Board staff to advance arguments of the Board's regulated constituency in order to prevent the implementation of a rule which applies in its present promulgated form only to sellers and not to creditors. I respectfully suggest that this does not bode well for the Federal Reserve Board's active exercise of its Section 18(f)(1) rulemaking responsibilities. I hope that this Committee insures that this prediction is proved wrong by the Board.

In conclusion, I would like to reiterate the steps which the Reserve Board should take now to defeat this prediction. *First*, it should develop Section 18(f)(1) procedural regulations. These regulations should include provisions to encourage public rulemaking petitions, and they should specify how the Board will make investigatory responses to FTC proposed rules. The regulations should also provide for Board funding of consumer and consumer groups' participation in the rulemaking process. *Second*, the Board should direct its staff to commence its independent rulemaking efforts immediately. Significant consumer credit rules may take several years to develop. We can be assured there will be more than enough delay after the process starts. Further delay in starting the process must not be accepted.

The CHAIRMAN. Our other witnesses are the Honorable Governor Philip C. Jackson, member of the Board of Governors of the Federal Reserve System; Thomas C. O'Nell, Director of the Office of Bank Customer Affairs, accompanied by John J. Early, Director, Division of Bank Supervision, FDIC; and Thomas W. Taylor, Associate Deputy Comptroller, and Director, Consumer Affairs Division, Comptroller of the Currency.

STATEMENT OF A PANEL CONSISTING OF: PHILIP C. JACKSON, MEMBER, BOARD OF GOVERNORS, FEDERAL RESERVE SYSTEM, ACCOMPANIED BY JANET HART, DEPUTY DIRECTOR, OFFICE OF SAVER AND CONSUMER AFFAIRS; NATHANIEL BUTLER, SECTION CHIEF; ED SCHMELZER, ACTING CHIEF, FAIR CREDIT PRACTICES SECTION; AND FRANK O'BRIEN, OFFICE OF PUBLIC INFORMATION; THOMAS C. O'NELL, DIRECTOR, OFFICE OF BANK CUSTOMER AFFAIRS, ACCOMPANIED BY JOHN J. EARLY, DIRECTOR, DIVISION OF BANK SUPERVISION, FDIC; AND THOMAS W. TAYLOR, DEPUTY COMPTROLLER, AND DIRECTOR, CONSUMER AFFAIRS DIVISION, COMPTROLLER OF THE CURRENCY, ACCOMPANIED BY WESTBROOK MURPHY, DEPUTY COUNSEL FOR LAW

Governor JACKSON. Thank you.

The CHAIRMAN. Gentlemen, you may have had an opportunity to follow the hearings we have had. Your agencies have been under considerable fire.

You got some of the flavor of that this morning. There was strenuous criticism on the preceding 2 days, Tuesday and Wednesday.

We would like very much to hear from you on your progress in enforcing the consumer protection laws.

Governor Jackson, will you go ahead, sir? We hope you can keep your remarks to about 10 minutes each, if possible, so we can have time for questioning.

Governor JACKSON. I will try to be more brief than that, Mr. Chairman.

As you know, we have responded to the questions the committee has asked. We appreciate the opportunity to participate today on behalf of the Board of Governors.

The CHAIRMAN. We have quite a bit of material from you. We shall insert material from the Regulatory Agencies in this hearing record at the close of the testimony.

Governor JACKSON. I believe these questions outline the three principal topics of the hearings; they cover the nature and extent of the Board's Office of Saver and Consumer Affairs, which acts on consumer complaints. They describe the enforcement activities in the consumer credit area of both the Board of Governors and the Federal Reserve System as a whole. They also speak to the rationale and the need for the complex regulatory scheme under the Consumer Credit Protection Act.

In discharging its responsibilities under the Consumer Credit Protection Act, the Board of Governors must fulfill the role of writer and promulgator of regulations under the statute, as well as that of enforcer of the statute for State member banks.

I would like to speak to the issue that some of the witnesses spoke to on Tuesday, if I could; principally, the question about bank supervision and State laws.

As you will no doubt recall, the Board of Governors and the Federal Reserve System has dual responsibility with the States for supervision of State-member banks.

We have not preempted the responsibility of the State supervisors of banks in the enforcement of State statutes as pertains to these State member banks.

Many times our examinations are conducted jointly. We have reported to the State organizations violations of State laws where we have found them; and, furthermore, I think the most interesting fact is that under these consumer protection statutes, in the general provisions for State exemption, there is a provision for a State to apply and secure exemption even for the enforcement of the State law with regard to federally-chartered institutions.

Until 2 weeks ago, no State had done so. I think that in itself speaks to the issue that is being discussed in connection with the State authority versus the Federal.

The Board's Office of Saver and Consumer Affairs not only responds to consumer complaints, but drafts regulations and interpretations to implement the statute and assists our Division of Banking Supervision and Regulation in its enforcement responsibilities.

Our past enforcement efforts under the Consumer Credit Protection Act, primarily concentrated on the Truth in Lending Act, have utilized the standard bank examination technique. However, the recent rapid growth of consumer credit laws in general is leading us toward changes in this approach.

These laws encompass such a broad range of highly technical subjects that examiners understandably have difficulty, like the public, keeping up with the many details involved. We have also found that the techniques needed for examination of bank practices and policies in the consumer credit area are quite different from the approach which

is appropriate for determining the safety and soundness of banks.

In recent months, a committee of the Board of Governors has been studying various approaches to the enforcement of consumer credit laws. This committee is striving to determine the best approach toward this type of enforcement activity and to provide for uniform techniques throughout oour relatively diverse system.

Several reserve banks have already established special teams and procedures for enforcement of consumer credit regulations. These teams consist of experts and provide helpful information to banks, particularly small banks where the burdens of technical compliance are disproportionately large. These specialists are also working to develop new techniques for examination that will meet the demands for the more contemporaneous concepts of compliance with the new regulations. Generally, these reserve banks are finding it appropriate to separate enforcement for compliance under consumer credit legislation from standard examinations on safety and soundness.

The Board shares the committee's concern about the complexity of the regulatory scheme that has arisen as a consequence of the Consumer Credit Protection Act. In recent weeks, we have made some recommendations to this committee for statutory simplification of those aspects of the Truth in Lending Act applicable to closed end credit. As soon as more practical experience is gained under the Fair Credit Billing Act, similar recommendations for potential simplification applicable to open end credit may be in order. One of the recommendations made earlier—the possible limitation of creditor liability to acts that significantly injure or mislead consumers—offers some hope of a major change toward simplicity in the statute and its implementation.

In the board's view, the principal reason that these statutes and regulations are complex is that the credit system in America is complex beyond the ability of any one person or organization to completely understand. Ours has become such a credit-oriented society that the purchase of practically any type of good or service may directly or indirectly involve the use of credit. It is thus axiomatic that any statute or implementing regulation which is applicable to credit in general will tend to be as complex as the system it is designed to regulate. We feel that the best solution to this problem for the future is to limit legislative corrective action to those particular fields where significant public abuse has developed.

The Board was pleased that the Congress recently authorized establishment of a Consumer Advisory Council which has the responsibility to advise it on a broad range of consumer matters. We are also pleased that, following public notice, a large number of qualified people has indicated a willingness to serve on the Council. Final selection of Council members is now being made. This Council should prove to be beneficial in assisting the Board in its commitment toward effective action in the regulatory and enforcement aspects of consumer credit legislation.

I will be happy to answer any of your questions.

[Complete presentation of the Federal Reserve may be found at p. 233.]

The CHAIRMAN. Thank you, sir.

Our next witness, Mr. Thomas C. O'Nell.

Mr. EARLY. If I may, Mr. Chairman, I am John Early. With me is Mr. O'Neil. Since April of this year he has been director of our Office of Bank Customer Affairs at the FDIC.

The FDIC is responsible for the administrative enforcement of all consumer protection laws with respect to almost 9,000 insured nonmember banks.

The Division of Bank Supervision and the Legal Division conduct the examinations and the investigations and the Office of Bank Customer Affairs coordinates all of the FDIC's efforts to protect the consumer interests of bank customers.

We have a substantial examination program. As I say, we went into over 7,000 banks last year; and we have a training program that is being expanded significantly. We have submitted our responses to the committee's inquiries, and we hope that we can be helpful here this morning with the chairman's questions.

[Complete presentation of the FDIC may be found at p. 493.]

The CHAIRMAN. Thank you very much.

Mr. Taylor?

Mr. TAYLOR. Mr. Chairman, I appreciate this opportunity to represent the Office of the Comptroller of the Currency today in my capacity as director of the Consumer Affairs Division.

I would like to make a brief opening statement in addition to the answers we provide to your questions.

Our office has a deep commitment to consumer protection as it relates to national banks.

In addition to being good public policy, attention to good relations with consumers should result in sound banking.

The Comptroller perceived early on the need to establish a special division in our office devoted to consumer affairs which would coordinate the various activities the office was undertaking to assist the consumer and enforce consumer protection laws.

This was before the Magnuson-Moss Warranty Federal Trade Commission Improvement Act mandated that each bank regulatory agency would have such a division. Our Consumer Affairs Division was fully operative by September 1974.

From our experience since that time, we have ascertained that our examination efforts in enforcing consumer protection laws need to be strengthened or given a new direction.

During 1975 and 1976, one of our regional offices conducted specialized examinations as a test project. The results of this project convinced us that there was substantially greater noncompliance with consumer credit protection laws than we had previously thought and, accordingly, we have decided to implement a crash program with the target of examining for consumer protection purposes all national banks within a 12-month period between 1976–77.

Beginning this fall a select group of 250 examiners will undergo 2 weeks of intensive training in newly designed procedures for examination of national bank compliance with consumer protection laws.

The special consumer examination will cover truth in lending, equal credit opportunity, fair credit reporting, fair credit billing, fair housing, home mortgage disclosure, real estate settlement procedures, advertising, usury, and applicable State laws.

We have isolated a number of the provisions of the laws affecting these areas which we think merit more emphasis than others.

Therefore, the new examination procedures will focus on those problems which will result in a significantly adverse impact on consumers.

Examiners will be prepared to review note forms used by the banks and to take a statistical sampling of their loans to review for conformity with various statutory and regulatory requirements.

A bank's lending policies also will be examined along with its policies implementing consumer protection laws. Extensive interviews of lending officers will be conducted to assist us in determining a bank's adherence to its own policy standards.

Where violations are detected during the examination, we will use the full authority of our office to see that these violations are corrected.

In those instances where bank customers have been aggrieved, we will use our authority to the fullest to correct the situation.

Our office is devoting extensive resources to the consumer protection area in the form of processing consumer complaints and conducting examinations.

We have found that both consumers and banks have derived benefit from the changes brought about by the new consumer protection laws.

Despite the necessary complexity of many of the regulations, increased disclosure and more rigorous, nondiscriminatory credit guidelines have served to educate the public and to improve relations between banks and their customers.

I look forward to discussing with you this morning the matters covered in the questions that you submitted, the answers to which are included in the appendix to my statement.

With your permission I would like to introduce "Banking Circular 73," which is an indication to the national banks of our efforts in examining for consumer protection.

The CHAIRMAN. All right, sir. It will be placed in the record.

[Document supplied follows:]

COMPTROLLER OF THE CURRENCY,
ADMINISTRATOR OF NATIONAL BANKS,
Washington, D.C., July 9, 1976.

BANKING CIRCULAR NO. 73

To: Presidents of All National Banks.
Subject: Compliance with Consumer Laws—Expanded Examination Procedures.

Within the past few weeks the Comptroller's Office has begun to implement new examination procedures designed to better determine compliance by national banks with a number of statutes enacted to protect consumer interests. Key elements of the new examination effort include:

Completely revised and greatly expanded examination questionnaires which will enable the examiner to probe the policies, procedures and practices of national banks for the purpose of assuring full compliance with the requirements of consumer protection statutes and regulations.

Expanded training programs which will require a mastery by assistant examiners of the new consumer-oriented examination procedures as a prerequisite to obtaining a commission.

Coordinated follow-up procedures which will require our Regional Offices to secure early bank correction of deficient practices.

Involvement by the Comptroller's Enforcement and Compliance Division in assisting the Regional Offices in obtaining correction of deficiencies by recalcitrant institutions—through formal procedures under the Financial Institutions Supervisory Act when necessary.

The new examination procedures initially will concentrate upon those problem areas in which noncompliance may have a significantly adverse impact upon consumers. When it is discovered that customers have been harmed by noncompliance, we are confident that national banks will act in a manner consistent with the public's faith and trust in them. It is expected that such actions will include taking whatever steps are deemed appropriate to remedy conditions resulting from violations of law, including restitution.

The experience of our examination force suggests that many deficient practices could be avoided simply by banks scrutinizing their own compliance more carefully. Indeed, inadvertent violations are frequently caused by a failure of bank officers and counsel to match an understanding of the law with an awareness of the details of the bank's procedures and practices. Because even highly technical violations of a number of these statutes can result in substantial punitive damages and protracted litigation, bank counsel, in particular, must be alert to deviations from statutory and regulatory requirements. A list of the statutes which should be reviewed by bank counsel is attached to this Circular.

In sum, the Comptroller's Office intends to assure whatever degree of examiner scrutiny may be necessary to obtain conscientious bank compliance with the requirements of these statutes. I encourage each of you to anticipate this heightened examiner inquiry by conducting your own thorough in-house reviews of practices and procedures in this complex, rapidly changing area.

Very truly yours,

JAMES E. SMITH,
Comptroller of the Currency.

Attachment.

Title	*Citation*
Consumer Credit Protection Act:	
Truth in Lending Act	15 U.S.C., 1601, Regulation Z (12 CFR 226).
Fair Credit Billing Act	15 U.S.C. 1666, Regulation Z (12 CFR 226).
Consumer Leasing Act of 1976 [1]	15 U.S.C. 1667, Regulation Z (12 CFR 226).
Fair Credit Reporting Act	15 U.S.C. 1681.
Equal Credit Opportunity Act	15 U.S.C. 1691, Regulation B (12 CFR 202).
Equal Credit Opportunity Act Amendments of 1976 [1]	15 U.S.C. 1691, Regulation B (12 CFR 202).
Home Mortgage Disclosure Act	12 U.S.C. 2801, Regulation C (12 CFR 203).
Real Estate Settlement Procedures Act	12 U.S.C. 2601, Regulation X (24 CFR 3500).
Fair Housing Act	42 U.S.C. 3605.
Advertising—deposits	12 U.S.C. 371b, Regulation Q (12 CFR 217.6).
Interest—usury	12 U.S.C. 85 and 86.
Applicable State laws	

[1] Effective Mar. 23, 1977.

Mr. TAYLOR. Thank you, Mr. Chairman.

[Complete presentation of the Comptroller's office may be found at p. 447.]

The CHAIRMAN. Thank you, sir.

Thank you, gentlemen.

Governor Jackson, the Board's Consumer Advisory Council was created in the Equal Credit Opportunity Act amendments signed in March.

Why has it taken so long in getting that group organized?

Governor JACKSON. Two reasons, Mr. Chairman: No. 1, we wanted an opportunity to get the public to respond and to see the people throughout the country from various persuasions that would be interested in serving on this.

For example, the last count I say—and I personally reviewed every name on the list—we had 438 people who were either recommended

by Members of Congress or personally volunteered or were recommended by other people.

We wrote to each one of those about whom we lacked sufficient information and said, "You have been recommended. Would you please give us some information about yourself and indicate affirmatively that you wish to serve."

That took some time to get those responses back. Frankly, it has taken further time to try to make up our minds on the selection. Our of 438 people, how do you pick 20 or 25 that are representative?

It is my hope that we will be able to complete that choice in the next few days.

The CHAIRMAN. You heard Mr. Harper testify earlier.

On Tuesday the Consumer Federation of America also raised sharp questions about the Office of Saver and Consumer Affairs.

Do you want to respond to Mr. Harper's statement or Ms. O'Reilly's?

Governor JACKSON. I didn't hear Ms. O'Reilly's statement. I think I could respond in some ways to Mr. Harper's statement.

First, as pertains to the Federal Trade Commission's rule pertaining to sellers under the so-called holder-in-due-course approach. This particular rule was not promulgated by the Federal Trade Commission under the provision of the statute applicable to comparable rules being issued by the Board.

So, therefore, our comments to the Federal Trade Commission were not as a fellow regulator of this particular action, but rather as a commentor in general.

If you look at those comments, you will see that we have not objected to the concept of preservation of consumer claims and defenses. What we have been concerned about is that the proposed rule in that case left doubt as to the liability of participants in the credit process. We were concerned that this might reduce the amount of credit available to consumers and therefore be injurious to consumers.

We cannot factually tell you today that it has proved to be injurious or not. In connection with the subsequent rule pertaining to creditors, on which the Board has initiated a rulemaking procedure, we are monitoring very carefully and devoting considerable research resources to determining to what extent the availability of credit to consumers has been influenced by the rule applicable to sellers.

Has three been a diminution of available credit?

Has it produced shifts in the sources of credit?

Has it adversely impacted one type of seller versus another?

We are monitoring that extremely carefully. I would say, frankly, that the results, thus far, are inconclusive.

I personally feel that this is among the ways that we should be going about determining, on our own, the appropriateness of extending the rule to creditors and to banks.

The CHAIRMAN. It seems to me that Mr. Harper made a strong case, and a strong case has been made before, that the Fed has been very, very slow in getting around to rulemaking proceedings.

One and a half years without any definitive action.

Governor JACKSON. I would agree with that.

The CHAIRMAN. Why has it taken so very long?

I realize it is a big agency and I realize it is a big problem. It seems to me you should be able to act in a matter of weeks and not days.

Governor JACKSON. I am going to give you a personal opinion as somebody who has come on the scene during this process.

I don't know tha this is an official, formal decision on the part of the other members of the Board. First, I think there is no question that the available resources that the Board has for staff in this area have been devoted primarily to the rulemaking process in implementing the other consumer statutes, that Congress has recently passed where there was a specific responsibility for rulemaking about a specific subject in an act that would take effect on a certain date, whether it was Home Mortgage Disclosure, Equal Credit Opportunity, or Fair Credit Billing.

The CHAIRMAN. I understand the latter point. I guess it was a failure on the part of Congress to make it a specific date.

It seems to me this should be just as clear and definite a responsibility of the Fed. The Fed is the one agency of the Government that has absolutely unlimited resources.

You have more resources than the Treasury has. You can print money. There is nothing you can't do. You don't even have to submit your budget to the Congress. You don't have an appropriation to worry about. There is no limit to what you can do.

It is just a marvelous agency. If anybody wants a fantasy about being a miser and having all kinds of gold, you just imagine yourself as being Governor of the Federal Reserve Board.

It would seeme to me you are well equipped to do the job. At least you have the financial resources to do the job. You are charged by law to do it.

Governor JACKSON. I see the point you have made, Mr. Chairman. At the same time, I would assure you that the amount of money we spend is subject to intense scrutiny and constant self-criticism.

The CHAIRMAN. Of course.

I am not saying that a nickel has been spent improperly. What I am saying is that you have a responsibility under the law, and if you don't spend the money—which you have not done in this case—it seems to me you are not following the law.

Governor JACKSON. I can't entirely defend our actions in this area. I do not intend to.

As I say, the technical expertise that we have in the way of staff that would know how to address this area has been primarily involved in these current issues.

Second: We have not been able to identify—and as Mr. Harper mentioned—we do monitor all the consumer complaints that we get to see if there is any pattern that would indicate that there is a substantial area where the banks have been abusive in the way of unfair and deceptive practices to consumers.

Thus far we have not identified any substantial trend of problems as a result of those types of consumer complaints.

Third: We have initiated a study and have looked into the issue of whether the practices of banks in offering savings accounts to consumers constitute an unfair and deceptive practice; and whether or not it would be appropriate to mandate or require that a certain concept of interest, for instance, be mandated throughout the country.

Our preliminary conclusion is that that would be a mistake, at least on a staff level that is the recommendation.

In addition, we are working with another group, an industry group, toward trying to see if it would be possible to have an industry code for bank advertising, a so-called fair advertising code—I have forgotten the exact acronym that is applied to it.

I think to the extent you can get any industry to police itself, you have a better result than if you have a mandated, procrustean Federal guide.

Our participation with this group has been directed toward achieving the objectives of the act. I would not try to suggest that we have completely implemented the intent of that statute.

The CHAIRMAN. Not only haven't completely implemented it, but you haven't issued a single rulemaking proceeding.

Have you assigned staff to this as was suggested by Mr. Harper, assigned staff to rulemaking?

Governor JACKSON. Not solely assigned to that task.

The CHAIRMAN. Have you solicited proposed rules in consumer agencies?

Governor JACKSON. No, sir. I am not aware of any.

The CHAIRMAN. Well, it seems to me that after a year and a half, there should be a record. It looks as if you are not taking the law seriously.

Governor JACKSON. I agree with you that it may look that way.

The CHAIRMAN. What do you expect to do from here on?

Governor JACKSON. Do something about it.

The CHAIRMAN. When?

Governor JACKSON. Well, I started again yesterday.

[Laughter.]

Governor JACKSON. Just to be candid with you, Mr. Chairman, I focused personally on the statute as it applied to our initiating rules in this area aside from our relationship with the Federal Trade Commission's issuance of rules; and I asked the staff to please supply me with a copy of the statute.

I said, "What is this independent rulemaking authority all about, and what have we done about it." The answer was, "Very little," aside from the matters I have already discussed.

The CHAIRMAN. Well, this is what, the 29th of July?

Governor JACKSON. Yes.

The CHAIRMAN. On the 29th of August, would you give us a report on the progress?

Governor JACKSON. I would be happy to.

The CHAIRMAN. On a related subject, Mr. Jackson, I have been even more appalled at the failure of the Federal Reserve—and the other banking agencies—to take any action with respect to the 1968 act, housing act, that provides for equal credit opportunity.

That was the law of the land in 1968. The Federal Reserve Board, among others, was charged with providing for enforcing that law.

To the best of your knowledge, neither the Federal Reserve Board, the Comptroller, the FDIC has done anything. They haven't issued regulations; they haven't required the banks to keep a record on loan turndowns, which is absolutely essential to determine whether or not a black person with an equal income, an equal job, supposedly, has been turned down where white people have been able to get loans.

The same thing with respect to sex. No recordkeeping has been required on that.

Eight years. Not a year and a half, but 8 years. Nothing.

What is the answer with respect to this law? It is a law, passed by the Congress; expecting, of course—and charged to the Federal Reserve Board—the responsibility for carrying it out.

Why hasn't something been done?

Governor JACKSON. As you know, something was recently done.

The CHAIRMAN. Recently, I think within the last few days, the Chairman of the Federal Reserve Board did indicate some small action had been taken.

Why did it take so long?

Governor JACKSON. I can't answer, sir.

The CHAIRMAN. How likely is it we are going to get real progress now?

What is it?

What kind of progress do we get?

Governor JACKSON. I would think the issue is *going* to center around not the fair housing statute that you refer to, but the equal credit opportunity statute.

First: There is some question about the enforcement capacity of other Federal agencies under title VIII, section 805, that you are referring to. However, there is absolutely no question whatever about the enforcement capacity under Equal Credit.

Second: Under Equal Credit, you have additional bases of discrimination; and it not only applies to one narrow field, housing credit, but to all credit.

The proposed regulations that the board has put out for public comment do have, as part of it, a proposal for special data-keeping for housing credit.

Let me give you an illustration of the difficulty of the problem.

The chief enforcer of title VIII is the Department of Housing and Urban Development. While I am not trying to suggest criticism of them when I make this comment, the Department of Housing and Urban Development in every application for mortgage insurance in recent years has had a data-keeping requirement on race and sex.

Thus far, I am not aware that they have found this data-keeping productive as part of their enforcement process. It is an issue that is not as easy as it might appear.

The CHAIRMAN. Of course, because they don't have bank examiners, they don't go in and analyze that data.

If you studied the data, it would show a clear pattern of no discrimination or discrimination.

Governor JACKSON. I am afraid you misunderstand. They do have total examination authority over all Federal Housing Administration-approved matters.

The CHAIRMAN. What I am talking about, the discrimination on the part of specific financial institutions. I am saying with respect to financial institutions, HUD does not have the kind of systematic examination of the financial institutions that the Fed has.

Governor JACKSON. I disagree.

The CHAIRMAN. And the other agencies represented here have.

Governor JACKSON. I disagree with you. I was the principal executive officer of a federally, FHA-approved mortgagee. We had examiners from the Department of Housing and Urban Development come in our facilities periodically.

The CHAIRMAN. What kind of institution did you have?

Governor JACKSON. A mortgage company.

The CHAIRMAN. A mortgage banker?

Governor JACKSON. Right. We were subject to the supervision of the Department of Housing and Urban Development.

The CHAIRMAN. That is a little different than a commercial bank or an S. & L.

Governor JACKSON. But the fundamental principle is the same.

The CHAIRMAN. The principle may be the same, but I think you would agree HUD doesn't spend the kind of time, effort, energy, and resources in examining commercial banks that the bank examiners do.

Governor JACKSON. Yes, sir.

The CHAIRMAN. Or S. & L.'s?

Governor JACKSON. I would agree with you.

But this is an area where it is my experience, as somebody who has been participating in that credit process for a number of years, that it is one thing to be suspicious and another thing to prove.

The CHAIRMAN. It may well be, but it seems logical to us, and we have good strong testimony from civil rights groups and others, that unless you do have a record of turndowns by race, it is very hard to show whether there was discrimination or no discrimination.

Doesn't that make sense?

Governor JACKSON. As you know, the regulation has already been issued under the Equal Credit Opportunity Act. It was issued last year.

It includes retention of certain information.

The CHAIRMAN. Instead of imposing a recordkeeping system in your July 15 regulation B that you circulated, you invite further comment on the issue.

You say three or four times in your text that the invitation for comments should not be mistaken for a requirement to maintain racial recordkeeping.

As I say, the testimony we have is overwhelming that this is the fundamental basis for effective enforcement of the antidiscrimination provision in the law.

You don't have the basis if you don't know the facts. It is very hard to determine whether the law is being violated or not being violated, and the basis for determining that.

Governor JACKSON. Some of the witnesses that participated in the Equal Credit Opportunity hearing, before those rules were put out for comment, urged the Board not to require datakeeping.

The CHAIRMAN. Oh, I know. Some of them say that it is discriminatory if you keep a record.

The overwhelming majority of witnesses—and certainly the logic seems to me—to be on the side of keeping a record so that you know whether a bank is obeying the law or not.

Obviously, if you have a situation where you have 1,000 loans made to blacks, and 4,000 loans made to whites, and you have an equal number of applicants from both races, and you find that on the basis of income, and on the basis of credit records and so forth, that the blacks' record is just about as good as the whites, there is a basis there for following up to determine whether or not there has been discrimination.

It seems quite conspicuous, absent that, there is no specific evidence that you are following up.

Governor JACKSON. I understand the point you are making.

The CHAIRMAN. Can we at least get your comment that some form of racial notation and recordkeeping information will be included in the recordkeeping business?

Governor JACKSON. No, sir. I don't speak for the Federal Reserve Board. I have six other colleagues who will share in the decision.

The CHAIRMAN. You are the man they are looking to. You are the specialist. You are the expert of those six men.

Governor JACKSON. I personally happen to think that it is appropriate, but I cannot give you the assurance you ask for, Mr. Chairman.

The CHAIRMAN. Well, I can't expect you to give me the assurance of how they are going to vote.

You can give me the indication of how you feel about it. Do you favor it?

Governor JACKSON. Yes, I do. I personally favor it. There is no question about that. I can't give you the assurance that the Board will put out the rule in the form you requested.

The CHAIRMAN. Do you maintain any liaison with consumer groups?

Governor JACKSON. Do I personally?

The CHAIRMAN. Yes, sir. Do you stay in touch with them to find out what their views are on these matters and get their recomendations as to how you can do a more effective job?

Governor JACKSON. I have tried to develop a personal relationship with consumer groups.

The CHAIRMAN. What groups do you do that with?

Governor JACKSON. I tried to secure the assistance of the American Civil Liberties Union in trying to develop a more personal relationship with people like Mr. Harper, Mr. Kuhn from the public interest research group.

The CHAIRMAN. How about the CFA—Consumer Federation of America?

What you are talking about, I think, is Mr. Harper's group, and I also think very highly of the American Civil Liberties Union. But they aren't really consumer groups; are they?

At least the Civil Liberties Union is not usually construed as a consumers group.

Governor JACKSON. It is a purely personal matter. I happen to know the director there. I was seeking personal assistance.

The CHAIRMAN. My question related to consumer groups, like the Consumer Federation of America.

Do you have any relationship with them?

Governor JACKSON. I personally do not, Mr. Chairman.

The CHAIRMAN. Do you think it would be a good idea to develop some communication with them? I don't mean you have to accept their views, but to understand what they are interested in and what their recommendations are.

Governor JACKSON. Don't misunderstand me.

We are talking about two separate issues here; one, we are talking about my personal relationship and second, the relationship of our staff.

We do have extensive relationships with the staff of those organizations through our staff.

The CHAIRMAN. Will you give me a list, for the record of the agencies that your staff systematically——

Governor JACKSON. Perhaps it is a simple matter—Miss Hart, I believe, is here.

Would you speak to the issues the chairman has asked me about?

She is Deputy Director of the Division of Consumer Affairs.

The CHAIRMAN. Will you tell us what consumer groups the staff systematically stays in touch with, solicits their opinion with respect to enforcement of the consumer protection laws?

Ms. HART. Can I ask Mr. Schmelzer and Mr. Butler to respond to that?

They are the section chiefs.

Mr. BUTLER. Mr. Chairman, I am Nathaniel Butler.

I would have difficulty responding to your question because you asked for a systematic contact with various groups. It is very unsystematic. When you have a problem that raises racial issues, you would go to groups that are concerned with race discrimination.

When you have a problem that deals with alienage, and ancestry, you tend to go to something like MALDEF—Mexican American Legal Defense Fund.

The CHAIRMAN. My question related to consumer credit groups.

Mr. BUTLER. I am in charge of the section of equal credit opportunity. This is an antidiscrimination statute more than a consumer protection statute.

The CHAIRMAN. Well, the other gentleman with you——

Ms. HART. May I make one point as to the Consumer Federation?

The staff did solicit their testimony, their contribution when we were developing the amendments to the Equal Credit Opportunity Act.

We directly contacted them and asked them to appear. They did appear. We received their comments.

The CHAIRMAN. That was the CFA?

Ms. HART. Yes.

The CHAIRMAN. Is that the one time you have?

Ms. HART. That is the principal recent instance that I can recall.

Mr. SCHMELZER. I am in charge of the fair practices section. I guess the best way I can respond to your question is within the context of our upcoming hearings on the new Consumer Leasing Act, which will be on August 3—next Tuesday.

We have met informally with members of the Consumers Union, Mr. Silbergeld. We have tried to schedule sessions with other consumer groups. We have invited all of them specifically to participate in the upcoming hearing.

Unfortunately, they are not going to be able to participate. They have stated that they did not have the time to review the issues and to testify.

In fact, we made a special effort last week to personally call them and remind them of the hearings and comment period on the proposed regulation.

Unfortunately, now the hearings will not have any consumer representation, despite the fact that we made every effort to solicit their participation.

The CHAIRMAN. What is the timing again on these hearings?

Mr. SCHMELZER. August 3. Notice on the hearings went out about the 12th of July, notifying them we would be having the hearings on August 3.

The CHAIRMAN. Would you be willing to accept statements from them if they couldn't appear?

Mr. SCHMELZER. Oh, certainly.

[The following was submitted for the record:]

I have compiled the following list of organizations which staff of the Office of Saver and Consumer Affairs had contacted, inviting them to appear, in preparation for the hearings on the Consumer Leasing Act and the recent amendments to the Equal Credit Opportunity Act.

1. On the Consumer Leasing Act, the following organizations were contacted:

Center for the Study of Responsive Law,
1910 K Street, N.W.,
Washington, D.C. 20006.

Mark E. Budnitz, Director,
National Consumer Law Center,
One Court Street,
Boston, Massachusetts 02108.

Center for National Policy Review,
Catholic University Law School,
Washington, D.C. 20017.

Ms. Roberta Madden, Director,
Consumer Protection Center,
1779 Government Street,
Baton Rouge, Louisiana 70802.

Ms. Alice Tepper Marlin,
Council on Economic Priorities,
84 Fifth Avenue,
New York, New York 10011.

Mr. Frank Damrell, Jr.,
President,
Consumer Federation of California,
P.O. Box 3148,
Modesto, California 95393.

Mrs. Shirley Goldinger,
President,
Los Angeles and Orange County Chapter, CFC,
644 Tiger Trail Road,
Los Angeles, California 90049.

Bernard Kamins, Executive Secretary,
American Consumers Council,
P.O. Box 24207,
Los Angeles, California 90024.

Mrs. J. C. Danley, Secretary,
Consumer Panel of America,
1424 Windsor Drive,
San Bernardino, California 92404.

Ms. Kay Pachtner, Executive Director,
San Francisco Consumer Action,
26 Seventh Street,
San Francisco, California.

Dr. Currin V. Shields, Chairman,
COCO Steering Committee,
6480 Camino de Michael,
Tucson, Arizona 85718.

Mrs. Ellen Zawel, President,
National Consumer Congress,
Room 1019,
1346 Connecticut Avenue, N.W.,
Washington, D.C. 20036.

Ms. Ellen Haas,
Acting Executive Director,
National Consumer League,
1785 Massachusetts Avenue, N.W.,
Washington, D.C. 20036.

Mr. Edward Metzen, Executive Secretary,
American Council on Consumer Interests,
238 Stanley Hall,
University of Missouri,
Columbia, Missouri 65201.

Ms. Cherrie Bolling, Chairman,
Consumers United of Palo Alto,
Box 311,
Palo Alto, California 94302.

Consumer Federation of America,
1012a 4th Street, N.W.,
Washington, D.C., 20005.

Consumer's Union,
1714 Massachusetts Ave., N.W.,
Washington, D.C. 20036.

National Consumer Law Center, Inc.,
One Court Street,
Boston, Massachusetts 02108.

2. On the Equal Credit Opportunity Act amendments, the following Organizations were contacted:

Mr. Al Perez, Director,
Mexican-American Legal Defense and Education Fund,
Washington, D.C. 20036.

(Through Mr. Perez),
Mr. Morris J. Baller,
Mexican-American Legal Defense and Education Fund,
San Francisco, California.

Mr. Ed. Terrones,
National Council of LaRaza,
Washington, D.C.

Mr. Richard C. Seibert,
Consumer Complaint and Education Division,
Office of the Commissioner of Banks,
State Office Building,
Government Center,
100 Cambridge Street,
Boston, Massachusetts 02202.

Ms. Karen Fox,
Washington State Human Rights Commission,
Olympia, Washington 98504.

Mr. Edward Holmgren, Director,
National Committee Against Discrimination in Housing,
1425 H Street, N.W.,
Washington, D.C. 20005.

Mr. Bates,
Washington Metropolitan Push,
1532 Q Street, N.W.,
Washington, D.C.

Ms. Lucy Edwards,
Assistant General Counsel,
U.S. Commission on Civil Rights,
1121 Vermont Avenue, N.W.,
Room 606,
Washington, D.C. 20425

Ms. Faye Mensch,
American Association of Retired Persons,
1900 K Street, N.W.,
Washington, D.C.

The CHAIRMAN. Let me ask Mr. Early: I take it from the answers you submitted to our questions that compliance reviews are conducted in the course of examinations by regular bank examiners who had some special training in consumer protection laws; is that right?

Mr. EARLY. Yes, actually, our compliance, our examination for consumer protection laws is a separate examination. It is conducted for the most part at the same time as the safety and soundness examination is conducted.

It is a separate examination report prepared by—it could be the same, could be a different examiner in charge of the safety and soundness aspects of the examination.

A separate report is prepared. An examiner signs off on it for the various consumer protection laws. We regard it really as a separate report for consumer protection purposes.

The CHAIRMAN. Do newly hired assistant experts conduct compliance reviews with only 1 hour of instruction in truth in lending?

If that is true, how can they be expected to do an adequate job?

Mr. EARLY. I wouldn't say they conducted those compliance examinations.

I think they might participate in them. They certainly wouldn't be in charge of the examinations, I don't believe.

The CHAIRMAN. Mr. O'Nell, would you agree with that?

Mr. O'NELL. Sir, I agree with Mr. Early. They may assist on some of the routine aspects of it. They would be under the charge of a senior examiner or assistant examiner.

The CHAIRMAN. Say then, the more experienced examiners, how much instruction do they have in truth in lending?

Mr. EARLY. Our total training program, formal training program in our school for assistant examiners and our school for senior assistants and our school for examiners amounts to about 7 or 8 hours in the classroom.

It could probably double or do more than that on the outside, I am sure, in preparation.

After our recent fair housing hearings over here, Mr. Chairman, the FDIC looked at this program and reviewed it and concluded that we would expand our training efforts in the entire consumer area significantly.

Our goal right now this year is to move immediately from this 7 or 8 hours to about 30 hours.

The CHAIRMAN. That will begin next year?

Mr. EARLY. Yes, actually, the way I think the thing will develop is it will be almost a full week course. We will have compliance examinations for the better part of a week.

The CHAIRMAN. I am glad to see you are moving on that. I wonder why it has taken so long to gear up the expanded training in view of the fact that these laws have been on the books for some time.

Mr. EARLY. I am not sure why. We think we have been covering the area. We recognize 7 or 8 hours is not sufficient. Perhaps we should have done it sooner.

The CHAIRMAN. Has the FDIC ever considered conducting separate examinations by specially trained examiners for consumer protection compliance?

Mr. EARLY. More and more the need for specialization, I think, is developing. The laws are complex, they are difficult. That's the major reason, the reason I see why we probably will be moving in the direction of specialization. As of now, we still feel our examiners are not so provincial that they can't handle both the safety and soundness in the consumer protection aspects of our work.

Personally I can see more and more as we discuss these things at the corporation that the laws, the detail and so forth, the requirements of specialization are there. I think that's the direction we will be moving in.

The CHAIRMAN. You agree that the FDIC's authority to order affirmative action, to correct violations is broad and includes authority to order restitution; and you acknowledged in earlier hearings that your examiners found truth-in-lending violations in something like 28½ percent, more than one-fourth of their examinations.

Yet you say you have not found it necessary to order any type of monetary recovery for consumers. Why not?

Mr. EARLY. Yes; we haven't, and I think on the complaint process there perhaps has been some correction and restitution. On the regular examination process, it is not so.

Certainly, it is an area that we are giving consideration to. At a minimum, we should be, I think when violations are uncovered during an examination perhaps requiring—we do require correction by the bank in their practice and procedures so similar incidents will be avoided in the future.

That's a prospective thing and we should be giving consideration to acting more affirmatively, having a new disclosure statement, and perhaps monetary restitution in the appropriate circumstances.

We haven't done it to date.

The CHAIRMAN. You also say you haven't publicized violations discovered to date.

Why not? Wouldn't that be a good deterrent? It wouldn't affect the safety and soundness of banks.

Mr. EARLY. I don't think it would affect safety and soundness in most cases. Visibility does have a lot to say for it.

To date we have not done that. There has been considerable discussion of that, whether our authority is clear. We have not publicized any major cases.

The CHAIRMAN. Let me ask Mr. Jackson and Mr. Taylor to comment, too.

Have you ordered any type of monetary recovery for consumers, Governor Jackson?

Governor JACKSON. I am not aware of any. We have one case under discussion right now with a bank where we found the bank had made a computer error in calculating interest.

We are discussing with the bank an agreement whereby it would restore to the consumers the amounts collected improperly.

The CHAIRMAN. You see here we have a case—and I think the FDIC deserves a lot of credit for having made the kind of very clear mathematical determination of the proportion of violations of truth in lending.

They found it very substantial; 28½ percent is quite shocking, it seems to me. I have no reason to suspect theirs would be much different than the Federal Reserve-administered banks or the Comptroller-administered banks.

It does seem to cry out for some effective remedy. One effective remedy would be to order restitution.

You give me a single example. It seems to be quite an exception.

Governor JACKSON. We have found roughly 17 percent of the banks had some violation. The important point to make in connection with that fact, and one of the subjects of this hearing, is that the vast majority—and I don't have any figures that I could cite you to prove my point—but the vast majority of these are purely technical violations.

They are not substantive from the consumer's point of view.

Here, again, what damage has been done to the consumer that the type at the bottom of the page was 6 point instead of 10 point?

The CHAIRMAN. Obviously in that case there would be no recovery that would be appropriate?

Governor JACKSON. That is right.

The CHAIRMAN. What I would say is that with the vast number of banks you have, the investigations you had, that if it is 17 percent in our case, that's hundreds and hundreds of violations.

I am sure there would be some where there would be a monetary recovery that would be appropriate.

Governor JACKSON. I agree.

The CHAIRMAN. Well, currently, you have no record of requiring that. Why not?

Governor JACKSON. The extent to which recovery has been mandated is something I don't have a factual answer on.

The CHAIRMAN. Get me the record on that.

Governor JACKSON. The Board in the past has not mandated monetary recovery for consumer overcharges, but as a matter of procedure, it does instruct State-member banks to correct any violations. The Board is considering instituting a system task force to make recommendations and develop procedures for a special compliance examination. The task force will consider, among other matters, what penalties and remedies are appropriate, including the possibility of restitution, for various kinds of violations.

The CHAIRMAN. How many? How many cases have you ordered restitution in?

Mr. TAYLOR. A subsequent review of the records indicate that the number of banks is 11.

The CHAIRMAN. Get me the record. That seems to me to be a very small number. It is better than one or none, but it is still small.

Mr. TAYLOR. If I may address that, this has been the result of our special pilot project in one region. It represents probably a significant percentage of base involved in that project.

The CHAIRMAN. Why haven't you released the names of the banks involved in violation?

I should ask Governor Jackson on that, too.

Mr. TAYLOR. We have considered this from time to time, sir, and concluded that it was the intent and expectation of Congress that the banking agencies would use the same private approach to consumer law enforcement as they do in regard to other banking laws.

THE CHAIRMAN. How did you reach that conclusion?

Mr. TAYLOR. This conclusion is reinforced by the cross references to the Federal Institution Supervisory Act which contains the cease-and-desist powers found in the CCPA and other recently enacted consumer protection laws.

The CHAIRMAN. Let me say by and large I can understand discretion; and I think I applaud discretion with respect to safety and soundness.

Obviously, that is sometimes vitally necessary. In fact, in most cases it would be a mistake to disclose it. I would oppose, as I am sure you would, disclosing examiners' reports.

In the case of violating a law, consumer protection law, it seems to me that this is something that should be disclosed. It is a deterrent.

There is no reason the public shouldn't know it. In the overwhelming majority of cases it doesn't go to the safety and soundness of the bank.

If it is a mere technical violation, then that can be said. Then it can be understood. I don't think it would be going down to the inconvenience of the bank, unless they have a number of such violations.

Then people ought to know that.

Mr. TAYLOR. Mr. Chairman, may I, with your indulgence, introduce Mr. Westbrook Murphy, Deputy Comptroller for Law. He would like to address your question.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. Schuck from the Consumer's Union testified on this very point yesterday. I was not present in the room. I have, however, read his prepared statement.

He talked very forcefully about the Comptroller's failure to give him the names of the banks under an information act request.

I am delegated authority by the Comptroller to pass on the information act request. I was the one who made that decision. It was my signature on the letter.

I would simply, to make the record complete, ask the chairman's permission to insert a copy of that response in the record.

The CHAIRMAN. It will be done.

[Document to be submitted follows:]

OFFICE OF THE COMPTROLLER OF THE CURRENCY,
Washington, D.C., July 2, 1976.

Mr. PETER H. SCHUCK,
Director, Washington Office,
Consumers Union, Washington, D.C.

DEAR MR. SCHUCK: On June 11, 1976, this Office received your appeal dated June 9, 1976, of Ms. Austrian's decision dated June 7, 1976, to deny "access to and an opportunity to copy those portions of (1) documents submitted to the Comptroller's Office by national banks which concern the extent of their compliance with the Truth-in-Lending Act, and (2) any analysis or summary by the Office of the Comptroller of those documents." As a basis for appeal you contend on legal grounds that: (1) the first category of documents does not qualify as records which are exempt under 12 C.F.R. § 4.16(b) (5) [intra-agency or inter-agency memoranda] because they were received from persons outside the agency and (2) they do not qualify under 12 C.F.R. §4.16(b) (8) because they were not submitted as part of an examination, operation, or condition report. You further assert that the documents in the second category are factual summaries which are not exempt under the principles discussed in the case of *Environmental Protection Agency* v. *Mink*, 410 U.S. 73 (1973). On policy grounds you urge that we exercise our discretion to make the requested documents public even if we deem them to be exempt under the Freedom of Information Act.

In my opinion, the documents are exempt from disclosure under 12 C.F.R. § 4.16(b) (4), (6), (7) and (8). I shall explain below the specific applicability of each claim to the respective category.

First, the documents in the first category are exempt under 12 C.F.R. § 4.16(b) (4) because they consist of financial information which relates to the business, personal, and financial affairs of a person and which were furnished in confidence.

Second, documents in the first category are financial records the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Therefore, they are exempt under 12 C.F.R. § 4.16(b) (6).

Third, under the Consumer Credit Protection Act, the Comptroller of the Currency is authorized to enforce compliance with Truth-in-Lending through the use of the cease and desist powers under 12 U.S.C. § 1818(b). See 15 U.S.C. § 1607 (a) (1) (A). Therefore, documents in both categories compiled for this purpose are exempt under 12 C.F.R. § 4.16(b) (7) (i), (ii) and (iii).

Fourth, documents in both categories are part of, contained in or related to examination reports which are exempt under 12 C.F.R. § 4.16(b) (8). The information was generated as part of the regular examination in most cases and as part of a special Regulation Z examination in the remaining cases. The fact that some of the records were generated by the banks involved rather than directly by personnel of this Office does not negate the fact that they are part of an examination. This Office often uses this technique as part of the examination process. Such bank generated reports also are exempt as operating or condition reports, as those terms are used in 12 C.F.R. § 4.16(b) (8). Any related intra-agency memoranda would contain the same information from these examination, operating or condition reports, and thus also are exempt under 12 C.F.R. § 4.16(b) (8). In addition, such memoranda are exempt under 12 C.F.R. § 4.16(b) (5) .

You state that the Office retains the discretion to make the documents public even if they are exempt under the Freedom of Information Act. I direct your attention to 12 U.S.C. § 431. Under that statute, it appears the Office does not have the unbridled discretion to release examination reports that you assert.

In arguing that the requested records be disclosed, you state that the Truth-in-Lending Act was enacted for the public benefit. I agree. Indeed, this Office was created for the public benefit. This fact, however, does not by itself justify public disclosure of confidential records.

I will explain our policy relating to the disclosure of records that are exempt by law from public disclosure. This Office, in carrying out its regulatory functions, obtains confidential information about the affairs of banks, their customers, and their shareholders from the banks themselves. Their officers know that we treat such information confidentially, and therefore, they provide it voluntarily. If we disclosed this confidential information, bank managements, customers, and shareholders would be reluctant to provide such information in the future. Since the Comptroller requires this information to carry out his regulatory duties, any such reluctance would impair the ability of the Office to supervise the national banking system. In addition, such disclosure could adversely affect the various parties involved. Therefore, requests for disclosure of such exempt records are approved only where compelling reasons are set forth which overcome the necessity for keeping such records confidential. You have not shown such compelling reasons.

Many of the documents you request contain financial information about bank customers. Bank customers expect banks to keep their financial transactions confidential. Indeed, I submit most Americans believe that generally a person has a right not to have his or her financial affairs made public. In fact, information relating to an individual's "financial transactions" which is maintained in a "system of records" is among the types of information that the Privacy Act (5 U.S.C. § 552a) forbids an agency from disclosing without the individual's consent. Thus, although disclosure of the financial transactions would not actually violate the Privacy Act because they are not maintained in a "system of records", such disclosure would certainly run contrary to the philosophy of that Act.

After reviewing the arguments in support of your appeal, I must affirm Ms. Austrian's initial determination for the reasons set fourth above.

Under the Freedom of Information Act [5 U.S.C. § 552(a) (4) (B)] you may obtain judicial review of this decision by filing a complaint in the District Court of the United States in the District in which you reside, or have your principal place of business, or in which the agency records are situated, or in the District of Columbia.

Very truly yours,

C. Westbrook Murphy,
Deputy Comptroller for Law and Chief Counsel.

Mr. Murphy. I have no question but what the information sought by Mr. Schuck—and by the way I should point out, as he did in his statement, that the reason that Mr. Schuck got involved in this question at

all is because he does sit on the Comptroller's national advisory committee.

We have asked him and other representatives of various non-banking groups on that committee.

Indeed——

The Chairman. He made that point. He said if it hadn't been for that, this would have gone on without his being able to criticize it.

Mr. Murphy. I think we are planning at the next meeting of that committee—and by the way, these meetings are public; notice is put in the Federal Register—I think at the next meeting we are planning on a presentation by Mr. Schuck on some of the consumer problems that bother him.

Getting back to the particular point at hand, I have no doubt in my own mind that the information he seeks is exempt from disclosure under the Freedom of Information Act.

Mr. Schuck disagrees with that. If he wishes to take issue with that in the court, we will be glad to litigate that particular issue.

That, of course, is not the end of the question. There is then another question: Should the Comptroller exercise whatever authority he may have to waive those exemptions; and, I think that would be quite out of line with the traditional mode of bank examination.

A bank examination is not a tour of the country to try and promote private civil actions. Our entire thrust of the agency is to seek remedies; that is, to discover the problems and to seek to have them corrected by the bank.

That is the attitude that we have taken on the consumer issue. That is, when we have a problem, we are seeking rehabilitation; we are seeking to get the problem straightened out and corrected.

We don't think it is part of our responsibility to put the bank up on the public gibbet.

The Chairman. Oh, it is not going to be on the public gibbet.

I just feel that one of the best correctives of error is to let the public know.

The only reason why there's this exemption is because of the fact that most of the legislation we have had in the past related to safety and soundness.

That's been a proper concern of the Congress and others with respect to banks. As I say, that was keeping that confidential.

There is no reason I can imagine that you have to keep violations of this kind confidential.

If there is, I haven't heard it.

Can you tell me of any reason why it should be confidential if they violate the truth-in-lending law? Why shouldn't that be disclosed?

Mr. Murphy. I am not sure all the statutes we enforce in our examination have to do with safety and soundness.

The Chairman. Oh, they don't. I say many of them do. Most of the thrust of legislation in the past through our long history has been with respect to safety and soundness.

Consumer credit legislation is brand new. It has only been on the scene for less than 10 years on a Federal basis.

We didn't pass truth in lending, which was the first major consumer credit legislation, until 1968.

Mr. Murphy. I can suggest two reasons: One is that I think the public would be unlikely to perceive the difference in kinds of disputes between a bank agency and its regulator. I think the headline would read "Federal Bank Agency Sues First National Bank" and from there on, there wouldn't be much discrimination in the public mind as to what the problem was.

The CHAIRMAN. I don't think the public is that stupid.

Before you state your second point, the one agency that has the most emphatic responsibility with respect to complicated financial data is the Securities and Exchange Commission.

They base their entire enforcement on disclosure. They insist on disclosure. Their style is to require the thousands of corporations around this country to publicize their errors as a way of making sure that there is a strong deterrent against violating the law.

Mr. MURPHY. That brings me to my second point which emphasizes the difference in the two modes of regulation.

Our examiners move rather freely about the bank. They have access to all records. They have the cooperation in almost every case of bank personnel.

This allows our examiners to gather a good deal of information and gather it much more quickly than is done by the formal processes which are usually employed by an agency such as the SEC.

When someone from the SEC shows up, the first person the banker calls is his lawyer and there is a good deal of dispute over the agency's access to information in the first place.

Part and parcel of the mode of regulation that we use is that the information, once we gain it, remains confidential and is not made public.

The CHAIRMAN. Well, to pose an answer to that is while you may be enforcing laws with respect to safety and soundness, none of these agencies are doing very much with respect to consumer protection.

I think we have overwhelming evidence that those laws are being ignored. Of course, if you have any rebuttal to that, I would sure like to hear it.

We have just had a preponderance of criticism from the State banking commissioners, and the consumer agencies, and they have documented it, instance after instance.

Mr. MURPHY. Mr. Taylor has referred to the pilot project in one region from which arose these dozen or so examples in which we requested restitution.

I think it would be good for him to talk about that project, what we learned, and what we intend to do about it.

The CHAIRMAN. Before that, what about disclosure of State law violations were such disclosure is required by State law?

Mr. MURPHY. I suppose we would have to talk, Senator, about a particular State law.

There is, in a number of areas, including the consumer area, a good deal of difficulty as to which State laws apply to national banks and which do not.

The CHAIRMAN. We have an instance by the banking commissioner in Maine.

The law required disclosure of violation of usury statutes.

Mr. MURPHY. That is one of the first and earliest examples of a consumer protection law. There is a provision in the National Bank Act for usury. It was part of the original act enacted in 1864.

It establishes the penalty. It refers to State law to incorporate the rate in some instances, but only the rate. One of the earliest cases to reach the Supreme Court under the National Bank Act arose from the State of New York as to whether the State penalties also applied.

In that case the penalty provided was forfeiture of the entire loan.

The Supreme Court said no, it didn't; that where the statute, the National Bank Act, created the right and the remedy, that act was exclusive.

The penalty in the National Bank Act is forfeiture of interest which has not been paid or refund double any interest which has been paid.

The CHAIRMAN. You seem to be saying, Mr. Murphy, that in order to preserve your access to bank records, you have to protect the violators; but your examiners have access by law—not because bankers believe you will protect their interests.

I realize there is a feeling on the part of banks that their basic situation is as sound as the loans, that the loans they made might be disclosed.

I think that should be held confidential.

I just cannot see any reason why it is going to inhibit your operations if you disclose violations as a matter of consumer protection laws.

It is different.

Mr. MURPHY. I think there is a difference between the right of access and the effective exercise of that right.

I suppose the SEC or any other number of agencies has equal statutory right to get the information. The question is how freely is the regulated institution going to recognize that.

The CHAIRMAN. Based on my observation—and perhaps it is wrong—the SEC has a pretty good record of effective enforcement.

They have never been complacent about being able to get information. They do their job, they do it well.

As I say, I am not asking that you follow the SEC with respect to a great deal of your responsibility. I am saying with respect to this particular violation of the law, a different policy is involved.

It might be in the public interest.

Mr. TAYLOR. Let me say briefly that I think we feel since we started discovering some of these errors, we have been able to achieve substantial correction without public proceedings.

We have considered the loss of public confidence as one of the considerations; but, we have not foreclosed the possibility of the public proceedings.

In many instances, when we have discovered violations of the law, the statute of limitations has already passed for a civil remedy for the consumer.

The CHAIRMAN. Oh, yes. I understand that that's the case. I understand also the very proper case of Mr. Jackson, Governor Jackson, that he made that most of these cases are technical and in most cases there wouldn't be any kind of return of funds which would be appropriate.

Mr. TAYLOR. Even where there are cases where return of funds is appropriate, the civil remedy is past for the consumer.

The CHAIRMAN. Yes. Right.

Governor Jackson, I haven't asked you about that aspect. I did ask you about the monetary recovery for consumers. I didn't ask you about publicizing violations discovered.

Governor JACKSON. We have not thus far publicized these violations.

The CHAIRMAN. Why not?

Governor JACKSON. I think the principal reason is what has been enunciated; and you began to develop another one in the previous interchange.

As we said, most of these violations are technical in nature. However, the penalties for technical violations provided for in this statute are quite substantial.

In my own mind at least, there is a difficult choice between being the champion of consumers versus a champertor.

The CHAIRMAN. What concerns me for all of you gentlemen—and I have great respect for your integrity—what concerns me is that there is a cozy relationship, by and large, between the regulators and the banks.

They are the people you see; they are the people you understand. Some of you have had a good background in banking which has made you very helpful. You are the experts in the field.

There is a natural kind of friendliness, a club-like atmosphere, old school ties, whatever you want to call it between the banker on the one hand and the regulator on the other.

The consumer is kind of on the outside. I just have the feeling that regulatory agencies tend to view their position, their responsibility primarily to the banks rather than to the public interest.

If you view it from the public interest standpoint, you would favor the disclosure of information which served the country well wherever we tried it.

Let me go on and ask Mr. Early this: Mr. Early, have you considered a more direct and substantial educational program to educate consumers as to their rights under the various consumer protection laws?

Mr. EARLY. I think I will refer to Mr. O'Nell from our Office of Bank Customer Affairs. He has been in that office for the past few months and directing its affairs.

He is making contact with groups as to a direct educational program.

Mr. O'NELL. Sir, I have considered it and also discussed it with the staff of the Comptroller of the Currency and the Federal Reserve.

I do believe in that area we would be more effective if the three agencies could do something together.

I have no immediate plans in that area. During the last several months I have been putting the major emphasis and importance on trying to have an efficient and effective running office.

The CHAIRMAN. Yesterday we had testimony, it seems to me, Governor Jackson, that the Fed had developed a brochure for this purpose but not made it available or not published the brochure.

What's the answer on that?

Governor JACKSON. We were in the midst of developing a brochure on equal credit opportunity.

When this committee and the Congress passed changes to that statute, we felt it would be a mistake to put out a brochure and less than 4 or 5 months later put out a change.

We felt that would be more confusing than helpful. We are planning to put out a brochure to cover the new statute as soon as it is implemented.

I believe there may be a confusion in the mind of the person that testified as to the proper reasons for not going forward immediately with the brochure.

The CHAIRMAN. At any rate, you do plan to issue a brochure?

Governor JACKSON. Certainly. I think you will find in the answers to our questions, we not only put out brochures on truth in lending, but we even had Spanish ones published.

The CHAIRMAN. What do you do to get those brochures in the hands of the consumers? Do you suggest to the banks, at the time of a transaction, that they make this available right away, tell the customer, "Here is an explanation of the situation"?

Governor JACKSON. I can't answer your question definitively. Maybe Miss Hart knows how we distribute the brochures.

Ms. HART. In quite a number of different ways. We do distribute them to banks and make them available to customers at times. We distribute them through educational organizations.

Mr. O'Brien's primary responsibility is public information. His office handles that.

Mr. O'BRIEN. Frank O'Brien. We have issued over a million copies of a brochure, both in English and in Spanish, on truth in lending. We have tried to place them in banks, in their lobbies to be picked up.

We have tried distributing them through the schools and through service organizations of all kinds. We also have a film strip which has been very, very successful.

The CHAIRMAN. Is that on television?

Mr. O'BRIEN. We offer it to anyone who wishes to use it. We made about 200 copies of this film strip with the accompanying voice over. It is offered through schools, men's and women's service clubs, in every way that we can offer it.

We lend it out. There is no charge. We have a mailing package. Anyone who wants it can call up, ask for it, write us a letter, ask for it, write to any of the reserve banks and ask for it. We will gladly supply it.

The CHAIRMAN. It would seem by far the most effective education is when people come in—we aren't going to learn something unless we have to. Of course, when you are borrowing money, and it is a cost, you are more likely then to attempt to learn what the score is and how you can protect yourself.

If there is any systematic effort when people come in to borrow money to make the brochure available at that point or to provide that there be some explanation, if possible, by a bank employee of what the rights are or what is available to them so they can protect themselves?

Ms. HART. May I answer that, Mr. Chairman?

Most shopping for credit actually, I think, nowadays is done by telephone. Much more than is done on a walk-in basis certainly. A person who walks in is usually ready to buy.

The regulation Z does have rather strict requirements as to what can be said and what cannot be said over the telephone. It requires that the true annual rate be quoted.

Perhaps Mr. Schmelzer can amplify on that.

The CHAIRMAN. Did the reporters hear that?

I am not sure the reporters heard that.

Ms. HART. I said Mr. Schmelzer could amplify on that. There are rules on the things you can quote over the telephone, particularly that you can only quote interest as the true annual rate. I believe there have been surveys by the public interest research group on the effectiveness of that rule and followup surveys showing that the efforts of the bank regulatory agencies to correct misquotation when it has occurred have been quite successful.

The CHAIRMAN. Governor Jackson, why can't you do the kind of thing that—I don't say everybody should do what we do—but why can't you do the kind of thing the Senate Banking Committee getting out a consumers guide to banking which indicated the various services available at the various prices for rates for borrowing money, and so forth, at various banks?

This is a consumer guide to banking, a staff report, issued April of this year on banks in New York and Washington, D.C.

Governor JACKSON. There is no reason why we can't, Senator.

The CHAIRMAN. We have far more limited facilities than you have, as you know. Without providing a commercial, this is a very handy publication to have. It is cheap and can save a lot of money.

Governor JACKSON. There is no reason we can't have it. However, I think it would be fair to point out there are only 1,000 banks under our supervision, in contrast with the 14,000 banks in the country.

The CHAIRMAN. But the three agencies that are represented at this table by you gentlemen regulate every commercial bank in the country. It seems to me that you can all get together.

Incidentally, Mr. Early very constructively suggested that you do coordinate your efforts.

Governor JACKSON. We would be happy to.

The CHAIRMAN. Can you do that on the basis—with respect to education, with respect to trying to get a more vigorous and effective education program?

Governor JACKSON. I believe it is factually correct that through several of these previous regulations that have come out——

The CHAIRMAN. Wouldn't it be easy for the three of you to get together, provide this kind of consumer guide to banking so people know what it costs for services for, say, the 200 major cities in the country covering 70 percent of the population? It seems to me that would be a workable project. It would be very helpful.

Governor JACKSON. I would be happy to look into it and see what could be worked out and what the results would produce.

The CHAIRMAN. Mr. Early, in general would you prefer that enforcement responsibilities be taken away from the FDIC and given instead to the Federal Trade Commission or State enforcement officials?

Mr. EARLY. I don't think so, not in general. We are learning and doing a good job, I think, in improving. Some of the States certainly do a first-rate job.

The CHAIRMAN. How about letting the States, where the States do have the will and the capability as in the case of Massachusetts and many of the others—why not let them take over?

Mr. EARLY. Of course, there are exempted provisions they have in Maine and Massachusetts that I think are exempt to regulation Z, are exempt and have taken over in a sense. We continue to do some work in those areas, but they are a primary enforcer, I would say, in those exempt States.

We continue to believe that you can run a safe and sound bank and you can still comply with the consumer protection laws. I think the regulators can handle this, too, the bank regulators.

The CHAIRMAN. Mr. Taylor, the Comptroller's position in consumer enforcement is a little different than that of the Fed and the FDIC, in that you have exclusive examination facilities for national banks. It is, therefore, very important to take a vigorous enforcement role. If you don't, nobody else can, with respect to national banks.

What efforts have you made to see that your examiners are trained in consumer protection laws, Federal and State, both? How significant a part of your bank examination are reviews for compliance with such laws?

Mr. TAYLOR. Obviously we are making a tremendous effort as a result of the recently announced program, in which we are going to conduct intensive training for selected examiners from throughout the country to conduct separate consumer protection examinations.

We had a long experience with trying to enforce consumer protection laws, beginning with regulation Z.

The CHAIRMAN. How many hours of training do you give your people in consumer protection?

Mr. TAYLOR. At the present time we probably give them, oh—in formal training we give a certain set of examiners maybe 3 or 4 hours in special training sessions of overall banking examination.

New examiners come on and serve a 6-month stint in a training crew capacity, at which time they are exposed to all facets of bank examination, including consumer protection laws. We obviously haven't done anything about enforcing the more recent laws because we haven't had time—we are in the process of gearing up our examination technique.

The CHAIRMAN. How many hours do you provide your examiners of training in consumer protection?

Mr. TAYLOR. Two weeks.

The CHAIRMAN. Two weeks?

Mr. TAYLOR. Yes.

The CHAIRMAN. Two weeks exclusively in consumer protection laws?

Mr. TAYLOR. Yes, sir, there will be 2 weeks of this training when our program is in full swing.

The CHAIRMAN. Is that for all your examiners?

Mr. TAYLOR. Eventually it will be. Initially it will be for approximately 140 examiners, starting in September.

The CHAIRMAN. This is prospective?

Mr. TAYLOR. Six months later, a similar number will also be trained. They will be trained at 6-month intervals.

The CHAIRMAN. Comptroller Smith recently announced a new tougher program for consumer protection compliance. In the announcement it suggested you may be ordering restitution-type remedies. I take it this means you have not done so in the past.

Would you also be likely to order payment to consumers of civil penalties called for under truth in lending and other laws?

Mr. TAYLOR. That is not quite accurate, sir. We already have, in some instances, ordered restitution. I have difficulty understanding your question—what you are saying is would we demand a civil penalty?

I don't think we have authority under the act to do so. We have considered that, I believe. I think we do not have that authority.

The CHAIRMAN. Who has the authority?

Mr. TAYLOR. By statute it is left to the individual customer.

The CHAIRMAN. Why do you so jealously guard your visitorial powers? That is, why do you not allow State examiners access to your records so they can determine compliance with State laws?

Mr. TAYLOR. It is because of the powers contained in 12 U.S.C. 484.

The CHAIRMAN. Shouldn't you modify them?

Mr. TAYLOR. If Congress does it. It is a law. It is a statute.

The CHAIRMAN. Do you think we should modify the statute?

Mr. TAYLOR. I think the original intent, the purpose of 484 is probably still valid. In such a heavily regulated industry, banks perhaps should only be subject to a limited number of regulatory visitors.

The CHAIRMAN. How can the States enforce their own State laws if they are not entitled to examine the records?

Mr. TAYLOR. We don't see any purpose in getting into a shooting contest with the State agencies. We have cordial relations with many States.

The CHAIRMAN. You are in it right now.

Mr. TAYLOR. I know that, sir. I don't think it serves a good purpose except for competition in creativity in what they are doing. We have benefited from them. Several States, I think, will benefit from what we are going to be doing.

The CHAIRMAN. The way the States testified, they indicated you are in it up to your neck. You are on the side of the banks and they are on the side of the consumers.

Mr. TAYLOR. I think that is perhaps a distorted point of view, certainly a prejudiced point of view. We think we are doing a better job than they give us credit for.

The CHAIRMAN. You see, if they don't have the facts, they have to put complete faith in you as far as enforcing State laws are concerned.

Mr. TAYLOR. Conversely, we don't have the facts about what they are doing to enforce laws in State banks either.

The CHAIRMAN. But you don't have jurisdiction over State banks.

Mr. TAYLOR. That's right. Nor do they have jurisdiction over national banks.

The CHAIRMAN. But those national banks are located in their States. Their citizens use those banks. Their citizens have the protection of their own State laws. They are barred by your policy from protecting their citizens.

Mr. TAYLOR. It is not our policy, sir. It is the law.

The CHAIRMAN. All right, the law.

My question to you was whether or not we should change the law.

Mr. TAYLOR. I gave you my response.

The CHAIRMAN. You said "No?"

Mr. TAYLOR. I agree that we should not change the law, unless we could be convinced. We don't have a closed mind on the subject. I think that the important thing to remember, Senator, is that we do have a commitment and have made efforts to enforce State laws.

The CHAIRMAN. I understand the regional administrator in New England has apparently been conducting an experimental procedure whereby specially trained examiners conduct separate compliance reviews of national banks. What resources have been devoted to that program? What has been your experience with that?

Mr. TAYLOR. We have had one man who has spearheaded it. Occasionally he has had the resources of a couple of other people. Obviously I am not saying that one man can accomplish these examinations throughout the States of New England. On the other hand, our purpose was basically to conduct a survey-type testing procedure, and we feel that the results—obviously the Comptroller has felt the results—were conclusive enough to extend the program nationwide.

The CHAIRMAN. Where does consumer protection rank in the priorities in the Comptroller's Office?

Mr. TAYLOR. I think obviously it ranks very high.

The CHAIRMAN. Can you name anything that is lower than consumer protection in the priorities?

Mr. TAYLOR. Well, we would like to think that all of the commitments that the office has to make enjoy some degree of equality. I can't think of anything that particularly ranks lower, but I can't think of anything that ranks higher.

The CHAIRMAN. Safety and soundness?

Mr. TAYLOR. I think at this time consumer protection ranks equally with safety and soundness.

The CHAIRMAN. Yet when it comes to a possible conflict with respect to disclosure?

Mr. TAYLOR. I expressed to you earlier that I think that we feel that we have been effective so far without that type of disclosure. In fact, we have, in effect, provided adequate protection to the customers. Not only have they gotten restitution in some cases, but where they have—if the statute had not run—they were certainly given notice through that form that they may have a civil remedy.

The CHAIRMAN. When it comes to resources, the time you spend training your examiners with respect to safety and soundness is certainly greatly exceeded any time you spend on consumer protection.

Mr. TAYLOR. At the present time. That will not be true in the future.

The CHAIRMAN. In the future you will spend as much time on consumer protection as on safety and soundness.

Mr. TAYLOR. In proportion to the number of statutes we enforce; yes, sir.

The CHAIRMAN. Mr. Connell, the Connecticut Banking Commissioner, indicated he applied to the Federal Reserve to have its State's truth-in-lending extended to enforcement against all federally supervised banks.

Will the Comptroller object to this delegation of enforcement power with respect to national banks?

Mr. TAYLOR. I am sorry. I never considered the question before. I am afraid I cannot respond to it.

The CHAIRMAN. You can see the position there. If you were a State banking commissioner, and your responsibility was to enforce the law, and you have in your State national banks which, of course, are very important financial institutions, among the biggest and you are unable to enforce the law.

Wouldn't it seem to you if you are going to do your job, you have to have the authority to act to get the information, to examine the banks, determine whether or not the laws were being enforced or not?

Mr. TAYLOR. We have a problem with Federal statutes, which said implicitly that they do not have the authority to go into national banks.

The CHAIRMAN. I know that. Again we come right back to what you said before. You wouldn't recommend a change of that?

Mr. TAYLOR. I don't think it is such a great dilemma if they are willing to rely upon us to enforce these laws.

The CHAIRMAN. You understand why they are not willing to rely on you to enforce those laws?

Mr. TAYLOR. Not clearly, no. I have certainly heard enough skepticism expressed in these hearings.

The CHAIRMAN. We will make it available to you. You read the transcript. Not only Mr. Connell's testimony before this committee——

Mr. TAYLOR. I was here for those, sir. I have that in mind.

The CHAIRMAN. There is no disrespect at all, but there was a very emphatic conviction on their part. They simply rely on the Comptroller's office to provide the kind of protection their citizens deserve with respect to consumer protection.

Mr. MURPHY. Mr. Chairman, I would like to straighten out the record on one small point, if I might, just because it may have a reflection on proceedings we have back at the agency. That was Mr. Taylor's comments on our authority to order civil penalties and restitution.

As the Chairman and the committee will remember, the Comptroller's office has used the cease and desist powers in a number of instances to—and in various and sometimes novel ways. We are just now beginning to explore some of the different ways that we can use those in the consumer area; and the Comptroller's legal staff is not as ready as Mr. Taylor seems to be to concede that we lack that power.

I also would not be ready at this point to assert that we have it. It is a question that is now under study. I can assure the committee that if we conclude that we have the power, and we find a case where it is appropriate to be used, we do intend to use it.

The CHAIRMAN. As soon as that has been determined, would you let us know? You say it is under study now? You haven't made a determination. When you make that determination, would you inform the committee?

Mr. MURPHY. We would be glad to, sir.

The CHAIRMAN. I would like to ask Governor Jackson whether he believes the Fed has the authority to delegate to the Connecticut Banking Commissioner, for example, the power to act with respect to federally supervised banks?

Governor JACKSON. Yes, sir. If the Commissioner of the State of Connecticut makes proper application to the board for an exemption regarding enforcement of the State law including evidence that arrangements for such enforcement have been made with the appropriate Federal supervisory authorities, and the board determines that the State authorities have adequate enforcement provisions, then such exemption may be granted. We feel we have the authority to do that.

As I said earlier, the Connecticut commissioner is the first one to come forward. That was very recently.

The CHAIRMAN. So you think it is clear you have the authority. The only question is whether or not they have the enforcement capability, is that right?

Governor JACKSON. In connection with the previous discussion, Mr. Chairman——

The CHAIRMAN. Is that right?

Governor JACKSON. Yes, sir, provided that the appropriate arrangements have been made and that there is adequate provision for enforcement.

In connection with the previous question, we think it is important to recall that under the Congress consideration currently is a provision for improving the enforcement powers of all the banking agencies. We have requested to be empowered to apply civil penalties for violation of a cease-and-desist order.

We hope as you consider this whole issue, that will be part of your consideration. It would be applicable to the enforcement of the Consumer Credit Protection Act.

The CHAIRMAN. I strongly agree with that.

Governor JACKSON. It would be helpful in bolstering the administrative enforcement of the act.

The CHAIRMAN. Well, gentlemen, thank you very much. This has been a most interesting and revealing morning for me. I think we made a good record.

The committee will stand in recess. This completes our oversight hearings for the time being.

[Whereupon, at 12:01 p.m. the committee adjourned, to reconvene at the call of the Chair.]

[Complete presentations of the three regulatory agencies follow:]

APPENDIX

FEDERAL RESERVE BOARD

Statement by

Philip C. Jackson, Jr.

Member, Board of Governors of the Federal Reserve System

I appreciate the opportunity to participate on behalf of the Board of Governors of the Federal Reserve System in these hearings. For purposes of brevity, I will not repeat the answers previously furnished to the Committee in response to its questions. These answers outline the nature and extent of the Board's Office of Saver and Consumer Affairs which acts on consumer complaints. They describe the enforcement activities in the consumer credit area of both the Board of Governors and the Federal Reserve System as a whole. They also speak to the rationale and need for the complex regulatory scheme under the Consumer Credit Protection Act.

In discharging its responsibilities under the Consumer Credit Protection Act, the Board of Governors must fulfill the role of writer and promulgator of regulations under the statute, as well as that of enforcer of the statute for State-member banks. Thus, the Board's Office of Saver and Consumer Affairs not only responds to consumer complaints, but drafts regulations and interpretations to implement the statute and assists our Division of Banking Supervision and Regulation in its enforcement responsibilities.

Our past enforcement efforts under the Consumer Credit Protection Act, primarily concentrated on the Truth in Lending Act, have utilized the standard bank examination technique. However, the recent rapid growth of consumer credit laws in general is leading us toward changes in this approach. These laws encompass such a broad range of highly technical subjects that examiners understandably have difficulty keeping up with the many details involved. We have also found that the techniques needed for examination of bank practices and policies in the consumer credit area are quite different from the approach which is appropriate for determining the safety and soundness of banks.

In recent months, a committee of the Board of Governors has been studying various approaches to the enforcement of consumer credit laws. This committee is striving to determine the best approach toward this type of enforcement activity and to provide for uniform techniques throughout the System.

Several Reserve Banks have already established special teams and procedures for enforcement of consumer credit regulations. These teams consist of experts and provide helpful information to banks, particularly small banks where the burdens of technical compliance are disproportionately large. These specialists are also working to develop new techniques for examination that will meet the demands for the more contemporaneous concepts of compliance with the new regulations. Generally, these Reserve banks are finding it appropriate to separate enforcement for compliance under consumer credit legislation from standard examinations on safety and soundness.

The Board shares the Committee's concern about the complexity of the regulatory scheme that has arisen as a consequence of the Consumer Credit Protection Act. In recent weeks, we have made some recommendations to this Committee for statutory simplification of those aspects of the

Truth in Lending Act applicable to closed end credit. As soon as more practical experience is gained under the Fair Credit Billing Act, similar recommendations for potential simplification applicable to open end credit may be in order. One of the recommendations made earlier -- the possible limitation of creditor liability to acts that significantly injure or mislead consumers -- offers some hope of a major change toward simplicity in the statute and its implementation.

In the Board's view, the principal reason that these statutes and regulations are complex is that the credit system in America is complex beyond the ability of any one person or organization to completely understand. Ours has become such a credit-oriented society that the purchase of practically any kind of good or service may directly or indirectly involve the use of credit. It is thus axiomatic that any statute or implementing regulation which is applicable to credit in general will tend to be as complex as the system it is designed to regulate. We feel the best solution to this problem for the future is to limit legislative corrective action to those particular fields where significant public abuse has developed.

The Board was pleased that the Congress recently authorized establishment of a Consumer Advisory Council which has the responsibility to advise it on a broad range of consumer matters. We are also pleased that, following public notice, a large number of qualified people has indicated a willingness to serve on the Council. Final selection of Council members is now being made. This Council should prove to be beneficial in assisting the Board in its commitment toward effective action in the regulatory and enforcement aspects of consumer credit legislation.

I will be happy to answer any of your questions.

CHAIRMAN OF THE BOARD OF GOVERNORS
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

July 23, 1976

The Honorable William Proxmire
Chairman
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to provide the enclosed materials in response to questions posed in your letter of July 9, 1976. I hope that these responses will be of assistance in preparation for the oversight hearings on Consumer Credit Protection Laws scheduled for July 27 through July 29. At the suggestion of your staff, these materials also include responses to questions asked by Senator Biden in a letter dated June 7, 1976, relating to violations of the Truth in Lending Act.

Should the Committee need additional information, do not hesitate to call upon me.

Sincerely yours,

Arthur F. Burns

Enclosures

1. Please describe the organization, staffing, and resources allocated to your consumer affairs division. To what extent does it operate through regional offices? How are its existence and complaint-handling function publicized?

Answer: The organization, staffing, and resources allocated to the Board of Governors' Office of Saver and Consumer Affairs (OSCA) are described in the attached charts. Due to the decentralized nature of the Federal Reserve System the details of organizational structure at each Federal Reserve Bank are left to that Bank's discretion. Each of the twelve Federal Reserve Banks have designated a Consumer Affairs Officer. These officers are responsible within the Reserve Bank for activities related to the handling of consumer complaints, and they act as official liaison between their banks in their District and the Board's Office of Saver and Consumer Affairs.

Within each Reserve Bank's organization, the location and other responsibilities of consumer affairs officers vary. Many are in the Examinations Departments, which conduct examinations of State-member banks. In some cases, consumer affairs officers are located in the Reserve Bank's Legal Department. A few of the Reserve Banks have, or are in the process of establishing, separate Consumer Affairs Divisions similar in nature and function to the Board's OSCA.

The existence of the Board's consumer complaint handling function is publicized in many diverse ways. Considerable attention is paid to the Board's function by the press, particularly during the Board's rule-writing process. Several of the Board's consumer protection regulations require State-member banks to furnish consumers a notice, part of which states that the System is the appropriate agency for

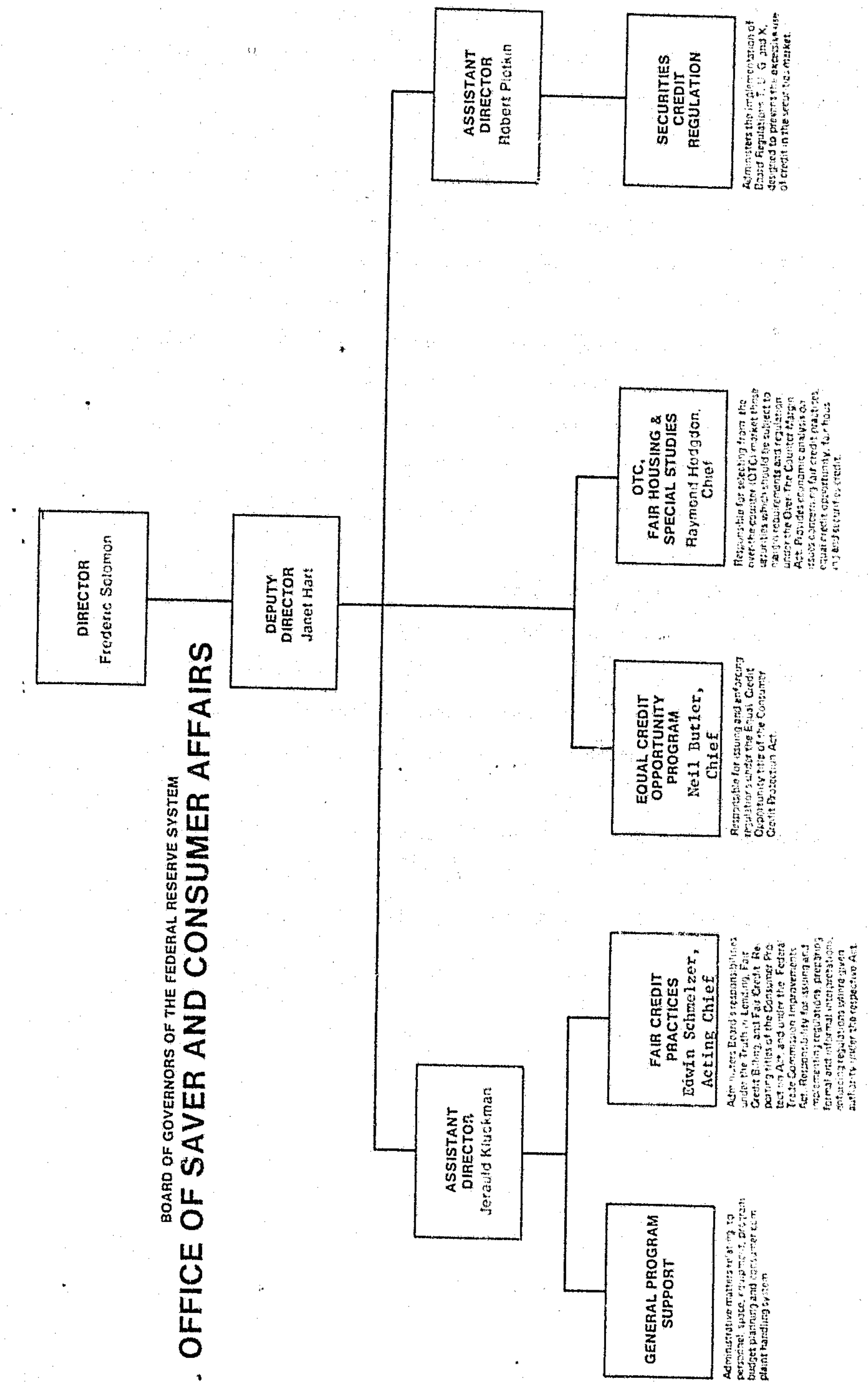
consumer complaints. The great majority of consumer letters received at the Board relate to creditors subject to the jurisdiction of other agencies, which suggests that the Board's complaint function is widely known to members of the public.

At the Reserve Bank level, knowledgeable personnel frequently act as guest speakers on consumer affairs at various public meetings, seminars, and other structured educational forums. In addition, during the rule-writing process for a new regulation, and after a new regulation has become effective, Reserve Bank staff meet with representatives of both creditor and consumer groups to publicize the existence and substance of the new regulation. Discussions invariably include a description of where and how individual consumers may file a complaint.

At the Board, senior officials as well as Board members themselves spend a considerable amount of their time making similar personal speaking appearances. In addition, educational pamphlets on new regulations are prepared as well as various informational fact sheets on topics of interest to consumers. The attached three-page fact sheet, describing the duties and responsibilities of the Board's Office of Saver and Consumer Affairs, is available to the public and to personnel of other consumer affairs offices seeking information for their own operations. Newspaper articles, interviews, and radio appearances are also utilized in an attempt to acquaint the general public with the existence of the Office and its complaint handling activities.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

OFFICE OF SAVER AND CONSUMER AFFAIRS



Breakdown of OSCA Staff

TOTAL STAFF		52
FR staff	45	
Official staff	4	
Vacancies	3	
Total	52	

By Section

Program Direction	6
Sec. Credit Regulation	11
Gen. Program Support	6
Fair Credit Practices	12
Equal Credit Opportunity	12
OTC & Special Studies	5

By Position

Director	1
Deputy Director	1
Assistant Director	2
Attorneys	17
Economist	1
Asst. for Educ. & Infor.	1
Consumer Complaint Spec.	1
Administrative Asst.	1
Docket & Records Spec.	1
File Clerk	1
Accountant Examiner	4
Statistical Asst.	1
Special Asst. ECO	1
Financial Analyst	1
Research Asst.	1
Secretarial	14
Section Chiefs	3

There are nine major pieces of consumer related legislation now under the auspices of the Office of Saver and Consumer Affairs.

1. TRUTH IN LENDING. Title I of the Consumer Credit Protection Act, enacted in 1968 and implemented by the Board's Regulation Z.

2. FAIR CREDIT REPORTING. Title VI of the Consumer Credit Protection Act, enacted October 16, 1970.

3. FAIR CREDIT BILLING. An amendment to the Truth in Lending Act, passed by Congress in 1974 and implemented as an amendment to Regulation Z.

4. CONSUMER LEASING. Also an amendment to the Truth in Lending Act enacted in 1976 and being implemented as a proposed amendment to Regulation Z.

5. EQUAL CREDIT OPPORTUNITY. Title VII of the Consumer Credit Protection Act, enacted October 28, 1974, and amended on March 23, 1976, implemented by the Board's Regulation B.

6. FAIR HOUSING. Title VIII of the Civil Rights Act of 1968.

7. HOME MORTGAGE DISCLOSURE. Enacted December 31, 1975, and implemented by the Board's Regulation C.

8. FTC IMPROVEMENT ACT. Federal Trade Commission Improvement Act, enacted in 1975.

9. SECURITIES CREDIT REGULATIONS. Securities Exchange Act of 1934, implemented by the Board's Regulations G, T, U, and X.

OFFICE OF SAVER AND CONSUMER AFFAIRS

The Office of Saver and Consumer Affairs (OSCA) has direct responsibility for a number of consumer oriented programs mandated to the Board by Congress. In addition, the Office is charged with the responsibility of assuring that the interests of savers and consumers are given adequate and specific attention in considerations leading to all Board decisions.

Generally, OSCA's responsibility entails drafting, amending, and interpreting regulations implementing Congressional legislation, monitoring enforcement activities for those regulations with regard to State-member banks of the Federal Reserve System, and the preparation and dissemination of educational materials concerning the rights and responsibilities of both creditors and consumers under these regulations. The Office also administers the Board's consumer complaint handling system.

There are nine major pieces of consumer related legislation now under the auspices of the Office of Saver and Consumer Affairs.

TRUTH IN LENDING

The Truth in Lending Act, passed by Congress in 1968, gives the Board the responsibility to write regulations requiring uniform disclosure of credit costs and certain other aspects of credit transactions. In 1969, the Board published Regulation Z implementing that legislation. Amendments to the Act, passed in 1970, prohibit the unsolicited distribution of credit cards and limit the liability for unauthorized use of lost or stolen cards to $50.

FAIR CREDIT REPORTING

OSCA has responsibility for ensuring that State-member banks comply with the Fair Credit Reporting Act, which relates to the ret ntion, use, and exchange of information about consumers.

FAIR CREDIT BILLING

In 1974 Congress passed the Fair Credit Billing Act, with an effective date of October 28, 1975. This Act amends the Truth in Lending Act by specifying how creditors must respond to billing complaints from consumers The Board's implementing regulation is incorporated in Regulation Z.

CONSUMER LEASING

Another, more recent amendment to Truth in Lending is the Consumer Leasing Act, which becomes effective on March 23, 1977. This Act requires the accurate disclosure of the costs and terms of consumer leases and of leasing terms in advertisements. The Board is currently preparing a proposed regulation to implement the Act.

EQUAL CREDIT OPPORTUNITY

The Equal Credit Opportunity Act prohibits discrimination on the basis of sex or marital status in any aspect of a credit transaction. Regulation B, implementing the Act, became effective October 28, 1975. Recent amendments to the Equal Credit Opportunity Act extend the prohibited categories of discrimination to include age, race, religion, color, national origin, receipt of public assistance funds, and exercise of rights under the Consumer Credit Protection Act. The Board is preparing proposed amendments to Regulation B to incorporate these provisions, which become effective March 23, 1977.

TITLE VIII

In December, 1974, the Board assigned the Office of Saver and Consumer Affairs the task of carrying out the Board's responsibilities under Title VIII of the Civil Rights Act of 1968. Title VIII forbids discrimination in the extension of housing credit.

HOME MORTGAGE DISCLOSURE

The Home Mortgage Disclosure Act, a bill requiring disclosure by depository institutions of the geographic distribution of their mortgage loans, was enacted on December 31, 1975. This bill requires the Board to write rules directing the manner in which depository institutions will have to compile and make available such information. The Act and the Board's implementing Regulation C became effective on June 28, 1976.

FTC IMPROVEMENT ACT

Early in January, 1975, President Ford signed into law the Federal Trade Commission Improvement Act, which, among other provisions, requires the Board to draft regulations defining with specificity what constitute unfair or deceptive acts or practices by banks. In addition, that Act directs the Board to issue regulations substantially similar to any promulgated by the FTC within 60 days of FTC action unless the Board

shows why such acts or practices are not unfair or deceptive as engaged in by banks or that prohibiting them would materially affect monetary policy or the payments mechanism.

To date, the Board has issued two proposed rules in response to similar FTC action: (1) the elimination or limiting of certain debt collection and consumer contract practices, and (2) the preservation of consumer claims and defenses. This latter rule would essentially eliminate the "holder in due course" doctrine by relieving consumers, in certain circumstances, of the legal responsibility to pay for defective merchandise or services purchased on credit. Neither rule has been finalized as of this date.

SECURITIES CREDIT REGULATIONS

Under the Securities Exchange Act of 1934, the Board has the responsibility for drafting regulations governing the use of credit to buy or carry securities. One of the primary purposes of this Act was to prevent the potentially destabilizing effect of an overextension of credit in the securities market. The Board has issued four regulations--G, T, U, and X--prescribing the use of margins in securities transactions by non-broker/dealers, nonbank lenders, broker/dealers, banks, and customers respectively.

Insofar as educational materials are concerned, two pamphlets are currently available: "If You Borrow to Buy Stock," explaining a borrower's responsibilities under Regulation X and "What Truth in Lending Means to You," available in both English and Spanish language versions. There is also a filmstrip available on Truth in Lending which retains a great deal of popularity with consumer groups. Work is now progressing on informational pamphlets covering savings accounts, Equal Credit Opportunity, and Fair Credit Billing, as well as educational materials for Truth in Lending to be utilized in high schools and adult education classes. As time permits, fact sheets will be developed on a number of topics of particular concern to consumers.

Individuals who wish to contact the Office may address correspondence to:

Federal Reserve Board
Office of Saver and Consumer Affairs
20th and Constitution Avenue, N.W.
Washington, D. C. 20551

2. Please indicate the numbers and -- to the extent possible -- the types of consumer complaints received. How many were found to be meritorious? What disposition was made of these complaints?

Answer: Between January 1 and June 30, 1976, a total of 282 consumer complaints were received at the Board. A breakdown of these complaints is as follows:

52	Concerned creditors not under Board supervision -- referred to other agency
18	Concerned State-member banks -- referred to Reserve Banks 1/
212	Handled by staff of Board of Governors 2/
282	

Between January 1 and March 31, 1976, a total of 629 consumer complaints were received by the 12 Federal Reserve District Banks. Staff is presently reviewing activity during the second quarter (April 1 through June 30, 1976) data collected during the recent quarter indicate that 401 consumer complaints received by 9 of the 12 Federal Reserve District Banks. A breakdown of these complaints, by quarters, is as follows:

1/ Four are still pending as of June 30, 1976.
2/ Twenty-five were in the process of being resolved as of June 30, 1976.

1st Quarter 12 Federal Reserve Banks	2nd Quarter 9 Federal Reserve Banks
413 - Response made	241 - Response made
192 - Response referred	145 - Response referred
24 - Response pending	15 - Response pending
629 - Total	401 - Total

Attachment A is a detailed breakdown by subject matter of the consumer complaints received by the Board through June 30, 1976. Attachment B describes each complaint which was referred to a Reserve Bank for review, including the nature of the complaint, the action taken, and current status. This description also indicates whether the complaint was found to be meritorious and, if so, how the complaint was resolved.

Referrals to other agencies are not evaluated for validity prior to the referral nor is any follow-up action taken by the Board. Complaints to which Board staff respond directly are often factually incomplete. Unless the complainant responds to our initial letter, there is no way of judging the validity of the consumer's complaint.

76-557 O - 76 - 17

Attachment A

Completed Actions/Referrals on Consumer Complaint Correspondence
Received in OSCA January 1, 1976 through June 30, 1976, by Topic

Regulation B (Equal Credit Opportunity)	
Discrimination by Sex/Marital Status	50
Discrimination by Age	16
Discrimination by Race/National Origin	4
Credit Denials by Internal Standards	10
Credit Denials by Credit Reporting Agencies	2
Notification of Adverse Action	15
Delayed Action on Application	2
	99
Regulation G, T, U, X (Securities Credit)	1
Regulation Z (Truth in Lending)	
Billing Error/Dispute	36
Annual Percentage Rate	4
Finance Charge	9
Periodic Billing Statement	2
Prepayment Penalty	
Rebate - "Rule of the 78's"	1
Offset	1
Advertising	2
Credit Cards	5
Leasing	1
	61

Unfair & Deceptive Acts/Practices	
Collection Method	2
Repossession	2
Advertising	4
	8
Regulation Q (Interest Rates)	2
Fair Credit Reporting Act	4
General Credit Practices and Procedures	
Service Charges	7
Interest Rate	5
Real Estate Transactions	8
Foreclosure Proceedings	4
Deposit Accounts	6
Refusal to Cash Check/Money Order	2
Forged Signature	2
Varied (one of a kind)	7
	41
Complaint-Type Inquiries	
"How To"	3
Reactions to Regulations	3
Total Actions	222
Responses Pending	25
Data Collection/Liaison Activity	35
	282

ATTACHMENT B

Accountability of the Eighteen Consumer Complaints Referred to the Federal Reserve Banks

COMPLETED CASES GROUPED BY DISTRICT

1. Subject: Billing error dispute.

   Referral: New York FRB on March 3, 1976.

   Interim Action Taken: Bank Regulations Division contacted bank involved for a review of records.

   Conclusion: Payment erroneously credited twice and customer had previously been sent a statement of zero balance. Error later identified and second portion of the double credit reversed. Customer closed account, refusing to pay balance.

   Final Action Taken: Bank will not pursue its claim due to time-lag between date of incorrect posting and recognition of problem. Account has been marked "Paid in Full." State member bank notified consumer of resolution by letter on April 4, 1976, with cc to the FR Bank.

2. Subject: Delayed notification of receipt of direct deposit of Social Security checks.

   Referral: New York FRB on June 2, 1976.

   Interim Action Taken: Bank Regulations Department contacted bank involved for review of problem.

   Conclusion: Most prevalent problem is delay of the mail.

   Final Action Taken: Bank adjusted the preparation date of depositors' statements to assure reflection of all direct deposits received by the third business day. Consumer so notified on June 15, 1976 by his bank and on June 23, 1976 by FR Bank.

3. Subject: Billing error dispute.

   Referral: New York FRB on March 22 and June 8, 1976.

   Interim Action Taken: Bank Regulations Department requested State member bank to review facts. Immediately, the bank temporarily credited consumer's account for the disputed amount and related finance charge.

   Conclusion: A copy of the signature draft verifying the disputed charge was received thereby confirming consumer's responsibility for the debt.

   Final Action Taken: Consumer's bank advised him by letter on April 21, 1976, that the temporary credit was reversed and that a debit offset would appear on next statement. However, because of the consumer's alleged date of notification of the suspected billing error, it appeared to the Board the creditor's delayed action may have violated the provisions of the Fair Credit Billing Act. The FR Bank was requested on June 8, 1976, to further follow up on the timing aspects. This subsequent investigation revealed that the customer's notification of the suspected billing error was mailed to incorrect address and delayed the triggering of the resolution procedure and, therefore, the Act was not technically violated.

4. Subject: Forged checks and subsequent insufficient fund charges.

   Referral: New York FRB on May 26, 1976.

   Interim Action Taken: Bank Regulations Department requested an investigation by the State member bank, which had consumer execute an Affidavit as to Forged Signature prior to investigation by its Security and Protection Division.

   Conclusion: Investigation revealed that two fraudulent checks cashed by a person using some kind of false I.D. had been charged in consumer's statements. Consequently, seven checks written by the consumer had subsequently been returned for insufficient funds, resulting in charges.

   Final Action Taken: A refund representing the fraudulent checks and service charges were remitted to consumer.

5. Subject: Past due status of "privilege checking" account.

   Referral: New York FRB on May 24, 1976.

   Interim Action Taken: Bank Regulations Department requested an investigation by State member bank.

   Conclusion: Account taken off the automatic method of repayment in September 1975. Since customer had not been notified of the change, account appeared to be past due as manual payments were not being made.

   Final Action Taken: Bank adjusted account to reflect a "no past due status."

6. Subject: Conversion rate of foreign currency.

Referral: New York FRB on May 3, 1976.

Interim Action Taken: Review by Foreign Exchange Officer.

Conclusion: The conversion rates are set by market conditions and are outside the province of Federal Reserve. Rate received by consumer was within the quoted range at time of transaction.

Final Action Taken: FR Bank explained the operation of the foreign exchange market, with particular reference to practices of banks in the New York City area. The Federal Reserve Board further confirmed Reserve Bank's conclusion by letter to consumer on June 28, 1976.

7. Subject: Disputed deposit of penciled entry.

Referral: Philadelphia FRB on March 4, 1976.

Interim Action Taken: Consumer Affairs Liaison Office discussed with both bank auditor and Vice President. Bank reviewed customer's deposit record, also discussed matter with relative who seemed to understand the situation.

Conclusion: Bank believes its records to be correct. Penciled entries not procedure followed by tellers.

Final Action Taken: FR Bank notified consumer by letter on March 12, 1976.

8. Subject: Credit denial based on insufficient credit history.

Referral: Richmond FRB on May 24, 1976.

Interim Action Taken: General Counsel's Office obtained copies of additional pertinent information and investigated circumstances regarding allegations.

Conclusion: Initial application for credit was declined because of "Insufficient credit history" and consumer so informed by letter dated March 13, 1976. Thereafter, consumer provided additional information and requested application be reconsidered. After reconsideration, the application was declined on the basis of lack of job stability. Consumer was advised of this adverse action by letter on April 1, 1976.

Final Action Taken: Reserve Bank wrote consumer on June 10, 1976 reiterating the sequence of events and confirming that the creditor's credit denial was not based on the sex or marital status of the applicant.

9. Subject: Credit denial based on race.

Referral: Richmond FRB on June 10, 1976.

Interim Action Taken: General Counsel's Office reviewed the case with the State member bank.

Conclusion: Application in question made no reference to having had a previous account, which was discovered during review of current application. The former account had been classified as being past due on several occasions - twice for three months, once for seven months and once for a period of about eighteen months. The current application for a credit account was declined because of this past payment record.

Final Action Taken: Reserve Bank explained the circumstances surrounding the rejection by letter to the consumer dated June 30, 1976.

10. Subject: Unsolicited credit card account as means of billing for resort membership dues and services.

Referral: Richmond FRB on June 9, 1976.

Interim Action Taken: General Counsel's Office initiated an investigation of circumstances surrounding the resort's billing practices.

Conclusion: Unauthorized account.

Final Action Taken: Entire balance listed in name of the consumer was removed and all records of the account closed. The Reserve Bank advised consumer of favorable resolution by letter dated June 29, 1976.

11. Subject: Discriminatory refusal to cash check and discourteous treatment because of race.

Referral: Atlanta FRB on May 26, 1976.

Interim Action Taken: Reserve Bank discussed the circumstances surrounding the allegation with officers of the State member bank.

Conclusion: Complainant was not a regular customer and had stopped temporarily in Montgomery, Alabama enroute from New York to California. The check in the amount of $4,000 was drawn on an out of State bank. As a matter of policy, the bank refused to cash check without proper references. Bank personnel did not feel or exhibit disrespect because of the race of the consumer. In addition, the complainant had previously applied for a position at the bank and although qualified, was not selected because of the probably temporary residence status. It is the bank's feeling that the complaint regarding the refusal to cash the check was to vindicate the rejection for employment.

Final Action Taken: Although no consumer credit law had been violated, the Reserve Bank explained the bank's position to the consumer by letter.

12. Subject: Discrepancy in a mortgage loan and insurance transaction.

Referral: St. Louis FRB on June 7, 1976.

Interim Action Taken: Examiner scheduled a visit to the bank for investigation of complaint.

Conclusion: None could be reached since the records cannot be located for verification. Records apparently have either been lost or destroyed by a flood in 1963 or through moving from bank's old building to temporary quarters and then to present premises.

Final Action Taken: Consumer notified by letter dated June 22, 1976 that we are unable to help.

13. Subject: Discrimination claim based on race.

Referral: Minneapolis FRB on March 23, 1976.

Interim Action Taken: Examiner investigation.

Conclusion: Application rejected on basis of past late payment credit experience.

Final Action Taken: FR Bank notified consumer by letter on June 9, 1976.

14. Subject: Return of application after credit denial. Cited article in Dallas Daily News.

Referral: Dallas FRB on June 21, 1976.

Interim Action Taken: Attorney in Regulations Department reviewed newspaper article and applicability of ECOA to consumer's complaint.

Conclusion: Under ECOA and Regulation B, a creditor is not required by law to return an application if credit is denied. Law only requires that creditor give reason(s) for the denial if requested by the applicant. Newspaper article makes no statement to the contrary.

Final Action Taken: FR Bank advised consumer by letter on July 1, 1976, that under law, the creditor is under no obligation to return applications for which credit has been denied.

PENDING RESPONSES GROUPED BY DISTRICT

1. Subject: Error in checking account resulting in insufficient fund charges and additional finance charges on "past due accounts."

   Referral: New York FRB on May 3, 1976.

2. Subject: Error in mortgage loan transaction.

   Referral: New York FRB on May 26, 1976.

3. Subject: Discrepancy in checking account.

   Referral: New York FRB on May 26, 1976.

4. Subject: Sex/Race discrimination in granting of home improvement loan.

   Referral: Chicago FRB on June 8, 1976.

3. What procedures are used to handle consumer complaints? Are all complaints processed? How promptly are they handled? Are there maximum time limits for dealing with them?

Answer: All incoming consumer complaint letters are reviewed and individually logged. Letters concerning creditors not under the supervisory authority of the Board are forwarded immediately to the proper supervisory agency for review. Complaints against State-member banks that require further investigation are referred to the Reserve Bank in the appropriate district for action.

Generally, the Reserve bank is asked to look into the situation and correspond directly with the consumer, sending copies of all correspondence and related materials to the Board. State-member bank complaints are considered closed only after staffs of the Reserve Bank and the Board are mutually satisfied either that the problem has been resolved or that the consumer has received a thorough explanation of the relevant circumstances.

Often, review indicates that no regulation or law has been violated, but rather that communications between the bank and the consumer have broken down. Where a violation does appear to have occurred, the consumer is so informed and also told of his or her rights and remedies under the appropriate law or regulation.

More than one-half of complaint letters, however, do not identify a specific creditor. Rather, the writer describes a situation which occurred and asks if there are any Federal laws or regulations which might apply. In these instances, staff responds with an informational letter, which attempts to explain any applicable law or regulation. Usually, a copy of any relevant regulation is included along with instructions on how to initiate a consumer complaint.

In many instances, it becomes immediately clear that the Board can be of little assistance. As much as possible, staff then attempts to refer the consumer to a State or local consumer affairs office, legal aid society, welfare office, or other community action group which may be able to provide help.

Turn-around time on consumer complaints received at the Board through the first half of 1976 is reflected in Attachment A. Board guidelines require that all letters be answered or acknowledged within ten working days. Those letters which cannot be answered within 20 working days must be reported to senior staff, including the reason for the delay and a firm date by which they will be answered.

Attachment A

Time Elapsed
Consumer Complaints Received in OSCA January 1 through June 30, 1976

Number of Working Days	Actions Completed Number	Actions Completed Cumulative %	Actions Pending Number
1 day	95	33.69	
2-5 days	20	40.78	
6-10 days	49	58.15	
11-15 days	25	67.02	4
16-20 days	20	74.11	1
21-25 days	12	78.37	3
26-30 days	8	81.21	7
31-60 days	19	87.94	3
61-90 days	9	91.13	4
Over 90 days	0	100.00	3
	257		25 (8.86% of 282 total receipts)

Number of Consumer Complaints Received in OSCA by Month through June 30, 1976

January	- 7
February	- 32
March	- 55
April	- 48
May	- 66
June	- 74
Total	282

ATTACHMENT B

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

January 2, 1976

This encloses revised forms and instructions for handling and reporting complaints and inquiries from consumers. The enclosed materials have been substantially re-studied and revised after a review of comments received from the Federal Reserve Banks in response to my letter to you of September 19. The comments and suggestions were very helpful, and to the extent possible, have been incorporated into the revised procedures.

The most important suggestion received from the Banks related to the types of complaints and inquiries which should be recorded. Under the revised procedure, as adapted, data to be collected and reported will be limited to specific complaints and complaint-type inquiries from consumers. Excluded are requests for printed matter and general information requests. Also excluded from this reporting system, but obviously not excluded from receiving other suitable attention, are complaints which are not directed against a bank or other commercial creditor, e.g., complaints about such things as monetary policy, statistical data, fiscal agency functions, and Treasury issues. A definition of the complaints to be recorded is included in the enclosed instructions.

The format of the Index Card to be used in compiling the necessary information has also been revised, and revised instructions covering its use are enclosed. We are working towards the possibility of recommending that the Board adopt a machine readable card that would lend itself to computer summarization. However, before such a card can be developed, it will be necessary to identify in some detail the specific types of complaints that are received and responses that are provided, as a substitute for the present qualitative-type information presently being obtained. Before this identification can be made, it will be necessary to have some fairly extensive experience with types of complaints actually received and handled. We would hope to be able to review the possibility of providing a machine readable card after some experience.

In order to carry out its responsibilities under the Federal Trade Commission Improvement Act and other applicable statutes, it is essential that the Board be made aware of any administrative, management or enforcement deficiencies at State member banks relating to the handling of consumer inquiries and complaints, as well as consumer concerns that would be helpful in developing more effective compliance procedures or remedies for consumer problems. Therefore, it is requested that each Bank provide quarterly a statistical summary of its consumer complaint activity, including a narrative analysis of topical information and current trends that indicate a need for regulatory or legislative changes. Enclosed is a copy of the statistical summation sheet to be submitted to the Office of Saver and Consumer Affairs at the end of each quarter.

It is requested that the procedures outlined here and in the enclosures be instituted by your Bank as soon as possible after receipt. We are furnishing an initial supply of the Index Card under separate cover. Additional copies of both forms may be reproduced as needed.

Any questions arising with respect to these procedures or any suggestions that you have should be referred to Miss Kathryn Casey in the Office of Saver and Consumer Affairs, (202) 452-3667.

Very truly yours,

Theodore E. Allison

Theodore E. Allison
Secretary of the Board

Enclosures

Identical letter and enclosures sent to:

Mr. Frank E. Morris
FRB - Boston

Mr. Paul A. Volcker
FRB - New York

Mr. David P. Eastburn
FRB - Philadelphia

Mr. Willis J. Winn
FRB - Cleveland

Mr. Robert P. Black
FRB - Richmond

Mr. Monroe Kimbrel
FRB - Atlanta

Mr. Robert P. Mayo
FRB - Chicago

Mr. Darryl R. Francis
FRB - St. Louis

Mr. Bruce K. MacLaury
FRB - Minneapolis

Mr. George H. Clay
FRB - Kansas City

Mr. Ernest T. Baughman
FRB - Dallas

Mr. John J. Balles
FRB - San Francisco

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

INSTRUCTIONS FOR CONSUMER COMPLAINT INDEX AND SUMMATION REPORTS

The 5 x 8 index card is to be used by the Board and the Federal Reserve Banks for maintaining records of consumer complaints to meet the Board's responsibilities under Title II of the Federal Trade Commission Improvement Act (Sec. 202(f), Public Law 93-637, January 4, 1975) and in addition, to provide periodic accounting to Congress as requested. The index card should be utilized in the preparation of the summaries which will serve as the basis for the Board's annual report of activities for transmittal to Congress not later than March 15 of each year beginning in 1976.

These instructions, index card and statistical summation sheet are designed to assist the consumer liaison officers of the Federal Reserve Banks in maintaining the required records.

GENERAL INSTRUCTIONS

This index card should be used to record all consumer complaints received by a Federal Reserve Bank, regardless of the department or division of the Bank that handles the complaint. For the purposes of these procedures, a Consumer Complaint is defined as follows:

CONSUMER COMPLAINT

A specific complaint by or for an individual consumer (borrower, saver or investor) or consumer group, a business

person or other creditor, against a financial institution or other creditor directed to the Federal Reserve Board or any Federal Reserve Bank regarding Regulations G, T, U, X, B, Q, and Z; consumer and investor protection legislation, such as the Fair Credit Reporting Act, Municipal Securities and Transfer Agent Regulations, Title VIII of the Civil Rights Act of 1968 (Discrimination in Mortgage Lending), including "redlining"; bank services and procedures, or any other action or practice not covered by rules and regulations, but which could be considered as an unfair or deceptive act or practice. This definition includes the Federal Reserve System's Consumer Complaint activity and also inquiries, framed in the form of a complaint, concerning acts or practices which may be authorized under existing Federal or State laws. Typical examples follow:

Rule of '78 rebate method
Computation of finance charge, e.g., using "average daily method"
Interest on savings account
Penalty for early withdrawal of CD
Credit denial based on creditor's legally authorized policy
Nondisclosure of credit standards
Legally authorized practices in clearing checks or handling securities transactions or deliveries

Excluded are requests for printed matter and general information and complaints which are not directed against a bank or other commercial creditor, e.g., complaints about such things as monetary policy, statistical data, fiscal agency functions, and Treasury issues.

Quarterly summarization of the information on the index cards should be submitted to the Board's Office of Saver and Consumer Affairs. These summarizations should include not only statistical information relating to complaints, but narrative information on trends concerning significant number of recurring complaints or complaints regarding same creditor, and any enforcement problems resulting from failure on the part of State member banks to correct procedures to assure compliance as well.

To assure that there is no duplication with respect to complaints referred by the Board to the Federal Reserve Banks, the Banks should include in their statistics only those cases in which final action with respect to the complaint is taken by the Bank. Perhaps several examples would best illustrate this point. Assume a consumer complaint relating to a State member bank is sent to the Board, and the Board refers it to the Bank. If the Bank handles the complaint and communicates the results to the inquirer, the Bank should count this inquiry in its statistics. On the other hand, if the information is communicated to the Board and the Board responds to the inquiry (such as is usually the case with Congressional inquires), the item will be counted in the Board's statistics and should not be counted by the Federal Reserve Bank. However, in such instances, the time spent resolving the matter by the Federal Reserve Bank will be reported to the Board, when resolved.

Whenever sufficient space is not provided on the face of the card or summary, the reverse side may be used.

FILING AND RECORDS MAINTENANCE

There should be a central location within each Bank at which the primary files of completed Index Cards are retained. The retention procedures should be as follows:

1. The Index Card noting complaints of violations or exceptions at State member banks should be retained regardless of the time span, as long as succeeding examinations note the same or similar violations or until a five-year period has lapsed from the last examination noting correction.
2. The Index Cards noting complaints involving creditors other than State member banks should be retained for a minimum of two years (plus the current year).

In order to further aid research and retrieval of specific correspondence, it is suggested that a copy of the letter of response to the consumer should be filed in the appropriate subject file(s) and cross-referenced to the Index Card.

SPECIFIC INSTRUCTIONS -- INDEX CARD

Control Number is any numbering system established by the Board's office or by an individual Federal Reserve Bank to assist in summarization and to provide an accounting control.

Date Received is to record the date of receipt of the letter, the telephone call or walk-in visit and the assignment of a control number.

Referred By should indicate the name of other Board office, another Federal Reserve Bank or other agency that referred the complaint for action.

Form of Complaint is provided to indicate the method used to register the complaint by checking the appropriate square.

Source of Complaint is provided to indicate the origin of the complaint by checking the appropriate square. When a complaint has been received by referral from a Congressional or other source, this source should also be identified by checking appropriate square and using additional line below to insert name.

Type of Creditor is provided to indicate the class of creditor to which the complaint is directed, such as a State member bank, other bank, or other type of creditor (e.g., retailer, finance company, or credit union).

Complaint Relates To: A check list is provided to indicate the nature of the inquiry and a space is provided for any other type of complaint not listed individually. Where possible, the sections of the regulations should be shown.

Complainant's Name should be recorded accurately.

Complainant's Address and Telephone Number should be used if complete identification is needed for resolution, referral or follow-up purposes.

Creditor's Name should be recorded accurately, especially when a State member bank is the subject of the complaint. This information can be helpful in determining the number of complaints registered against a State member bank and could indicate a need to direct special attention to management.

Creditor's Address or Branch and Telephone Number should be used if complete identification is needed for resolution, referral, or follow-up purposes.

Summary of Complaint should indicate the nature of the consumer's complaint or complaint-type inquiry.

Disposition/Resolution/Referral: This space is provided to describe how a complaint was settled and, if against a State member bank, any follow-up that would be required concerning corrective action which should be taken to avoid recurrence of the problem. To assure that possible or potential problem areas are reviewed at each examination, the respective Examiner in Charge should be furnished the necessary information. During the next examination, it should be determined if the bank has changed procedures to eliminate similar complaints. Any failure on the part of the bank to correct exceptions should be reported to the Office of Saver and Consumer Affairs.

Additionally, use of this space includes information regarding complaints referred to the Board, another Federal Reserve Bank, or other enforcement agency. Indicate the name of the referral recipient and whether the consumer was advised of the referral.

Date of Final Action: This date will indicate when the problem, request, or complaint has been properly settled with the consumer and member bank, if any, or the date the inquiry was referred to another agency.

Approximate Time Involved: Indicate the approximate time involved in handling the request or complaint. Include time for both clerical and professional staff.

Complaint Handled By: Indicate the name of the officer or employee which was assigned the responsibility of handling the request or complaint.

SPECIFIC INSTRUCTIONS -- SUMMARIES

Statistical Summation of Consumer Complaints is a columnar form to be used to record the total number of complaints received during each quarterly reporting period. Space is provided for the total number of complaints categorized by Form of Complaint, Source of Complaint, Type of Creditor, Disposition/Referral and Staff Time for each general subject area and for the horizontal and vertical sub-totals. In addition, with each summary, there should be submitted a narrative analysis of current trends and topical information which should include the following indicators:

1. Significant recurring complaints regarding the consumer credit Regulations, Acts, or Rules or unregulated, but questionable, bank procedures, acts or practices. Where Regulation, Act, or Rule is involved, include applicable section(s) or reference(s).

2. Significant recurring complaints about the same creditor, either main office or branch office.

3. Significant recurring complaints within a State or local geographic area.

4. Significant creditor reactions to the Regulations, Acts, or Rules or to bank procedures, acts, or practices, especially among competitor banks.

5. Significant enforcement or compliance problems with respect to State member banks in correcting a violation or exception as a result of a consumer complaint.

6. Primary subjects of consumer complaints, useful in preparation of a subject classification code system.

F.R. FORM 1116   CONTROL NUMBER ____________

CONSUMER COMPLAINT INDEX

DATE RECEIVED: ____________ REFERRED BY: ____________

FORM OF COMPLAINT:
- /_/ Written
- /_/ Telephone
- /_/ Walk-in

SOURCE OF COMPLAINT:
- /_/ Consumer
- /_/ Other ______
- /_/ Consumer Group
- /_/ Congressional

TYPE OF CREDITOR:
- /_/ Member Bank
- /_/ Other Bank
- /_/ Other ____________

COMPLAINT RELATES TO:
- /_/ Regulation B Sec. ________
- /_/ Regulation GTUX Sec. ________
- /_/ Regulation Q Sec. ________
- /_/ Regulation Z Sec. ________
- /_/ Fair Credit Reporting
- /_/ Unfair and Deceptive
- /_/ Other ____________

NAME OF COMPLAINANT: ____________ NAME OF CREDITOR: ____________

ADDRESS: ____________ ADDRESS OR BRANCH: ____________

TELEPHONE: ____________

SUMMARY OF COMPLAINT: ____________ DISPOSITION/RESOLUTION/REFERRAL OF COMPLAINTS: ____________

DATE OF FINAL ACTION: ________ HANDLED BY: ____________ APPROXIMATE TIME INVOLVED: ________

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F.R. Form 1116 A

STATISTICAL SUMMATION OF CONSUMER COMPLAINTS

By ____________ Federal Reserve Bank for Quarter Ending ____________

SUBJECT OF COMPLAINT	FORM OF COMPLAINT			SOURCE OF COMPLAINT				TYPE OF CREDITOR			DISPOSITION						TIME	TOTAL COMPLAINTS BY SUBJECT
													REFERRED					
	Phone	Letter	Walk-in	Consumer	Consumer Group	Congressional	Other	Member Bank	Other Bank	Other	Resolved	Pending	FR Board	FR Bank	Other Regulator	Other	Hours Spent	
Regulation B																		
Regulation Q																		
Regulation G																		
Regulation T																		
Regulation U																		
Regulation X																		
Regulation Z																		
Unfair/Deceptive Acts/Practices																		
Fair Credit Reporting																		
Title VIII Civil Rights																		
Municipal Bonds																		
Transfer Agents																		
Other																		
TOTAL																		

271

4. Do the staff members assigned to consumer complaints have other enforcement duties?

Answer: The Board has assigned two staff members the task of handling consumer complaints. One of these individuals devotes full time to the task. The other has additional responsibilities for developing consumer education materials.

5. Through what devices does your agency exercise its responsibility to enforce the consumer protection law? Through regular examination? Special examinations? Education? Other methods?

Answer: The Board's responsibility for enforcing consumer protection laws and regulations is fulfilled primarily through its regular examinations of State-member banks performed for the purpose of determining financial soundness and solvency. These examinations are performed annually by the some 630 examiners for the 12 Federal Reserve banks. Compliance normally is monitored through a review of the bank's formal policies and procedures, as well as actual practices followed, relating to the requirements of the laws and regulations and the bank's responsibility thereunder. For example, compliance with Truth in Lending requirements is verified through review of the bank's policies and procedures in granting direct and indirect consumer loans, its disclosure forms, and copies of its actual advertising.

The Board is considering implementation of a separate "consumer compliance" examination report for use by specially trained teams in the Reserve Banks. These teams would perform their "compliance" examinations of State-member Banks either simultaneously with the annual financial examination or at other times. Several of the Reserve Banks are currently performing such examinations with special teams of examiners.

The Board also uses educational methods to aid in enforcing compliance with consumer protection laws. Since enactment of the Truth in Lending Act in 1968, the Board has conducted an extensive educational program relating to the Act and Regulation Z. For example, following the passage of the recent Fair Credit Billing Amendments to the Act and the Board's issuance of implementing amendments to Regulation Z, the Board's staff participated in numerous meetings and seminars for the purpose of explaining to creditors the new provisions and requirements. Approximately 6,200 creditors attended these meetings during 1975. The Board has also distributed more than two million copies of a pamphlet that contains the Act and Regulation Z, as well as questions and answers concerning compliance matters. In addition, more than three million copies of a leaflet explaining the basics of Truth in Lending to consumers have been distributed. More than half a million copies of a Spanish version of this leaflet have also been distributed. Staff is developing similar pamphlets on the provisions of the Fair Credit Billing and Equal Credit Opportunity Acts. In addition, staff members of the Reserve Banks have been actively involved in this educational effort through participation in meetings of various local trade associations and community groups, as well as through radio and television appearances.

Perhaps the most effective tools for creditor education have been the Board's official interpretations and amendments to Regulation Z, as well as the more than 1,000 public information letters issued by the Board's staff. Regulation B was adopted, effective October 16, 1975, and already nearly 75 public information letters concerning compliance with the regulation have been issued. These letters which are available through several sources, such as the Federal Reserve banks and the Consumer Credit Guide published by Commerce Clearing House, offer substantial guidance to creditors regarding compliance matters.

The Board feels that its educational program has been beneficial to both consumers and creditors and it plans to continue its activities in this area in the belief that a comprehensive educational effort is necessary to achieve the purpose of consumer protection laws.

6. How are your bank examiners trained, with respect to examining for violation of State and Federal consumer protection laws? Would you supply the Committee copies of the training material used, handbooks or other instructional materials for examiners on the job; and examination report forms used for assessing compliance in this area?

Answer: The Board operates a school for training examiners in all areas of bank examination work. Newly hired junior examiners attend various training sessions offered, and more senior personnel are given training in new areas of responsibility as the need arises. Part of the curriculum of the school is devoted to examination for purposes of enforcing compliance with the requirements of the Consumer Credit Protection Act. A manual, a copy of which is enclosed, has been issued for use by examiners in making Truth in Lending examinations of State-member banks.

Staff of the Board is currently developing expanded training for examiners in the enforcement of recently enacted consumer protection laws. A special school devoted entirely to training in consumer credit protection laws has recently been established. The first session of this school will be held in September, 1976.

7. How are examiners supervised, with respect to examining for violations of State and Federal consumer protection laws? To what extent do supervising and training include reviewing State laws applicable to banks?

Answer: Each examination of a State-member bank is the responsibility of an experienced senior examiner, designated as the examiner-in-charge. It is this examiner's responsibility to conduct the examination in accordance with standard policies and procedures, to supervise the examining personnel assigned and to prepare the final report of examination. In fulfilling these requirements, the examiner-in-charge must determine that the bank is in compliance with all laws including consumer protection laws and regulations. Usually, this assignment is given to other members of the examining team who report directly to the examiner-in-charge. The examiner-in-charge is under the direct supervision of an officer of the Reserve Bank who reviews the report of examination and discusses important matters with the examiner-in-charge before the report is processed and finalized. A copy of the final report is forwarded to the Board in Washington where it is reviewed and analyzed by experienced examiners. In this final review, those Board staff members who are primarily responsible for implementation of consumer protection laws also review and analyze the results of field examinations in this specific area.

The response to the second part of Question #7 relating to State consumer protection laws is contained in the answer to Question #12 below.

8. How are bank examinations conducted with respect to consumer protection laws? Are they comprehensive reviews of the bank's consumer transactions, or spot checks or random reviews? What systematic records of violations are maintained? How are examiners' reports analyzed, and how are judgments made about appropriate corrective measures?

Answer: Generally, the objective of the examiner in fulfilling System responsibility in this area is to determine the extent of management's familiarity with respect to consumer protection laws and to ascertain whether policies and procedures established to meet the requirements are, in fact, adequate and effective. The examiner assigned to this area first obtains copies of all written policies and manuals of procedures established by management to fulfill its responsibility under the Acts and copies of all forms, statements and other material developed for use in complying with the various statutes. These are reviewed along with the minutes of pertinent meetings of directors and staff committees and correspondence and other records relating to the adoption of procedures needed to comply with the requirements. Having become familiar with stated policies and procedures, the examiner proceeds to test check or review selected samplings of pertinent records of transactions to determine if policies and procedures are followed in practice and if the requirements of the statute are being met. Weaknesses in policies and procedures and in their application are discussed with management and corrective action is requested. Violations are called to the attention of management and are discussed with a view toward obtaining correction and adoption of measures to prevent future occurrence.

Violations of the statutes are cited in the report of examination. Generally, corrected violations are listed for the record and, depending on the circumstances and nature of the infractions, no further

action is taken. Violations listed that were not corrected during the Reserve Bank's examination require management's plans for corrective action and the Reserve Bank follows up with correspondence and progress reports to assure compliance.

As indicated in the response to Question #7 above, the reporting of violations in the report of examination is subject to the review of the examiner-in-charge, a supervising official of the Reserve Bank and staff members of the Board's Washington office. No single procedure is prescribed exclusively for determining what appropriate corrective measures are to be taken. Rather, the expertise and judgment of reviewers at all levels are relied upon to tailor appropriate corrective measures.

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CONTINUED

3 OF 7

9. Where violations are detected through bank examinations, what corrective measures are sought? E.g., formal sanctions against the bank or its officers? Compensation for the aggrieved consumers? Changes in bank practices for the future? Publicity of the violations?

Answer: Violations are detected by the System either through the examination process or through consumer complaints. In either instance, the Federal Reserve Bank having jurisdiction over the State-member bank in question immediately endeavors to have the bank correct the violation and insure that similar violations do not recur.

In 1975, the Federal Reserve Banks wrote 252 letters to member bank officials informing them of consumer oriented violations found during the examination process and instructing them to correct such violations. While the number of State-member banks found in violation of the Truth in Lending Act has decreased since 1974, the number of formal communications with the member banks has increased. For the most part these letters were generated after the completion of an examination and encompassed other areas of concern discovered during the examination. It should be borne in mind that these statistics do not reflect continual informal recommendations and suggestions made by examiners for the strengthening of member banks' compliance.

With regard to each violation, bank management is additionally informed of the civil liability provided for under the Act, along with, in the case of small banks, an explanation of the Act's provisions so as to clarify any misunderstanding. Banks are procedures so as to achieve compliance and to correct any injustices dealt its consumers.

An amplification of this information as to the number and types of violations under the Truth in Lending Act may be found in our attached response to earlier questions posed by Senator Biden.

While the Board has considered the possibility of publicizing violations of the Consumer Credit Protection Act by State-member banks, the Board has serious reservations about disclosure of information gathered in the examination process.

10. To what extent, and how, are enforcement policies and criteria coordinated among various Federal supervisory agencies? What coordination is done with State agencies having parallel responsibilities?

Answer: Since the inception of Truth in Lending in 1968 the bank regulatory agencies have exchanged information regarding enforcement policies. Numerous meetings have been held with the other Federal financial supervisory agencies involved in the Act regarding examination techniques and procedures.

Truth in Lending was the first Federal banking-oriented consumer protection act, and information exchanged among agencies was initially limited to development of examiners' manuals (previously provided the Committee). While these manuals do not cover enforcement policies *per se*, they do provide a standard by which examiners may measure a particular bank's compliance with the Act.

There has been substantial coordination of agency efforts as a result of the passage of recent amendments to the Consumer Credit Protection Act. Information has been exchanged regarding the development of examiners' manuals, procedures for examination, questionnaires and checklists covering recent amendments to existing regulations and new regulations. A number of interagency work sessions have been held covering such enforcement tools as cease and desist orders and restitutional relief actions.

In addition to this coordination on the Washington level, the District Reserve Banks communicate frequently with other enforcement agencies within their District. This includes inquiring into examination techniques and manuals as well as referrals of consumer complaints to appropriate agencies.

Because the banks under the Federal Reserve System's jurisdiction are chartered by the individual States, State examination forces and System forces work together to ensure compliance with consumer protection laws. In many instances personnel from both agencies jointly examine banks. Action to be taken on any violation of Federal law affecting the State-chartered bank is also coordinated between these agencies.

11. What degree of importance or priority does the enforcement of consumer protection laws have in your agency's overall operations? What degree of importance does it have in individual bank examinations?

Answer: The principal involvement of the Board in the consumer protection laws, particularly in recent years, has been in the development of implementing regulations. Nevertheless, the training of examiners for enforcement of these laws has been a regular part of the Board's examiner schools. The curricula of both the Junior and Senior Examination Schools include training in the enforcement of consumer protection laws. With the passage of new consumer protection legislation, the Board has placed an increased emphasis on enforcement and has allocated additional personnel to handle this function.

With the increase in the volume of consumer protection regulations, field examining staff are devoting more time and effort in enforcing compliance in this area.

12. What degree of importance or priority does the enforcement of State consumer protection laws have in your agency's overall consumer protection effort? Are State enforcement personnel involved in your efforts? Are they notified? Do they have access to information developed by your examiners?

Answer: While the Board believes that the responsibility for enforcing State consumer protection laws properly resides in the State authorities, it has been the longstanding policy of the Board that its examiners assist and cooperate with State officials wherever possible in enforcing State consumer protection laws. The Reserve banks are under instructions to maintain contact with State authorities for consumer laws to assure that System examiners have copies of all checklists or other State examiner material relating to such laws applicable to banks. They are also under instructions to have their examiners render assistance to the State authorities in their own enforcement of State law. Copies of all examination reports of State-member banks prepared by System examiners are made available to State authorities.

13. Where a State has been exempted from Federal law (e.g., Truth in Lending) on condition that there is adequate State enforcement of substantially similar State laws, who exercises enforcement responsibility with respect to banks under your jurisdiction?

Answer: To date, five States have been exempted from the provisions of Chapter 2 of the Truth in Lending Act. No exemptions have been sought with reference to the Fair Credit Billing Amendments or the Equal Credit Opportunity Act. In those States which have been granted an exemption, enforcement responsibility over State-member banks with respect to Truth in Lending has been undertaken by the examination staff of State banking authorities. Each of the exempt States is required by the Board to provide an annual report on the status of compliance with Truth in Lending. Federal Reserve Bank examiners continue to enforce the provisions of the Act for which an exemption has not been sought or is not available.

14. Is there any discernible incompatibility or conflict of interest in your agency's dual responsibilities to see to the bank's soundness and to consumer protection?

Answer: The Board has always regarded compliance with the Consumer Credit Protection Act to be one of the elements in the evaluation of a bank's financial condition. Full compliance with the Act's provisions is relevant to the soundness of a bank in light of the civil penalties imposed under the Act, particularly the liability in potential class action suits. Therefore, the Board does not believe there is a conflict of interest in its responsibilities. However, to reduce potential incompatibility or conflict of interest between these points of view, the Board is studying a procedure whereby examinations relating to compliance with the Consumer Credit Protection Act will be conducted by examiners with special expertise in the Board's consumer protection regulations. To this end, the Board is actively considering mandating that each of the Federal Reserve Banks select separate examiners to enforce the provisions of the Act, and the Board has established a specialized examination school to provide concentrated training to such examiners in its consumer credit protection regulations.

15. Regulations promulgated under the Consumer Credit Protection Act are lengthy, complex and technical. Why? Is this complexity necessary? Does this complexity serve the consumer's interest?

Answer: In the Board's view, the existing complexity of the consumer credit protection regulations stems from several factors. First, the extension of credit is a large and complex activity and one traditionally regulated by a diverse body of State law. The Congress, in enacting the Consumer Credit Protection Act, wisely, in the Board's view, chose not to overturn this traditional State authority or to dictate the terms that creditors could offer to their customers. Rather, the Act required that certain credit terms and costs be disclosed in a uniform manner. As a consequence, the regulations implementing the statute of necessity have had to provide certainty as to the methods that diverse creditors employ in disclosing the wide variety of the credit terms offered. The coverage of such a variety of potential credit terms has contributed to the complexity of the regulations.

Second, the Congress imposed substantial civil liability for violations of the Act in an effort to make its provisions self-enforcing. Courts have generally held creditors to a high degree of accuracy regarding their disclosures under the Act. Potential liability for technical violations has in turn led creditors to pose highly complex questions for interpretation by the Board. Formal responses to these questions have further added to the complexity of the regulation.

Thus, the complexity of the Act and its regulations is proportional to the complexity and consequences of the subject matter covered. The Board, in its letter to Senator Proxmire on July 16, 1976, suggested that

the Congress investigate further the civil liability provisions of the Act to consider what modifications might be made therein to lessen the impact of litigation particularly with regard to technical violations of the regulations.

The Board has long been concerned that much of the Truth in Lending disclosures may be confusing to consumers. In response to this concern, the Board has attempted to weigh the need for disclosure against the possibility that such information could lead to confusion or detract from more important disclosures. When the Board has determined that the potential for such confusion was substantial, it has rejected requests that more information be added to the disclosure forms.

16. What adverse effects do you perceive from the complexity of Regulation Z and B? What beneficial effects?

Answer: The complexity of regulations may result in the following problems: Creditors may be required repeatedly to adjust their procedures to achieve and maintain compliance with the regulations. This adjustment involves retaining counsel to design forms, printing forms, training employees, and establishing review procedures, all of which amount to a substantial cost. These costs are almost certain to be passed on to consumers, either directly through higher interest rates or indirectly by reducing creditors' profits and thereby decreasing their willingness to lend to marginal customers. Small creditors, faced with the costs of assuring compliance with the complex details of the regulations, might withdraw from the consumer credit market, thereby reducing both competition and the availability of credit. Finally, as creditors' efforts are increasingly devoted to compliance with complex acts and regulations, less of their attention may be paid to developing new techniques to offer better and more attractive credit plans to the consumer.

Fundamental in drafting any Act or regulation is an effort to achieve equitable results that will fit the general rule to specific situations. One example of this deviation from the standard in the Truth in Lending Act is the breakdown of credit other than open end and open end credit. Unfortunately, no single set of rules could apply to our very complex credit industry. Perhaps a beneficial effect of complexity is certainty. General regulations may appear simple but such appearances are often illusory. When creditors attempt to comply

with the regulations, they find that broad generalities do not account for the variety of practical problems that may arise. If a given regulation itself does not provide guidance for at least some of the common practical problems, creditors must turn to legal counsel or the regulatory agency for assistance or proceed at their peril with behavior that may later be found to violate the regulation. Thus, drafting regulations requires a balance between (1) readily understandable general rules that leave questions unanswered and ambiguities unresolved and (2) detailed specific rules that may impose problems of compliance.

17. How can this regulatory complexity be avoided?

Answer: Please refer to the Board's letter of July 16, 1976, to Senator Proxmire, which comments on this issue. In addition, the following specific examples are offered. The proposed amendments to Regulation B which were published for comment on July 15, 1976, contain several changes which would simplify compliance. For example, responding to the requiests of small creditors, the Board's proposal contains several sample application forms. Creditors would not be required to use the sample forms but those who did could be assured of being in compliance with those portions relating to the format provided. Similar forms are being prepared with regard to Regulation Z.

Another proposed change in Regulation B relates to the delivery of the Equal Credit Opportunity Act notice. This notice describes the Act's prohibition of credit discrimination on the basis of sex and marital status and provides the name and address of the appropriate enforcement agency. Under the existing Regulation B the ECOA notice must be provided in a form the applicant can retain. Strict construction of this requirement by creditors has resulted in customers receiving numerous copies of the notice.

Recognizing that the ECOA notice is an important consumer education tool, the Board's proposed amendments to Regulation B preserve the notice while at empting to make compliance simpler. Under the proposed amendments the ECOA notice would be combined with the notification of action taken and reasons for adverse action, thus reducing paperwork and, more importantly, providing the notice at a time when it has the most significance to the applicant. The proposed amendments like the existing version of Regulation B, contain a sample ECOA notice. However, unlike the existing regulation, the proposal

provides that a creditor need not use the sample statement verbatim. For example, a creditor may alter the wording of the notice to mention a State equal credit law.

Another proposed change in the regulation that will simplify compliance is a provision permitting the notice of action taken to be given by implication when the action is to grant the credit applied for. For example, when a person has applied for a credit card and the card application is granted, the creditor's sending of the card is deemed to be notice of action taken.

Finally, the recently adopted amendments to Regulations B and Z regarding the issuance of staff opinion letters, upon which individual creditors may rely, may well provide certainty without unduly complicating either regulation.

The following material responds to questions posed in Chairman Biden's letter of June 7, 1976, relating to violations of the Truth in Lending Act. Since the subject matter of the questions closely parallels those posed by Chairman Proxmire, the Board has combined the answers into one response. As the Committee is aware from previous correspondence regarding Truth in Lending, the Federal Reserve System's enforcement and monitoring functions are, by practice and law, limited to the slightly more than one thousand State-member banks under its jurisdiction. The responsibility is carried out by the 12 Federal Reserve Districts.

In collating the data received, we have found that a meaningful geographic distribution of Truth in Lending violations could be illustrated by dividing the United States into four general areas, the Eastern region, the Southern region, the Mid-western region, and the Western region. Certain States appear to have experienced more violations of the Truth in Lending Act. This response will highlight these areas.

As Congress passes new legislation in the consumer credit area, the development of procedures to enforce these laws becomes more intensified. Where once the procedure of examination of State-member banks for compliance with Regulation Z could be accomplished within the regular examination process, the increased scope of consumer protection laws is requiring development of consumer examination specialists and procedures for carrying out the System's enforcement duties.

Board staff has collected data on violations of Regulation Z from 1972 through the first quarter of 1976. However, the attached responses will concentrate on the most current data. The principal source for the responses is the reports of examination conducted by the Federal Reserve District Banks. The answers to questions three and four are the result of both District Bank and Board evaluations. It should be noted that not all Truth in Lending violations are found during the examination process. Only a sampling of the State-member banks' advertsiing, disclosure forms, and dealer paper is reviewed, due to obvious examiner time constraints. Depending on the abilities and resources of the member bank in question and the discovery of violations from a small sampling of the various required disclosure forms, an examiner will provide an in-depth analysis of the banks' compliance efforts.

Often, when a minor violation has occurred, it may not be placed in a formal examination report and would not, therefore, be included in Board statistics. One seemingly deceptive figure can be derived when review examiners note a single violation in a Reserve Bank's examination report. Such a notation may, in fact, reflect a number of violations of the same nature. To discover whether or not a bank has violated the regulation with regard to all of its customers would require a monumental examination effort.

Senator Biden's questions and our answers are contained in the enclosed memorandum.

Enclosure

76-557 O - 76 - 20

Responses to Questions from Chairman Biden Regarding Violations of the Truth in Lending Act by State-Member Banks

1. A description, in as much detail as possible, of the numbers, types, and geographic distribution of Truth in Lending violations observed among banks subject to your supervision.

Answer: The total number of State-member banks reported to be in violation of the Act during 1975 was 173. This figure represents about 17 per cent of the total member banks falling under the Board's supervisory jurisdiction and compares to almost 20 per cent, or 206 banks in violation in 1974.

Federal Reserve System examiners reported 543 violations of the Act in 1975, compared to 1,139 in 1974. These violations were discovered during the examination process. An additional 99 violations of the Act were discovered through consumer complaints, referrals from other government agencies, and consumer interest groups. It should be emphasized that these numbers relate principally to types of violations. For example, 10 annual percentage rate miscalculations may have been reported as one violation, as only one section of the Regulation was involved.

Attachment A provides a breakdown of the number of banks in violation by geographic region.

In 1975, the Federal Reserve Banks forwarded 252 letters to bank management informing them of violations of the Act and seeking corrective action. This information is often part of the formal letter sent to the bank's Board of Directors following an examination. In addition to these letters, Federal Reserve Banks reached verbal agreements with the State-member banks within their jurisdiction on 181

occasions to effect compliance with Regulation Z. It should be noted that, while the number of violations under Truth in Lending has decreased in the last four years, the number of Federal Reserve District bank letters to member banks has increased.

Data received in a recent study indicate that much work still need to be done to inform State-member banks of the provisions of the Act. For example, 78 State-member banks in 1975 were involved in repeat violations of the Act, compared to 46 repeat violators in 1974. While this represents almost 38 per cent of the total banks in violation in 1974, nearly 70 per cent of this figure comes from the Atlanta region. As has been noted in previous testimony before your committee, that region has reported many violations.

The nature of the repeat violations should be clarified. The high percentage of repeat violations can be misleading as technical violations of the Act are included in the figures. For example, if in 1974 an examiner found that a certain fee was not included in the finance charge, and the 1975 examination revealed that, in another isolated incident, a different fee failed to be so included, the violation would appear as a repeat violation of that section of the regulation. Repeat violations may not indicate willful disregard for the Act nor the failure to heed prior District recommendations for correction.

Certain types of requirements appear to produce a higher volume of violations than others. Especially for small banks, the lack of understanding of the regulations may invite confusion as to what charges should be included in the annual percentage rate. The failure to include one required charge in this calculation, is, by itself, a violation, and results in a misstatement of the annual percentage rate. Inaccurate disclosures of the annual percentage rate, therefore, constitute a large portion of Truth in Lending violations.

2. An indication of particular problem areas -- i.e., types of transactions which seem to produce unusually large numbers of violations.

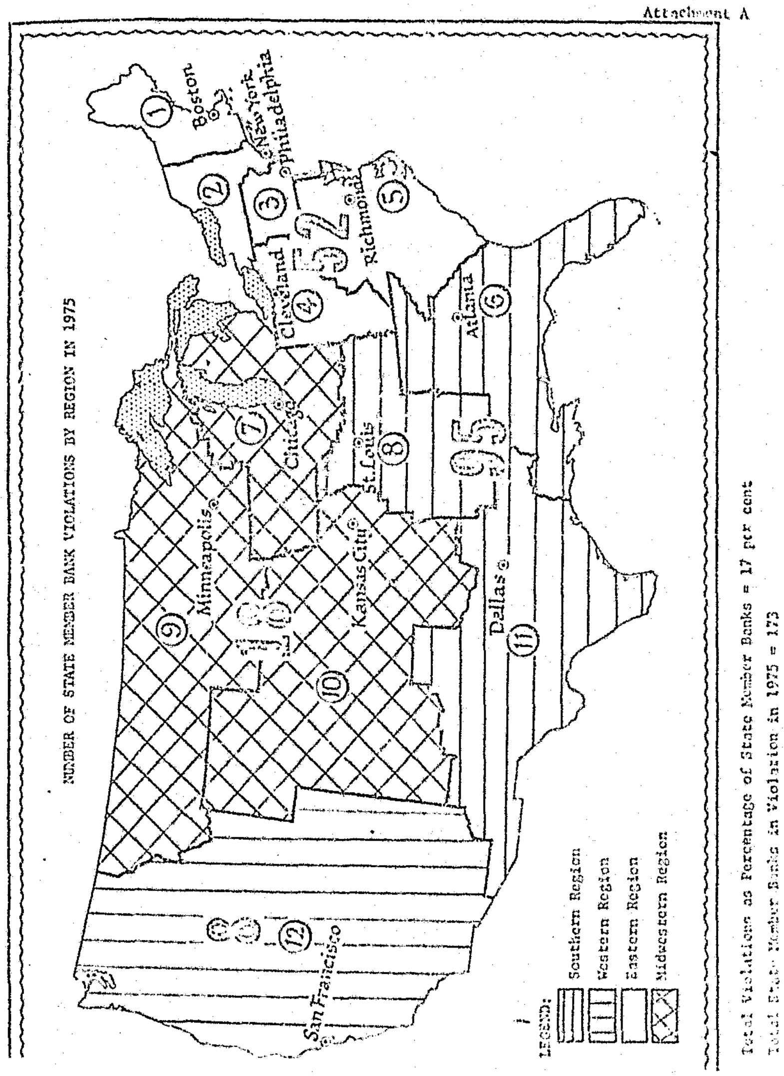
Answer: While there is no indication that different types of transactions create particular problems or large numbers of violations, certain disclosure requirements and annual percentage rate calculations for particular credit areas are much more comples than others. Examples of very complex calculations required are student loan and agricultural credit categories. Disclosures on multiple advance loans (such as loans for construction) are also very complex. Generally, only when rather complicated credit transactions are rarely used by a lending institution do violations occur.

3. "Your judgment of the extent to which these violations, or patterns of violations, result from inadvertence, negligent procedures, mistaken understanding of the law, or intentional failure to comply."

Answer: All indications are that the violations which do occur are generally the result of inadvertance or misunderstanding of the law. In a very small number of cases there have been serious violations of the Act by State-member banks. In those instances the Reserve bank promptly informed bank management of the violation. Depending upon past experience with the bank, examiners may return to the bank to insure that promised corrections are made.

4. "Your assessment of the extent to which these violations seriously mislead consumers or deprive them of essential information."

Answer: Since many of the violations involve miscalculation of the annual percentage rate, the consumer is misled. However, we do not believe that these incorrect disclosures seriously mislead the consumer, inasmuch as the miscalculation is normally only minor (for example, failing to calculate the rate to the nearest quarter of one per cent).



Board of Governors

of the

Federal Reserve System

EXAMINERS MANUAL

TRUTH IN LENDING

REGULATION Z

Table of Contents

TRUTH IN LENDING
REGULATION Z

Reference

I. PURPOSE OF THIS MANUAL

Because of the wide variety of credit plans and the complexities of some of these plans, it was not possible to translate the requirements of Truth in Lending into a few simple provisions. Regulation Z is a complex regulation. Its complexity is necessary to encompass a great many variances within a multitude of credit plans. (SEE NOTE)

The purpose of this Manual is to acquaint examiners with the general requirements of Truth in Lending and to highlight the provisions of Regulation Z that you most likely may encounter in performing bank examinations. Unfortunately, the text cannot deal with all types of situations that may come to light during an examination. Consequently, the Manual is designed only to supplement the Regulation and not to substitute for it. Where questions are not resolved by the Manual, examiners will need to refer to the applicable provisions of the Regulation for guidance.

NOTE: The "Reference" column is used throughout this text as a convenient means of citing applicable provisions of the Truth in Lending Act, Regulation Z, its interpretations, and letters issued by the Board's staff. (These staff letters are available in the Federal Reserve Bank and, in some cases, may have been distributed to the field staff.) References to sections of the Act are designated by the letter "A", such as "A103(e)". References to the sections of the Regulation are designated by the letter "Z". For example, reference to section 226.4(b) (3) would be designated Z.4(b)(3). References to interpretations are designated by the letter "I", such as "I.101", and references to staff letters are designated by the letter "L", such as "L643".

II. BACKGROUND

Prior to the Truth in Lending Act, only the most sophisticated consumers were able to make realistic comparisons of costs between competing creditors. The vast majority of consumers could not understand the variety of credit terminology and the many methods used for rate calculation. These consumers found that they did not have the tools to make intelligent comparisons between types of credit plans or between different creditors, such as finance companies, credit unions, and banks.

After many years of consideration, Congress enacted the Truth in Lending Act in order to put an end to the confusion regarding credit costs. The stated purpose of the Act, which became effective on July 1, 1969, is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to
A102 him and avoid the uninformed use of credit."

The Act attempts to accomplish its purpose in several ways. First, it requires all of the various terms used to describe the dollar cost of credit, such as interest, time-price differential, and points, to be shown under the title "FINANCE
A106 CHARGE." The Act also prohibits the use of the various terms which describe the cost of credit in percentage terms, such as add-on and discount, and prescribes a uniform method of computation of a single rate known as the "ANNUAL PERCENT-
A107 AGE RATE." Regulations implementing the Act require the

use of certain other terminology, such as "balloon payment" and "cash price," instead of the variety of terms previously used by creditors. The Act requires these disclosures to be made <u>before</u> the customer enters into the contract, so that he may use the information to shop for the best credit deal.

The Act also places restrictions on credit advertis-
ing, as well as the issuance of unsolicited credit A141-145
cards. It also specifies a cardholder's maximum liability for A132-134
the unauthorized use of his credit card. Finally, it allows a consumer who gives his home as security for a loan (other than a first lien) a period of three business days to think it over and cancel the transaction, if he wishes.

III. ADMINISTRATION AND ENFORCEMENT

The Act gave responsibility to the Board for the preparation of the implementing regulation, which is
known as Regulation Z. In addition to the initial preparation A105
of the Regulation, the Board is responsible for administering it, which is done through amendments, interpretations, and explanatory letters from both the Board and its staff.

<u>General Enforcement</u> - Administrative enforcement
of the Act is distributed among nine Federal agencies. For A108
the most part, those Federal agencies with general supervisory authority over a particular group of creditors were given Truth in Lending enforcement responsibility over those creditors--

for example, the Comptroller of the Currency is responsible for enforcing Truth in Lending among National banks, and the National Credit Union Administration is responsible for Federally chartered credit unions. Enforcement for all remaining creditors who are not under the supervision of another Government agency is the responsibility of the Federal Trade Commission. As discussed in Section XV, some States have received an exemption from the Federal Act and are responsible for enforcing their own Truth in Lending legislation which must be substantially similar to the Federal Act. Truth in Lending was also intended to be self-enforcing, by way of civil liability

A130 suits initiated by consumers.

Board's Enforcement - Examiner Responsibility - The Board is responsible for enforcement among State member banks, and this responsibility has been delegated to the Federal Reserve Banks. Enforcement is carried out largely through the examination program. Each member bank's compliance with Regulation Z should be determined during each examination. Violations should be noted and agreements with management for prompt correction of violations should be obtained wherever possible.

IV. STRUCTURE OF REGULATION Z

Regulation Z has been structured to cover the five basic elements of Truth in Lending. Each of these elements is summarized here and is commented upon in detail in the following sections.

A. Disclosure - Regulation Z does not set credit terms, rates or charges. It does, however, prescribe that the important terms must be disclosed to the consumer in uniform terminology. The disclosure pattern differs depending upon the type of credit involved. The Regulation divides credit extensions into two basic types.

1. Open End Credit - One type is called "open end credit," which encompasses the typical department store revolving credit account, a bank credit card, or a check overdraft plan. Open end credit plans usually permit frequent Z.2(r) I.203 extensions of credit, generally in small amounts, up to an agreed limit. The basic disclosure concept for such plans is to provide the customer with the ground rules of the plan before the Z.7(a) account is actually used. Subsequently, when the account is used, certain disclosures are required to be made on each billing statement sent to the customer. Z.7(b)

2. Credit Other Than Open End - The other type of credit plan is referred to as "credit other than open end." As the term implies, it encompasses all credit Z.8 plans that do not fit the "open end credit" definition. Installment credit contracts, including direct loans by banks and purchased dealer paper, are perhaps the most common plans included in this group. The basic concept for disclosure of this type of credit provides the customer with all of the required disclosures before he enters into the contract. Under this scheme, the customer receives a "one-shot" disclosure

Reference

of his credit cost and other terms. Home mortgages, single payment loans, demand loans, and other types of credit not meeting the definition of "open end credit" are included within this disclosure.

B. Right of Rescission - The second basic element of Regulation Z grants consumers a right to rescind

Z. 9 certain contracts. This provision gives a customer three business days in which to rescind a credit transaction which results, or may result, in a lien on his home. The right of rescission is designed to allow a person some time to think over such a drastic step as using his residence as security for a loan or other credit extension. However, the right of rescission does not apply to purchase money first mortgages on developed real property.

C. Advertising - The third element of Regulation Z

Z. 10 covers the advertising of consumer credit. Generally, if any one important credit term is mentioned in a credit advertisement--for example, amount of downpayment, amount of monthly payment, or maturity--all important terms must also be mentioned. Also, a creditor may not advertise credit terms which he does not ordinarily extend. The purpose is to eliminate "come-on" credit advertising and thereby allow the consumer to utilize credit advertisements to shop for the best credit deal.

Reference

D. Credit cards - The fourth part of the Regulation prohibits the unsolicited issuance of credit cards and establishes a maximum $50 limit per card on liability for the unauthorized use of credit cards (for example, purchases made with lost or stolen credit cards). Z. 13

E. State Exemptions - Finally, the Regulation deals with a somewhat novel approach in Federal legislation. This new approach permits the exemption of States from the Federal Act when a State has adopted a law substantially similar to the Federal law and has provided adequate provision for enforcement of its law. Z. 12

V. WHAT IS COVERED

Criteria for Coverage - The Truth in Lending Act is consumer legislation and, consequently, is applicable only to "consumer credit." An extension of credit must meet the following tests before it can be considered "consumer credit" subject to the Regulation.

1. The extension of credit must be to a natural person. Credit extended to corpora- Z. 2(k)
tions, partnerships, trusts, governments, or organizations is exempt. Credit extended to Z. 3(a)
joint ventures is also exempt. L348

2. The extension of credit must be primarily for personal, family, household, or agricultural purposes. Credit extended for Z. 2(k)
business purposes is exempt. Z. 3(a)

3. The extension of credit must be subject to a finance charge, or repayable in more than
Z. 2(k) four instalments.
4. The extension of credit must be for $25,000 or less, unless it is secured by real property,
Z. 3(c) in which case no limit applies.
5. The amount financed must be $25,000 or less if the credit transaction is primarily for agricultural purposes, whether or not secured
A104 by real property.

As discussed on page 67, the exception relating to business and commercial purposes does not apply to the provisions relating to the unsolicited issuance of credit cards and
Z. 13(a)(4) Z. 13(b) liability for their unauthorized use. However, where a business entity holds ten or more cards from the same card issuer, the liability of the business for unauthorized use of credit cards
A135 may be negotiated by contract with the card issuer.

Mixed-Purpose Credit - Mixed-purpose loans, such as a loan for an automobile that will be used for both business and personal purposes, create a special problem. Answers are not always clear and perhaps may be reached only through court decisions. As a general rule of thumb, examiners should advise banks that when doubt exists as to the primary purpose of a credit extension, they should err on the side of making disclosures as the safest way to insure protection of the bank and compliance with the law.

A "mixed-purpose" question which the Board has answered relates to an extension of credit to purchase a dwelling which contains more than four family housing units. The Board has ruled that such credit extensions are for business or commercial purposes and, therefore, are not subject to Regulation Z. I. 302

VI. GENERAL DISCLOSURE REQUIREMENTS

Conspicuousness - The disclosures required by the Regulation must be made clearly, conspicuously, and in meaningful sequence. Except in advertising, whenever the terms Z. 6(a) "annual percentage rate" and "finance charge" are required to be used, they must be disclosed more conspicuously than the other required terminology. The purpose of giving these terms prominence is to highlight their importance above all other disclosures. The requirement that the terms be disclosed more conspicuously does not mean that the print must be larger, although it is usually done this way. Any other means may be used to make such terms stand out from the rest. For example, where computers print all terms in the same size type, it would be permissible to make the terms "annual percentage rate" and "finance charge" more conspicuous by the use of asterisks. L462 & 602

All number amounts and percentage rates must be stated in figures and must be printed in not less than the equivalent of 10 point type, .075 inch computer type, elite size typewritten numerals, or if handwritten, such figures must be

L670 legible.

Inconsistent State Requirements - States may require certain disclosures regarding credit contracts and the bank may want to place them on the same form it uses for
Z. 6(b) the Truth in Lending disclosures. Where the State requirements are consistent with Federal requirements or the bank makes the State disclosures on a separate form, no problem results. However, where State disclosures are inconsistent with the Federal disclosures and the bank wants to place them on the same form, the State disclosures must give way to the Federal requirements. In such cases, the inconsistencies must appear below the Federal disclosures, be separated by a conspicuous demarcation line, and be identified by a clear and conspicuous heading indicating that the statements are incon-
Z. 6(c) sistent with those required by the Federal Act.

Additional Information - Creditors are given the option of providing additional information along with the
Z. 6(c) disclosures required under Truth in Lending. However, no additional information can be given which would mislead or confuse a customer or contradict or detract attention from the required disclosures. For example, a creditor could print on his disclosure statement a message such as "read your contract before you sign" but the voluntary inclusion of the add-on rate
L255 would be prohibited.

Disclosures "As Applicable" - Disclosures are to be made to the extent they are applicable to the credit transaction involved. If certain disclosures are not applicable to L213
the transaction, they need not be made. For example, although the Regulation requires the disclosure of late payment charges, creditors who do not assess them are not required to disclose that fact. However, there is a special provision requiring creditors who do not rebate precomputed finance charges in the event of prepayment to disclose that fact. Z. 8(b)(7)

Multiple Creditors - The responsibility for making disclosures falls upon "creditors." Occasionally, there may Z. 7(a) & (b) Z. 8(a)
be more than one creditor in a credit transaction. This can Z. 2(m)
occur when one person arranges for a loan to be made by another. Generally, a person who arranges for a loan is one who provides consumer credit to be extended by another person, and receives a fee for his services or has knowledge of the credit terms and participates in the preparation of the contract documents. An example of an "arranger" would be a Z. 2(f)
loan broker. Both the lender and the arranger are required to make disclosures within his knowledge and the purview of his relationship with the customer. Where there are multiple creditors, separate disclosures can be made by each or they can join together in making a single disclosure. All credi- Z. 6(d)
tors must be clearly identified on the disclosure statement. L699

Multiple Customers - If a credit transaction involves more than one customer (for example, husband and

Reference

wife, borrower and co-maker, or guarantor), disclosures
Z. 6(e) need to be made only to one of them. However, a creditor may not make the disclosure only to an endorser, co-maker, guarantor, or similar party who is not primarily liable for the
Z. 6(g) obligation.

If the transaction is subject to rescission, a copy of the disclosure statement, as well as two copies of the Notice of Opportunity to Rescind, (required by § 226.9(b)), must be given to each person who has the right to rescind the transac-
L279 & 319 tion. (See "Notice to Customers" on page 58).

Estimating Unknown Information - The Regulation provides that when information required to be disclosed is not known or available when the disclosures are made, the bank
Z. 6(i) may estimate such information. Any estimates must be identified as such and must be reasonable and based on the best information available. Estimates cannot be used when actual figures are known.

Where information has been estimated, there is no requirement that a corrected disclosure statement or the actual information be given to the customer if the estimate turns out to be inaccurate, as long as it was a bona fide estimate initially.

Subsequent Occurrences - All disclosures required under Truth in Lending should be made on the assumption that the terms and conditions of the contract will be carried out as
Z. 6(g) agreed. In some cases, especially when the customer may de-

Reference

fault on some obligation under the contract, the original disclosures can become inaccurate as a result of such occurrence. An example would be where the customer fails to keep the property used as security insured against physical damage, and the creditor, in accordance with the contract, purchases the insurance and adds the premium to the obligation. Such subsequent occurrences do not require additional disclosures.

Record Retention - The Regulation requires that creditors maintain evidence of compliance with all of its requirements, other than the advertising requirements, for at
least two years. The two-year requirement applies even though Z. 6(i)
an obligation may have a maturity of less than two years or be prepaid or refinanced within the first two years it is outstanding.

Microfilmed copies of the disclosures meet these
provisions. L188

Leap Year - In making disclosures, a creditor is permitted to disregard any variances in credit terms which may
occur as a result of the extra day in leap year. Z. 6(l)

VII. FINANCE CHARGE

What is a Finance Charge - One of the important
disclosures required by the Regulation is the "finance charge." Z. 4(a)
The general rule is that the finance charge is the sum of all charges payable directly or indirectly by a creditor as an incident to, or a condition of, the extension of credit. Included in the finance charge are items such as interest, time-price

differential, add-on or discount charges, service, transaction or carrying charges, loan fees, points, and finder's fees. Fees for appraisals, investigations and credit reports are also part of the finance charge, except in real estate transactions. These are merely examples of the types of fees and charges that are included in the finance charge; in determining whether or not an amount should be included in the finance charge, the general rule, as stated above, applies. The finance charge may even include certain charges for credit life and property insurance premiums, as will be discussed later in this section.

Generally, it can be said that where the same charge is levied for both credit sales and cash sales, such a charge should not be included in the finance charge. The reasoning is that such charges do not meet the general finance charge rule in that they are not a condition of, or incident to, the extension of credit. An example would be a $5 fee charged by an automobile dealer in all sales, cash or credit, for preparation of the documentation necessary to obtain a car title
L60 and license plates. However, as discussed in the next paragraph, this general rule does not apply to charges listed in § 226.4(b), such as the official license and title fees themselves, which, although the same in cash or credit sales, must nevertheless be itemized and disclosed to be excluded from the finance charge <u>when they are handled by the bank</u>. Where such charges are paid directly by the customer to the State officials, they need not be itemized and disclosed.

<u>Charges Excludable from the Finance Charge</u>

A. <u>All credit transactions</u> - Certain charges are specifically excludable from the finance charge. These are:

(1) Fees set by law payable to public officials in determining the existence of security interests. The same is true of official fees for perfecting, releasing, or satisfying any security interest related to the credit transaction. Z. 4(b)(1)

(2) The premium payable for any insurance in lieu of perfecting a security interest, if the premium does not exceed the official fees for perfecting liens, for example, chattel-lien non-filing insurance premiums. Z. 4(b)(2)

(3) Taxes not included in the cash price. Z. 4(b)(3)

(4) License, certificate of title, and registration fees imposed by law, for example, in connection with an automobile loan. Z. 4(b)(4)

In order to be excludable from the finance charge, the fees listed above must be itemized and disclosed to the customer.

B. <u>Real Estate Loans</u> - In transactions secured by real estate, certain closing costs are excludable from the finance charge, provided that they are bona fide, reasonable in amount, and not for the purpose of evading the Regulation. These charges need <u>not</u> be itemized and disclosed to qualify for the finance charge exemption, as is the case with the charges in the preceding paragraph. The following items are excludable:

Z.4(e)(1) (1) Fees or premiums for title examination, abstract of title, title insurance, required property surveys, or similar purposes.

Z.4(e)(2) (2) Fees for preparation of deeds, statements, or other documents.

Z.4(e)(3) (3) Amounts required to be paid into an escrow or trustee account for future payments of taxes, insurance, and water, sewer and land rents.

Z.4(e)(4) (4) Notary fees.

Z.4(e)(5) & (6) L215 &643 (5) Fees for appraisal (including photographs and termite inspections), and credit reports.

Late Payment Charges are not Finance Charges - The Regulation provides that a late payment, delinquency, default, reinstatement, or other such charge is not a finance charge if it is imposed for actual unanticipated late payment, delinquency, or default. This provision, however, does not allow a creditor to call a true finance charge a late payment charge and thereby circumvent the Regulation. Z.4(c)

Offsets from Finance Charge are Prohibited - In some cases, a bank may require a customer to maintain a certain investment, such as a compensating balance, as a condition of the extension of credit. Any interest or dividend payments on such investments may not be considered as offsets and deducted from the total finance charge. (Such investments Z.4(f)

themselves are subject to certain disclosure rules, as discussed on page 34).

Seller's Points - One type of charge which can prove difficult in determining whether or not it is to be included in the finance charge is "seller's points." Seller's points are I.406 charges assessed by a lender against the seller of property which gives rise to the credit transaction. One point equals one per cent of the amount of the loan. Under the general rule, such points must be included in the finance charge to the extent they are passed on to the customer (usually through increase in the purchase price). However, as a practical matter, it is frequently difficult to determine whether or not the seller has passed the cost of such points to the borrower. They are frequently passed to the borrower, but not necessarily in all cases. In enforcing Truth in Lending, an examiner should not presume the seller's points are always passed to the consumer. Where seller's points have been passed to the borrower, but have not been disclosed as part of the finance charge, a violation has occurred.

Because the determination of whether such points are passed to the customer is often difficult, even for the creditor, the Board has taken the position with regard to State member banks that such points may be included in the finance charge in all cases, whether or not passed on to the customer.

Membership Charges for Credit Cards - Annual charges for the issuance of a credit card have been determined

I. 407 by the Board to be outside of the finance charge.

Credit Life Insurance - Unless certain conditions are met, the premiums for credit life, accident, health, and loss of income insurance written in connection with a credit transaction must be included in the finance charge. In order for such premiums to be excluded from the finance charge, the creditor must clearly and conspicuously disclose in writing to the consumer the fact that such insurance is not required. If the customer desires such insurance of his own volition, he must give a specifically dated and separately signed affirmative written indication of his desire to purchase the insurance, after having received a written disclosure of its cost. Z. 4(a)(5)

These disclosures usually appear on the same form as the other disclosures required by the Regulation. However, the credit life disclosures may be made on a separate document apart from the other required disclosures. L264

If the examiner discovers that a high percentage of contracts include optional credit life insurance (80 per cent or higher), a question might arise whether the insurance is not, in fact, required by the creditor. <u>In such cases, the examiner should review the bank's credit life procedures to determine whether or not credit life insurance is truly optional.</u> If it is not optional, the premiums must be included in the finance charge.

Property Insurance - Charges or premiums for property or liability insurance written in connection with any credit

transaction are to be included in the finance charge unless the bank furnishes a written statement to the customer. The statement must disclose the cost of the insurance if purchased from or through the bank and also state that the customer may choose the person through whom the insurance is to be obtained. Where such disclosures are made, the premiums for insurance need not be included in the finance charge. Z. 4(a)(6)

If the customer already owns a policy of insurance which was purchased by him for some purpose other than being used in connection with the extension of credit, the premium for that insurance need not be disclosed as part of the finance charge and the disclosures required in the paragraph above do not need to be made. The fact that the bank must disclose to the customer his right to choose the person through whom the insurance may be obtained does not prevent the bank from refusing, for reasonable cause, to accept an insurer offered by the customer. ZFootnote 4 ZFootnote 5

In the event that the customer indicates that he does not desire insurance from or through the bank, but instead indicates that he will furnish his own insurance, it is not necessary for the bank to disclose the cost of the insurance obtainable through it. I. 404

Vendor's Single Interest Insurance - Premiums for vendor's single interest insurance required by the creditor must be included in the finance charge, unless the insurer waives <u>all right</u> of subrogation against the customer. I. 404

Other Insurance Considerations - Premiums or other charges for any other guarantee or insurance protecting the creditor against the customer's default or other credit loss must be included in the finance charge. Typical examples would
Z.4(a)(7) be premiums for FHA or MGIC mortgage insurance.

When insurance premiums are required to be included as part of the finance charge, the premium for the coverage extending over the time the creditor will require the customer to maintain such insurance must be included. For example, if a bank requires property insurance to be purchased through it for the life of a three-year automobile loan for which the annual premiums are $150, the insurance premium to be included in
Z.4(h) the finance charge would be $450 (3 x $150).

When insurance premiums are not required to be included in the finance charge, the cost to be disclosed need be only the cost of premiums for the term of the initial policy, accompanied by a statement of the type and term of the in-
I.402 surance. Using the example in the paragraph above and assuming an annual policy, the cost to be disclosed would be $150. The term of the insurance must be disclosed only when the
L724 term does not coincide with the maturity of the obligation. Disclosure of the term of the insurance is not necessary where the coverage is for the full term of the obligation.

Miscellaneous Charges - Since Regulation Z was issued, the Board's staff has considered whether many different types of charges are finance charges under Truth in Lending. An examiner may, from time to time, encounter specific charges in addition to the ones mentioned above. Appendix A contains a listing of various charges and staff's opinion whether such charges are finance charges.

VIII. ANNUAL PERCENTAGE RATE

The primary objective of Truth in Lending is to provide consumers with information to enable them to shop for the best credit deal. Credit costs can vary depending upon the interest rate, the amount of the loan and other charges, the maturity, and the repayment schedule, among other things. The ANNUAL PERCENTAGE RATE, which must be disclosed in nearly all consumer credit transactions, is designed to take account of all variable factors and provide a uniform measure for comparing the cost of various credit plans.

For purposes of discussion of the annual percentage rate, it should be recognized that one set of rules applies to open end credit and another to credit other than open end. Before describing the particulars of annual percentage rate computation, several general rules should be cited.

Rounding to Nearest Quarter - The Regulation provides that the annual percentage rate may be rounded to the Z. 5(a) & (6) nearest quarter of one per cent. Some have misinterpreted this provision to mean that the disclosed rate can be accurate to 1/8th of one percent on either side of the precise rate. For example, some have erroneously concluded that a precise rate of 12.2 per cent could be stated anywhere in a range from 12.08 per cent to 12.32 per cent without violating the Regulation. This is not the case. An annual percentage rate must be stated either as a precise rate or as a rate rounded to the nearest quarter of 1 per cent. In other words, a rate of 12.2 per cent could be stated only as 12.2 per cent or 12.25 per cent. A rate which falls precisely between two quarters, for example, 12.25 per cent can be rounded to either quarter and stated either as 12 per cent or 12.25 per cent L506 at the creditor's option.

Overstatement - Rules relating to the accuracy of the annual percentage rate also apply to the intentional over- Z. 6(h) statement of a rate. A bank may not avoid calculating the rate simply by stating that "the annual percentage rate does not exceed 13 per cent" or stating a rate which is higher than the actual rate. However, an inadvertent overstatement is not to I. 601 be considered a violation.

Single Add-on Rate - Many banks determine the finance charge by the application of a single add-on rate to all consumer instalment loans of a certain type. Depending upon I. 502 the maturities of the loans, the annual percentage rates calculated under this procedure may result in minor variations. For example, the annual percentage rate where the total finance charge is based upon a 6 per cent add-on is 10.9 per cent for 12 months, 11.13 per cent for 24 months, 11.08 per cent for 36 months, and 10.85 per cent for 60 months. The Board has taken the position that where the same add-on rate is applied to all transactions within a range of maturities up to 60 months, a single annual percentage rate may be disclosed, but it must be the highest annual percentage rate applicable to transactions within that range. The highest rate of 6 per cent addon is 11.13 per cent at the 24 months maturity level. Therefore, the 11.13 per cent rate could be quoted, or 11.25 per cent if rounded, in this example. To qualify for this treatment, the loans must be repaid in equal intervals and equal amounts, subject to the "minor irregularity" provisions, as discussed later in this section.

360-and 365-day Year - Considerable confusion has arisen regarding the use of the 360- or 365-day year in computing interest. The questions usually arise where the finance charge is computed by applying a daily rate to an unpaid balance. Many single payment loans in banks fall into this category. Either the 360-or 365-day method is permissible

under Regulation Z since Truth in Lending doesn't require
L539 the use of one method of interest computation over another.
However, it is necessary that the disclosures reflect the results of the method used. Disclosure violations occur when a creditor applies a daily interest factor based on a 360-day year instead of 365 to the actual number of days between payments. In these situations, it is necessary for the creditor to disclose the higher amount of finance charge and the higher annual percentage rate which result from this practice. For example, a 12 per cent rate divided by 360 days results in in a daily rate factor of .033333 . Applying this factor on a daily basis results in an annual percentage rate of 12.17 per cent (.033333 x 365 = 12.17), or 12.25 per cent if rounded. (It should be noted, however, that because of the privilege of rounding, the application of a 360-day factor for 365 days does not result in a higher annual percentage rate when rounded, unless the annual percentage rate is above 9 per cent.)

Credit Other Than Open End -

A. Actuarial Formula - The actuarial formula for computing annual percentage rates for credit other than open
Z.5(b) end is spelled out in Supplement I to Regulation Z. The formula
is complex. Creditors having computer facilities can program the formula to provide annual percentage rates for
ZSupp I all types of transactions.

B. Annual Percentage Rate Tables - For the multitude of creditors who do not have computer facilities, the Board has developed two volumes of Annual
Percentage Rate tables. Volume I can be used to determine Z.5(c)(1)
the annual percentage rates in single advance transactions calling for substantially equal payments at substantially equal intervals. These tables can also be used where there is an odd first or final payment amount or where the first payment period is longer or shorter than the other payment periods. Volume I can also be used for loans with balloon payments (See Appendix B). An illustration of an annual percentage rate computation for a single payment loan can be found in Appendix D.

Volume II can be used for all other types of transactions for which Volume I cannot be used, such as those with odd payment amounts, odd time intervals between payments, or those with more than one advance. Examples showing the use of Volume II are included in that publication. Some banks may want to use tables specially prepared for them. A number of commercial publishers have annual percentage rate tables in stock and frequently can prepare tables for specific situations (See Appendix C for a listing of representative rate chart com-
panies). The accuracy of any new specially prepared tables Z.5(c)(2) & (3)
should be test checked by the examiner.

C. Small Transactions - An annual percentage rate must be disclosed for all but certain small transactions. The annual percentage rate does not need to be disclosed in any non-open end transaction where the amount financed is $75 or less and the finance charge does not exceed $5, or where the amount financed is more than $75 and the finance charge is
Z. 8(b)(2) $7.50 or less. However, a transaction cannot be split into two or more smaller transactions to take advantage of this exemption.

D. Minor Irregularities - In some cases, a single-advance credit transaction will take on all aspects of a regular transaction in that it is payable in equal instalments and at
Z. 5(d) equal intervals, except for a small irregularity. For example, the amount of one payment may be slightly greater or less than the other payments or one time interval between payments may be slightly greater or smaller than between other payments. To illustrate, the first payment period may be 45 days in a transaction calling for monthly payments, or one payment may be a few dollars more or less than the other payments. Subject to certain restrictions, such minor irregularities can be ignored in determining the annual percentage rate or the finance charge to be disclosed. These restrictions are set forth in
I. 503&505 interpretations.

Open End Credit - Open end credit plans are not uniform; they have many variations. For example, one may offer a period of 30 days in which to pay to avoid finance charges,

another 25 days, and yet another no free period. One credit plan may assess finance charges on the opening balance without deducting payments and credits, another may deduct payments and credits, while another may use the average daily balance. Because of the difficulty in taking these factors into account in calculating the annual percentage rate, Congress prescribed a computation method for open end credit accounts. This method does not take into account many of the distinguishing features of the various plans. The same annual percentage rates can be reported for two different credit plans, although the finance charge may differ greatly for identical transactions on the accounts.

A. One or More Periodic Rates - The simplest method of determining annual percentage rates under an open end credit plan is by multiplying the periodic rate by the number of periods in a year. In other words, if a creditor Z. 5(a)(1)(i)
imposes a periodic rate of one per cent per month, the annual percentage rate to be disclosed would be 12 per cent (one per cent x 12 = 12 per cent). If he imposes two or more periodic rates--for example, 1-1/2 per cent per month on balances up to $500 and one per cent per month for balances over $500--he may either disclose both the rates of 18 per cent and 12 per cent, or he may employ the quotient method.

B. Quotient Method - A creditor imposing more than one periodic rate could also divide the amount of the finance charge by the balance on which the finance charge is computed

Reference

and multiply the quotient by the number of periods in a year to express a single annual percentage rate. This method is known as the "quotient" method. To illustrate this method using the rates above and assuming a $700 balance, the finance charge would be $9.50: (1-1/2 per cent x $500) + (1 per cent x $200) = $7.50 + $2.00 = $9.50). A single rate of 16.25 per cent could be disclosed by dividing the finance charge by the balance upon which it was computed and multiplying by the number of periods in a year: ($9.50 ÷ ($700 x 12) = 16.29 per cent, or 16.25 per cent rounded to the nearest quarter).

Z.5(a)(1)(ii)

C. Minimum Charges - Transaction Charges - The annual percentage rate computation for open end credit accounts becomes more complex when the account provides for minimum charges or when charges are assessed for certain types of transactions on the account.

When there is a minimum charge on an account, the charge can be ignored for annual percentage rate purposes, provided the minimum charge combined with all other finance charges imposed on the account for that billing cycle is 50¢ or less. In such cases, merely multiplying the periodic rate by the number of periods in a year will produce the appropriate annual percentage rate. However, if the minimum charge plus all other charges imposed on the account during the billing cycle result in a finance charge greater than 50¢, the "quotient" method must be used. In such cases, the finance charge must be divided by the balance to which

Z.5(a)(3)(iii)

Reference

the finance charge is applicable and the quotient multiplied by the number of periods in a year to produce the appropriate annual percentage rate.

Where separate charges are assessed for certain transactions (for example, a 2 per cent charge for each cash advance), special rules apply in determining the annual percentage rate. Procedures for calculation vary depending upon whether the average daily balance or some other method is used to determine the balance on which the finance charge is imposed. Illustrations of the computations are included in the Regulation. Z.5(a)(3)(ii)

IX. SPECIFIC DISCLOSURES FOR CREDIT OTHER THAN OPEN END

Disclosures Before Consummation - The Regulation requires that disclosures must be made to the customer prior to the "consummation" of a transaction. In most situations, the time of consummation is easily determined. The Regulation provides that a transaction shall be considered consummated at the time a contractual relationship is created between a creditor and a customer, irrespective of the time of performance of either party. In a typical loan transaction, disclosures would be given before the customer signs the note and prior to the disbursement of the proceeds of the loan. For some transactions, determining the date of the consummation can be more difficult. Where difficult questions arise regarding the time of consummation, it may be necessary for the bank to seek legal guidance on the provisions of State law relating to forma-

Z.8(a)

Z.2(cc)

tion of contracts.

Location of Disclosures - The disclosures can be made either on the note or other instrument evidencing the obli- Z. 8(a) gation or on a separate disclosure statement. In all cases, the disclosures must be made together in a clear and conspicuous manner and in meaningful sequence. The creditor must be identified on the form. When disclosures are made on the note or other credit instrument, they must appear on the same side of the page and above or adjacent to the place for the customer's signature. If the note or other credit instrument involves more than one page, all disclosures must be made on the page the customer signs, above or adjacent to the L527&537 signature.

There is no requirement that the customer sign any form evidencing that he received the disclosure statement, although many banks require customers to do so.

Disclosures Required for Loans - The following disclosures, if applicable, must be made for loans. Where terms appear in quotations, those specific terms, and no other, must be used.

. The "amount financed," which is the amount of credit paid to the customer, or for his Z. 8(d)(1) account, or to another person on his behalf. This includes all charges (individually itemized) which are financed but are not part of the finance charge, for example, optional insur-

ance premiums. Finance charges that are payable immediately, like points, or required deposit balances (discussed later in this section), may not be included in the "amount financed." Z. 8(d)(2)

. The "finance charge," including a description of each amount included in it, such as interest and points when there is more than one amount. The finance charge disclosure is not required on a first purchase money mortgage on a dwelling. Z. 8(d)(3)

. The "annual percentage rate." Z. 8(b)(2)

. The number, amount, and due dates or periods of payments (for example, monthly) scheduled to repay indebtedness. Z. 8(b)(3)

. Any "balloon payment," which is a payment more than double the size of a regular payment. Z. 8(b)(3)

. The "total of payments" (except on a purchase money first mortgage on a dwelling). Z. 8(b)(3)

. Any security interest. The disclosures must identify the type of security interest and provide a clear identification of the property to which the security interest relates. Z. 8(b)(5) The clear identification provision means an adequate description so that the consumer knows which

Reference

items of property are being given as collateral for the loan. For example, an adequate description of an automobile need not include the motor or serial number; the make and the year would be sufficient. Similarly, when household goods or corporate securities are given as security, a simple statement such as "household goods" or "corporate securities" would be sufficient identification of the security interest for Regulation Z purposes. Individual items of household goods or securities need not be listed.

L509&521

. The amount, or method of computing the amount, of any default, delinquency, or similar charge payable in the event of late payments. For example, a $5 or one per cent charge imposed if a payment is more than 7 days late would need to be disclosed. Some contracts call for the imposition of attorney's fees upon default and the question arises whether such fees must be disclosed. If the imposition of attorney's fees is automatic--for example, 10 per cent attorney's fees become immediately due and collectible by virtue of default--that would constitute a default charge which must be disclosed. If, however, the imposition of

Z. 8(b)(4)

Reference

attorney's fees is not automatic after default, but is conditioned upon employment of the services of an attorney to effect collection, the right to impose such fees under such circumstances does not constitute a default charge and disclosure is not required.

. A description of any penalty charge that may be imposed for the prepayment of the principal of the obligation, with an explanation of the method of its computation and conditions under which it may be imposed. A charge of one per cent of the unpaid balance assessed on a home mortgage when the loan is paid before maturity is an example of a prepayment penalty to be disclosed. These penalties generally relate only to transactions in which the interest is computed by the application of a simple rate to an unpaid balance, such as in many home mortgages and single payment loans.

Z. 8(b)(6)

. An identification of the method of computing the rebate of any unearned portion of the finance charge in the event of prepayment of the obligation. This disclosure requires only identification of the method, for example, Rule of 78's, actuarial, or sum of the digits. A description of how the method is used in

Z. 8(b)(7)
I. 818

Reference

computing unearned finance charges is not required. In addition, if an amount is deducted from any rebate, such as an acquisition fee, such amount (or method of its computation) must also be disclosed. For example, this disclosure could state that in the event of prepayment, a rebate of unearned finance charges will be made by the application of the Rule of 78's, less a $10 charge. If the creditor does not rebate finance charges in the event of prepayment, he must state that fact.

Z. 8(e) . Prepaid finance charges and required deposit balances. Where the creditor requires a finance charge to be paid immediately, for example, points paid in cash by the customer at closing in a real estate transaction, such charges must be disclosed as a "prepaid finance charge," deducted from the amount financed, as well as shown as a component of the total finance charge. Where the creditor requires a customer to establish or maintain a deposit balance or an investment as a condition of the credit transaction, such deposit balance or investment must be excluded from the amount financed and must be separately disclosed to the customer as "required

Reference

deposit balances." The following items are specifically <u>excluded</u> from the deposit balance category: Z. 8(e)(2)

1. Typical escrow accounts for future payment of taxes and insurance in real estate transactions.

2. A deposit balance which was in existence prior to the extension of credit and is offered by the customer as security.

3. A deposit balance established from all or substantially all of the proceeds of the extension of credit, made at the written request of the consumer. These loans are sometimes referred to as estate loans.

Where an obligation calls for both a "required deposit balance" and a "prepaid finance charge," they must also be totaled and disclosed as "total prepaid finance charge and required deposit balance." Z. 8(d)

The purpose of providing special treatment to such deposit balances and prepaid finance charges is so that the annual percentage rate reflects the funds of which the customer has actual use. For example, if a customer borrows $5,000 but is required to establish a 10 per cent compensating balance, he has actual use of only $4,500 and the annual percentage rate would be higher than if he got the full $5,000.

Finance charges computed by the common add-on or discount methods employed by banks are not to be treated as "prepaid finance charges." Obviously, such charges are finance charges. I. 819

Refinancing - The Regulation provides that if two or more obligations are consolidated or if an existing obligation is increased, such transactions require new disclosures. However, when the creditor must undertake the consumer's obligation to furnish insurance to protect or preserve the security for the obligation, the addition of the cost of that insurance to the obligation is not considered a refinancing and no new disclosures are required. Z. 8(j)

In most cases, renewals of notes are not refinancings subject to the disclosure provisions of Regulation Z. Generally, a renewal is not a refinancing if a prior disclosure has been made on the obligation and if the terms of the renewal are basically the same as previously disclosed. I. 811

See page 59 for the effects refinancing may have on the right of rescission.

The Board's staff has been asked from time to time whether certain transactions constitute refinancings for which new disclosures are required. Listed below are some of the types of transactions which are considered to be refinancings.

- New advances following partial prepayment of a mortgage loan. L126

- Refinancing of a balloon payment to be payable in instalments. L203
- Increase in interest rate on an existing obligation (See also variable interest rates, page 55). L297 & 610
- Payout arrangements made prior to judgment--"Workout" agreements. L335
- Extending the maturity with additional collateralization. L335
- Reaffirmations of debt discharged in bankruptcy. L335

Deferrals or Extensions - If a creditor makes a separate charge for a deferral of a payment or an extension of the maturity of an obligation, he must disclose the amount deferred or extended, the date to which or the period for which payments are deferred or extended, and the amount of the charge. An example of a charge triggering this disclosure is where a bank charges $5 to defer the payment of an instalment for a two-month period. No disclosures are required where no additional charge is made for the deferral or extension or where the only charge results in additional finance charges accruing on an obligation in which the finance charge is determined by the application of a rate to the unpaid balance, such as simple interest--single payment loans. Z. 8(l)

Assumptions - Generally, assumptions of existing
Z.6(k) obligations are not subject to the disclosure requirements. The Board has ruled that the only assumptions covered are those involving a written agreement between the subsequent customer and the creditor making the new obligor personally liable for
I.807 the debt. In such cases, interpretation § 226.807 spells out the disclosures required.

Dealer Paper - Many banks are involved in purchasing dealer paper--for example, paper of automobile or appliance dealers or real estate developers--which is subject to Truth in Lending disclosure requirements. Dealer paper presents a likely source of problems to the bank. The bank is at the disadvantage of not having control over the preparation of the numerical disclosures, even when its own forms are used. In many cases, it may be purchasing dealer paper on forms prepared outside the bank. Since these transactions are credit sales, rather than loans, some terminology normally not encountered by a bank is involved.

The practices of a dealer, over which the bank may have insufficient control, may lead to litigation in which the bank may be a party. Two separate provisions of the Truth in Lending Act permit suits to be brought against a bank assignee. The first provision permits civil actions to be brought against the assignee of any credit transaction in which a violation made by the original creditor in the disclosures is apparent on the face of the instrument (or form)

assigned unless the assignment is involuntary, such as in the
case of bankruptcy. A second provision of the Act relates to A115
civil liability in credit transactions involving security interests
in real property. In such cases, suit is permitted against an A130(d)
assignee of an original creditor where the assignee is in a continuing business relationship with the original creditor. Like the other provision of the Act, liability in this event exists only if the assignment is voluntary. Further provision is made for a bank to avoid liability by showing through a preponderance of evidence that it did not have reasonable grounds to believe the dealer was engaged in violations of the Act and that the bank had maintained procedures to apprise it of the existence of such violations.

In short, a bank may be liable for disclosure violations made by a dealer on paper which the bank has purchased. For this reason, it is important that banks develop policies and procedures to review dealer paper before it is purchased to insure that it is in compliance with Regulation Z.

Disclosures Required for Credit Sales - Dealer Paper - Some of the disclosures required for dealer credit sales differ from those required for loans. The finance charge, the annual percentage rate, the number, amount, and due dates or periods of repayments scheduled to pay the indebtedness, balloon payments, the total of payments, security interests, late payment charges, penalties for prepayment, rebates of

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unearned finance charges, as well as prepaid finance charges and required deposit balances are required to be disclosed in the same manner involving loans as described on pages 30 through 35. In addition, however, the following disclosures are specifically applicable to credit sales. Again, where terms appear in quotations, those specific terms and no others must be used.

- The "cash price" of the property or service purchased. This is the price at which the creditor in the normal course of business offers to sell the property or services for cash. It can include the cost of accessories or services related to the sale, such as delivery and alterations, and can also include taxes. Z.8(c)(1) Z.2(i)
- The "downpayment." Downpayments must be categorized as downpayments in money using the term "cash downpayment" and downpayments in property using the term "trade in" and where both are applicable, the sum, shown as the "total downpayment." Z.8(c)(2)
- The "unpaid balance of cash price" which is the difference between the cash price and the downpayment. Z.8(c)(3)

- All other charges individually itemized that are not part of the finance charge, for example, optional credit life insurance. Z.8(c)(4)
- The "unpaid balance," which is the sum of all other charges plus the "unpaid balance of cash price." (If there are no other charges and no prepaid finance charges or required deposit balances, this disclosure may be omitted.) Z.8(c)(5) L536
- The "amount financed," which is the difference between the "unpaid balance" and any "prepaid finance charges" or "required deposit balances." Z.8(c)(7)
- The "deferred payment price," which is the sum of the "cash price," plus all other charges not included in the finance charge, plus the "finance charge." This disclosure, as well as that of the finance charge, is not required in the case of the sale of a dwelling. Z.8(c)(8)

Permissible Periodic Statements - Some banks send billing statements or reminders of instalment payments due on credit obligations to their customers. Such statements relating to credit contracts consummated after July 1, 1969, must include the following disclosures: L390

. The annual percentage rate of the contract.

. The date (or period) by which payment must be made to avoid late payment or delinquency charges. Z. 8(n)

Delinquency notices, payment coupon books, or payment passbooks are not subject to these disclosures.

X. OPEN END CREDIT

The disclosure scheme for open end credit accounts is substantially different than that for other than open end credit. The typical open end credit plans encountered by examiners will be bank credit card arrangements, whereby a bank issues its credit cards or honors credit cards issued by another bank, and overdraft checking accounts.

Open end credit involves two types of disclosure. Initially, disclosures are made before the first transaction on the account, and these disclosures generally set out the ground rules of the credit arrangement. Subsequently, with each periodic billing statement (generally monthly) certain disclosures in connection with transactions taking place during the period must be made.

It is important that examiners closely review a bank's open end credit plan to determine compliance. A bank's exposure to liability for violations is greatly increased under an open end credit plan, since a violation, such as in the disclosure format or in the annual percentage rate, can affect many

individual cardholders simultaneously and could result in a class action suit.

Disclosures Upon Opening an Account - Before the first transaction is made on an open end account, the creditor must disclose in writing to the customer certain details of the operation of the plan. These are:

. The conditions under which a finance charge may be imposed, including an explanation of any time period within which any credit extended may be paid without incurring a finance charge, except that a creditor may, at his election, and without disclosure, impose no such additional finance charge if payment is received after such date or the termination of such period. This time period is frequently referred to as a "free-ride." Z. 7(a)(1) A127

. The method of determining the balance on which the finance charge may be imposed. See page 27 for a brief discussion of some of the more common methods of determining that balance, such as the previous balance, adjusted balance, and average daily balance. Z. 7(a)(2)

. The method of determining the amount of the finance charge, including the method of determining any minimum, fixed, check service, transaction, activity, or similar charge which may be imposed as a finance charge. For example, where a creditor's minimum finance charge is 50¢, it must be disclosed. Also, if a one per cent transaction charge is assessed for each cash advance, this fee must be disclosed. Z. 7(a)(3)

- The periodic rate and the corresponding nominal annual percentage rate. For example, if a 1 per cent per month periodic rate is assessed, the corresponding nominal annual percentage rate is 12 per cent (one per cent x 12). If the creditor assesses more than one annual percentage rate, he must disclose each periodic rate, the balances to which each applies, and the corresponding nominal annual percentage rate. Z. 7(a)(4)
- The conditions under which any other charges may be imposed, and the method by which they will be determined. This would include charges such as optional credit life insurance or State taxes imposed on the finance charge, as well as late payment charges. Z. 7(a)(6)
- The conditions under which the creditor may

acquire any security interest in property and a description or identification of the type of such security interest. Z. 7(a)(7)

- The minimum periodic payment required. Z. 7(a)(8)

<u>Disclosures on Periodic Statements</u> - Subsequent to making these initial disclosures, the creditor must provide each customer whose account balance is more than $1 or upon whom a finance charge is imposed, a periodic billing statement which includes certain additional disclosures. (Statements do not have to be provided where the account is considered uncollectible, or where collection procedures have been instituted.) If applicable, the following disclosures must be made on the periodic billing statements. <u>Terms shown in quotations are required terminology</u>. Z. 7(b)

- The outstanding balance at the beginning of the billing cycle, using the term "previous balance." Z. 7(b)(1)
- The amount and date of each extension of credit <u>or</u> the date such extensions of credit are debited to the account during the billing cycle. Unless identification of the goods and services or extensions of credit was previously furnished to the customer, for example, by giving him a copy of the sales slip on which the purchases are identified when the sale is made, the identification must be A211

included with the periodic statement. Some
creditors provide this identification by
printing descriptions on the billing state-
ments (descriptive billing), while others
provide copies of the sales slips containing
the identification (country club billing).

- The amounts credited to the account during
the billing cycle for "payments" and
Z. 7(b)(3) "credits." The same requirements relating
to the methods of identification of purchases
and loans stated in the paragraph above also
apply to "credits."

- The amount of the "finance charge" added to
Z. 7(b)(4) the account during the billing cycle. If the
finance charge is comprised of more than a
single item--for example, the product of the
application of the periodic rate and a cash
advance transaction charge--each component
of the finance charge must be itemized and
L582 & 666 identified, but a total need not be shown.

- Each "periodic rate" which may be applied
to the account, the range of balances to which
each rate is applicable, and the "correspon-
ding annual percentage rate" determined by
multiplying the "periodic rate" by the number
Z. 7(b)(5) of periods in a year. These disclosures must

be made whether or not a finance charge is
assessed for that billing cycle. The terms
"corresponding nominal annual percentage
rate," "nominal annual percentage rate," or
"annual percentage rate" (or "rates") may
be substituted for "corresponding annual
percentage rate." Z. 7(b)(5)

- Where finance charges have been imposed,
the actual "annual percentage rate" computed
under Z. 5(a). Z. 7(b)(6)

- The balance on which the finance charge was
computed. If the creditor uses the method Z. 7(b)(8)
under which payments and credits made dur-
ing the billing cycle are not considered in
determining the balance on which the finance
charge was computed (the previous balance
method), the creditor must also disclose
that fact. Where the finance charge is based
on a daily balance (the actual balance of the
account for each day), the Board has pro-
vided several alternatives for meeting this
disclosure requirement. I. 703

- The closing date of the billing cycle and the
outstanding balance in the account on that
date, identified as "new balance." Examiners Z. 7(b)(9)

should be alert to the possibility of a bank overemphasizing the minimum payment due, as opposed to the "new balance." More prominence should not be given to the minimum payment due, which could mislead the customer into paying that amount rather than the "new balance," thereby incurring additional

L538 finance charges.

- If the creditor's plan provides a free-ride period, the date by which, or the period within which, payment must be made to

Z.7(b)(9) avoid additional finance charges. However, the creditor may at his election and without disclosure impose no additional finance charge if payment is received after period.

- The amount of any minimum charge

Z.7(b)(5) that may be assessed on the account.

Location of Disclosures - The Regulation provides that most periodic disclosures must be made on the front of the billing statement. Some disclosures may be made on the reverse side of the statement or on another statement accompanying the periodic statement. Reference should be made to the Regulation to determine which disclosures may be made other than on the face of the billing statement and the conditions under

Z.7(c) which the options may be exercised.

Honoring Another Bank's Credit Card - When a bank honors the credit card of another bank--that is, grants a cash advance to the customer on a credit card issued by another bank--and makes a charge for that cash advance, the card-honoring bank must disclose the finance charge, the annual percentage rate, and the amount financed. For example, where a cash advance of $400 is made subject to a 2 per cent fee, the disclosures would be as follows:

Amount financed: $392 ($400 less the $8 finance charge)

FINANCE CHARGE: $8.00 ($400 x 2%)

ANNUAL PERCENTAGE RATE: 24.5% rounded ($8.00 divided by $392 x 12)

The annual percentage rate disclosure is not required when the finance charge is $5.00 or less for any cash advance, or $7.50 or less for any cash advance over $75.00. A bank may not divide a single cash advance into two or more advances to take advantage of this exception. Z.7(d)

When the card-honoring bank makes the disclosures required by the paragraph above, the card-issuing bank is not responsible for making any additional disclosures with regard to that specific finance charge. Z.8(b)(2)

Change in Terms - If the creditor of an open end credit account changes the terms previously required to be disclosed to the customer, the Regulation provides that he must notify the customer not later than fifteen days prior to the beginning of the billing cycle in which the change is to take

Z. 7(e) place. If a customer does not have an active account at that time, the creditor may wait to notify him of the new terms until the next required billing statement is sent to that customer. However, this exception relating to inactive accounts does not apply if the periodic rate or rates are increased or any minimum, fixed, check service, transaction, activity or other charge is increased--in other words, if the charge could cost the cardholder more.

No special notice is necessary to any customer at any time if the only change is a reduction in the minimum periodic payment or periodic rate, or in any minimum, fixed, check service, transaction, activity, or similar charge applicable to the account. Nor is special notice required when the creditor changes from a credit plan in which payments and credits are not deducted from the balance on which the finance charge is computed to one in which such deductions are made from such balance (changing from the previous balance method to the

I. 705 adjusted balance method).

XI. UNIQUE DISCLOSURE SITUATIONS

There are a number of special types of credit transactions which pose unique situations for disclosure. Discussed below are special rules relating to demand loans, construction loans, educational loans, loans for agricultural purposes, insurance purchased subsequent to the contract, contracts calling for variable interest rates, and reductions in the annual percentage rate on existing contracts.

Demand Loans - Since demand loans usually do not carry a stated maturity, special rules are applicable which impute a maturity date for disclosure purposes. Regulation Z specifies that if a demand loan carries no alternative maturity, a maturity of one-half year will be used for purposes of computing the amount of the finance charge and the annual percentage rate. Where an alternative maturity date is specified in the obligation (for example, payable on demand but not later than one year from date), the alternative maturity date should be used in making the disclosures. Z. 4(g)

With regard to disclosing the number, amount, and due dates or periods of payments for a demand loan without an alternative maturity, the creditor need disclose only the due dates or periods of payments of all scheduled interest payments for the first one-half year. In such cases, the creditor need not disclose the number, amounts, or total of payments or identify any balloon payment. However, the fact that the obligation is payable on demand must be disclosed. For I. 815
example, the disclosure applicable to payment of a demand loan with no alternative maturity date but requiring interest to be paid monthly could be satisfied by a statement such as "principal balance of the loan is payable on demand, but until demand is made, interest is payable monthly." Where an alternate maturity date is specified, the creditor must disclose the number, amount, and due date or periods of payment based on the alternative maturity date. "Payments" include payments

L173 of interest only.

In some cases, mortgages are written with a demand feature. Until such demand is made, the principal and interest are payable in scheduled periodic instalments until the obligation is paid in full, as if there were no demand feature. For example, a 30-year mortgage may be callable any time after 5 years. This is a device used to allow the creditor an opportunity to increase the interest rate if the price of money increases. The obligation is thus payable according to a specified amortization schedule subject to the creditor's right to demand payment in full. In such cases, the creditor may make disclosures based on the specified amortization schedule, provided that he also clearly and conspicuously discloses that the obligation is payable on demand and that the disclosures are made on the basis of the amortization schedule. If the creditor does not take advantage of this option, he must make the disclosures based on the earliest date that demand for payment in full can be made, showing the unpaid balance due at
I. 816 that time as a "balloon payment."

Construction Loans - Construction loans and other multiple advance loans pose special problems in computing the
I. 813 finance charge and the annual percentage rate. In many cases, the amounts and dates of advances are not predictable with certainty since they depend on how the work progresses. Regulation Z provides that the annual percentage rate and finance charge for such loans may be estimated for disclosure

purposes. To qualify for this special treatment, the loans must be payable in a single sum or permanently financed by the same creditor at the maturity of the construction phase, with interest only payable up to such maturity.

Educational Loans - Insured educational loan programs are often unique in that they provide for advances for each school year, with no payments scheduled until after the student graduates. These advances without repayment terms are referred to as "interim loans." Certain exceptions with regard to disclosure apply to such "interim" loans granted under any insured loan program, such as the Higher Education
Act. Disclosures for such "interim" loans need not include I. 809
the number, amount, and due dates or periods of payments, or
the total of payments. It is also unnecessary to disclose the ZFootnote 10
total amount of the finance charge. These exceptions do not apply to the "pay-out" notes, which are executed upon the student's graduation and call for specific repayment terms. ZFootnote 11

Loans for Agricultural Purposes - Many loans for agricultural purposes provide for payments and advances tied
to the farmer's seasonal or production needs. Estimating the Z. 8(p)
dates and the amounts of the advances and payments in order to make Truth in Lending disclosures can sometimes result in disclosures that bear little resemblance to the actual transaction, given the uncertainties of weather, etc., that accompany such estimates. The Regulation has special disclosure requirements for agricultural transactions in which the

amount or date of any advance or payment is tied to production or seasonal needs and is not known at the time of the execution of the agreement. In such cases, the creditor may disclose the method of computing the finance charge, in lieu of disclosing the amount of the finance charge. For example, it would be permissible to state simply that "Interest at the rate of 8 per cent per annum will accrue on each advance." Also the creditor need not disclose the annual percentage rate or amounts and dates of unknown payments and advances. He must, however, make certain other disclosures which are known and applicable at the time of consummation. The Board's staff has drawn up a sample of such a disclosure, which is set forth in staff
L399 opinion letter 399.

Subsequent Insurance Purchases - Sometimes, following an extension of credit, the customer may wish to purchase optional insurance in connection with the obligation. Typically, this involves mortgage life and disability insurance, which is offered to a customer under a plan by which the lender will advance the amount of the premiums due and add that amount to the existing obligation. Additional advances are made automatically for renewal premiums as they become due. In such cases, the insurance agreement can be considered a separate transaction and the disclosures with respect to the amount of the initial advance can be made prior to the time the insurance agreement is executed.

Variable Interest Rates - Certain transactions provide for variable interest rates which may be pegged to fluctuations in the prime rate, for example. Under these circumstances, the creditor may make his disclosures on the basis of the rate in effect at the consummation of the transaction. If he also discloses the variable feature, the conditions under which the rate may be changed, and, if applicable, the maximum and minimum limits of such rate, no new disclosures are required when the rate is changed. I.810

Unless the creditor discloses the variable feature, each increase in rate is a refinancing and new disclosures are required. Reductions in rates are discussed in the next paragraph. Z.8(j)

Reductions in the Annual Percentage Rate - A creditor may wish to voluntarily reduce the annual percentage rate on an existing contract. This may occur when the money mar- I.817
ket rate drops and the creditor wishes to deter a customer from refinancing his contract elsewhere. The Board has ruled that if the annual percentage rate is reduced and no other credit terms are changed (except accompanying reductions in the amount or number of payments resulting from the reduced rate), the reduction is not a refinancing subject to new disclosures. However, any increase in rate (even from a rate previously reduced) would be a refinancing subject to the disclosure requirements, except for increases under a variable rate disclosure as discussed under the topic "Variable Interest

Rates " above.

XII. RIGHT OF RESCISSION

Transactions Covered - Truth in Lending grants consumers a new right--the right of rescission--for many transactions in which a security interest is or will be retained or acquired in any real property which the consumer uses or
Z. 9 expects to use as his principal residence (home). Included is not only the consumer's present home, but any dwelling that he intends to use as his home in the future, for example, a country place where he intends to retire. The period in which the transaction can be canceled runs until midnight of the third business day following the later of either (1) the date of consummation (see page 29), or (2) the date all material Truth in Lending disclosures, including the right of rescission notice, have been given to the customer. Therefore, to start the running of the three-day rescission period, the disclosures in (2) above must have been given. However, if the disclosures in (2) have not been given, the consumer's three-day right to rescind would expire at the end of three years (or when the property is sold)
Z125 ZFootnote 14 in any event. Generally, business days do not include Sundays and the nine scheduled Federal holidays.

There is, however, a broad exemption to the right of rescission. The right does not apply to first liens to finance the acquisition of a consumer's dwelling--the typical mortgage
Z. 9(g)(1) to purchase a home. It does apply to second mortgages, many refinancings, and to nonpurchase money first liens. It also

applies where mechanics, materialmen's and similar liens may arise on the customer's home by operation of law, for example, under home repair contracts. Certain obligations which include A125
confession of judgment clauses or cognovit provisions making it possible for the creditor to record a lien on the consumer's residence also give rise to the right. However, confession of Z. 2(z)
judgment clauses and cognovit provisions which exclude a lien on real property would not bring a transaction under the right of rescission, since they could not constitute security interests in the customer's home. Likewise, if effective waivers of lien Z. 202
rights can be obtained from those persons who may have liens arising by operation of law (for example, mechanics, carpenters, and lumber companies), the transaction would not be subject to the right of rescission. Z. 901

The right of rescission does not apply when a customer uses his residence to secure a business loan because the Regulation exempts credit for business purposes. Z. 3(a)

It should be noted that not all purchase money first liens are exempt from the right of rescission. Purchase money first liens to acquire unimproved property (for example, a vacant lot) are rescindable if the consumer intends to use the lot as his principal residence. This position is derived from the fact that the right of rescission covers all transactions involving a lien on the borrower's "residence," a term which the Regulation defines as including all real property in which the customer resides or expects to reside. Note that the defini-

tion of residence relates to "real property" and not to "dwell-
Z.2(y) ings." The exemption from the rescission right relates only to first liens to purchase a dwelling. Consequently, all mortgage credit transactions on vacant lots on which the customer expects to reside are rescindable.

Any consumer credit transaction in which an agency of a State is the creditor is exempt from the right of rescission. This exemption does not include Federal agencies acting as
A125 creditors.

Notice to Customers - The creditor must give the customer two copies of a prescribed Notice of the Right of Rescission, which is set forth in the Regulation. The customer may use one of these copies or any other writing to rescind the transaction. Except with regard to credit for agricultural purposes, the creditor is prohibited during the rescission period from disbursing money, except in escrow, or doing any work on the customer's property. Before any money can be disbursed or service performed, the creditor must satisfy himself that
Z.9(c) the customer has not exercised his right to rescind. The prohibition against disbursing cash or performing services is to insure that the customer is free to rescind if he wishes to do so.

Where there are joint owners of property involved in the right of rescission, each joint owner who is a party to the credit transaction must receive a copy of the document on which the Truth in Lending disclosures are made and two copies of
Z.2(k) the Notice of Right of Rescission. For example, if husband

and wife sign a second mortgage loan on the home which they
own jointly, each must receive a copy of the disclosures and Z.6(e)
two copies of the rescission notice. Z.9(f)

Waiver of Rescission - There may be cases in which there is an emergency which would need to be remedied immediately without waiting for the three-day rescission period to expire. For example, the furnace of a consumer in Duluth, Minnesota, may break down in January and credit secured by the home may be needed to get it fixed. If there is such a bona fide immediate personal financial emergency, and a delay of three days would jeopardize the welfare, health, or safety of people or endanger property, the customer can waive his right of rescission. He can do so by giving the creditor a separate dated and signed personal statement describing the situation requiring immediate remedy and waiving his rights. Each joint owner who is party to the credit transaction must waive his rights, if there is to be a waiver. A preprinted form cannot be used for this purpose. Once a waiver is given, the three-day delay is not required.

Refinancing and the Right of Rescission - When the creditor of an existing obligation refinances that obligation, and the amount of the new transaction does not exceed the unpaid balance plus any accrued and unpaid finance charges on the
existing obligation, the right of rescission does not apply. However, Z.903
such refinancings by a creditor other than the original

creditor are rescindable even if no new money is advanced. When new money is advanced by the original creditor, the right of rescission applies, but only to the increased amount. Also, renewals of single payment loans on the same general terms

Z. 811 are not subject to rescission.

XIII. ADVERTISING

What Advertisements Are Covered - Truth in Lending includes specific requirements regarding advertising to aid or

Z. 10 promote any extension of credit. The definition of an advertisement is quite sweeping and includes commercial messages in newspapers, radio, television, magazines, leaflets, flyers, catalogs, public address systems, direct mail, window dis-

Z. 2(b) plays, billboards, and price tags.

Advertising Requirements - A creditor may not use "bait" advertising such as offering an amount of credit, installment amount, maturity, no downpayment, or a specific down-

Z. 10(a) payment unless he usually arranges such terms.

In general, no advertisement may give a specific credit term unless all other terms are stated. Specific terms which require a complete advertisement are sometimes referred to as "triggering" terms. For example, a bank cannot advertise the specific term "36 Months to Pay" without triggering a full advertisement showing other related terms including the amount of loan, total of payments, number, amount and due

Z. 10(c) & (d) dates or periods of payments, and annual percentage rate. How-

ever, in advertisements for credit other than open end, a creditor may advertise the annual percentage rate without including all of the other terms.

General appeals that do not include any specific terms are permitted. For example, a bank could use the Z. 10(d)(1)
phrases "Consolidate your bills with us," or "We like to say 'Yes.'"

Appendix E contains some commonly used examples of phrases that trigger a full advertisement along with some phrases that do not.

The requirements for complete advertisements are spelled out in the Regulation. As with disclosure, the requirements differ for open end credit and other that open end credit. Generally, the information that must be shown in an Z. 10(c)&(d)
advertisement is not as extensive as that needed to be shown for disclosure purposes. For the most part, each of the specific requirements for advertising is discussed under the sections relating to disclosure, and, therefore, further elaboration is not provided here.

Where the Regulation specifies terminology for disclosures, those terms must be used where applicable in advertisements. For example, the "annual percentage rate" cannot be described as "Annual %," "% Rate," "APR," or other such incorrect description.

REFERENCE		YE
226.4(b)(2)	d. Non-filing insurance?	—
226.4(a)(5)	e. Credit life insurance required by the creditor?	—
226.4(a)(6)	f. Fire insurance required by the creditor with a statement of the cost and a statement that the customer may choose the person through which the insurance is to be obtained?	—
226.4(a)(5)	g. Credit disability insurance is not required by the creditor; however, a borrower desiring the insurance has failed to sign and date a separate statement of his desire to purchase the insurance?	—
	5. Should any of the following charges be <u>included</u> in the finance charge involving a real estate loan:	
226.4(e)(1)	a. Title search?	—
226.4(e)(3)	b. Appraisal fee?	—
226.4(a)(3)	c. Points paid by the buyer?	—
226.4(a)	d. Commitment fee?	—
226.4(e)(1)	e. Survey fee?	—
226.4(a)(7)	f. FHA Insurance?	—
226.4(g)	6. Demand loans are considered to have a maturity of one year for the purpose of computing the amount of finance charge and the annual percentage rate?	—
226.4(h), 226.402	7. The annual premium should be disclosed in cases where the insurance premium is required to be included in the finance charge?	—
226.5(a), 226.5(b)(1)	8. The annual percentage rate should be disclosed with an accuracy at least to the nearest 1 per cent?	—
226.5(d)(1)(i)	9. You are reviewing an instalment note with 13 monthly payments of 60.00 and a final payment of 90.00. Interest begins to accrue at date of note. May this final payment be considered regular in amount in determining the annual percentage rate?	—
226.6(a)	10. The amount of the finance charge and the annual percentage rate on a disclosure statement should be printed more conspicuously than the other amounts and percentages?	—
226.6(e), 226.603	11. John Doe signs a note for the purchase of an automobile, his father cosigns, and an uncle endorses the note. The bank has furnished only one disclosure statement to John Doe. Is this adequate?	—

portion of the advertisement.

XIV. CREDIT CARDS

The credit card provisions consist of two parts. The first part prohibits the issuance of unsolicited credit cards, and the second part limits the liability of consumers for the unauthorized use of credit cards.

<u>Issuance of Credit Cards</u> - No credit card can be issued except in response to a request or an application. However, cards can be issued on an unsolicited basis if they are a renewal of, or in substitution for an accepted credit card. Z.13(b)

Sometimes it is difficult to know whether a particular type of bank card is a "credit card." Several staff letters have been written on this subject. L434, 649, 681

A credit card may be issued in spouse "A's" name in response to spouse "B's" request when "B" has the authority under the State law of agency to request the card for "A". For example, a bank could issue a credit card in the husband's name as a result of the bank's telephone solicitation of the wife, if she has the authority under the laws of agency in the State where the solicitation occurred. L642&700

<u>Renewal Cards</u> - Cards may be issued in renewal of an "accepted credit card." An accepted credit card is defined as one which the cardholder has requested or applied for and received, or has signed, or has used, or has authorized another person to use. The Regulation also provides that when a renewal Z.13(a)(1)

card is issued for an accepted credit card, the renewal card itself becomes an accepted credit card upon receipt by the cardholder. This means once a credit card becomes an "accepted credit card" by virtue of its being requested or used, it may be renewed repeatedly, regardless of whether the renewal cards have been requested or used. Of course, renewal cards should not continue to be sent to a consumer after he has requested that they be stopped.

Renewal cards may be issued to customers whose credit privileges have been suspended <u>temporarily</u> on an existing account because of exceeding the credit limit, delin-
L702&721 quency on the account, or inactivity. However, such cards would not be considered renewal cards and could not be issued without a request or application where they would constitute the opening of a new account.

<u>Substitute Cards</u> - Credit cards may be substituted for existing credit cards, when, for example, a bank
Z.13(a)(1) purchases the accounts of a merchant. The Regulation permits a bank to send out its card in substitution for a merchant's card (which can no longer be used) when it has purchased the merchant's credit card plan (whether or not the related accounts
L518&575 receivable are also purchased). However, when a bank purchases the accounts of a merchant who does not have a credit card plan, the bank could not send its card to the account holders unless the customer has requested it. There would be no pre-existing card for which the bank's card would be a

substitute. L466

<u>Liability for Unauthorized Use</u> - The second part of the credit card provisions sets a flat $50 maximum on cardholder liability for unauthorized use, but even the $50 maximum is not automatic and in some cases there could be no liability
at all. The Act provides that in order for the card issuer Z.13(b)
to recover the $50, five conditions must be met:

- First, the cardholder must have requested and received the card on which the unauthorized use occurred, or signed it, or used it, or authorized another person to use it. In other words, it must have been an "accepted credit card." Z.13(c)(1)
- The second condition is that the card issuer must have given the cardholder notice of his potential $50 liability. This notice may be Z.13(c)(3)
placed on the credit card or given by any other means, for example, with the opening statement on the account or with the periodic billing statement. The notice must have been given within two years prior to the un-
authorized use, if it is not on the card. Z.13(e)
The notice must tell the cardholder that he may inform the issuer of loss, theft, or possible unauthorized use of the card either orally or in writing. It must also

give the name and address of the party to receive the notice. An example of an acceptable notice is included in the credit card amendments to Regulation Z.

- The third condition is that the card issuer must have provided the cardholder with an addressed notification, requiring no postage, that the cardholder can use to notify the issuer in the event of loss, theft, or possible unauthorized use of his card. However, the cardholder does not need to use this preaddressed form to give notice. He may use any means he chooses, such as by letter, telegram, telephone, or in person.

Z.13(c)(4)

- The fourth condition is that the unauthorized use must occur before the cardholder notifies the issuer of the loss, theft, or possible unauthorized use of his card. If the cardholder immediately notifies the card issuer of loss, and the card is subsequently used to make an unauthorized charge, the cardholder is not liable for any amount of unauthorized use.

Z.13(c)(2)

- The final condition is that the card issuer must have provided a method whereby

the user of the card can be identified as the person authorized to use it. Methods of identification could be signature, photograph, or fingerprint on the credit card or by electronic or mechanical confirmation, such as voice confirmation. A signature panel on the card satisfies this requirement. Z.13(d)

There is no requirement that a card issuer do any of these things. He need do them only if he wishes to preserve the right to hold the cardholder liable for up to $50 of unauthorized use. In fact, many issuers have decided that they will not hold the cardholder liable for unauthorized use and have not taken any of these steps.

The $50 limit applies regardless of the number of times the card is used in an unauthorized manner. For example, if a card is used in an unauthorized manner three times, once for $50, once for $100 and once for $150, the maximum the card issuer could collect from the cardholder is still only $50. L445
If a cardholder loses his card this year, it is returned, and then he loses it again three years from now, the $50 maximum would apply now and again three years later. If more than one card is issued on a single account, the $50 liability limit applies to each card.

Bank credit cards and related materials should not contain incorrect information regarding the cardholder's lia-
L528 bility for unauthorized use. For example, currently-issued material should not indicate that the cardholder is liable for all unauthorized use until he notifies the card issuer, since, in fact, his liability is limited to $50 in any case. There may, however, be old cards outstanding which misstate the extent of liability. These cards need not be withdrawn, although any reissuance of cards should, of course, not contain the misstatement.

<u>Credit Cards Issued to Businesses</u> - The business exemption in Regulation Z does not apply to the credit card
Z.13(a)(4) provisions. In other words, credit cards used exclusively for business purposes, or those used for both business and personal purposes, are subject to the credit card restrictions. Such
A133 cards may not be issued unsolicited to businesses; and the $50
Z.13(b)
Z.13(c) limit on liability applies, except that a card issuer and a business or other organization which provides credit cards from the same issuer to ten or more of its employees may by contract agree as to liability of the business with respect to unauthorized use of such credit cards. In no case may the business or card issuer impose liability upon any employee with respect to unauthorized use of such a credit card, except in accordance
A135 with and subject to the limitations of § 226.13(c).

XV. STATE EXEMPTION

The Truth in Lending Act permits the Board to exempt from the Federal Act those States which have a law substantially similar to the Federal law and adequate provisions for enforcement. The exemption provisions apply only to the Z 12(a)
disclosure, rescission, and credit card provisions of the Federal law. The advertising requirements are not subject to exemption.

Certain classes of transactions can be exempted from the disclosure and rescission provisions, as provided in Supplement II to Regulation Z. In addition, States may also re- ZSupp II
receive exemptions from the credit card provisions under Supplement IV. Exemptions from the disclosure and rescission ZSupp IV
provisions are separate and distinct from the exemptions from the credit card provisions. Each type of exemption must be applied for and granted individually. Currently, five States--Maine, Massachusetts, Connecticut, Oklahoma, and Wyoming--have been exempted from the disclosure and rescission provisions. No States have been exempted from the credit card provisions. The classes of transactions to which the exemptions apply in each State are listed in Supplement III. ZSupp III

The Board has generally viewed the requirement of "substantially similar" laws to mean that State law must be <u>at least as strict as the Federal law</u>. The State can go beyond these requirements, but cannot impose lesser ones. For example, a State could require an annual percentage rate to be disclosed for all transactions, even though the Federal law exempts from disclosure of the annual percentage rate certain small transactions (for example, those with a finance charge of less than $5). On the other hand, a State could not require a method of computing the annual percentage rate that would not be in accord with the Federal Act.

The Board has the responsiblity for granting exemptions, as well as determining after exemption whether State law remains substantially similar and enforcement remains adequate. Therefore, examiners should report any obvious oversight on the part of State officials in detecting violations in their enforcement efforts involving State member banks in exempt States. In addition, since advertising is not subject to exemption, the examiner will need to continue to review the bank's advertising file during each examination of a State member bank in an exempt State.

XVI. LIABILITY UNDER THE ACT

Civil Liability:

Individual Actions - In addition to the administrative enforcement power granted to the enforcement agencies under the Truth in Lending Act, consumers are given civil remedies in cases where creditors have failed to comply with any requirement imposed under the Truth in Lending Act or Regulation Z. A creditor is liable to a consumer for any such failure in an

amount equal to twice the finance charge, but not less than $100 and no more than $1000, plus any actual damage sustained by the consumer as a result of the failure. A130(a)

Class Actions - In the case of class actions against creditors, the members of the class can recover statutory damages of twice the amount of the finance charge, limited to the lesser of $100,000 or 1 one percent of the creditor's net worth, plus actual damages. The minimum recoverable liability in individual actions of $100 is not applicable in a class action, and the maximum liability does not limit actual damages sustained by the consumer members of the class. The court is granted great discretion in determining the amount of damages to be awarded in a class action; in its determination, the court is to consider the amount of actual damages awarded, frequency of failure to comply by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's violation was intentional. In all successful actions to enforce the civil liability provisions of the Truth in Lending Act, the creditor must bear the cost of the action and must pay the consumers' attorney's fees as determined by the court. A130(a)

Good Faith Reliance - The failure to make accurate disclosures does not automatically subject the creditor to liability. A creditor may not be liable if he is able to show by a preponderance of evidence that his failure to comply was not

CONTINUED

4 OF 7

intentional and resulted from a bona fide error which occurred even though he maintained procedures reasonably adapted to

A130(c) avoid any such error. In addition, if a creditor acts or fails to act in good faith in conformity with any rule, regulation, or interpretation by the Board, he will not be held liable under

A130(f) either the civil or criminal liability provisions of the Act. This applies even though after the occurrence of his act or failure to act, the rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid.

Errors - In the case of errors in disclosures, the creditor is not liable if, within 15 days after discovering an error and prior to receipt of written notice of the error, he notifies the borrower of the error and makes whatever adjustments are necessary to insure that the borrower will not pay a finance charge in excess of the amount or percentage rate

A130(b) actually disclosed. In other words, the charge for credit must be adjusted down to the rate or dollars of finance charge disclosed, whichever is lower.

In addition, a consumer may not take any action to offset any amount for which a creditor is potentially liable to the consumer against any amount the consumer owes the creditor, unless the amount of the creditor's liability has been determined by a judgment of a court of competent jurisdiction

A130(h) in an action to which the consumer was a party. This is to prevent consumers from simply deducting from their obliga-

tion to a creditor the minimum $100 award, which is provided for in individual actions, without being a party to an action in which such liability is determined by a court.

Multiple Violations - The civil liability provisions of the Act limit creditors' liability for multiple disclosure violations and provide that a multiple failure to disclose required information to the consumer in connection with a single account under an open end credit plan or a single credit sale, loan, or other extension of consumer credit, entitles the consumer to a single recovery only. However, continued failure to disclose after recovery has been granted will give rise to rights of additional recoveries. A130(g)

Dealer Paper - Review procedures are most necessary with regard to dealer paper (see page 38). The review of such paper is particularly important in connection with transactions involving security interests in real property--for example, paper generated by the sale of recreational lots. There is a specific section in the civil liability provisions which makes the assignee bank liable for the dealer's violations when the bank is in a continuing business relationship with the dealer. A130(d)

To avoid this liability, the bank must show by a preponderance of evidence that it did not have reasonable grounds to believe that the dealer was engaged in violations and that the bank maintained procedures reasonably adapted to apprise itself of the existence of any such violations. In addition, the Act specifically provides that a civil action may be brought against a subsequent assignee of the original creditor when a violation from which the liability arose is apparent on the face of the instrument assigned, unless the assignment was involuntary, such

A130(d) as in the case of bankruptcy.

Criminal Liability - With respect to criminal liability, willful and knowing violations resulting from the failure to make specific disclosures can mean a fine of not more than $5,000 or imprisonment for not more than one year, or

A112 both.

APPENDIX A

MISCELLANEOUS CHARGES

Type of Charge	Included in Finance Charge?	Reference
Attorney's fees in real property transactions	No, to the extent that they cover 226.4(e) charges	L251
Building permit	No	L609
Cancellation fee	No	L565
Charges for NSF checks	No	L440
Commitment or standby fees	Yes	L167, 196, 272, 309
Discounts on instalment contracts	No	L433
Environmental Impact Report fee	No	L687
Escrow fees	Yes, to the extent they exceed fees in cash sales	L167, 224, 363
Fee for amortization schedule	No, except where required by creditor	L643
Fee for preparation of Truth in Lending statement	Yes	L461
FHA application fee	No	L357
FHA Contractor certification fee	Usually No	L687
FHA extension charges (to extend time of commitment to insure)	No, if not anticipated at time of consummation	L224
Loan fee paid by builder	Yes	L523
Points paid by contractor for construction loan	No	L429
Real estate brokerage fees--		L167
for sale	No	
for arranging credit	Yes	
Reconveyance fees	No	L207, 224

APPENDIX B

ANNUAL PERCENTAGE RATE COMPUTATION USING VOLUME I FOR CREDIT TRANSACTIONS INVOLVING BALLOON PAYMENTS

Amount Financed	$3,000	Repayment Schedule:	
Finance Charge	180	11 payments at $100	$1,100
	$3,180	Balloon final payment	2,080
			$3,180

Monthly payments with first payment due one month from date of consummation of loan.

Volume I Reference

Note at bottom of Page A3

DETERMINE ADJUSTED NUMBER OF PAYMENTS

$$\text{Adjustment} = \frac{(\text{Final Payment} - \text{First Payment}) \times (\text{No. of Pmts.} - 1)}{\text{Total of Payments}}$$

$$= \frac{(2080 - 100) \times (12 - 1)}{3180}$$

$$= \frac{1980 \times 11}{3180}$$

$$= \frac{21780}{3180}$$

$$= 6.8$$

$$\text{Adjusted Number of Payments} = \text{Scheduled Payments} + \text{Adjustment}$$

$$= 12 + 6.8$$

$$= 18.8$$

DETERMINE FINANCE CHARGE PER HUNDRED

$$FC/100 = \frac{\text{Finance Charge} \times \text{Factor from Table on Page A4}}{\text{Amount Financed}}$$

$$= \frac{180 \times 96}{3000}$$

$$= \frac{17280}{3000}$$

$$= 5.76$$

(CONTINUED ON NEXT PAGE)

APPENDIX B (con't)

Note at bottom of Page A1

ADJUST FRACTIONAL NUMBER OF PAYMENTS SO THAT VOLUME I TABLES CAN BE USED

18.8 payments [less than 60 payments; therefore use whole number portion of adjusted number of payments] = 18 payments

FRB 102 M

DETERMINE ANNUAL PERCENTAGE RATE

Read 18 payment line to $5.84, closest figure to $5.76 (finance charge per hundred)

Annual Percentage Rate is 7 1/4%

APPENDIX C

ANNUAL PERCENTAGE RATE COMPUTATION - SINGLE PAYMENT LOANS

Single Payment Loan With Maturity Less Than One Year

I $\frac{\text{Finance Charge} \times 100}{\text{Amount Financed}}$ = Finance Charge per hundred

II $\frac{\text{Finance Charge per hundred}}{\text{Number of periods credit outstanding}}$ = Quotient

III Quotient X Number of periods in a year = Annual Percentage Rate

EXAMPLES

A loan of $325.00 is made on May 1, 1973, and is due in a single payment on July 15, 1973, a period of 76 days. FINANCE CHARGE is $10.00 and total repayments is $335.00. The amount financed is $325.00.

(I) $\frac{10.00 \times 100}{325.00} = 3.077$ (II) $\frac{3.077}{76} = .040487$

(III) $.040487 \times 365 = 14.78\%$ Annual Percentage Rate, or 14.75% rounded

A loan of $1,000 is made on February 1, 1973, and is due in a single payment in 8 months (October 1, 1973). Finance charge is $75.00 and total repayment is $1,075.00. The amount financed is $1,000.

(I) $\frac{75.00 \times 100}{1000} = 7.50$ (II) $\frac{7.50}{8} = .9375$

(III) $.9375 \times 12 = 11.25\%$ Annual Percentage Rate

Single Payment Loan with Maturity Greater Than One Year

Use Volume II with adjustments based upon tables on pages 24 or 26 of that Volume.

APPENDIX D

REPRESENTATIVE RATE CHART COMPANIES

American Charts Company
3185 Maple Drive, N. E.
Atlanta, Georgia 30305

Capital Computing & Publishing Company, Inc.
P. O. Box 172
Miami, Florida 33101

Carleton Financial Computations, Inc.
P. O. Box 576
1801 Commerce Drive
South Bend, Indiana 46624

Financial Publishing Company
82 Brookline Avenue
Boston, Massachusetts 02215

APPENDIX E

ADVERTISING

Examples of General Phrases Which Do Not Trigger Full Disclosure

Open End Credit	Reference	Closed End Credit	Reference
"MONEY SALE"		"GET AN AUTO LOAN FOR 9.25 ANNUAL PERCENTAGE RATE"	L534
"PAY MONTHLY"	L19	"PAY WEEKLY"	L19
"OPEN A BANK CARD ACCOUNT"		"NO FINANCE CHARGES UNTIL SPRING"	L358
"JUST SAY CHARGE IT"		"BANK FINANCING AVAIL-ABLE"	
"CHARGE SOME CASH"	L466	"SAVE 10% OF THE ANNUAL PERCENTAGE RATE YOU'D ORDINARILY PAY"	L487
"EASY CREDIT"		"EASY MONTHLY TERMS"	
"CHARGE IT--IT WILL NOT BE BILLED TO YOUR ACCOUNT UN-TIL FEBRUARY"	L192	"NO CLOSING COSTS"	L628
		"YOUR FIRST INSTALMENT [do not use "payment" unless you state "monthly pay-ment"] BEGINS IN JUNE"	L192

Examples of Specific Terms Which Trigger Full Disclosure

Open End Credit	Reference	Closed End Credit	Reference
"3 YEARS TO PAY"	L19	"NO MONEY DOWN"	
"A SMALL MONTHLY SERVICE CHARGE ON THE REMAINING BALANCE"	L154	"10% DOWN"	
		"90% FINANCING"	
		"AS LOW AS $10 A MONTH"	
"12% ANNUAL PER-CENTAGE RATE"		"24 MONTHS TO PAY"	
"REPAYMENT AS EASY AS 5% OF THE OUT-STANDING BALANCE"	L492	"30 EQUAL PAYMENTS"	
		"NO CHARGE FOR CREDIT"	

APPENDIX E (con't)

Open End Credit	Reference	Closed End Credit	Reference
"$10 DOWN"		"100% FINANCING AVAILABLE"	L417
"MINIMUM PAY-$10"		"NO PAYMENTS UNTIL AUGUST"	
"UP TO 59 DAYS OF FREE CREDIT IF YOU PAY YOUR BILL IN FULL EACH MONTH"			

MAY 1971
(reprinted APRIL 1976)

FINANCIAL INSTITUTIONS AND THE FAIR CREDIT REPORTING ACT

On April 25, 1971, the Fair Credit Reporting Act became effective (Public Law 91-508, Title VI of the Consumer Credit Protection Act). It is designed to insure fair and accurate reporting of information regarding consumers. It restricts the use of reports on consumers, and in certain situations requires the deletion of obsolete information. It requires notice to consumers when the use of a credit report contributes to the denial or increase in the cost of credit or insurance, or denial of employment. Disclosures must also be made when credit is denied or the cost is increased on the basis of other information from third parties, and when investigative consumer reports are used. Under the Act consumers are entitled to disclosure of the information maintained in their files by consumer reporting agencies, and procedures are provided for the correction of erroneous information. The collection, use, and referral of information on consumers for credit, insurance, employment and other purposes by financial institutions is directly affected by this Act.

Financial institutions are likely to be subject to the Act as credit grantors, purchasers of dealer paper, issuers of credit cards, and employers. In some instances, a financial institution may even be a consumer reporting agency under the Act as a result of the type of information about consumers that it provides to others. In general, the Act does not apply to commercial transactions.

This pamphlet contains the text of the Act and questions and answers explaining the Act's applicability to the operations of a financial institution. It has been prepared to inform financial institution examiners of the principal statutory requirements of the Act, and to serve as a guide for its enforcement. The pamphlet is not designed to answer all questions that might arise under the Act; rather, it is to assist financial institutions in developing a working knowledge of the Act and its requirements. The questions and answers are being distributed jointly by the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation and Federal Home Loan Bank Board, and are applicable to the operations of financial institutions subject to the enforcement authority of these agencies.

The statute is unclear in some instances as to its application to financial institutions. Court decisions may ultimately construe provisions of the statute in ways contrary to the information in this pamphlet. Although copies of the pamphlet are being made available to financial institutions, the information in the pamphlet should not be relied upon without advice of counsel. Nevertheless, institutions that act in accordance with them will be regarded by examiners as acting in compliance with the Act.

The questions and answers are grouped into the following categories:

QUESTIONS AND ANSWERS*

I. The Financial Institution As A User Of Consumer Reports

1. May a financial institution obtain a consumer report from a consumer reporting agency in connection with a consumer's application for an extension of credit?

Yes. Reports may be obtained for this purpose, as well as certain other legitimate business purposes. Reports (known as "consumer reports" under the statute) may also be obtained in connection with the review or collection of an account, in connection with employment, or the underwriting of insurance. § 604 (See question 25 for a list of permissible purposes.)

2. Are new procedures required to obtain a consumer report?

Yes. The financial institution must identify itself and certify to the reporting agency (called a "consumer reporting agency" under the statute) the purposes for which the information is sought. It must also certify that the information will be used for no other purpose. § 607

3. Must certification be given each time a consumer report is requested?

No. A written blanket certification by the financial institution could cover all inquiries to a particular consumer reporting agency.

4. Does a financial institution which uses a consumer report have any new responsibilities to the consumer?

Yes. If a financial institution denies employment or if it denies credit or insurance for personal, family, or household purposes, or if it increases the cost, even partially because of information in a consumer report from a consumer reporting agency, it must make disclosures to the consumer. It must advise him orally or in writing that information in the report caused or contributed to the denial or increase in cost, and inform him of the name and address of the consumer reporting agency issuing the report. The financial institution is not required to disclose the nature of the information in the report. § 615(a) (See question 56 which deals with the denial of employment based on a consumer report.)

* Answers should be read in the context of the surrounding questions and answers, which, in many cases, are structured to relate to each other.

5. What would constitute a "denial" of credit?

If any condition is imposed, without which credit would not be extended, and it is imposed because of information in the consumer report, there is a "denial" which would require disclosures. This would include cases where a larger downpayment, a shorter maturity, a co-signer, guarantor, or additional collateral is required as a condition of extending credit. If a consumer applies, for example, for a credit card limit of $1,500, and only $1,000 is approved because of information in a consumer report, a "denial" has occurred.

6. Does a financial institution have any responsibility to the consumer when it obtains information from someone other than a consumer reporting agency?

Yes. Disclosures must be made when credit for personal, family, or household purposes is denied or the charge is increased even partially because of information obtained from someone other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. Disclosure would not be required if the denial is based on the financial institution's own experience with the consumer, on his credit application, or on the institution's own credit policies. Where disclosures are required they must be made regardless of whether the information is obtained currently, or is already in the files. At the time credit is denied or the charge increased, the financial institution must inform the consumer orally or in writing of his right to make a written request for disclosure of the "nature" of the information. If the consumer requests this information within 60 days, the financial institution must tell him the nature of the information orally or in writing. Note that these requirements apply only in the case of credit, and not in the case of insurance or employment where disclosures are required when a report from a consumer reporting agency is involved. § 615(b) (See question 4.)

7. What would the "nature" of the information include?

It would include information that the consumer's credit history with another financial institution is poor, his income is not what he represented it to be, he has not been employed or has not lived at the address indicated on the application for the period specified, that his debts are greater than represented, that a statement that his debts are current is inaccurate, and so on. The nature of the information should be given with enough detail to enable the consumer to question the accuracy of the information if he believes it is erroneous.

8. In disclosing the "nature" of the information, must the source be disclosed?

Although the statute does not require that the source be disclosed, it may be impossible to identify the "nature" of certain information without also revealing the source.

9. Do the requirements of disclosure by a user of information discussed in questions 4 through 8 apply in the case of information about a co-maker, guarantor, or surety?

Yes. In these instances disclosures, as indicated above, should be made to the co-maker, guarantor or surety to whom the information relates.

10. Are these rules applicable when a financial institution decides not to honor an overdraft on a checking account on the basis of information from a third party?

Yes. If an overdraft is denied on the basis of information from any outside source, disclosures must be made. This is so whether or not the account ordinarily includes overdraft credit privileges (for example, "check credit"). No disclosures need to be made if the denial is based on the financial institution's general policy not to honor overdrafts.

11. Must disclosures be made when a financial institution which issues credit cards refuses to authorize a merchant to honor a credit card, or, itself, refuses to honor a credit card, because of information received from any outside source?

Yes. The issuer would have to disclose the name and address of the consumer reporting agency, or the consumer's right to know the nature of the information when it was received from someone other than a consumer reporting agency. In the latter instance, where a merchant is involved, it would appear that he would need to make disclosures on the issuer's behalf, since the consumer must receive notice of his right "at the time such adverse action is communicated to the consumer." However, if the information does not bear upon the customer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living (for example, if the information is simply that the card is lost, stolen or being used in an unauthorized manner), or if the information is not obtained from an outside source, disclosures would not be required.

12. Do these requirements for disclosure by users of information apply to business or commercial transactions?

No. The "user" requirements of disclosure apply only in the case of credit or insurance for personal, family, or household purposes, or in connection with employment. In other words, in the case of credit, they are applicable to the general type of consumer credit transactions covered by Regulation Z, but do not include agricultural credit.

13. Must a financial institution make any disclosure to the consumer when it denies credit or increases the charges solely on the basis of its prior transactions or experiences with the consumer, or on the basis of unverified information furnished by the consumer on his application?

No. There is no responsibility of disclosure in these circumstances. However, if credit is denied or the cost increased because of information obtained from third parties in the process of verifying information on the application, then disclosures must be made. § 603(d)(3)(A).

14. If one department or branch of a financial institution obtains information on the consumer from some other department or branch of the same financial institution as to its prior transactions or experiences, and denies credit or increases the charge based on this information, must disclosures be made?

No. Disclosures are required only when information is obtained from an outside source. However, disclosures must be made if the department or branch transmitting the information relays information obtained from third parties outside the financial institution, and the institution either denies or increases the cost of credit based upon the information.

15. What are some actions that a financial institution should consider taking to insure that it can comply with the requirements imposed on a user of consumer reports?

First, file the appropriate certification mentioned in question 2 with each consumer reporting agency whose services are expected to be used. Retain a file copy. Instruct employees that consumer reports may be obtained only for the purposes specified in the Act and certification. Develop procedures for making required disclosures to consumers when credit, insurance, or employment is denied, or when the cost of credit or insurance is increased, based on information obtained from outside sources. Record all inquiries to reporting agencies or others, as well as the information obtained through those inquiries, so that accurate disclosure can be made to consumers.

76-557 O - 76 - 26

Forms may be useful to advise the consumer of the name and address of the consumer reporting agency (when a consumer report is involved), or to advise him of his rights to request the nature of the information when other outside sources are involved.

II. The Financial Institution As A Consumer Reporting Agency

16. Is it possible that a financial institution could be a consumer reporting agency?

Yes. If the financial institution regularly passes on information in its files about a consumer, other than information solely as to its transactions or experiences with the consumer, it may be considered a consumer reporting agency. A consumer reporting agency is any entity which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. § 603(d), (f)

17. Does this apply to the regular exchange of information between correspondent financial institutions, or between a holding company and its subsidiaries, or between subsidiaries of the holding company?

Yes. However, a branch or department of a financial institution may furnish information to another branch or department of that financial institution without becoming a consumer reporting agency.

18. What information may a financial institution give to third parties in response to inquiries about a consumer, without becoming a consumer reporting agency?

The financial institution may relate information solely as to its transactions or experiences with the consumer. For example, the financial institution may disclose that the consumer had a history of delinquency, or was current, and could give other information as to the status of any loans or deposits with it. To assure that it does not become a consumer reporting agency, it should not regularly give out information contained in credit applications bearing on the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. In addition it should not regularly give out information obtained in reports from consumer reporting agencies, or any other information obtained from third parties. For example, a financial institution which obtained information as a "user" may become a consumer reporting agency if it subsequently conveys the information to another financial institution.

19. Does a financial institution become a consumer reporting agency by transmitting information obtained from outside sources to another party involved in the same transaction?

No. The financial institution would not become a consumer reporting agency since it is a joint user of the same information with the other party involved in the same transaction. For example, a financial institution does not become a consumer reporting agency by transmitting such information to an insurer or guarantor (as in the case of FHA, VA, private insurers or insured student loan programs), or to a participating financial institution in connection with the same transaction, or to a collection agency in connection with its efforts to collect on the transaction. Furthermore, the procurement and transmission of a consumer report to FHA, VA, or other similar insuring or guaranteeing entity is for determining whether the entity will issue its insurance or guaranty to the holder of an obligation and not whether it will issue insurance to the consumer involved.

20. If a financial institution regularly obtains information for its customers about the sufficiency of funds to cover checks on drawee banks and gives the information to such customers does it become a consumer reporting agency?

No.

21. If a financial institution becomes a consumer reporting agency are there any restrictions on the type of information which may be furnished?

Yes. Certain obsolete information may not be furnished by a consumer reporting agency. The Act defines obsolete information to include information about the following:

--Bankruptcies which antedate the report by more than 14 years;

--Suits and judgments, paid tax liens, and accounts placed for collection or charged to profit and loss which antedate the report by more than 7 years;

--Arrests, indictments, or convictions of crime which antedate the report by more than 7 years; and

--Any adverse information which antedates the report by more than 7 years.

Refer to § 605 of the Act for information as to when the time periods begin to run.

22. Are there any situations in which these restrictions on obsolete information do not apply?

Yes. They do not apply in connection with a credit transaction expected to involve $50,000 or more in principal, or the underwriting of insurance which is expected to involve a face amount of $50,000 or more. They also do not apply to information for employment at an annual salary of $20,000 or more. § 605(b)

23. Must a financial institution which is a consumer reporting agency remove this obsolete information from its own files after the 7 and 14 year periods, although it wishes to use the information solely for its own use?

No. It need not remove the information from its files. However, by not removing it, the financial institution may be exposed to civil liability in the event that prohibited information is negligently released. § 617

24. What are the responsibilities of a financial institution which regularly furnishes information other than as to its own transactions and experiences with a consumer and thus becomes a consumer reporting agency?

It must maintain procedures to assure that the obsolete information specified in the Act is not released, except where permitted as indicated in question 22. Procedures should be maintained to assure that the information is given only for the permissible purposes listed in § 604 of the Act. Reasonable procedures are necessary to assure maximum possible accuracy of the information in any consumer report. Certifications must be obtained from all users of the information that it will be used only for authorized purposes. The identity of new users must be verified. A consumer reporting agency may not furnish a consumer report to any person if it has reasonable grounds for believing that the report will not be used for an authorized purpose. § 604, § 605, § 607

In addition, a consumer reporting agency has other responsibilities to consumers as discussed in Section III of these questions and answers.

25. What are the authorized purposes for which consumer reports can be furnished?

Reports may be furnished only in the following circumstances:

--In response to a court order;

--In accordance with the written instructions of the consumer to whom it relates;

--In connection with an extension of credit involving the consumer (or review or collection of his account);

--For employment purposes;

--In connection with the underwriting of insurance;

--In connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality in which the determination of an applicant's financial responsibility or status is required by law, or

--For any other legitimate business need in connection with a business transaction involving the consumer (for example, on a consumer who wishes to establish a checking account in the financial institution, or a builder checking the financial condition of a prospective buyer). § 604

26. Are there any other situations in which a consumer reporting agency may furnish information?

Yes. It may also furnish identifying information to a governmental agency for other purposes, limited to the consumer's name, address, employment, and former addresses and places of employment. § 608

III. Responsibilities Of A Financial Institution To Consumers When It Is A Consumer Reporting Agency

27. Does a financial institution that is a consumer reporting agency have responsibilities to consumers with respect to the information it has on file?

Yes. Upon the request and proper identification of any consumer, the financial institution must disclose to him the "nature and substance" of all information, except medical, that it has in its files. In addition, it must disclose the sources of the information, except in the case of investigative consumer reports as noted in question 49. The financial institution must also disclose the recipients of any consumer report within six months preceeding the request (two years in the case of reports furnished for employment purposes). Accordingly, a financial institution which is a consumer reporting agency should keep a dated record of each recipient of information about a consumer, even when the inquiry is oral. § 609

28. Must the consumer make a specific request for disclosure of sources and recipients of reports?

No. A consumer's general request about information in his file requires disclosure of the nature and substance of the information and sources and recipients.

29. Are there any limitations on when disclosures must be made to consumers?

Yes. Disclosure need be made only during normal business hours and only on reasonable notice by the consumer. § 610(a)

30. Can the consumer require that disclosure be made either in person or by telephone?

Yes. Disclosures must be made to him if he appears in person and furnishes proper identification. Disclosures must also be made by telephone if the consumer makes a written request for telephone disclosure and properly identifies himself. In making disclosures by telephone, the financial institution can require that any toll charge must be borne by the consumer. § 610(b)

31. If the consumer asks for disclosure in person, can he be accompanied by another party?

Yes. He can be accompanied by one other person of his choosing, who must furnish reasonable identification. The consumer may be required to furnish a written statement granting permission to the financial institution to discuss the customer's file in that person's presence. § 610(d)

32. How must disclosures be made to the consumer?

Disclosures may be made either in writing or orally. If given orally, the consumer or his representative should be given reasonable opportunity to make notations of the information being disclosed.

33. Does the financial institution have to explain the information in the consumer's file?

Yes. It must provide trained personnel to explain any information furnished to the consumer. § 610(c)

34. What is the meaning of the consumer's "file"?

It means all of the information on that consumer (bearing on his credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living) recorded and retained by the financial institution, regardless of how the information is stored. Any financial institution which is a consumer reporting agency under the Act should maintain a central file of information on the consumer, or be capable of collecting all the information it might have on the consumer in its various departments or branches for disclosure to the consumer. § 603(g)

35. Can the financial institution charge the consumer for making disclosures to him in connection with his file?

Yes, depending on the time when the consumer requests information about his file. If he makes the request either within 30 days after receiving notice that a user of a consumer report has denied or increased the charge for credit or insurance (or denied employment) on the basis of the report, or within 30 days of notification from a debt collection agency affiliated with the financial institution that the consumer's credit rating may be, or has been, adversely affected, the information must be furnished free of charge. However, the financial institution may impose a reasonable charge for making disclosures to the consumer if the request is not made within the 30 day time limit, and the charge is indicated to the consumer prior to making disclosures. § 612

IV. Disputes About Material in a Consumer Reporting Agency's File

36. What must a financial institution which is a consumer reporting agency do when a consumer questions the completeness or accuracy of an item of information in his file?

The financial institution must, within a reasonable period of time, reinvestigate and record the current status of the questioned information, unless it has reasonable grounds to believe that the dispute is frivolous or irrelevant. The Act provides that the presence of information in the consumer's file contradicting his contention does not, in and of itself, constitute reasonable grounds for believing the dispute is frivolous or irrelevant. § 611(a)

37. What must the financial institution do if reinvestigation indicates that the information was inaccurate, or if it can no longer be verified?

The information must be promptly deleted from the file. § 611(a)

38. What if reinvestigation appears to confirm the information?

If reinvestigation does not resolve the dispute with the consumer, he is entitled to file a brief statement setting forth the nature of the dispute. This statement may be limited to 100 words, if the financial institution provides the consumer with assistance in writing a clear summary of the dispute. Unless there are reasonable grounds to believe that the dispute is frivolous or irrelevant, all subsequent consumer reports containing the information in question must clearly note that it is disputed by the consumer, and provide either the consumer's statement or a clear and accurate codification of summary of it. § 611(b), (c)

39. Is there any requirement that the financial institution notify past recipients of reports on the consumer in the event disputed information is deleted or a statement or notification of the dispute is filed by the consumer?

Yes. The consumer may request that a financial institution which is a consumer reporting agency provide prior recipients with notification that the information has been deleted, or a copy of the statement, codification or summary of the dispute. It must be given to any person specifically designated by the consumer who has received a consumer report containing the disputed information within the preceeding two years for employment purposes, or within the preceeding six months for any other purpose. § 611(d)

40. Must the financial institution disclose the consumer's right to request this notification to prior recipients?

Yes. The financial institution must orally or in writing clearly and conspicuously disclose to the consumer his right to make the request. The disclosure must be made at, or prior to, the time the information is deleted or the consumer's statement regarding the disputed information is received. § 611(d)

41. May a financial institution charge the consumer for furnishing notification of deleted or disputed material to prior recipients of his report?

Yes, depending on the time when the consumer makes the request, whether the financial institution normally charges users of reports for furnishing them, and whether the material is found to be inaccurate or can no longer be verified. If the consumer makes the request either within 30 days after he receives notice that a user of a report has denied or increased the charge for credit or insurance (or denied employment) on the basis of the report, or within 30 days of notification from a debt collection agency affiliated with the financial institution that the consumer's credit

rating may be, or has been, adversely affected, the information must be furnished free of charge. If the request is received after 30 days, a charge may be made for furnishing notification to prior recipients. The amount must be indicated to the consumer prior to furnishing the information and it may not exceed the charge that the financial institution would impose on each designated recipient for a consumer report. If the financial institution makes no such charge, then it may not charge the consumer for furnishing information about the dispute to prior recipients. In any event, the statute prohibits the imposition of any charge for notifying prior recipients of the deletion of information which is found to be inaccurate or which can no longer be verified. § 612

V. The Financial Institution As A Purchaser Of Dealer Paper

42. Does a financial institution which regularly purchases dealer paper have specific responsibilities with regard to those transactions?

Yes, if the financial institution wishes to avoid becoming a consumer reporting agency. When a dealer calls the financial institution before credit is extended to inquire whether the institution will either extend credit directly to his customer or purchase the retail contract, and the financial institution denies the credit or increases the cost, even partially because of information from outside sources, the dealer and the financial institution must each make certain disclosures to the consumer to keep the financial institution from being considered a consumer reporting agency.

Whenever such a request is made, the dealer must advise the consumer of the name and address of the financial institution. If the financial institution denies credit or increases its cost, it must follow the normal procedures of a user of information from outside sources. If the financial institution's decision was based on a report from a consumer reporting agency, it must give the consumer the name and address of the agency. If its decision was based on information from a third party, which is not a consumer reporting agency, the financial institution must disclose to the consumer his right to make a written request to the financial institution within 60 days for disclosure of the nature of the information.

If the decision to deny credit or increase its cost is based on the financial institution's prior experience with the consumer or its general credit policy (for example, size of downpayment or maturity required) it would not need to make any disclosure to the consumer. However, a denial requiring disclosures occurs when any condition is imposed on the dealer contract on the basis of information from any outside source. This may include increasing the discount or dealer reserve or taking the paper with recourse. It may also include requiring a larger downpayment, shorter maturity, a co-signer or guarantor. § 603(d)(3)(C), § 615

43. If, subsequent to an extension of credit to a consumer, a financial institution sells the consumer's obligation to a third party (including a collection agency), and furnishes information on the consumer which was obtained from outside sources to the third party in connection with that sale, does the financial institution become a consumer reporting agency?

No. Such a transaction is a business transaction which is generally beyond the scope of the Act.

VI. Investigative Consumer Reports

44. What is an "investigative consumer report"?

This would be a consumer report compiled from personal interviews with neighbors, friends, associates or others as to the consumer's character, general reputation, personal characteristics, or mode of living. § 603(e)

45. What are the responsibilities of a financial institution as a user of an investigative consumer report?

When such a report is requested from a consumer reporting agency, the financial institution must mail or deliver written notice to the consumer within three days that an investigative report including information as to his character, general reputation, personal characteristics, and mode of living may be made. He must also be informed that he may make a written request for the "nature and scope" of the investigation. If the consumer makes a written request within a reasonable period of time, the financial institution must make a complete and accurate disclosure of the "nature and scope" of the investigation. One way to do this (although not required by the law) would be to furnish the consumer a copy of any questionnaires to be used in the investigation. Within 5 days after the consumer's request (or 5 days after the time the report was first requested by the financial institution, whichever is later) these disclosures must be made in writing by mailing them or otherwise delivering them to the consumer. § 603(e), § 606, § 609(a)(2)

46. Are disclosures required in all instances when investigative consumer reports are used?

No. They are not applicable when the report is to be used for employment purposes and the consumer has not specifically applied for the position. § 606(a)(2) In addition, they are not required if the financial institution conducts an investigation for its own purposes, using its own employees.

47. What if a financial institution denies credit, insurance or employment or increases the charge for credit or insurance based upon information in an investigative consumer report?

The financial institution must make the "user" disclosures described in Section I.

48. Are special requirements imposed on a financial institution that is a consumer reporting agency if it prepares an investigative consumer report for a third party?

Yes. Adverse information (other than public record information) in such a report cannot be included in a subsequent consumer report unless verified in the process of making the subsequent report, or unless received within the three months preceeding the date the subsequent report is furnished. § 614

49. If a consumer requests disclosure of information in his file, must the financial institution disclose the nature and substance of the information contained in the investigative consumer report?

Yes. However, the source of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose, need not be disclosed. § 609(a)(2)

VII. Responsibilities Of A Financial Institution When It Furnishes Or Uses Consumer Reports For Employment Purposes

50. Can a financial institution give out information on a consumer in response to an inquiry about the consumer for employment purposes?

Yes. However, if it regularly furnishes information other than as to its own transactions or experiences with the individual, it may become a consumer reporting agency. § 603(d), § 604

51. What is the definition of a report used for "employment purposes"?

It means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee. § 603(h)

52. Do the restrictions on furnishing obsolete information apply to information furnished by a financial institution for employment purposes if it is a consumer reporting agency?

Yes, except where the information is to be used in connection with the employment of an individual at an annual salary which equals, or which may reasonably be expected to equal, $20,000 or more. In that case, the restrictions on obsolete information do not apply. § 605(b)

53. Are there special requirements if a financial institution, which is a consumer reporting agency, furnishes a report for employment purposes which contains matters of public record (such as liens, judgments, pending law suits, arrests, convictions, etc.) which are likely to have an adverse effect on the consumer's ability to obtain employment?

Yes. At the time the information is reported to the user, the financial institution must notify the consumer of the fact that public record information is being reported, together with the name and address of the person to whom such information is being reported.

As an alternative, the financial institution need not make these disclosures if it maintains strict procedures designed to insure that, whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported, it is complete and up-to-date. The statute provides that items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up-to-date if the institution reports the current public record status of the item at the time the report is reported. § 613

54. In evaluating a potential employee, may a financial institution obtain a consumer report from a consumer reporting agency or other information from present or former employers?

Yes. However, financial institutions insured by the Federal Deposit Insurance Corporation should not rely entirely upon a consumer report to obtain information as to whether an individual has been convicted of a crime involving dishonesty or breach of trust to meet Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829). Information relating to such crimes is relevant to meeting the requirements of Section 19 regardless of when the conviction occurred, whereas such information, if older than 7 years, will probably not be contained in a report from a consumer reporting agency, unless the report is to be used in connection with employment at an annual salary of $20,000 or more.

55. Must the consumer be notified if the report takes the form of an investigative consumer report?

Generally yes, if the financial institution requests the report from a consumer reporting agency. However, notification would not be required if the report is obtained in connection with employment, promotion, or reassignment for which the consumer has not specifically applied. Otherwise, he must be notified of the request for an investigative report within 3 days of the request, and the financial institution must otherwise comply with § 606, as outlined in questions 45, 46 and 47.

56. Does the financial institution have any responsibilities to the prospective employee if employment is denied on the basis of a consumer report?

Yes. If employment is denied, even partially on the basis of information in a consumer report from a consumer reporting agency, the individual must be given the name and address of the consumer reporting agency making the report. However, if employment is denied because of information from a source other than a consumer reporting agency, no disclosures are necessary. § 615

VIII. Penalties, Liabilities And The Act's Effect On State Law

57. What are the civil liabilities for failing to comply with the Act?

The Act provides civil liabilities for either willfully or negligently failing to comply with the requirements of the Act. The liabilities apply to financial institutions as users of consumer reports and as consumer reporting agencies where they are acting in that capacity. In the case of negligent noncompliance, a financial institution may be liable to the consumer for any actual damages substained by the consumer, court costs and reasonable attorney's fees. If the failure to comply is willful, a financial institution may also be liable to the consumer for punitive damages. § 616, § 617

58. Is there any protection where a financial institution which is a "user" has made a good faith attempt to comply?

Yes. A user of information will not be held liable if he shows by a preponderance of evidence that at the time of an alleged violation he maintained reasonable procedures to assure compliance. § 606(c), § 615(c)

59. What is the statute of limitations on civil liability?

Any action must be brought within two years from the date on which the liability arises, except in certain situations where there has been a material and willful misrepresentation, in which case the action may be brought within two years after discovery by the consumer of the misrepresentation. § 618

60. Are there any criminal penalties?

Yes. The Act provides for a fine of not more than $5,000 or imprisonment of not more than one year, or both, in the case of any person who willfully and knowingly obtains information from a consumer reporting agency under false pretenses. The same criminal penalty can be imposed upon any officer or employee of a financial institution which is a consumer reporting agency who willfully and knowingly provides information from a financial institution's files about a consumer to a person not authorized to receive it. § 619, § 620

61. What effect does the Act have upon State law?

This Act does not annul, alter, affect, or exempt any person subject to the provisions of this 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 provisions of this Act, and then only to the extent of the inconsistency. § 622

TITLE VI—PROVISIONS RELATING TO CREDIT REPORTING AGENCIES

AMENDMENT OF CONSUMER CREDIT PROTECTION ACT

SEC. 601. The Consumer Credit Protection Act is amended by adding at the end thereof the following new title: 82 Stat. 146. 15 USC 1601 note.

"TITLE VI—CONSUMER CREDIT REPORTING

Citation of title.

"§ 601. Short title

"This title may be cited as the Fair Credit Reporting Act.

"§ 602. Findings and purpose

"(a) The Congress makes the following findings:

"(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

"(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.

"(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

"(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

"(b) It is the purpose of this title to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this title.

"§ 603. Definitions and rules of construction

"(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this title.

"(b) The term 'person' means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

"(c) The term 'consumer' means an individual.

"(d) The term 'consumer report' means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under section 604. The term does not include (A) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under section 615.

Post, p. 1133.

"(e) The term 'investigative consumer report' means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such

items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

"(f) The term 'consumer reporting agency' means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

"(g) The term 'file', when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

"(h) The term 'employment purposes' when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

"(i) The term 'medical information' means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

"§ 604. Permissible purposes of reports

"A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

"(1) In response to the order of a court having jurisdiction to issue such an order.

"(2) In accordance with the written instructions of the consumer to whom it relates.

"(3) To a person which it has reason to believe—

"(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

"(B) intends to use the information for employment purposes; or

"(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

"(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

"(E) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

"§ 605. Obsolete information

"(a) Except as authorized under subsection (b), no consumer reporting agency may make any consumer report containing any of the following items of information:

"(1) Bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen years.

"(2) Suits and judgments which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

"(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

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"(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.
"(5) Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years.
"(6) Any other adverse item of information which antedates the report by more than seven years.
"(b) The provisions of subsection (a) are not applicable in the case of any consumer credit report to be used in connection with—
"(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of $50,000 or more;
"(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of $50,000 or more; or
"(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal $20,000, or more.

"§ 606. Disclosure of investigative consumer reports

"(a) A person may not procure or cause to be prepared an investigative consumer report on any consumer unless—
"(1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure (A) is made in a writing mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested, and (B) includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section; or
"(2) the report is to be used for employment purposes for which the consumer has not specifically applied.
"(b) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a)(1), shall make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.
"(c) No person may be held liable for any violation of subsection (a) or (b) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (a) or (b).

"§ 607. Compliance procedures

"(a) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of section 605 and to limit the furnishing of consumer reports to the purposes listed under section 604. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 604.

"(b) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

"§ 608. Disclosures to governmental agencies

"Notwithstanding the provisions of section 604, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

"§ 609. Disclosures to consumers

"(a) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:
"(1) The nature and substance of all information (except medical information) in its files on the consumer at the time of the request.
"(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: *Provided*, That in the event an action is brought under this title, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.
"(3) The recipients of any consumer report on the consumer which it has furnished—
"(A) for employment purposes within the two-year period preceding the request, and
"(B) for any other purpose within the six-month period preceding the request.
"(b) The requirements of subsection (a) respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this title except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

"§ 610. Conditions of disclosure to consumers

"(a) A consumer reporting agency shall make the disclosures required under section 609 during normal business hours and on reasonable notice.
"(b) The disclosures required under section 609 shall be made to the consumer—
"(1) in person if he appears in person and furnishes proper identification; or
"(2) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.
"(c) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section 609.
"(d) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.
"(e) Except as provided in sections 616 and 617, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information

against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 609, 610, or 615, except as to false information furnished with malice or willful intent to injure such consumer.

"§ 611. Procedure in case of disputed accuracy

"(a) If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete such information. The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

"(b) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

"(c) Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.

"(d) Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information. The consumer reporting agency shall clearly and conspicuously disclose to the consumer his rights to make such a request. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received.

"§ 612. Charges for certain disclosures

"A consumer reporting agency shall make all disclosures pursuant to section 609 and furnish all consumer reports pursuant to section 611(d) without charge to the consumer if, within thirty days after receipt by such consumer of a notification pursuant to section 615 or notification from a debt collection agency affiliated with such consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 609 or 611(d). Otherwise, the consumer reporting agency may impose a reasonable charge on the consumer for making disclosure to such consumer pursuant to section 609, the charge for which shall be indicated to the consumer prior to making disclosure; and for furnishing notifications, statements, summaries, or codifications to person designated by the consumer pursuant to section 611(d), the charge for which shall be indicated to the consumer prior to furnish-

ing such information and shall not exceed the charge that the consumer reporting agency would impose on each designated recipient for a consumer report except that no charge may be made for notifying such persons of the deletion of information which is found to be inaccurate or which can no longer be verified.

"§ 613. Public record information for employment purposes

"A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall—

"(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

"(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

"§ 614. Restrictions on investigative consumer reports

"Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished.

"§ 615. Requirements on users of consumer reports

"(a) Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

"(b) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

"(c) No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (a) and (b).

"§ 616. Civil liability for willful noncompliance

"Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of—

"(1) any actual damages sustained by the consumer as a result of the failure;

"(2) such amount of punitive damages as the court may allow; and

"(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

"§ 617. Civil liability for negligent noncompliance

"Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of—

"(1) any actual damages sustained by the consumer as a result of the failure;

"(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

"§ 618. Jurisdiction of courts; limitation of actions

"An action to enforce any liability created under this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this title to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this title, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

"§ 619. Obtaining information under false pretenses

"Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined not more than $5,000 or imprisoned not more than one year, or both.

"§ 620. Unauthorized disclosures by officers or employees

"Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be fined not more than $5,000 or imprisoned not more than one year, or both.

"§ 621. Administrative enforcement

38 Stat. 717; 52 Stat. 114. 15 USC 58.

"(a) Compliance with the requirements imposed under this title shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed

under this title shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act and shall be subject to enforcement by the Federal Trade Commission under section 5(b) thereof with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act were part of this title. Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this title.

66 Stat. 632. 15 USC 45. 52 Stat. 112.

"(b) Compliance with the requirements imposed under this title with respect to consumer reporting agencies and persons who use consumer reports from such agencies shall be enforced under—

"(1) section 8 of the Federal Deposit Insurance Act, in the case of:

64 Stat. 879; 80 Stat. 1046, 1054. 12 USC 1818.

"(A) national banks, by the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

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

"(2) section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

80 Stat. 1028. 12 USC 1464. 80 Stat. 1036. 12 USC 1730. 47 Stat. 727; 69 Stat. 640. 12 USC 1426, 1437.

"(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

73 Stat. 628; Ante, pp. 49, 994. 12 USC 1751.

"(4) the Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts;

49 USC 1 et seq.

"(5) the Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act; and

72 Stat. 731. 49 USC 1301 note.

"(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

42 Stat. 159. 7 USC 181, 226, 227.

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

Pub. Law 91-508 October 26, 1970

84 STAT. 1136

"§ 622. Relation to State laws

"This title does not annul, alter, affect, or exempt any person subject to the provisions of this title 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 this title, and then only to the extent of the inconsistency."

EFFECTIVE DATE

82 Stat. 167. SEC. 602. Section 504 of the Consumer Credit Protection Act is amended by adding at the end thereof the following new subsection:

"(d) Title VI takes effect upon the expiration of one hundred and eighty days following the date of its enactment."

Approved October 26, 1970.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-975 (Comm. on Banking and Currency) and No. 91-1587 (Comm. of Conference).
SENATE REPORT No. 91-1139 accompanying S. 3678 (Comm. on Banking and Currency).
CONGRESSIONAL RECORD, Vol. 116 (1970):
May 25, considered and passed House.
Sept. 18, considered and passed Senate, amended.
Oct. 9, Senate agreed to conference report.
Oct. 13, House agreed to conference report.

I. Introduction

A. Why did Congress enact Truth in Lending?

1. Cost of credit very difficult to determine

a. For example, add-on--discount--time price differential--rate applied to unpaid balance
b. How can these be compared?

2. If consumer could compare rates and terms, he could shop around for the best terms

3. Will improve competition among creditors and lower prices.

B. How does Truth in Lending work?

1. Requires disclosure of essential credit terms in uniform language.

a. Annual percentage rate
b. Uniform calculation of finance charge

2. Right to Rescind certain real estate transactions

3. Regulation of credit advertising

4. Regulation of issuance of credit cards and subsequent liability

C. Why is the Board involved?

1. Act required Board to write Regulation Z

a. Continues to amend and interpret
b. Issues staff opinion letters

2. Enforces Act among state member banks

3. Works with others agencies that enforce Act: nine in all

4. Grants State exemptions

D. Materials used in implementing Regulation

1. Regulation Z pamphlet

a. Act
b. Regulation Z
c. Amendments: 15
d. Interpretations: 50
e. Questions and Answers

2. Supplements I-IV: APR, State Exemptions

3. Staff Letters : 850

4. APR Tables I & II

5. Educational materials: filmstrip and leaflets

II. What Kind of credit is covered?

A. Extended to natural persons by creditors or arrangers
B. Personal, family, household or agricultural purpose
C. Finance charge or more than 4 instalments
D. $25,000 or less, except for real property

E. Exempted transactions:

1. Business or governmental credit

2. Securities or commodities accounts with SEC broker-dealer

3. Nonreal prop. over $25,000

4. Agency regulated public utility bills

F. Mixed purpose: when in doubt-disclose

III. General Disclosure Requirements

A. Clear, conspicuous, in meaningful sequence

B. APR and Finance Charge: more conspicuous, except in ads.

C. Figures: legible and 10 pt. type

D. Additional information: not to mislead or confuse customer or contradict or detract attention

E. Inconsistent state requirements

1. Below or separate
2. Marked inconsistent
3. Below demarcation line

F. Multiple customers

1. Single disclosure

2. Not to those secondarily liable

3. Rescission: disclosure and two notices to all customers with right.

G. Estimating Unknown Information

1. Lable

2. No requirement to correct

H. Subsequent occurences, i.e., fails to keep property insured

I. Record retention

1. Two years
2. Microfilm o.k.

IV. Finance Charge Computations

A. <u>General rule</u>-- sum of <u>all charges</u> payable directly or indirectly by the customer and imposed directly or indirectly by the creditor as an incident to, or a condition of, the extension of credit.

B. Excludable Charges-- all credit

1. Filing fees
2. Nonfiling insurance
3. Taxes not included in amount financed
4. License, certificate of title, registration fees
5. Must be itemized and disclosed

C. Exceptions: real property closing costs

1. Fees for title examination, abstract of title, title insurance, property surveys

2. Preparation of deeds, settlement statements

3. Escrow deposits

4. Notary fees

5. Appraisal fees, photograph, termite report, and credit reports

6. No itemization required, but must be bona fide charges

D. Bona fide delinquency charges not finance charges

E. Seller's points

1. Payable if passed on
2. May assume that all are

F. Membership charges for credit cards--no

G. Credit Life Insurance

1. If required, include in FC

2. If optional, must disclose

a. Disclose premium cost
b. Provide for separate election
c. Separate form permissible; may be cross-referenced to cost

3. Penetration problem

H. Property Insurance

1. If required from creditor, include in FC

2. If may be purchased elsewhere:

a. Must disclose cost
b. State that it may be purchased from anyone
c. Creditor may refuse to accept insurer

3. Previously owned insurance not in FC

I. VSI insurance-- include in FC unless right of subrogation is waived

J. Mortgage Insurance

1. FHA
2. MGIC

V. Annual Percentage Rate

A. General Rules

1. Round to nearest quarter of 1%
2. No overstatement
3. Use of 360 v. 365 day year--no effect unless over 9%

B. Credit other than open end

1. Formula in Supp. I
2. APR Tables I & II

F. Dealer paper

1. Likely source of error
2. Subject to defenses and liability if improper disclosures; also rescission
3. Can cure in 15 days if no action has been started--can't charge more than disclosed

G. Refinancing--new transaction

1. Includes consolidations or increases
2. Unearned FC not credited must be added to new FC and not to amount financed
3. Renewals not refinancing where terms basically the same § 226.811

H. Deferrals or extensions: precomputed FC

1. If charge or fee imposed for deferral, must disclose amount deferred, deferral period, amount of fee

I. Assumptions

1. Written agreement and personal liability of subsequent obligor are necessary
2. Make new disclosures and give right of rescission

VII. Open-end Credit

A. General Description

1. Customer permitted to make purchases or get loans from time to time using card, check or other device.
2. Customer can pay in full at anytime
3. FC computed on outstanding balance
4. No total finance charge

B. Disclosures before opening the account

C. Periodic statement disclosures

D. Location of disclosures

E. Charges imposed for honoring credit card--cash discounts

F. Change in terms

1. 15 days prior to beginning of billing cycle reflecting the change

2. No notice of reduction in payment or rate of FC

3. Unit APR in small transactions
   a. FC $\leq$ \$5; AF $\leq$ \$75
   b. FC $\leq$ \$7.50; AF $>$ \$75
   c. May not divide

4. Minor irregularities ignored--§§ 226.5(d), 226.503, 226.505

C. Open-end credit

1. Arbitrary nature of rate--plan variations, free ride, previous balance, etc.
2. Nominal method
3. Quotient method (2 simple rates)
4. Minimum charges (ignore if less than \$.50)
5. Transaction charges

VI. Closed-End Disclosures

A. Given <u>before</u> consummation

B. Location

1. On note or on separate statement
2. One side of page
3. No signature requirement

C. Specific disclosures

1. Amount financed
2. APR - exceptions
3. Finance charge (except in sale of dwelling or first lien loan)
4. Total of payments (except in sale of dwelling or first lien loan)
5. Late charges (attorney's fees)
6. Security interests
7. Prepayment penalties (mortgages or loans where interest in imposed or outstanding balance)
8. Method (of lack thereof) of rebate (precomputed FC)--Rule of 78s.

D. Prepaid FC

1. Deduct to get amount financed
2. Paid separately in cash or withheld from proceeds
3. Still include in FC
4. Does not include add-ons

E. Required deposit balances

1. Deduct to arrive at amount financed
2. Exceptions: escrows, prior balance offered loan, balance from proceeds requested for that purpose in writing

VIII. Unique Disclosure Situations

A. Demand Loans

1. 1/2 year maturity imputed, unless alternative maturity stated
2. Only disclose due dates or periods--no total of payments
3. Mortgage with demand feature--based on amortization schedule

B. Construction Loans: estimate APR and FC by § 226.813

C. Education Loans

1. Interim loans: no total of payments or total finance charge
2. Full disclosure on payout

D. Agricultural Loans: when advances or payments tied to seasons or production, disclose <u>method</u> of FC computation

E. Variable Interest Rates: rate in effect at time of consummation plus conditions under which may be changed

F. Reductions in APR: no disclosure

IX. Rescission

A. Transactions covered:

1. Real property as principal residence
2. Exempts first lien to finance acquisition of dwelling
3. Includes vacant lots, liens arising by operation of law, confessions of judgment clauses if no notice and hearing

B. Notice to customer

1. Two copies
2. No dispersal, except for agriculture
3. Rescind in writing
4. Midnite of third business day following consummation.

C. Waiver

1. Bonafide immediate personal financial emergency.

2. Dated and signed personal statement (no preprinted form).

D. Refinancing

1. Applies only to new money

2. Renewals at same terms--no rescission

X. Advertising

A. Broad coverage--newspaper, radio, TV, flyers, billboard

B. Triggering terms: general vs. specific terms

C. Oral quotation of rates

XI. Credit Cards

A. Issuance

1. No unsolicited issuance (can use phone or wife's okay)

2. Can issue if in renewal or substitution

3. Can if successor card issuers (no, if no previous card)

B. Unauthorized use--cardholder is liable for:

1. $50 maximum

2. Must be accepted credit card

3. Notice goven by card issuer of potential liability

4. Card issuer must provide addressed notification

5. Unauthorized use--by person other than cardholder who (1) does not have actual, implied, or apparent authority and (2) cardholder receives no benefit. (if other condition exists, then the use is authorized)

6. Limited liability applies to all credit cards, no matter the purpose.

XII. State Exemptions

A. Board grants exemptions

1. Must be substantial similarity in laws

2. Must be adequate enforcement

3. Maine, Oklahoma, Mass., Conn., Wyoming

B. Applies to State banks, not Nationals

C. Not applied to advertising

D. Credit card coverage is optional

XIV. Penalties

A. Found in the Act

1. § 112: criminal--willful and knowing

a. fine ≧ $5000
b. imprisonment ≧ 1 year

2. § 130: civil fails to disclose

a. twice the amount of FC ($100 to $1000)
b. court costs and attorney's fees
c. class actions

XV. Fair Credit Reporting

A. Concerns bank as user of credit information

B. Bank as supplier of credit information

XVI. New Developments

A. FTC Improvement Act

1. Unfair and deceptive practices by banks

2. Has passed both Houses and will go to conference.

B. Fair Credit Billing

1. How creditors must deal with billing error complaints from consumers.

2. Has passed Senate, not House. Enact in 1975 is likely.

C. Fair Credit Reporting Amendments

1. Strengthens present act
2. Not acted on this year

D. Equal Credit Opportunity

1. Prohibits discrimination in credit
2. Passed both Houses, now in conference

E. Truth in Savings

1. Full disclosure of terms and conditions of savings accounts
2. Still in Senate committee

F. Presettlement Disclosures

1. Advance uniform settlement statement
2. Passed both Houses; now in conference

TRUTH IN LENDING CASE PROBLEM

You are an experienced senior assistant examiner who has been delegated the duty of reviewing the loan portfolio and other records for conformance with Regulation Z and the Truth in Lending Act at the Bent Twig Trust Company.

During your review of a sample of the loans, the following questions are raised which may be answered by either a Yes or a No. (You may use any of the source material furnished to you regarding Truth in Lending.)

REFERENCE		YE
226.2(c) 226.2(k)	1. Is a loan to Mr. Jones, who is not a farmer, for a delivery truck to be used for the sole purpose of transporting agricultural products for local farmers covered under Regulation Z?	___
226.2(k)	2. The bank has purchased some loans payable in six monthly instalments without a finance charge from a door to door magazine salesman. Are these notes covered under the Regulation?	___
	3. Are any of the following loans exempt from Regulation Z:	
226.3(a)	a. A loan to Mr. Brown for inventory in his grocery store with a second real estate mortgage on his home offered as additional collateral?	___
226.3(a), 226.301, 226.2(s)	b. A loan to the XYZ Corporation for operating money to sustain its large cattle feeding operation?	___
226.3(a), 226.301 226.2(s)	c. A loan to Smith and Son (partnership) operating an orange grove in Florida?	___
226.3(a), 226.2(s)	d. A loan to School District #40?	___
226.3(c)	e. A 30,000 loan on a self-propelled combine to Mr. James who farms?	___
226.3(c)	f. A 75,000 real estate loan to Mr. Rich for the purchase of a home?	___
226.3(b)	g. A 10,000 loan to Mr. Green, who is a carpenter, for 100 shares of General Motors Corporation?	___
226.3(a), 226.302	h. A loan to Mr. Hood for remodeling his 10 unit apartment house secured by a second mortgage on the apartment?	___
	4. Should any of the following charges be included in the finance charge of consumer loans not involving real estate:	
226.4(a)(2)	a. Transaction fee?	
226.4(b)(1)	b. Fee for filing a financing statement?	
226.4(a)(4)	c. Credit report?	

Any credit advertisement promoting an extension of credit which is payable in more than four instalments must, unless a finance charge is imposed, clearly and conspicuously state: "The cost of credit is included in the price quoted for A146 goods and services."

Add-on and Discount Rates Prohibited - Some banks have continued to use "add-on" and "discount" in their credit advertising and in their conversations with customers, especially in response to telephone inquiries. Continued use of these rates rather than the annual percentage rate perpetuates the very confusion that Truth in Lending was intended to resolve. Use of add-on and discount rates is prohibited by the Regulation, whether used in connection with advertising or

Z.10(d) in response to consumer inquiries. It is not permissible to quote these rates, even if the annual percentage rate is quoted

Z.101 in conjunction with them. It is permissible to advertise or quote a simple interest rate in conjunction with the annual percentage rate when two rates are not the same, for example, because of the effect of points in a home mortgage transaction.

Conspicuousness of the Annual Percentage Rate - In credit advertising, it is not necessary to show the annual percentage rate more conspicuously than the other terms. All that is required is that the rate, as well as the other terms,

Z.10(c)& (d)(1)(ii) be shown clearly and conspicuously. This permits a creditor

Z.10(d) (2) to highlight another credit term if he desires to do so, but prohibits him from burying important terms in an obscure

TRUTH IN LENDING CASE PROBLEM

REFERENCE

226.6(g) 12. A three year note requires that the borrower carry property insurance on his automobile. After one year the borrower refuses to renew his insurance and the bank purchases the insurance and adds the cost to the balance of his loan. Are new disclosures required?

226.6(i) 13. Since the state of limitations is one year for civil liability, the banker has been disposing of completed disclosures forms after one year. Is this correct?

226.8(a)(1), 226.801 14. The bank uses separate disclosure forms in some cases but does not obtain the customer's signature on these forms that the customer has received the disclosures. Is this a violation?

226.8(b)(2) 15. A note for 90.00 has a finance charge of 6.25, but the annual percentage rate is not disclosed. Is this a violation?

226.8(b)(3), 226.8(d)(3) 16. A note secured by a first lien on a dwelling made to finance the purchase of that dwelling does not disclose the total of payments or the total amount of the finance charge. Is this all right?

226.8(j) 17. A borrower wishes to refinance his note and borrow an additional 1,000.00. Does the bank have to give a new disclosure?

226.8(l) 18. A borrower wishes to extend his original six month note for four months, and the bank will not charge an extension fee. Must new disclosures be made?

226.8(n), Footnote 13 19. The bank sends out reminder notices on its instalment notes showing the annual percentage rates and the date by which payment must be received in order to avoid late charges. Are these disclosures adequate?

226.8(n) 20. The bank only shows the balance due on its delinquency notices. Are any disclosures required on a delinquency notice?

21. Does the bank have to give a rescission notice to the following individuals:

226.9(g)(1) a. A real estate loan to Mr. Spark secured by a first mortgage on a dwelling in which he expects to reside and for the purpose of purchasing that dwelling?

226.9(a) b. A second real estate mortgage to Mr. Hayes taken on his residence to secure a previous debt to this bank?

226.9(b), 226.902 c. Mr. Rock guarantees a personal loan for another individual and gives a second mortgage on his home as additional security?

226.9(a) d. A real estate loan to Mr. Snyder secured by a first mortgage on a vacant lot on which he expects to construct his residence?

TRUTH IN LENDING CASE PROBLEM

REFERENCE			Y
226.9(a)	22.	The right of rescission may run the full term of a real estate loan if the required disclosures have not been given to the borrower?	
226.9(a), 226.9(c)(1)	23.	At closing, the required disclosures are given to the borrower and a real estate transaction subject to the right of rescission is consummated. The rescission notice was given to the borrower a week ago. May the banker disburse the proceeds to the borrower immediately after closing?	
226.9(b)	24.	The bank should furnish each owner of the property subject to rescission who is also a party to the transaction one copy of the rescission notice?	
226.10(d)(1)	25.	Is it all right for a bank to advertise 4-1/2% add-on in addition to showing a 8.21% annual percentage rate?	
226.10(d)(2)	26.	If a bank advertisement for new automobile loans shows the number and amount of installment payments, then it must state the dollar amount of the finance charge as one of the required disclosures?	
226.13(b)	27.	May this bank send out unsolicited credit cards to select groups of individuals after careful credit screening?	
226.13(c)	28.	May this bank under certain conditions hold a customer responsible for up to 100.00 in liability for unauthorized use of its credit card?	
130(a)	29.	May a consumer sue this bank for inadequate advertising disclosures under Regulation Z?	
131 and Examiner Memo (6-30-71)	30.	Does this bank take any risk in accepting dealer paper with inadequate disclosures?	
R/D Memo (6-23-69)	31.	A letter-report should be written to the bank's Board of Directors in almost all cases where violations of Regulation Z are found in the bank?	
R/D Memo (6-23-69) and 112	32.	A criminal letter-report should be written to the U.S. Attorney where bankers have willfully and knowingly given false or inaccurate information or failed to give information required under Regulation Z and the Truth in Lending Act?	
R/D Memo (8-11-71)	33.	State consumer protection laws may be ignored by you because these laws are usually enforced by State officials?	
Examiner Memo (6-30-71) and R/D Memo (6-23-69)	34.	When you find improper disclosures with respect to dealer paper that the bank has purchased or holds as collateral, you should write a letter-report to the bank's Board of Directors and, in addition, notify the proper Federal Agency having jurisdiction over the dealer by a letter-report?	

TRUTH IN LENDING CASE PROBLEM

REFERENCE			Y
XXXXXX	35.	In writing letter-reports to the bank's Board of Directors, you may cite violations from Sections 226.1, 226.2, 226.3, and 226.12 of Regulation Z?	

ANSWERS TO TRUTH IN LENDING CASE PROBLEM

1. No. This is a loan for a business purpose other than an agricultural purpose. In order to have an agricultural purpose, a natural person must cultivate, plant, propagate, or nurture the agricultural products involved. 226.2(c), 226.2(h), PIL-41

2. Yes. Irrespective of the lack of a finance charge, this credit is payable, pursuant to an agreement, in more than 4 instalments and defined as consumer credit. 226.2(k), PIL-11

3. a. Yes. This loan is for a business purpose and a second mortgage on the customer's residence does not affect the exemption from the Regulation. 226.3(a), PIL-277

   b. Yes. Corporations (organizations) are exempt from Regulation Z even if the loan is for an agricultural purpose. 226.3(a), 226.2(s), 226.301

   c. Yes. Partnerships (organizations) are exempt from Regulation Z even if the loan is for an agricultural purpose. 226.3(a), 226.2(s), 226.301

   d. Yes. Governmental subdivisions (organizations) are exempt from Regulation Z. 226.3(a), 226.2(s)

   e. Yes. This is a non-real estate transaction over $25,000. 226.3(c)

   f. No. A real estate transaction to a natural person is covered regardless of amount. 226.3(c)

   g. No. This loan is considered to be consumer credit since the individual is not directly involved in the business in which he is investing. 226.3(a), 226.2(k), PIL-241, PIL-368

   h. Yes. Credit to an owner of a dwelling containing more than four family units for the purpose of remodeling that dwelling is considered credit for a business purpose. 226.3(a), 226.302

4. a. Yes. 226.4(a)(2)

   b. No. 226.4(b)(1)

   c. Yes. 226.4(a)(4)

   d. No. 226.4(b)(2), PIL-35

   e. Yes. 226.4(a)(5)

   f. No. 226.4(a)(6)

   g. Yes. 226.4(a)(5)

5. a. No. 226.4(e)(1)

   b. No. 226.4(e)(5)

   c. Yes. 226.4(a)(3)

   d. Yes. 226.4(a), PIL-272, PIL-369

   e. No. 226.4(e)(1)

   f. Yes. 226.4(a)(7), PIL-317

6. No. Demand loans are considered to have a maturity of one-half year for computing the amount of finance charge and the annual percentage rate. 226.4(g)

7. No. The amount of premium covering the entire period of time that the creditor requires the customer to maintain the insurance should be disclosed. 226.4(h), 226.402

8. No. The annual percentage rate should be disclosed with an accuracy at least to the nearest quarter of one percent. 226.5(a), 226.5(b)(1)

9. Yes. The creditor may consider the 90.00 payment as regular since the period from the date the finance charge begins to accrue and the date the final payment is due is more than a year and the 90.00 payment is not more than 50 percent greater than the regular payment. 226.5(d)(1)(i)

10. No. The terms "finance charge" and "annual percentage rate" where required should be printed more conspicuously than other required terms. 226.6(a)

11. Yes. In a nonrescindable transaction, the creditor need only furnish one disclosure statement to one of the direct borrowers. 226.6(e), 226.603

12. No. The increase in the loan as a result of the customer's failure to renew his insurance is considered a subsequent occurrence not requiring additional disclosures. 226.6(g), PIL-113, PIL-202

13. No. The creditor shall preserve evidence of compliance with the Regulation for a period of not less than two years after the date each disclosure is required to be made. 226.6(i)

14. No. There is no requirement under the Regulation that the customer sign any disclosure statement. Reference to a signature in the Regulation is a reference to the contract signature. Requiring a signed receipt for a disclosure statement may be recommended as a good practice. 226.8(a)(1) & (2), 226.801, PIL-106, PIL-333

15. No. The annual percentage rate need not be disclosed since the amount financed exceeds $75 and the finance charge does not exceed $7.50. 226.8(b)(2)(ii)

16. Yes. Both disclosures may be excluded in a loan secured by a first lien on a dwelling and made to finance that dwelling. 226.8(b)(3), 226.8(d)(3)

17. Yes. When an existing obligation is increased, this is considered a new transaction subject to disclosure requirements. 226.8(j)

18. No. In the case of an obligation where there is no fee for an extension, no new disclosures need be made. 226.8(l), PIL-223

19. Yes. These are the two required disclosures for a permissible periodic statement (reminder notice). 226.8(n), Footnote 13, PIL-110, PIL-324

20. No. There are no disclosures required for a delinquency notice. 226.8(n), PIL-110

21. a. No. The right of rescission is not applicable to the creation, retention, or assumption of a first lien to finance the acquisition of a dwelling in which the customer resides or expects to reside. 226.9(g)(1)

    b. Yes. Since a security interest is being taken on a residence, the right of rescission is applicable. 226.9(a), PIL-217, PIL-300

    c. Yes. The right of rescission and the right to receive disclosures apply to all joint owners of the property who are parties to the transactions. 226.9(b), 226.902, PIL-361, PIL-410

    d. Yes. The exception for a purchase money first mortgage applys to a dwelling and not to a vacant lot. 226.9(a), 226.9(g)(1), PIL-162, 226.2(y)

22. Yes. If the required disclosures are not made and the notice of rescission is not given, the right of rescission could continue indefinitely. 226.9(a), PIL-219

23. No. The creditor shall not disburse any money until the rescission period has expired and he is reasonably satisfied that the customer has not exercised his right of rescission. The right of rescission continues until midnight of the third business day following the date of consummation or date of delivery of the required disclosures, whichever is later. 226.9(a), 226.9(c)(1)

24. No. The bank should furnish each owner of the property who is also a party to the transaction two copies of the notice of rescission as well as one copy of the disclosure statement. 226.9(b), PIL-410

25. No. "No use should be made in advertising, or in other communications with consumers, of the add-on or discount rates (whether in percentages or dollars-per-hundred). Under the Act and Regulation, only the annual percentage rate may be used in advertising the cost of consumer credit." Executive Officer Memorandum 9-27-71, 226.10(d)(1), PIL-465

26. No. The amount of the finance charge is not one of the required items to be stated in advertising of credit other than open end. The amount of the finance charge is expressed as an annual percentage rate. 226.10(d)(2)(iv)

27. No. "No credit card shall be issued except: (1) In response to a request or application therefor, or (2) As a renewal of, or in substitution for, an accepted credit card whether such is issued by the same or a successor card issuer." 226.13(g)

28. No. A cardholder's liability is limited to $50.00 for unauthorized use of a credit card. 226.13(c)

29. No. Civil action for advertising violations is not provided for under the Act. 130(a)

30. Yes. "A bank may be held to have direct responsibility in civil litigation for improper dealer disclosures." Memorandum to Examiners and Assistant Examiners (6-30-71)

31. Yes. "Other violations" --Regulation Z-- "and comment shall be detailed in a letter-report addressed to the Board of Directors of the bank, and forwarded to the Supervision Examiner along with the completed Report of Examination." Memorandum to Supervising Examiner (6-23-69)

32. Yes. "Criminal violations" --Regulation Z-- "will be reported to the United States Attorney in accordance with existing instructions." Criminal liability is defined in Section 112 of the Act. Memorandum to Supervising Examiners (6-23-69) and 112

33. No. "While the responsibility for insuring compliance with such State laws justly resides with the State authorities, we share the Commission's" (National Commission on Consumer Finance) "belief that effective enforcement will be encouraged by the availability to Corporation examining personnel of State check lists or other material relating to State consumer protection laws applicable to banks." Memorandum to Regional Directors (8-11-71)

34. Yes. "When improper disclosures are noted with respect to dealer paper purchased or held as collateral, violations by the bank should be reported in accordance with existing instructions. In addition, the Federal Agency having jurisdiction over the dealer should be notified of the improper disclosures by the dealer as well as the corrective action contemplated by the bank." Memorandum to Examiners and Assistant Examiners (6-30-71)

35. No. It is improper to cite violations of Sections 226.1, 226.2, 226.3, and 226.12. These are explanatory Sections of Regulation Z. However, reference may be made to these Sections for the purpose of explanation or interpretation.

TRUTH IN LENDING CASE PROBLEM

You are an experienced senior assistant examiner who has been delegated the duty of reviewing the loan portfolio and other records for conformance with Regulation Z and the Truth in Lending Act at the Bent Twig Trust Company.

During your review of a sample of the loans, the following questions are raised which may be answered by either a Yes or a No. (You may use any of the source material furnished to you regarding Truth in Lending.)

EFERENCE		YE
26.2(c) 26.2(k)	1. Is a loan to Mr. Jones, who is not a farmer, for a delivery truck to be used for the sole purpose of transporting agricultural products for local farmers covered under Regulation Z?	___
26.2(k)	2. The bank has purchased some loans payable in six monthly instalments without a finance charge from a door to door magazine salesman. Are these notes covered under the Regulation?	___
	3. Are any of the following loans exempt from Regulation Z:	
26.3(a)	a. A loan to Mr. Brown for inventory in his grocery store with a second real estate mortgage on his home offered as additional collateral?	___
26.3(a), 226.301, 26.2(s)	b. A loan to the XYZ Corporation for operating money to sustain its large cattle feeding operation?	___
26.3(a), 226.301 26.2(s)	c. A loan to Smith and Son (partnership) operating an orange grove in Florida?	___
26.3(a), 226.2(s)	d. A loan to School District #40?	___
26.3(c)	e. A 30,000 loan on a self-propelled combine to Mr. James who farms?	___
26.3(c)	f. A 75,000 real estate loan to Mr. Rich for the purchase of a home?	___
26.3(b)	g. A 10,000 loan to Mr. Green, who is a carpenter, for 100 shares of General Motors Corporation?	___
26.3(a), 226.302	h. A loan to Mr. Hood for remodeling his 10 unit apartment house secured by a second mortgage on the apartment?	___
	4. Should any of the following charges be included in the finance charge of consumer loans not involving real estate:	
226.4(a)(2)	a. Transaction fee?	
226.4(b)(1)	b. Fee for filing a financing statement?	
226.4(a)(4)	c. Credit report?	

TRUTH IN LENDING
PRESENTATION AT FEDERAL RESERVE BANKS
1974

BOARD INVOLVEMENT

Implementing Regulation "Z"

Supplements I - IV

Amendments

Interpretations

Staff Letters

APR Tables

Educational Materials

Enforcement

Nine Federal Agencies

State Members by FR Banks

Reg. Z

STRUCTURE OF REGULATION

Disclosure

Open End

Initial - "Game-Plan"

Periodic - Billing Statements

Closed End - One-Shot

Rescission

Credit Advertising

Credit Cards

Unsolicited Issuance

Maximum Liability for Unauthorized Use

State Exemptions

"CONSUMER CREDIT" IS COVERED

Natural person

Personal, family, household or agricultural purpose

Finance charge / more than four instalments

$25,000 or less (real property exception)

Mixed Purpose

When in doubt - DISCLOSE

GENERAL DISCLOSURE RULES

Clear-Conspicuous

Annual percentage rate - finance charge

Figures legible / 10 point type

Inconsistent state requirements

Additional info cannot mislead or detract

"As Applicable"

More than one customer

Single disclosure

Not to secondarily liable

Exception in rescission

Estimates

Lable

No requirement to correct

Record retention

Two years

Microfilm ok

FINANCE CHARGE

General Rule - all charges

Exceptions - all credit

Filing fees, non-filing insurance, taxes, license, title and registration fees.

Must be itemized and disclosed.

Exceptions - real property only

Fees for title examination, abstract of title, title insurance, property surveys, preparation of deeds, settlement statements, escrow deposits, notary, appraisal, photograph, termite report and credit reports.

No itemization required but must be bonafide charges.

Bonafide delinquency charges not FC

Credit life insurance

If required, in FC

If optional, must disclose

Separate form permissible--may refer to cost

Penetration rates

Property insurance

If required from creditor, in FC

If may be purchased elsewhere, must disclose

VSI insurance

Mortgage insurance--FHA and MGIC

ANNUAL PERCENTAGE RATE

Computation - Non-open end

Formula in Supplement I

Volumes I and II

No need for APR in small transactions

Minor irregularities ignored § 226.5(d), 226.503 and 226.505

General Rules

Rounded to the neareast quarter of 1%

No overstatement

Use of 360 v. 365 day year

CLOSED END DISCLOSURES

Given before consummation

Made on note or separate statement

Specific disclosures

Amount financed

Annual percentage rate

Finance charge - home purchase exemption

Payments - total of payments - home purchase exemption

Late charges

Security interests

Prepayment penalty

Prepayment rebate - rule of 78's

Prepaid finance charges

Required deposit balances

Dealer paper

UNIQUE DISCLOSURE SITUATIONS

Demand loans

Half-year maturity imputed

Payments--only due dates or periods

Construction loans

Estimate APR & FC by 226.813

Education loans

Interim loans - no payments or FC disclosed

Full disclosure on payout

Agricultural loans

Advances or payments tied to seasons or production

Disclose method of FC computation

Variable interest rates

Reductions in APR

Decrease - no disclosure

Increase - full disclosure

RESCISSION

Transactions Covered

Real property as principal residence

Notice to Customer

Two copies

No disbursal

Rescind in writing

Waiver

Bonafide immediate personal financial emergency

Dated and signed personal statement (no preprinted form)

Refinancings

Applies only to new money

Renewals at same terms--no rescission

ADVERTISING

Broad Coverage

Newspaper, radio, television, flyer, billboard

Triggering Terms

Oral Quotation of Rates

CREDIT CARDS

Issuance

No unsolicited issuance

In renewal or substitution

By successor card issuer

Unauthorized Use

$50 maximum

Materials should not misstate

Applies to business cards

STATE EXEMPTIONS

Board grants exemptions

Substantial similarity

Enforcement adequate

Five States exempted

Applies to State banks--not to Nationals

Not applied to advertising

Credit card coverage optional

COMPTROLLER OF THE CURRENCY

Statement of

Thomas W. Taylor

Associate Deputy Comptroller of the Currency

for Consumer Affairs

I appreciate this opportunity to represent the Office of the Comptroller of the Currency today in my capacity as Director of the Consumer Affairs Division. Our Office has a deep commitment to consumer protection as it relates to national banks. In addition to being good public policy, attention to good relations with consumers should result in sound banking.

The Comptroller perceived early on the need to establish a special division in our Office devoted to Consumer Affairs which would coordinate the various activities the Office was undertaking to assist the consumer and enforce consumer protection laws. This was before the Magnuson-Moss Warranty -- Federal Trade Commission Improvement Act of 1974 mandated that each bank regulatory agency would have such a division. Our Consumer Affairs Division was fully operative by September 1974.

From our experience since that time, we have ascertained that our examination efforts in enforcing consumer protection laws need to be strengthened or given a new direction. During 1975 and 1976, one of our Regional Offices conducted specialized examinations as a test project. The results of this project convinced us that there was substantially greater non-compliance with consumer credit protection laws than we had previously thought, and, accordingly, we have decided to implement a crash program with the target of examining for consumer protection purposes all national banks within a 12-month period between 1976-77.

Beginning this fall a select group of 250 examiners will undergo two weeks of intensive training in newly designed procedures for examination of national bank compliance with consumer protection laws. The special consumer examination will cover Truth-in-Lending, Equal Credit Opportunity, Fair Credit Reporting, Fair Credit Billing, Fair Housing, Home Mortgage Disclosure, Real Estate Settlement Procedures, advertising, usury, and applicable state laws. We have isolated a number of the provisions of the laws affecting these areas which we think merit more emphasis than others. Therefore, the new examination procedures will focus on those problems which will result in a significantly adverse impact on consumers.

Examiners will be prepared to review note forms used by the banks and to take a statistical sampling of their loans to review for conformity with various statutory and regulatory requirements. A bank's lending policies also will be examined along with its policies implementing consumer protection laws. Extensive interviews of lending officers will be conducted to assist us in determining a bank's adherence to its policy standards.

Where violations are detected during the examination, we will use the full authority of our Office to see that these violations are corrected. In those instances where bank customers have been aggrieved, we will use our authority to the fullest to correct the situation.

Our Office is devoting extensive resources to the consumer protection area in the form of processing consumer complaints and conducting examinations. We have found that both consumers and banks have derived benefit from the changes brought about by the new consumer protection laws. Despite the necessary complexity of many of the regulations, increased disclosure and more rigorous, non-discriminatory credit guidelines have served to educate the public and to improve relations between banks and their customers. I look forward to discussing with you this morning the matters covered in the questions that you submitted, the answers to which are included in the appendix to my statement. Thank you.

Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

July 29, 1976

Dear Senator Biden:

This refers to your letter of June 7, 1976, in which you ask four specific questions regarding violations by national banks of Regulation Z. Our replies are set forth in the same order as the questions posted in your letter.

1. This Office has kept no statistics regarding the number, frequency, and geographic distribution of Truth-in-Lending violations. We do know that national banks throughout the country have made an enormous effort to comply with all aspects of Regulation Z. We have found numerous technical violations, however, through our examining process, which seem to arise in all areas of the country. In addition, we are finding a surprising number of substantive violations in banks as a result of an experimental and exhaustive examination procedure used in one national bank region. These violations were not detected in previous examinations. All further replies to your questions will be based on the information developed from those experimental examinations.

2. Most of the substantive problems found in our experimental examination procedures revolve around the amount financed. Of course, if the amount financed calculation is incorrect, the other charges will automatically be wrongly classified, and the annual percentage rate will be affected. Since these three components of the disclosures form the basis of the Truth-in-Lending material, this Office is most disturbed at our findings. Specific recurring problems are discussed in the next section.

3. In our opinion, the extent of the violations results from inadvertance, and mistaken understanding of the law. We have found very little evidence of negligent procedures or intentional failure to comply. On the contrary, most banks have sought advice from every available source, including private counsel and this Office, as well as the Federal Reserve staff, and have assidiously acted upon the advice given.

Most of the forms we have seen appear to conform and would, in fact, conform to the requirements of Regulation Z if they accurately reflected the bank's practices. However, the violations exist because those who draft and prepare disclosure forms frequently do not thoroughly understand the details of the bank's procedures. The disclosures comply with the drafter's conception of the loan, but misrepresent the loan as it actually exists. For example, a bank may disclose a rebate of unearned finance charge under the "sum of the digits" method when it actually rebates under the "square of the months" formula. Similarly, a disclosure form may state that the finance charge will begin to accrue 30 days prior to the first payment, and an estimated date of accrual will be disclosed. In reality, the bank accrues finance charges from the date of the transaction. The result of this misunderstanding of the bank's practices is a misleading and confusing disclosure.

Had bank counsel been aware of the date of accrual, no disclosure would have been necessary, in that finance charges accrue from the date of the transaction. Another troublesome area involves erroneous calculations resulting from improper use of a 360-day year.

Other patterns of violation stem from a misunderstanding regarding the amount financed. In our opinion, the official information concerning Regulation Z has never properly described the difference between total loan proceeds and the amount financed. This has given rise to great confusion among bankers. For example, when points and origination fees are charged, under Regulation Z these fees must be itemized as a prepaid finance charge and deducted from the loan proceeds to arrive at the amount financed. We have on several occasions found that prepaid items, when borrowed from the bank, are often erroneously included in the amount financed. Even some of those bankers who are immersed in Truth-in-Lending have conceptual difficulty with the term "amount financed" as defined by the Regulation.

In our continuing discussions with banks which have been subject to this intensive examination, we have concluded that the banks have made the best possible use of the advice available to them. Continuing failure on the part of some banks to achieve total compliance with Regulation Z does not result from lack of substantial effort on their part. Instead, in our opinion, the problem seems to arise from the fact that the private bar does not possess a sufficient number of individuals both, familiar with consumer banking practices and fully cognizant of the somewhat complex requirements of Regulation Z.

When our examiners detect violations of Regulation Z, the banks have been extremely cooperative even eager to change their practices in order to comply fully with Regulation Z requirements. We are, therefore, undertaking to intensify our examining procedures and to expand our training efforts in the belief that a greater commitment of manpower and resources may be the key to moving those banks in error from substantial compliance to complete compliance with Regulation Z.

4. As noted above, although most of the violations of Regulation Z are technical, a significant number do affect the annual percentage rate. Therefore, consumers have been misled to some extent and their opportunities to compare loan rates have been impaired to some degree. However, the discrepancies in annual percentage rate have exceeded one-quarter of one percent in only a very few situations and the dollar amounts involved in most cases (approximately 75% of the banks studied) have likewise been relatively small, that is, under ten dollars. There are some situations where either the annual percentage rate has been understated to a greater degree or where because of the larger loans involved, the dollar amount has been substantially greater. In most of these situations, the banks have taken steps to make restitution to their customers.

This Office is now committing a significantly larger portion of its examining resources to the area of compliance with consumer laws, including Regulation Z, than in prior years. We are convinced that banks are making a continuing effort to comply and that most violations result from inadvertent misconceptions about the requirements of the Regulation as they apply to certain charges. We repeat that banks have been extremely prompt in correcting deficiencies where they have been pointed out by our Office and are eager to accept technical assistance and expertise from any available source.

We trust this is responsive to your inquiry.

Very truly yours,

Donald A. Melbye
Special Assistant for Congressional Affairs

The Honorable
Joseph R. Biden, Jr.
Chairman
Consumer Affairs Subcommittee
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D. C. 20510

QUESTIONS FOR BANK REGULATORY AGENCIES
OVERSIGHT HEARINGS, JULY 27-29, 1976

RESPONSE OF THE COMPTROLLER OF THE CURRENCY

1. Please describe the organization, staffing and resources allocated to your consumer affairs division. To what extent does it operate through regional offices? How are its existence and its complaint-handling function publicized?

The Consumer Affairs Division of the Office of the Comptroller of the Currency was created in March, 1974, and was organized in September, 1974. It is staffed by an Associate Deputy Comptroller who serves as Director, two Consumer Affairs Specialists, and two secretaries. The Division receives substantial support from other departments within the Office, particularly the Law Department. Because the Division cuts across several policy and operating areas, the Director reports directly to the Comptroller. This close alliance also serves to give clear understanding that consumer protection efforts are of fundamental importance to the Comptroller.

All consumer complaints are monitored by the Washington Office. Depending upon where they are received, complaints are handled by our fourteen Regional Offices, as well as by the Consumer Affairs Division. The functions of the Division have been publicized in newspaper columns throughout the United States, in banking oriented newsletters and periodicals, by appearances before both public and banking groups, and by mention in public television programs prepared by other government agencies. At least one Regional Office has been listed in the Yellow Pages under a consumer protection heading. As a result of a requirement of Regulation B of the Board of Governors of the Federal Reserve System (Board), loan applicants are given a notice that this agency has the responsibility for enforcing the statutory provisions of the Equal Credit Opportunity Act. As a direct result, we are receiving an increasing amount of consumer correspondence. Also, Regulation C of the Board, which implements the Home Mortgage Disclosure Act, requires that national banks subject to the Act designate this Office as the agency responsible for enforcing the Regulation.

A new factor in allocating staff and resources to the Consumer Affairs Division will materialize in September, 1976. At that time, approximately ten percent of our field examination force will begin to devote their efforts exclusively to special consumer examinations, with the support of a specialist in each Regional Office.

2. Please indicate the numbers and -- to the extent possible -- the types of consumer complaints received. How many were found meritorious? What disposition was made of these complaints?

Enclosed is a summary of complaints received by the Washington Office in 1973 through 1975, and the Washington and Regional Offices in the first half of 1976. This data was derived from our Consumer Complaint Information System (CCIS). The computer system was established at our Washington Office in August, 1975, and became operational for our Regional Offices on January 1, 1976. Previously, the master file on citizen complaints, started in 1970, consisted of nine filing trays containing approximately 14,000 three by five cards. The fourteen Regional Offices did not start sending these cards into the Washington Office until 1973. The data base for the CCIS was initially derived from the Washington Office routing slips. The CCIS is designed to identify volume, type and concentration of complaints by region and bank. It serves as a useful tool in handling the increasing volume of complaint letters we are receiving and to monitor the problem areas that might be indicated by consumer complaints.

During the years 1973 through 1975 we received 2,609 complaints at the Washington Office. During the first half of 1976, we received 2,850 complaints, including those processed by our Regional Offices. The enclosed

charts indicate the types and nature of the complaints and how they were resolved.

We record all complaints which we receive and we process all of them except those which are referred to other enforcement agencies. All complaints which we process are responded to except a few which are received from persons who are obviously unstable or not capable of understanding that a problem does not exist.

3. What procedures are used to handle consumer complaints? Are <u>all</u> complaints processed? How promptly are they handled? Are there maximum time limits for dealing with them?

When a complaint is received, a letter of acknowledgement is sent to the complainant. At the same time, a letter is sent to the bank involved which describes the complaint and asks for the bank's explanation. If the complaint is very complex or contains an extremely serious allegation against the bank, an examiner may be sent to the bank to investigate the facts. After receiving information from the bank or the examiner, the situation is analyzed by our Washington or Regional staff and the complainant is informed of our findings and determination. If the bank has erred or violated a law, it is directed to seek the proper remedy with the customer.

Generally, we have found banks to be responsive to our inquiries concerning consumer complaints. If they have made an error, they usually will issue an apology to the complainant and an explanation of the corrective action they have taken. If the bank's defense is that its action was legally proper, or that the consumer should be seeking redress from a third party, and if we agree, we apprise the complainant of this and suggest he seek legal counsel. In instances where there is a factual dispute between the parties, we advise the complainant that we do not have authority to adjudicate such matters and that he should seek legal advice concerning possible redress in the courts.

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All complaints received by this Office are processed, and all are answered with the few exceptions noted above in the answer to question two. Generally, we attempt to give a final response to the complainant within four weeks of receiving the complaint. Of necessity this schedule varies according to the amount of time required for receiving a response from the bank or examiner. In more complex matters, there are occasions when a complaint may not be resolved for several months.

4. Do the staff members assigned to consumer complaints also have other enforcement duties?

Two members of the Law Department, who operate outside the Consumer Affairs Division, devote full time to processing consumer complaints. Other members of the Consumer Affairs Division, the Law Department, and Regional Office staffs who have responsibility for consumer complaints have other enforcement responsibilities. We have not found that these other duties interfere with complaint processing. The staff of the Consumer Affairs Division devotes full time to consumer enforcement responsibilities, except that the Director is also the Comptroller's delegate to the National Commission on Electronic Fund Transfers. This responsibility is considered consumer related.

5. Through what devices does your agency exercise its responsibility to enforce the consumer protection law? Through regular examination? Special examinations? Education? Other methods?

At the present time, the principal means of enforcing consumer protection laws is through the regular bank examination. Although all examiners are advised of the principal components of these laws, we have concluded that the only effective means to enforce consumer laws is by specialized examinations conducted by specially trained examiners. We now are preparing texts,

procedures and questionnaires to implement this new examination process. Various task forces have been created to assist in this task, and we are preparing a curriculum in training procedures to equip approximately 250 examiners in the next year to conduct these examinations. We will begin September 13, 1976, to train 135 examiners in three schools of two week duration each and we plan to have examiners in the field by late September and early October. Twelve months later all national banks will have received a consumer examination. The examination will cover Truth-in-Lending, Equal Credit Opportunity, Fair Credit Reporting, Fair Credit Billing, Fair Housing, Home Mortgage Disclosure, Real Estate Settlement Procedures, advertising, interest on deposits, usury, and applicable state laws. As the result of a test project, we have isolated certain areas in these laws which we think merit more emphasis than others and therefore we will focus our attention on those targets. The purpose of the examination procedures will be to focus on those problems which result in a significantly adverse impact on consumers.

One other method we use for enforcing compliance with consumer protection laws is through the review of consumer complaints, as we have previously noted.

6. How are your bank examiners trained, with respect to examining for violations of state and federal consumer protection laws? Would you supply the Committee copies of the training materials used, handbooks or other instructional materials for examiners on the job, and examination report forms used for assessing compliance in this area?

New examiners have been educated in consumer protection law when they are assigned to training crews for six months. During this period they are indoctrinated into the entire regular examination process, including consumer protection compliance. Until recently, newly commissioned National Bank Examiners have attended a two week training session which included a nominal amount of consumer law instruction. At the present time this course is being addressed to seasoned assistant examiners. Although these sessions will continue to include instruction on consumer laws, the training emphasis will be on a separate school devoted exclusively to consumer protection enforcement, as noted in our response to question five.

Pursuant to your request, we are including a copy of page 6-1 of our present examination report, which we use for examining for compliance with the Truth-in-Lending Act. Because the Office is adopting new examination procedures, this page will not be used in the future. Rather, as noted above, Truth-in-Lending will be included in the special consumer protection examination. The report itself will be in memorandum form culled from certain working materials. We expect to have these materials completed in the next few weeks and we will provide you with copies of them at that time.

7. How are examiners supervised, with respect to examining for violations of state and federal consumer protection laws? To what extent do supervision and training include reviewing state laws applicable to the banks?

National Bank Examiners are directly supervised by their respective fourteen Regional Administrators and enforcement action concerning violations of state and federal consumer protection laws is taken by the Regional Office. When matters concerning violations cannot be satisfactorily resolved in the Region, they are referred to the Washington Office for formal enforcement proceedings.

At the present time, supervision and training concerning state laws vary considerably from state to state. This is due to a number of factors, i.e., disparities in effect of the different state statutes, the variety of enforcement approaches and the degree of involvement of state banking officials. In some states the bulk of consumer protection is contained within the procedural rules of local courts, concerning which there is little room for federal participation. In a few states our examiners have been using consumer

protection examination manuals prepared by the state for the use of its examiners. This has been the case where a fairly broad body of state consumer protection law exists. In some states our examiners have been using consumer protection examination manuals prepared by the state for the use of its examiners. This has been the case where a fairly broad body of state consumer protection law exists. In some states, we have conferred with state regulatory authorities concerning the enforcement of state laws, while in others there has not been much interaction between the Regional Office and the state authorities. As part of our specialized consumer examination, we are contacting each state banking department, asking them to provide us with an analysis of state usury laws. At the outset, we believe that this is the most important area of state law affecting consumers. However, we intend to broaden our scope to include other pertinent state laws as our programs develop.

8. How are bank examinations conducted, with respect to consumer protection laws? Are they comprehensive reviews of the bank's consumer transactions, or spot checks or random reviews? What systematic records of violations are maintained? How are the examiners' reports analyzed, and how are judgments made about appropriate corrective measures?

In examining with respect to consumer protection laws, our examiners review a bank's loan application and note forms to determine that they comply procedurally with the law. Selected loans are also reviewed. Other than a listing of violations in the report of examination, there is no record of violations maintained in the Washington Office. The Regional Offices maintain lists of violations in each bank's file. Examination reports are analyzed in the Regional Office by a review examiner and a letter is written to the bank's Board of Directors asking for appropriate corrective action in accordance with Office policy.

The special consumer examination process will include a review of a bank's stated and actual lending policies, its forms, and a statistical sampling of loans. Internal controls used by the bank will be monitored, since a complete audit of consumer loans is not feasible. Violations of laws will be reported to the Regional Office and a consumer affairs specialist will review the reports and prepare appropriate follow-up data with each bank. The Consumer Affairs Division will provide additional technical support to the Regional Offices. Policy guidelines will be established to determine appropriate corrective measures for various violations.

9. Where violations are detected through bank examinations, what corrective measures are sought? E.g., formal sanctions against the bank or its officers? Compensation for the aggrieved consumers? Changes in bank practices for the future? Publicity of the violations?

When violations of law are discovered during bank examinations, we seek to impose a remedy which is appropriate to the violation. If, for instance, there is a technical violation in the bank's forms, we bring this fact to the attention of the Board of Directors and require that the forms be changed. We follow a similar procedure if there are violations in advertising or promotions. If the customer has suffered a monetary loss because of a bank's violation of law, we ask for an equitable remedy, such as restitution. This might occur through a lump sum payment, or if the monetary burden would be unduly damaging to the bank, we suggest that the bank might prorate the overcharge over the life of the loan, as in the case of a long-term mortgage loan. If the bank resists complying with our request for restitution, we are prepared to use our cease and desist powers, although we have not yet been forced to resort to this. In a relatively few instances where there have been repeated and continuing violations of consumer protection laws, particularly regarding Truth-in-Lending, we have entered into formal agreements with the banks to gain compliance. When a bank has violated the terms of such an agreement, we have filed formal cease and desist orders.

We have not to date followed a policy of making public announcements concerning violations found in individual banks. We have carefully considered this from time to time and have concluded that it was the intention and expectation of Congress that the banking agencies would use the same private approach to consumer law enforcement as they do in regard to other banking laws. This conclusion is reinforced by the cross-references to the Financial Institutions Supervisory Act (cease and desist power) found in the CCPA and other recently enacted consumer protection laws. The Supervisory Act provides that the normal rule is that enforcement proceedings under it are to be private although the agency may go public if it determines that it is "necessary to protect the public interest."

To date we have been able to achieve correction of abuses without public proceedings. In view of the peculiar sensitivity of depository institutions to loss of public confidence, we feel that it is important to continue this policy. However, we certainly do not foreclose the possibility of public enforcement proceedings in appropriate circumstances.

10. To what extent, and how, are enforcement policies and criteria coordinated among the various federal supervisory agencies? What coordination is done with state agencies having parallel responsibilities?

The federal financial institution supervisory agencies share enforcement responsibility for many consumer protection laws, and there is obvious interest in inter-agency communication. The Federal Reserve System has been given the responsibility for promulgating several consumer protection regulations. Our Office has benefited from invitations to comment on proposed regulations and from formal and informal interpretations issued after the regulations have become effective. Members of the Office of Saver and Consumer Affairs of the Board of Governors of the Federal Reserve System, the Office of Bank Customer

Affairs of the Federal Deposit Insurance Corporation, and the Comptroller's Consumer Affairs Division meet frequently to discuss mutual problems and concerns. Information is exchanged concerning consumer complaints and examination procedures. Meetings also are held with the Federal Home Loan Bank Board, the Department of Housing and Urban Development, and the Civil Rights Division of the Department of Justice, particularly on the topic of Fair Housing. All of these agencies are contributing substantially to the development of our consumer protection examination. In addition, we consult with the Federal Trade Commission on matters concerning unfair and deceptive acts and practices by banks.

Most contact with state agencies originates from referrals of consumer complaints to and from our Office. We contemplate that there will be more coordination with state agencies as we incorporate state consumer protection laws into our new examination process. Meetings also have been held with state agencies on problems of mutual concern.

11. What degree of importance or priority does the enforcement of consumer protection laws have in your agency's overall operation? What degree of importance does it have in individual bank examinations?

The enforcement of consumer protection laws is considered to be of fundamental importance by the Comptroller's Office. Extensive development, technical, and training resources have been made available for handling consumer complaints and establishing effective examination procedures. As noted above, a substantial amount of examiner resource also will be made available this coming September. Our objective is for every national bank to have undergone a special consumer examination by October, 1977.

12. What degree of importance or priority does the enforcement of state consumer protection laws have in your agency's overall consumer protection effort? Are state enforcement personnel involved in your efforts? Are they notified? Do they have access to information developed by your examiners?

Because this agency is responsible for examining national banks, we have accorded a higher priority to federal consumer protection laws than to state laws. Not all state consumer protection laws are applicable to national banks, particularly in light of recent federal legislation which has preempted state laws in many areas. At the present time our Regional Offices have been instructed to compile a more comprehensive record of usury laws from the respective state agencies. This information will be incorporated into the consumer examination. Thereafter, additional state laws which are applicable to national banks will be compiled in a similar manner. Normally, state agencies do not have access to information developed by our examiners because of our exclusive visitorial powers over national banks under federal law.

13. Where a state has been exempted from federal law (E.g., Truth in Lending) on condition that there is adequate state enforcement of substantially similar state laws, who exercises enforcement responsibility with respect to banks under your jurisdiction?

The Comptroller's Office exercises sole enforcement authority for all banking laws applicable to national banks because of our visitorial rights. Some states have received an exemption from the Truth-in-Lending Act where the state law is substantially similar, but the Federal Reserve System, which has authority to grant such exemptions, has explicitly provided that such exemptions do not apply to national banks in those states.

14. Is there any discernible incompatibility or conflict of interest in your agency's dual responsibilities to see to the bank's soundness and to consumer protection?

We do not perceive any incompatibility or conflict of interest in our agency's dual responsibilities to insure the sound operation of national banks and to protect the consumer in accordance with law. We believe that a bank's safety and soundness depends in part on its compliance with consumer protection laws. There is a possibility that a bank subject to a large restitution remedy or to a class action for damages might be impaired. However, in the first instance, we would attempt to arrange for restitution to be made over a period of time to ease the burden and yet make the customer whole; in the second instance, we do not believe that a court of law would impose an inequitable damage burden on a bank. Even if a separate agency were responsible for enforcing consumer protection laws, that agency would face the same dilemma as to whether the public interest would be served by jeopardizing a bank's ability to continue to function in the community as a financial intermediary.

Banks are competitive institutions, and it is in their self-interest to lend in a fair and non-discriminatory manner. Banks that treat customers fairly will acquire more customers than banks who do not.

15. <u>Regulations promulgated under the Consumer Credit Protection Act are lengthy, complex and technical. Why? Is this complexity necessary? Does this complexity serve the consumer's interests?</u>

The main reason for the complexity of any regulations and especially Regulation Z, is the multitude of fact patterns which must be covered by the regulatory language. There is always a trade-off in regulation writing between simplicity and coverage. If the agency writes a general brief rule such as "All elements of cost to the borrower must be included in the finance charge," then it merely has postponed to a later date answering hundreds of requests for individual rulings as to what is meant by "cost to the borrower." The resulting collection of individual rulings makes for even greater complexity and confusion than a more precisely drafted regulation.

Another reason that the regulations promulgated under the Consumer Credit Protection Act are lengthy, complex, and technical is because Congress has not given sufficient consideration to costs, social and economic, in relation to the benefits to be derived from some provisions of such legislation. For

example, disclosure of the method of rebating unearned finance charges on prepayment of loans involving precomputed finance charges is of dubious value to the consumer in shopping for credit because of the difficulty of comparing dollar charges to percentages. The concept and computation is difficult and not readily understood, even by competent bankers. This is not the type of information that a consumer likely would consider in applying for a loan.

In general, the Federal Government is attempting to achieve truth, equality, and fairness in the granting of credit. These are ideals based on moral principles and any attempt to achieve such ideals through legislation requires that they be defined; this necessitates complex, lengthy, and technical procedures.

Drafting a regulation to govern essentially subjective processes is an extremely difficult task. For example, discrimination in the granting of credit on the basis of marital status is prohibited. It would seem logical to forbid the creditor from inquiring as to the applicant's marital status on the assumption that if the creditor does not have this information, he cannot discriminate on the basis of it. However, because of state property laws, if the loan is to be secured, it is necessary to know the applicant's marital status in order to establish a valid lien. Therefore, to draft a law or regulation to achieve this goal, it is necessary to reach a compromise between the bank's need to know certain information and the applicant's right to withhold such information. The conclusion which must be drawn is that some degree of complexity is inherent in attempting to prohibit unlawful discrimination and deceptive practices.

This is not to advocate the abolition of laws dealing with discrimination and broader disclosure. Despite the complexity of most of these laws, generally they are accomplishing their intended purpose. Those parts of the law which are not really beneficial to consumers should be repealed selectively.

Frustrations and costs will continue to pose problems in efforts to comply, but ultimately consumers and creditors both benefit from the changes brought about by these laws.

16. What adverse effects do you perceive from the complexity of Regulation Z and B? What beneficial effects?

The consumer has derived benefit from the provisions of Truth-in-Lending that require disclosure of finance charges and the annual percentage rate because the cost of credit is disclosed accurately and enables him to shop for credit on a cost comparative basis. Similarly, the Equal Credit Opportunity Act has had a favorable impact on the granting of credit to women. On the basis of the consumer complaints we have received, it is apparent that many creditors are changing their attitudes and policies in regard to granting credit to women.

Unfortunately, Truth-in-Lending, Fair Credit Billing, and Equal Credit Opportunity have caused creditors to incur substantial costs in reviewing and printing forms, educating personnel, and revising loan policies to conform with the regulations implementing these statutes. These costs have been passed along to consumers in the form of higher interest rates. Also, marginal loan applicants who previously may have qualified for credit no longer qualify because of the attempts by lenders to hold collection costs to a lower level.

It also has been costly for this Office and other enforcement agencies to monitor compliance as more resources of our Washington Law Department, Regional Counsels, and bank examiners have been devoted to this task. A substantial amount of the Consumer Affairs Division's efforts is involved in enforcing consumer protection regulations. A significant amount of the time of the senior staff, as well, has been expended in this effort.

There are also indications that some consumers have abused the laws. Some loan applicants believe that the law confers on them the automatic right

to have credit. In certain areas of the country attorneys for debtors who are filing for bankruptcy almost automatically file a legal suit for a Truth-in-Lending violation in the hope that a creditor will settle on the loan whether the case has merit or not.

17. How can this regulatory complexity be avoided?

As noted above in our answers to questions fifteen and sixteen, it is unlikely that regulatory complexity can be avoided completely. The amount of complexity might be decreased by a judicious review of consumer protection laws to determine which provisions do not bestow a truly necessary or significant consumer benefit.

CONSUMER COMPLAINT RESOLUTIONS

01-01-75 through 12-31-76

RECEIVED AT WASHINGTON OFFICE

494	Closed; no resolution code
73	Open complaints
10	No reply necessary - TO FILES
68	Bank errors
229	Bank legally correct
22	Consumer reimbursed - Bank legally correct
38	Consumer reimbursed - Bank error
55	Factual dispute - contestable
114	Referral to other agency
124	Information
16	Consumer reimbursed - Communication problem
13	Settled by mutual agreement
1,256	

01-01-76 through 07-19-76

RECEIVED BY WASHINGTON AND REGIONAL OFFICES

9	Closed; no resolution code
801	Open complaints
43	No reply necessary - TO FILES
100	Bank error
825	Bank legally correct
106	Consumer reimbursed - Bank legally correct
158	Consumer reimbursed - Bank error
323	Factual dispute - Contestable
196	Referral to another agency
598	Information
80	Consumer reimbursed - Communication problem
39	Settled by mutual agreement
3,278	

June 1971
UNITED STATES TREASURY
COMPTROLLER OF THE CURRENCY

Charter No.........................

REGULATION Z - TRUTH IN LENDING

1. Were test checks made of the bank's forms and procedures for disclosure? If any irregularities were disclosed, discuss in detail and indicate management's plan for correction.

2. Has bank established effective procedures to detect defects in disclosures on dealer paper which it proposes to acquire? If not, or if th[illegible] defects, discuss in detail and indicate management's plan to correct existing procedures or establish new ones.

3. Were test checks made to determine accuracy of interest computations and rebates? If any irregularities were disclosed, discuss in detail and indicate corrective measures proposed to prevent future occurrences.

4. Were test checks made of the bank's advertising? If any irregularities were disclosed, discuss in detail and indicate proposed plans to prevent future occurrences.

5. If it appears that rescission rights are not being properly observed on both direct and indirect paper, discuss in detail.

07-12-76

CONSUMER COMPLAINTS - DEPOSIT FUNCTION - WASHINGTON & REGIONAL OFFICES

FOR PERIOD 01-01-76 TO 06-30-76

Nature of Complaint	Time	Demand	Vacation/ Xmas Club	Escrow	Savings	Other	Total
Advertising	5	6		-	4	1	16
Attachment and Claims Freezing	1	15			5		21
Deposit Not Credited	1	87			13	3	104
Deposit Not Credited on Day Made		10			4	1	15
Disclosure of Account Service Charges & Terms	5	5		1	5	1	17
Discrepancy in Account	4	131		5	58	7	205
Forged Signature or Endorsement	4	58			13	3	78
Offset or Set-Off	4	26			5	1	36
Payment of Interest	28	3	1	2	36	5	75
Processing Without Benefit of Endorsement		20	1				21
Refusal to Cash or Pay Customer's Check	2	35		1	2		40
Refusal to Cash Non-Customer's Check		9				5	14
Release of Funds	3	22	3	2	27	7	64
Renewal Automatic					1		1
Service Charges	2	64			17	2	85
Stop Payment Check Being Paid	3	45		1		2	51
Untimely Dishonor of Instrument		27		1		1	29
Possible Escheat or Inactive Account		4			33	4	41
Account Regulations - Procedures	18	76		4	21	4	123
Other	8	49		10	20	10	97
[illegible]	[illegible]	692	5	27	264	57	1133

07-12-76

CONSUMER COMPLAINTS - LOAN FUNCTION - WASHINGTON AND REGIONAL OFFICES

FOR PERIOD 01-01-76 TO 06-30-76

Nature of Complaint	Credit/ Bank Card	Check Credit/ Overdraft	Commercial Agricultural	Instal-ment	Real Estate Mortgages	Single Payment Demand	Other	Total
Acceleration Clauses	2	1	1	1		1	1	7
Amount of Interest Charges - Usury	68	4	7	28	13	2	10	132
Amount of Rebate Upon Prepayments 78's			2	29			3	34
Collateral	1		6	9	2	2	3	23
Collection Tactics	23	5	1	36	2	3	5	75
Collection Service and Attorneys	2		1	17	1	1	5	27
Credit and Disability Insurancy - TIL	1		1	12	2		2	18
Discrimination by Age	1				1			2
Discrimination by Sex, Marital Status	45	4		7	2		3	61
Discrimination by Race, National Origin	3		3	3	1		1	11
Discrimination by Religion							1	1
Equal Lending Poster								
Escalator Clauses				1				1
Fair Credit Reporting Act	26	3	4	15	2		9	59
Flood Disaster Act								
Individual Credit Decision	58	7	5	26	6		11	113
Institutional Loan Policy	10	3	16	24	23		3	79
Late Payment Penalty Charges	6	1		28	5		2	42
Leasing				2			2	4
Real Estate Settlement Procedures (RESPA) Act					1		2	3
Redlining			1		2		2	5
Refusal to Renew	5		1		3	1	.	10
Repossession or Foreclosure	2		9	42	14		3	70
Restrictions on Security Interests	1			5	2		1	9
Regulation Z - Advertising				2	1			3
Regulation Z - Fair Credit Billing Act	113	3		8	1		1	126
Regulation Z - Disclosure	2	2		13	2		4	23
Regulation Z - Oral Disclosure				1				1
Regulation Z - Right of Rescission								
Regulation Z - Unauthorized Mailing of Issuance	14							14
Regulation Z - General	1			3	1			5
Forgery	5		1	2		1		9
Credit Account	15	1	1	7	7			31
Other	58	7	8	56	46	1	33	209
Total	462	41	68	377	140	12	107	1207

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CONTINUED

5 OF 7

07-12-76

CONSUMER COMPLAINTS - OTHER FUNCTIONS
FOR PERIOD 01-01-76 TO 06-30-76
WASHINGTON AND REGIONAL OFFICES

FUNCTION	TOTAL
Electronic Funds Transfer System	2
Automatic Bill Payment	1
Automatic Payroll Deposit	1
CBCT Equipment	1
CBCT Location	
Confidentiality	
Customer Identiality Technique or Methods	1
Error Correction Procedures	4
Liability	1
Monthly Statement	1
Transaction Errors	1
Transaction Receipt or Record of Reconcilation	
Wrongful or Fraudulent Use of card.	2
TOTAL	15
Trust Services	31
Excessive Charges	6
Improper Disbursement	14
Investments	13
Prudent Handling of Estates/Trusts	30
Too long to Close and Disburse Estates	12
Refusal to Respond for Information	24
TOTAL	130
Foreign Operations	1
Letters of Credit/Traverlers' Checks	8
Foreign Currency Transactions	19
Foreign Draft Presentment	9
TOTAL	37

07-12-76

CONSUMER COMPLAINTS - OTHER FUNCTIONS
FOR PERIOD 01-01-76 TO 06-30-76
WASHINGTON AND REGIONAL OFFICES

FUNCTIONS	TOTAL
Safety Deposit Box/Safekeeping	11
Disappearance of Items	11
Illegal Entry	4
Service Charges	5
Securities Redemption Transfer/Collection Items	34
TOTAL	65
General Complaints	89
Advertising	12
Cashing U.S. Government Checks	9
Information Available to Stockholders	4
Lost or Stop Payment of Official Checks/ Money Orders	48
Promotions	4
Service Charges	9
Stock Manipulation by Bank Officials	4
U.S. Savings Bond Redemption	9
Wire Transfer	9
Incompetent or Rude Personnel	43
Bank Supervision	8
Secrecy	5
Travel Business	
Employee Hiring, Benefit, Firing	7
Data Processing Services	3
Conflict of Interest	
TOTAL	263

Total Complaints received by Washington and Regional Offices during Period - 2850

07-07-76

CONSUMER COMPLAINTS - DEPOSIT FUNCTION - WASHINGTON

FOR PERIOD 01-01-75 TO 12-31-75

Nature of Complaint	Time	Demand	Vacation/ Xmas Club	Escrow	Savings	Other	Total
Advertising	4	1			6	6	17
Attachment and Claims Freezing	2	4			1	3	10
Deposit Not Credited	1	17	2		1	4	25
Deposit Not Credited on Day Made		2			1	2	5
Disclosure of Account Service Charges & Terms	1	2			1		4
Discrepancy in Account	6	22			6	6	40
Forged Signature or Endorsement		14					14
Offset or Set-Off	2	7			1		10
Payment of Interest	9		3		13	5	30
Processing Without Benefit of Endorsement		2			2	3	7
Refusal to Cash or Pay Customer's Check		6				2	8
Refusal to Cash Non-Customer's Check		4				2	6
Release of Funds	6	8			2	6	22
Renewal Automatic	1						1
Service Charges	6	18			2	2	28
Stop Payment Check Being Paid		13				1	14
Untimely Dishonor of Instrument						2	2
Possible Escheat or Inactive Account	1	3			5	10	19
Account Regulations - Procedures	1	11	1		6	1	20
Other	16	46		5	29	25	121
Total	56	180	6	5	76	80	403

474

07-07-76

CONSUMER COMPLAINTS - LOAN FUNCTION - WASHINGTON

FOR PERIOD 01-01-75 TO 12-31-75

Nature of Complaint	Credit/ Bank Card	Check Credit/ Overdraft	Commercial Agricultural	Instalment	Real Estate Mortgages	Single Payment Demand	Other	Total
Acceleration Clauses				1				1
Amount of Interest Charges - Usury	12	4		4	3	1	9	33
Amount of Rebate Upon Prepayments 78's				6	3		3	12
Collateral		2	1	4		2	3	12
Collection Tactics		2		3			2	7
Collection Service and Attorneys	1	1					2	4
Credit and Disability Insurance - TIL				3			1	4
Discrimination by Age		1						1
Discrimination by Sex, Marital Status	7	5			1	1	2	16
Discrimination by Race, National Origin			2		1	1	2	6
Discrimination by Religion		1				1	4	6
Equal Lending Poster							13	13
Escalator Clauses					1			1
Fair Credit Reporting Act	2	3		4			6	15
Flood Disaster Act					1		2	3
Individual Credit Decision	7	1	2	4	1	1	4	20
Institutional Loan Policy	5	2	1	2	1	1	5	17
Late Payment Penalty Charges	2			1	1		2	6
Leasing					1			1
Real Estate Settlement Procedures (RESPA) Act					4		1	5
Redlining	1	1					2	4
Refusal to Renew	1	2		6	4		2	15
Repossession or Foreclosure	1	2			2			5
Restrictions on Security Interests			1	1			1	3
Regulation Z - Advertising	31	6					2	39
Regulation Z - Fair Credit Billing Act	1	2		2	1			6
Regulation Z - Disclosure							30	30
Regulation Z - Oral Disclosure				1				1
Regulation Z - Right of Rescission	7							7
Regulation Z - Unauthorized Mailing of Issuance	1			1	2		21	25
Regulation Z - General				1			1	2
Forgery Credit Account	3	1		2	3		2	11
Other	37	2	3	21	17	3	20	103
Total	119	38	10	67	47	11	142	434

475

07-07-76

CONSUMER COMPLAINTS - OTHER FUNCTIONS
FOR PERIOD 01-01-75 TO 12-31-75
WASHINGTON

FUNCTION	TOTAL
Electronic Funds Transfer System	2
Automatic Bill Payment	
Automatic Payroll Deposit	3
CBCT Equipment	2
CBCT Location	1
Confidentiality	
Customer Identiality Technique or Methods	1
Error Correction Procedures	2
Liability	
Monthly Statement	2
Transaction Errors	1
Transaction Receipt or Record of Reconcilation	
Wrongful or Fraudulent Use of card	1
TOTAL	15
Trust Services	28
Excessive Charges	2
Improper Disbursement	7
Investments	1
Prudent Handling of Estates/Trusts	22
Too long to Close and Disburse Estates	4
Refusal to Respond for Information	3
TOTAL	67
Foreign Operations	1
Letters of Credit/Travorlers' Checks	12
Foreign Currency Transactions	4
Foreign Draft Presentment	6
TOTAL	23

07-07-76

CONSUMER COMPLAINTS - OTHER FUNCTIONS
FOR PERIOD 01-01-75 TO 12-31-75
WASHINGTON

FUNCTIONS	TOTAL
Safety Deposit Box/Safekeeping	8
Disappearance of Items	1
Illegal Entry	1
Service Charges	1
Securities Redemption Transfer/Collection Items	20
TOTAL	31
General Complaints	144
Advertising	12
Cashing U.S. Government Checks	8
Information Available to Stockholders	8
Lost or Stop Payment of Official Checks/ Money Orders	11
Promotions	8
Service Charges	1
Stock Manipulation by Bank Officials	1
U.S. Savings Bond Redemption	7
Wire Transfer	7
Incompetent or Rude Personnel	8
Bank Supervision	22
Secrecy	8
Travel Business	6
Employee Hiring, Benefit, Firing	3
Data Processing Services	3
Conflict of Interest	2
TOTAL	259

Total Complaints received by Washington Office 1975 - 1232

07-07-76

CONSUMER COMPLAINTS - DEPOSIT FUNCTION - WASHINGTON

FOR PERIOD 01-01-74 TO 12-31-74

Nature of Complaint	Time	Demand	Vacation/ Xmas Club	Escrow	Savings	Other	Total
Advertising	2	1			2	1	6
Attachment and Claims Freezing						1	1
Deposit Not Credited		1				2	3
Deposit Not Credited on Day Made						1	1
Disclosure of Account Service Charges & Terms	1						1
Discrepancy in Account		1			3	5	9
Forged Signature or Endorsement		5				2	7
Offset or Set-Off		2			1		3
Payment of Interest	2				6	1	9
Processing Without Benefit of Endorsement					1		1
Refusal to Cash or Pay Customer's Check		2				3	5
Refusal to Cash Non-Customer's Check		1				1	2
Release of Funds		3			1	5	9
Renewal Automatic							
Service Charges		3				1	4
Stop Payment Check Being Paid		2				1	3
Untimely Dishonor of Instrument						1	1
Possible Escheat or Inactive Account					1	1	2
Account Regulations - Procedures							
Other	8	17		1	12	14	52
Total	13	38		1	27	40	119

478

07-07-76

CONSUMER COMPLAINTS - LOAN FUNCTION - WASHINGTON

FOR PERIOD 01-01-74 TO 12-31-74

Nature of Complaint	Credit/ Bank Card	Check Credit/ Overdraft	Commercial Agricultural	Instal-ment	Real Estate Mortgages	Single Payment Demand	Other	Total
Acceleration Clauses								
Amount of Interest Charges - Usury				2			12	14
Amount of Rebate Upon Prepayments 78's							5	5
Collateral				2			2	4
Collection Tactics				1			1	2
Collection Service and Attorneys							1	1
Credit and Disability Insurancy - TIL							4	4
Discrimination by Age							3	3
Discrimination by Sex, Marital Status				4				4
Discrimination by Race, National Origin							4	4
Discrimination by Religion							1	1
Equal Lending Poster					1		3	4
Escalator Clauses								
Fair Credit Reporting Act							3	3
Flood Disaster Act							1	1
Individual Credit Decision	1	1		1	3		4	10
Institutional Loan Policy	1			2	2		6	11
Late Payment Penalty Charges	2				1			3
Leasing							1	1
Real Estate Settlement Procedures (RESPA) Act								
Redlining							4	4
Refusal to Renew								
Repossession or Foreclosure					1		1	2
Restrictions on Security Interests					1		2	3
Regulation Z - Advertising	1			1	1			3
Regulation Z - Fair Credit Billing Act	5						2	7
Regulation Z - Disclosure				1		1		2
Regulation Z - Oral Disclosure				3			33	36
Regulation Z - Right of Rescission								
Regulation Z - Unauthorized Mailing of Issuance	4	1						5
Regulation Z - General	2			2	1		26	31
Forgery	2						1	3
Credit Account	1	1						2
Other	42		1	17	9	2	8	79
Total	61	3	1	36	20	3	128	252

479

07-07-76

CONSUMER COMPLAINTS - OTHER FUNCTIONS
FOR PERIOD 01-01-74 TO 12-31-74
WASHINGTON

FUNCTION	TOTAL
Electronic Funds Transfer System	
Automatic Bill Payment	
Automatic Payroll Deposit	
CBCT Equipment	
CBCT Location	
Confidentiality	
Customer Identiality Technique or Methods	
Error Correction Procedures	
Liability	
Monthly Statement	
Transaction Errors	
Transaction Receipt or Record of Reconcilation	
Wrongful or Fraudulent Use of card.	
TOTAL	
Trust Services	34
Excessive Charges	
Improper Disbursement	
Investments	1
Prudent Handling of Estates/Trusts	6
Too long to Close and Disburse Estates	
Refusal to Respond for Information	
TOTAL	41
Foreign Operations	2
Letters of Credit/Traverlers' Checks	
Foreign Currency Transactions	
Foreign Draft Presentment	2
TOTAL	4

07-07-76

CONSUMER COMPLAINTS - OTHER FUNCTIONS
FOR PERIOD 01-01-74 TO 12-31-74
WASHINGTON

FUNCTIONS	TOTAL
Safety Deposit Box/Safekeeping	5
Disappearance of Items	1
Illegal Entry	2
Service Charges	1
Securities Redemption Transfer/Collection Items	9
TOTAL	18
General Complaints	274
Advertising	21
Cashing U.S. Government Checks	7
Information Available to Stockholders	4
Lost or Stop Payment of Official Checks/ Money Orders	5
Promotions	3
Service Charges	7
Stock Manipulation by Bank Officials	1
U.S. Savings Bond Redemption	4
Wire Transfer	3
Incompetent or Rude Personnel	
Bank Supervision	24
Secrecy	2
Travel Business	1
Employee Hiring, Benefit, Firing	
Data Processing Services	
Conflict of Interest	
TOTAL	356

Total Complaints received by Washington Office 1974 - 790

07-07-76

CONSUMER COMPLAINTS - DEPOSIT FUNCTION - WASHINGTON

FOR PERIOD 01-01-73 TO 12-31-73

Nature of Complaint	Time	Demand	Vacation/ Xmas Club	Escrow	Savings	Other	Total
Advertising	1				8	11	20
Attachment and Claims Freezing		1					1
Deposit Not Credited		2				1	3
Deposit Not Credited on Day Made							
Disclosure of Account Service Charges & Terms		1					1
Discrepancy in Account		4				3	7
Forged Signature or Endorsement		1				2	3
Offset or Set-Off							
Payment of Interest	5				5	5	15
Processing Without Benefit of Endorsement					1		1
Refusal to Cash or Pay Customer's Check							
Refusal to Cash Non-Customer's Check		2				1	3
Release of Funds		3			1	2	6
Renewal Automatic	1						1
Service Charges		2		1	1		4
Stop Payment Check Being Paid							
Untimely Dishonor of Instrument							
Possible Escheat or Inactive Account					2	3	5
Account Regulations - Procedures							
Other	4	10	1	1	10	11	37
	11	26	1	2	28	39	107

07-07-76

CONSUMER COMPLAINTS - LOAN FUNCTION - WASHINGTON

FOR PERIOD 01-01-73 TO 12-31-73

Nature of Complaint	Credit/ Bank Card	Check Credit/ Overdraft	Commercial Agricultural	Instal- ment	Real Estate Mortgages	Single Payment Demand	Other	Total
Acceleration Clauses								
Amount of Interest Charges - Usury	1						6	7
Amount of Rebate Upon Prepayments 78's				1	2			3
Collateral				1			1	2
Collection Tactics							1	1
Collection Service and Attorneys					1			1
Credit and Disability Insurancy - TIL							1	1
Discrimination by Age								
Discrimination by Sex, Marital Status							1	1
Discrimination by Race, National Origin							2	2
Discrimination by Religion								
Equal Lending Poster								
Escalator Clauses								
Fair Credit Reporting Act	1						2	3
Flood Disaster Act								
Individual Credit Decision	1						3	4
Institutional Loan Policy							3	3
Late Payment Penalty Charges				1				1
Leasing							2	2
Real Estate Settlement Procedures (RESPA) Act								
Redlining					1			1
Refusal to Renew	1							1
Repossession or Foreclosure				1	1			2
Restrictions on Security Interests				1				1
Regulation Z - Advertising							5	5
Regulation Z - Fair Credit Billing Act	3							3
Regulation Z - Disclosure								
Regulation Z - Oral Disclosure							3	3
Regulation Z - Right of Rescission								
Regulation Z - Unauthorized Mailing of Issuance	7	1					1	9
Regulation Z - General	2						24	26
Forgery							1	1
Credit Account				1	1			2
Other	36	4		3	5	1	4	53
Total	52	5		9	11	1	60	138

07-07-76

CONSUMER COMPLAINTS - OTHER FUNCTIONS
FOR PERIOD 01-01-73 TO 12-31-73
WASHINGTON

FUNCTION	TOTAL
Electronic Funds Transfer System	1
Automatic Bill Payment	
Automatic Payroll Deposit	
CBCT Equipment	
CBCT Location	
Confidentiality	
Customer Identiality Technique or Methods	
Error Correction Procedures	
Liability	
Monthly Statement	
Transaction Errors	
Transaction Receipt or Record of Reconcilation	
Wrongful or Fraudulent Use of card.	
TOTAL	1
Trust Services	13
Excessive Charges	
Improper Disbursement	1
Investments	
Prudent Handling of Estates/Trusts	2
Too long to Close and Disburse Estates	
Refusal to Respond for Information	
TOTAL	16
Foreign Operations	
Letters of Credit/Traverlers' Checks	4
Foreign Currency Transactions	2
Foreign Draft Presentment	2
TOTAL	8

07-07-76

CONSUMER COMPLAINTS - OTHER FUNCTIONS
FOR PERIOD 01-01-73 TO 12-31-73
WASHINGTON

FUNCTIONS	TOTAL
Safety Deposit Box/Safekeeping	3
Disappearance of Items	
Illegal Entry	
Service Charges	2
Securities Redemption Transfer/Collection Items	2
	7
TOTAL	
General Complaints	250
Advertising	30
Cashing U.S. Government Checks	1
Information Available to Stockholders	2
Lost or Stop Payment of Official Checks/ Money Orders	8
Promotions	2
Service Charges	
Stock Manipulation by Bank Officials	1
U.S. Savings Bond Redemption	4
Wire Transfer	1
Incompetent or Rude Personnel	3
Bank Supervision	5
Secrecy	3
Travel Business	
Employee Hiring, Benefit, Firing	
Data Processing Services	
Conflict of Interest	
	310
TOTAL	

Total Complaints received by Washington Office 1973 - 587

FEDERAL HOME LOAN BANK BOARD

FEDERAL HOME LOAN BANK BOARD,
Washington, D.C., July 30, 1976.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Consumer Affairs Subcommittee, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of June 7, 1976, to Acting Chairman Marston and subsequent discussion with your staff requesting the Federal Home Loan Bank Board to answer certain questions relating to its enforcement responsibilities under the Truth-in-Lending ("T-I-L") Act.

As we indicated in our letter to you of March 10, 1976, the Board's examination process, and the very small number of complaints received directly from consumers, reveal an apparent general and continued high level of compliance by insured savings and loan institutions with the requirements of the T-I-L Act, even though some violations of the T-I-L Act have taken place. In addition to the formal cease-and-desist proceedings cited in our letter of March 10, 1976, six consumer complaints concerning Regulation Z were received by the Board's Washington, D.C. headquarters in 1973; five complaints were received in 1974; six complaints were received in 1975; and no such complaints have been received to date in 1976. These figures do not include complaints received and handled at the 12 regional Federal Home Loan Banks, but that number is believed to be insignificant. While the Board believes that this data is meaningful as an indication of the scope of the problem that T-I-L violations represent in the savings and loan industry, we do not believe that an analysis of these complaints, which are *de minimis*, would provide meaningful or accurate answers to the first two questions posed in your letter.

There are a number of reasons which, in the Board's view, explain the lack of T-I-L violations on any significant scale in the savings and loan industry. These reasons relate directly to traditional real estate financing and settlement procedures in the United States. First, the Regulation Z disclosure form earned quick acceptance in the savings and loan industry, which already was familiar with various real estate settlement forms. In fact, disclosure of many of the terms required by the T-I-L Act was a routine practice in the savings and loan industry prior to the passage of the T-I-L Act. In short, with the enactment of the T-I-L Act savings and loan associations were not faced with any substantial alteration of their existing lending patterns and practices.

Second, the practice of the savings and loan industry with respect to substantially all residential mortgage loans has always been one of applying a simple rate of interest to the outstanding loan balance. Although problems may arise on such matters as whether charges are includable or excludable in the finance charge (*i.e.*, points, appraisal fees, charges for credit life, accident, health, or loss of income insurance, taxes not included in the cash price, recording fees, *etc.*), the problems do not appear as complex as those experienced by the commercial banks in their consumer credit transactions (as you know, the banks use varying methods of computing interest). Unlike creditors in other fields, the very great majority, if not all of savings and loan associations, have historically stated the rate of interest in a uniform and simple fashion. This practice, in turn, should promote "shopping around" for credit by home purchasers, a principal objective of the T-I-L Act.

Such violations as have come to the Board's attention resulted more from a mistaken understanding of the law or inadvertence than from negligent procedures or an intentional failure to comply with the requirements of the T-I-L Act. For example, in the case of informal enforcement action taken by the Supervisory Agent for the Federal Home Loan Bank of Topeka cited in our March 10, 1976, letter, the subject Iowa association had failed to disclose to loan customers on the Regulation Z disclosure statement the variable rate feature of a variable rate mortgage. Instead, the association made disclosures based upon the

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interest rate in effect at the time of the consummation of the loan, as if the mortgage carried a fixed interest rate. Although loan customers were verbally notified of the variable rate feature prior to the consummation of the loan (and in fact offered a ¼ of a percent reduction in the interest rate for electing the variable rate mortgage option), the disclosure of the feature was not made in the Regulation Z statement because of the novelty of the transaction and the absence of a space on the standard form specifically requiring such a disclosure. The violations in this case appeared to be more a result of inadvertence and a misunderstanding of the law than an intentional failure to comply.

In conclusion, it is our judgment that T-I-L violations do not appear to be a serious problem in the savings and loan industry. We think that, on balance, savings and loan associations subject to the Board's supervision have adequately and in good faith implemented the provisions of the T-I-L Act. Where we discover violations, you may be assured that this agency will take prompt and appropriate action.

Respectfully,

DANIEL J. GOLDBERG,
Acting General Counsel.

FEDERAL HOME LOAN BANK BOARD,
Washington, D.C., August 20, 1976.

Hon. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of August 3, 1976, wherein you request the Federal Home Loan Bank Board to comment upon certain issues raised by the Massachusetts Commissioner of Banks. You also ask for the Board's views on the relationship between Federal and State consumer protection laws generally.

Enclosed with this letter is a memorandum discussing the three areas of concern raised by the Massachusetts Commissioner. We believe a review of this memorandum will show that the Board's policies are in full accord with the applicable Federal statutes which deal with the subject matters in question and that, in a material respect, one of the Massachusetts consumer statutes is at variance with your views and those of your Committee.

While this Board does not follow a blanket policy of exempting Federal S&L's from complying with State consumer laws or regulations, under the dual banking system, certain vital areas of Federal S&L operations are covered by exclusive Federal regulation and supervision. The question of whether a particular State law or regulation is applicable to Federal S&L's depends on a number of factors, including—the nature of the State law or regulation involved, whether it would impinge upon or interfere with the thrift and home-financing functions of Federal S&L's, whether there is a preemptive Federal statute governing the area covered by the State law or regulation, and whether the State law or regulation would conflict with the Board's responsibility for maintaining its Federal statutory and regulatory framework.

We believe that the record will reflect that this Board, on balance, has taken the lead in the consumer protection area. We have regulations which protect borrowers by limiting the contractual powers of Federal S&L's respecting, among other things, due-on-sale clauses, late charges, prepayment penalties, short term loans, balloon payments and interest escalation clauses. We also have taken the lead in protecting savers, and in prohibiting usurpation of corporate opportunity by Federal S&L insiders and requiring an accounting and return to the S&L of any profits resulting from any such usurpation. Most States do not have comparable laws or regulations, or their laws or regulations do not provide as great a degree of protection as those of the Board. Moreover, some States base their laws and regulations on the regulatory action of the Board.

There would be no need for preemptive Board regulations in the lending area if there were uniform and modern State laws in this area. Presently, State laws tend to be diverse and highly inconsistent, outdated, unduly complex and costly to consumers, thus restricting S&L's in their home-financing functions and imposing unnecessary barriers to the free flow of mortgage capital, and to secondary mortgage market operations which clearly benefit home purchasers.

An opportunity to simplify, modernize, improve, and standardize the diverse State land lending laws is now at hand in the form of the Uniform Land Transactions Act (ULTA). ULTA was developed by specialists in the land transactions area serving on a special committee of the National Conference of Commissioners on Uniform State Laws (that organization is made up of Commissioners appointed by each of the 50 States). The intent of ULTA is to bring about national uniformity and to simplify the law as it pertains to land transactions.

Enclosed for your information is a joint letter of the Board, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation strongly supporting and endorsing ULTA. As noted in the letter, Federal preemption in the land lending area is the result of State inaction and the clear and pressing need for achieving national uniformity as to nationwide problems. The Board is of the view that enactment of ULTA will eliminate many of the difficulties which currently exist respecting the relationship between Federal and State laws.

The Board recognizes your strong interest in having Federal S&L's follow State consumer law; however, we ask that you also consider the other side of the coin. Presently, the Board's consumer regulations apply only to Federal S&L's—State S&L's follow only State laws and regulations in this area, even when State laws and regulations are less protective of savers' or borrowers' interests than are the Board's regulations. It seems unfair to suggest that Federal S&L's comply with State consumer laws unless State S&L's are likewise required to comply with the Board's consumer regulations. To do otherwise, would give State S&L's competitive advantage, and could cause many Federal S&L's to convert to State charters. Conversion to State charter would necessarily bring with it adoption by the converting institution of State rather than Federal standards. In some cases, this would mean that the converting institution would escape stricter Federal standards not only for the area of regulation at issue but in other areas as well.

It is a difficult task for a Federal authority, such as the Board, not only to keep abreast of developments in each of the 50 States, but also to interpret the meaning of a State statute absent implementation by State authorities by regulation, opinion, practice or otherwise. We would also like to re-emphasize a concern which we expressed in our letter to you of March 25, 1976, dealing with the protections which the Board provides respecting the exercise of due-on-sale clauses and the imposition of late charges by Federal associations. In a given case it may be no easy matter to determine which rule—State or Federal—provides a greater degree of consumer protection, even where simple arithmetic calculations are concerned. To take the example we cited in our letter, would a State law which sets a maximum 4 percent late charge and requires a 10-day grace period protect the borrower more than a Board regulation which sets a maximum 5 percent late charge but requires a 15-day grace period?

We believe that there is a more fundamental difficulty in determining, in a given instance of a particular saver's or borrower's contract term, which provision (Federal or State) provides, over-all, greater protection and increased benefits to all classes of "consumers" who deal with savings and loan associations. For example, at first blush it would appear the elimination of the due-on-sale clause would benefit certain home sellers and borrowers. However, closer analysis of the matter demonstrates that the elimination of such clauses would raise interest rates generally and harm particularly younger home purchasers, who ordinarily can least afford higher interest rates. Would a Board regulation restricting the use of due-on-sale clauses, therefore, be regarded as more or less pro-consumer than a State law or regulation totally prohibiting the use of such clauses? Moreover, in some instances the interests of *saver* "consumers" may be at odds with *borrower* "consumers". We believe a strong case is made, with respect to Federal associations, for striking the balance—among the interests of persons who deal with associations—at the national level where nationwide effects and implications exist for savers, borrowers and S&L's. We must expect State authorities to be primarily concerned with local problems and situations and not to give as great a weight to national implications as is the case with authorities at the Federal level. Thus Federal "consumer protection" strikes at the very center of the need to weigh, at the national level, the sometimes conflicting interests of savers, existing home owners and would-be home buyers with the need for soundness of S&L operations. We believe that the present flexible approach of the Board, on a variety of matters of intense concern to a number of parties, addresses this need very well.

We would like to bring another somewhat related matter to your attention. While, as noted above, the Board (under the dual system) does not apply its consumer regulations to State S&L's, it does, as the operating head of the FSLIC, apply its Insurance Regulations uniformly to all Federal and FSLIC-insured State S&L's. This is proper because such Insurance Regulations relate to the FSLIC's supervisory and insuring functions, and are intended, *inter alia*, to prevent S&L failures, to protect the soundness and financial stability of S&L's, and to safeguard the FSLIC's public funds which provide the Federal system of savings account insurance. Lately, the FSLIC's Insurance Regulations, particularly those directed at potential lending abuses and insider transactions, have been under attack by State S&L's. Arguments have been repeatedly made that our Insurance Regulations—as applicable to State S&L's—must yield to State law whenever our regulatory and supervisory standards are more strict than the comparable State statute or regulation. Similarly, certain State officials have complained that the Board, as the operating head of the FSLIC, may not, in passing upon insurance of accounts applications of State-chartered S&L's apply the Board's insurance standards when they exceed those of the chartering State. The foregoing matters, which affect the soundness and stability of FSLIC-insured State S&L's, are causing increasing dual system tension, and we may wish to discuss this problem with you at a later date.

In conclusion, the Board is committed to meaningful and appropriate consumer protection and will continue to improve its examination, supervision, and regulation of Federal S&L's on these matters. Further, the Board wishes to assure you that we have for some time given emphasis to the question of the the dual system and to finding ways to improve our ability to keep abreast of positive consumer developments by the States. We want consumers to continue to benefit from a responsible and progressive Federal system. We hope that this letter will be helpful in clarifying the Board's positions in the difficult area of accommodating sometimes conflicting State and Federal policies.

Sincerely,

GARTH MARSTON,
Acting Chairman.

Enclosure.

ATTACHMENT

The Massachusetts Commissioner expressed three areas of concern. The first relates to the alleged failure of Federal savings and loan associations in Massachusetts to follow State law in the equal opportunity credit area. This dispute, up to now, involves only one area of conflict. Federal savings and loan associations have been advised by the Board's Acting General Counsel that they may use the standard mortgage application form developed by the Federal Home Loan Mortgage Corporation ("Mortgage Corporation"). This form, moreover, is required by the Mortgage Corporation for all mortgage loans closed after July 1, 1976, to be sold to the Mortgage Corporation. The benefits of a uniform mortgage application form and its acceptance by investors in interstate commerce and secondary markets are considerable, not only nationally, but also with regard to the availability of home mortgage capital in the Commonwealth of Massachusetts itself. The Mortgage Corporation form asks, on a voluntary basis, for data respecting race and sex of the applicant. Based upon the language of Senate Report No. 94–930, dated June 3, 1976, the Committee on Banking, Housing and Urban Affairs appears to strongly favor notation systems as an aid to antidiscrimination enforcement and has commented on the failure of Federal financial regulatory agencies to require such notation systems.

The Board acknowledges that the Mortgage Corporation form asks for data respecting marital status. However, the Equal Credit Opportunity Act and Regulation B of the Board of Governors of the Federal Reserve System permit a creditor to ask such information in a secured loan transaction where the signature of the applicant's spouse is necessary under the applicable statutory or decisional law of the State, or is reasonably believed by the creditor to be necessary, to create a valid lien, pass clear title, or waive inchoate rights to property (See Section 701(b) of the Equal Credit Opportunity Act; section 202.7(c) of Regulation B (12 C.F.R. 202.7(c).). The Board believes there can be no legal basis for, nor would it be sound policy, to prohibit Federal associations from exercising this right under a Federal statute and regulation in the absence of a showing that the information is being used to unlawfully discriminate against a mortgage applicant. Further, there has been no indication to the Board that the Massachusetts Commissioner contends that the subject form is being used in a discriminatory manner.

The Mortgage Corporation form has been designed to help detect discrimination in lending because of the race or sex of the loan applicant and permits inquiry into marital status where sound loan underwriting standards so require. Therefore, the Board believes that the Massachusetts statute in question (Massachusetts General Law C. 151B, Section 4, Paragraph 14 and, specifically, Section 4 of the "Regulations Concerning Discrimination in Credit Becaues of Sex or Marital Status", promulgated by the Massachusetts Commission Against Discrimination), to the extent that it would prevent inquiry as to sex or marital status of the loan applicant, regardless of the purpose of the inquiry, would not only be contrary to Federal law, but also inconsistent with the views of the Committee on Banking, Housing and Urban Affairs.

The second area of concern raised by the Massachusetts Commissioner involves recent refusals to permit Commonwealth examiners to enter Federal savings and loan associations to examine records to determine if there may be violations of the Commonwealth's Truth-in-Lending (T–I–L) law and regulations. The Board's initial view of the Commissioner's comments is that it fails to see why Commonwealth examiners would desire to enter Federal savings and loan associations when the Board of Governors of the Federal Reserve System, which has primary responsibility for interpreting the Federal T–I–L law, has not exempted Federally chartered institutions in Massachusetts from the requirements of the Federal T–I–L Act and has not directed the Federally chartered institutions follow Massachusetts law (see, Board of Governors of the Federal Reserve System, Supplement III to Regulation Z (July 1, 1970)).

The third area of concern expressed by the Massachusetts Commissioner relates to the Board's policy on interest on tax escrow accounts. In June, 1975, the Board amended its regulations (12 C.F.R. 545.6–11(c)) to require Federal savings and loan associations to pay interest on tax escrow accounts maintained in connection with loans on single family dwellings if the State in which the association was situated also generally required such payments by State-chartered institutions. The regulation does not require that interest be paid on tax escrow accounts maintained in connection with loans on multi-family housing (generally maintained as commercial ventures), as pointed out by the Massachusetts Commissioner. However, the Board believes, on balance, that its regulation provides appropriate consumer protection by protecting the individual homeowner in this instance. In any event, the Board's action in requiring, as a matter of Federal law, that Federal savings and loan associations in certain States, including Massachusetts, pay interest on tax escrow accounts does not constitute a disregard for the State consumer protection laws.

FEDERAL DEPOSIT INSURANCE CORPORATION

OFFICE OF THE CHAIRMAN

July 28, 1976

Honorable Joseph R. Biden, Jr.
Chairman
Consumer Affairs Subcommittee
Committee on Banking, Housing and
Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Biden:

This is in response to your letter of June 7, 1976, requesting detailed information regarding violations of Truth in Lending regulations observed among FDIC-supervised banks. You request a careful analysis of numbers, types, and geographic distribution of Truth in Lending violations as well as an indication of any particular problem areas. You also request our judgment of the extent to which these violations occur either inadvertently or willfully, and our assessment of the extent to which consumers may be misled or deprived of essential information by the occurrence of such violations.

The enclosed tables, Exhibits A and B, detail information regarding the compliance of FDIC-supervised banks with the provisions of Truth in Lending as revealed by the 4,193 Compliance Reports reviewed in the Washington Office during the first six months of 1976. Enclosed also as Exhibit C is a blank copy of the Truth in Lending Compliance Report used as the basis for this analysis. As can be seen from Exhibit A, a total of 1,046 banks (24.9%) were cited for one or more violations of Truth in Lending regulations. Although we do not maintain a separate record indicating the number of violations cited in each Report, the Reports reflect for the most part several violations. In many cases our examiners may cite merely a representative sample of the violations they find while in other cases they may not cite at all a rather minor, apparently inadvertent violation corrected during the course of their compliance review. The states have been listed according to the FDIC Region in which they are located to reflect some geographic grouping.

Exhibit B details the most commonly cited violations of Truth in Lending as reflected by these 4,193 Reports. The statistics have been compiled in the aggregate on a nationwide basis. Unfortunately, our records do not permit

Honorable Joseph R. Biden, Jr.
Page Two
July 28, 1976

the statistics to be readily broken down on a state-by-state basis, although such a breakdown can be obtained through a rather arduous and time-consuming process. If your Subcommittee believes such a breakdown would be especially valuable for its purposes, we will be happy to develop and furnish it at your request. As Exhibit B indicates, the most frequently reported violations were: failure to disclose either the finance charge or annual percentage rate; incorrect computation of the finance charge or annual percentage rate; and failure to comply with requirements regarding rescission rights in appropriate cases. We have noted no particular problem areas not otherwise reflected by these statistics.

We believe that in the vast majority of cases the reported violations were of a nonwillful nature, resulting primarily from carelessness, clerical error, lack of knowledge or misunderstanding of the law. Typically, bankers and bank personnel exhibit a ready willingness and desire to comply with the law. Often, for example, following our examiner's discussion with bank management, new procedures or training programs are established for loan department personnel to eliminate or reduce violations in the future. In a relatively few cases, however, we have noted apparently willful violation of Truth in Lending regulations. In these cases, we have referred the matter to the appropriate United States Attorney for possible criminal prosecution. Since July 1969, we have referred 45 such cases for possible criminal prosecution.

We have no way of assessing with any degree of accuracy or confidence the extent to which violations seriously mislead consumers or deprive them of essential information.

I trust the foregoing comments and the enclosed information will be helpful to your Subcommittee. Should you desire any additional information, please do not hesitate to call upon us.

Very truly yours,

Robert E. Barnett

Robert E. Barnett
Chairman

Enclosures

EXHIBIT A

TRUTH IN LENDING SUMMARY STATISTICS
JANUARY 1 THROUGH JUNE 30, 1976

	COMPLIANCE REPORTS REVIEWED		BANKS CITED FOR VIOLATIONS OF TRUTH IN LENDING		PERCENTAGE OF REPORTS REVIEWED CITED FOR VIOLATIONS	
	Individual States	Regional Total	Individual States	Regional Total	Individual States	Regional Total
ATLANTA REGION		255		80		31.4
Alabama	35		24		68.6	
Florida	144		20		13.9	
Georgia	76		36		47.4	
BOSTON REGION		199		68		34.2
Connecticut	64		18		28.1	
Maine	36		6		16.7	
Massachusetts	46		20		43.5	
New Hampshire	23		13		56.5	
Rhode Island	15		2		13.3	
Vermont	15		9		60.0	
CHICAGO REGION		477		126		26.4
Illinois	350		98		28.0	
Indiana	127		28		22.0	
COLUMBUS REGION		216		80		37.0
Kentucky	119		51		42.9	
Ohio	56		18		32.1	
West Virginia	41		11		26.8	
DALLAS REGION		566		159		28.1
Colorado	76		3		3.9	
New Mexico	16		2		12.5	
Oklahoma	143		14		9.8	
Texas	331		140		42.3	
MADISON REGION		310		91		29.3
Michigan	62		21		33.9	
Wisconsin	248		70		28.2	
MEMPHIS REGION		382		64		16.7
Arkansas	84		23		27.4	
Louisiana	102		8		7.8	
Mississippi	70		10		14.3	
Tennessee	126		23		18.2	

	Compliance Reports Reviewed: Individual States	Compliance Reports Reviewed: Regional Total	Banks Cited for Violations of Truth in Lending: Individual States	Banks Cited for Violations of Truth in Lending: Regional Total	Percentage of Reports Reviewed Cited for Violations: Individual States	Percentage of Reports Reviewed Cited for Violations: Regional Total
MINNEAPOLIS REGION		445		42		9.4
Minnesota	274		22		8.0	
Montana	26		7		2[illegible]	
North Dakota	78		6		7[illegible]	
South Dakota	49		6		12.2	
Wyoming	18		1		5.5	
NEW YORK REGION		116		24		20.7
New Jersey	39		8		20.5	
New York	73		14		19.2	
Puerto Rico	4		2		50.0	
OMAHA REGION		429		78		18.2
Iowa	263		51		19.4	
Nebraska	166		27		16.3	
PHILADELPHIA REGION		88		43		48.9
Delaware	6		4		66.7	
Maryland	34		15		44.1	
Pennsylvania	48		24		50.0	
RICHMOND REGION		108		34		31.5
North Carolina	20		6		30.0	
South Carolina	31		17		54.8	
Virginia	57		11		19.3	
ST. LOUIS REGION		459		101		22.0
Kansas	196		39		19.9	
Missouri	263		62		23.6	
SAN FRANCISCO REGION		143		56		39.2
Alaska	3		2		66.7	
Arizona	8		1		12.5	
California	56		12		21.4	
Hawaii	2		0		-0-	
Idaho	7		4		57.1	
Nevada	2		1		50.0	
Oregon	12		8		66.7	
Utah	24		11		45.8	
Washington	28		16		57.1	
Guam	1		1		100.0	
GRAND TOTALS		4,193		1,046		24.9

EXHIBIT B

AREAS OF TRUTH IN LENDING MOST FREQUENTLY VIOLATED
BY FDIC-SUPERVISED INSTITUTIONS
AS REVEALED BY INFORMATION IN 4,193 REPORTS REVIEWED
DURING THE PERIOD OF JANUARY 1 THROUGH JUNE 30, 1976

Nature of Deficiency	Section of Regulation Z	Number of Banks Cited	Percentage
Failure to disclose Finance Charge	226.8(d)(3)	263	6.3
Failure to disclose Annual Percentage Rate	226.8(b)(2)	244	5.8
Incorrect computation of Annual Percentage Rate	226.5	227	5.4
Deficiencies related to the borrower's right to rescind	226.9	197	4.7
Incorrect computation of Finance Charge or improper handling of excludable charges	226.4	180	4.3
Nondisclosure of various payment terms (such as number and due dates of payments)	226.8(b)(3)	149	3.6
Violations related to disclosures on purchased paper	226.8	113	2.7
Lack of or incorrect disclosure of terms related to credit life insurance	226.4(a)(5)	109	2.6
Failure to provide disclosures	226.8(a)	101	2.4
Failure to disclose Amount Financed	226.8(d)(1)	88	2.1
Failure to disclose balloon payment or conditions under which it may be refinanced	226.8(b)(3)	69	1.6
Failure to adequately identify pledged security	226.8(b)(5)	65	1.6
Failure to use certain prescribed terminology ("Finance Charge," "Annual Percentage Rate," etc.)	226.8(a)	34	.8
Failure to make new disclosures when refinancing	226.8(j)	28	.7
Failure to make required initial disclosures on open end credit	226.7	24	.6
Failure to make required periodic disclosures on open end credit	226.7	23	.5
Incorrect disclosures in advertising	226.10	20	.5
Failure to retain evidence of disclosure	226.6(i)	18	.4
Failure to disclose method of computation of rebate of unearned finance charge in event of prepayment	226.8(b)(7)	16	.4
Improper oral disclosure of annual rates	226.1	8	.2

EXHIBIT C

FEDERAL DEPOSIT INSURANCE CORPORATION REGULATION Z – TRUTH IN LENDING	EXAM. (Close of business)	NUMBER
	NO. OF OFFICES	TOTAL ASSETS
NAME OF BANK	EXAMINER IN CHARGE	
CITY / COUNTY	STATE	

NOTE: Answers to the following questions are based upon the results of a selected sampling, upon statements made by bank's management regarding procedures and policies, and upon observations by the examiner. In the case of negative answers, details are provided and management's promised remedial action noted.

ITEM	YES	NO
1. Is the bank correctly determining finance charges and properly handling excludable charges?		
2. Is the bank properly computing annual percentage rates?		
3. If the bank extends open end credit, are correct disclosures being provided?		
(a) before the first transaction is made on a new account?		
(b) when required periodic statements are rendered?		
4. Is the bank providing correct disclosures on credit other than open end?		
5. With respect to any consumer paper purchased by the bank or held by it as collateral, are the disclosures made therein correct?		
6. Is the bank properly observing rescission rights on both direct and indirect paper?		
7. Based on available information, is the bank making correct disclosures in its advertisements?		
8. Is the bank complying with the issuance and disclosure provisions for credit cards?		
9. Has the bank adopted procedures which assure that its employees are making proper oral disclosures of annual rates?		

COMMENTS

FDIC 6500-59 (12-74)

(Examiner)

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D.C. 20429

OFFICE OF THE CHAIRMAN

July 28, 1976

Honorable William Proxmire
Chairman
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your letter of July 9, 1976 advising us of the upcoming oversight hearings scheduled for July 27, 28, and 29 and submitting some 17 questions you wish answered in advance of the hearings. Enclosed is a list of the questions together with our answers.

Mr. John J. Early, Director of our Division of Bank Supervision, and Mr. Thomas C. O'Neill, Director of our Office of Bank Customer Affairs, will appear at the hearings on behalf of the FDIC.

Very truly yours,

Robert E. Barnett

Robert E. Barnett
Chairman

Enclosure

Responses to Questions from Senator Proxmire
Regarding the FDIC's Administration of Its Consumer Protection Function

1. Please describe the organization, staffing, and resources allocated to your consumer affairs division. To what extent does it operate through regional offices? How are its existence and its complaint-handling function publicized?

The Board of Directors of the FDIC established the Office of Bank Customer Affairs in April of 1975. The Office is a separate division within the Corporation and reports directly to the Board of Directors. The staff of the Office presently includes a director, a consumer affairs specialist, a research assistant, and two clerical personnel. Recruitment efforts have been initiated for an additional consumer affairs specialist and an attorney.

With respect to allocation of resources, the Office is one of several organizational units within the Executive Offices of the FDIC and has not been designated as a separate cost center. However, the major expense of the Office is salaries, currently at $81,000 per annum.

The Office operates to a great extent through the Regional Offices. The organization of the Office within the structure of the Corporation requires a close coordination of activities with the Division of Bank Supervision, its 14 Regional Offices, and its approximately 1,800 field bank examiners. Coordination with the Regional Offices includes the referral by the Office of appropriate complaints for field investigation and the processing and disposition of consumer complaints received by the Regional Offices with subsequent review by the Office of Bank Customer Affairs.

The creation of the Office and the complaint-handling functions were initially announced in April 1975 through a press release issued by the FDIC. Since that time the existence of the Office has been mentioned in such publications as U.S. News and World Report and Guide to Federal Consumer Services. Information on the Office has been recently furnished to the publishers of The Colorado Express and Of Consuming Interest for inclusion in their forthcoming directories of consumer services.

2. Please indicate the numbers and -- to the extent possible -- the types of consumer complaints received. How many were found meritorious? What disposition was made of these complaints?

The various offices of the FDIC received 692 consumer complaints for the period from April 1, 1975 through March 31, 1976. Statistics indicating the numbers and types of complaints for the periods of April - December 1975, and January - March 1976, are included as Exhibits A and B. Approximately six percent of the above complaints were found to involve either clerical errors or violations of law or regulation on the part of the banks involved. In all cases where an error was found, the bank involved corrected the error and any monetary loss was reimbursed to the customer. In the case of violation of law or regulation, the banks were requested to take corrective action and refrain from any further violations.

3. What procedures are used to handle consumer complaints? Are all complaints processed? How promptly are they handled? Are there maximum time limits for dealing with them?

Complaints may be received in any one of the 14 Regional Offices or in the Washington Office, and may be in the nature of a telephone call, an office visitation, or a letter. Each complaint is initially reviewed to determine whether it pertains to an area coming within the Corporation's jurisdiction. Complaints which do not involve an insured nonmember bank, such as complaints involving a national bank or an insured savings and loan association, are referred to the Federal agency having jurisdiction. In certain complaints involving a State law, the complainant is referred to the banking authority that chartered the bank for further assistance.

All complaints are processed; however, the procedures vary somewhat depending on the nature of the complaint. When appropriate, we attempt to resolve the matter by a telephone call or a letter to the bank involved. If, however, it appears that a visit to the bank is necessary to either develop the information required or review the records of the bank, then the complaint is assigned for investigation. If such a complaint is received by the Washington Office, it is referred to the appropriate Regional Office for investigation, and the complainant is notified of this through an interim acknowledgement letter.

The period of time necessary to handle a complaint depends on a number of variables including whether a given complaint must be referred to other offices for processing, requires a field investigation, or involves any complex legal issues. Our records indicate that complaints received by the FDIC have been processed in an average period of 39 days. While maximum time limits have not been set for handling and resolving complaints, we are constantly attempting to improve our performance in this area.

4. Do the staff members assigned to consumer complaints also have other enforcement duties?

In addition to processing consumer complaints and inquiries, the staff of the Office of Bank Customer Affairs also has certain responsibilities with respect to the Corporation's role in enforcing compliance with consumer protection legislation. One of the responsibilities of the Office is to recommend to the FDIC Board of Directors formal enforcement action against nonmember banks where previous efforts at voluntary compliance with the requirements of "consumer legislation" have been unsuccessful. To fulfill this function, the staff of the Office of Bank Customer Affairs has been reviewing those Compliance Reports indicating possible compliance problems with consumer laws.

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5. Through what devices does your agency exercise its responsibility to enforce the consumer protection law? Through regular examination? Special examinations? Education? Other methods?

The FDIC exercises its responsibility to enforce compliance with consumer protection laws primarily through periodic reviews for compliance conducted during the course of regular examinations of the insured state nonmember banks within its enforcement jurisdiction. (In the three states, Georgia, Iowa, and Washington, which are subject to the selective withdrawal from the regular examination program, our examiners conduct separate compliance examinations in those banks solely examined by the respective state departments.) After the compliance examinations are conducted, our examiners discuss their findings with respect to apparent violations of law with bank management and note the findings in a series of compliance report forms which include forms dealing with consumer protection laws. Enclosed as Exhibit C is a blank copy of the series of report forms used. The completed forms or Compliance Reports are submitted to our Regional Offices for review and subsequently sent to the banks under a cover letter pointing out the deficiencies found and requiring whatever correction is necessary to assure compliance. Occasionally, special compliance examinations are conducted or examiner visitations made to determine the status of a bank's compliance with relevant laws or to review its progress in instituting required corrections. In certain cases, our Regional Directors find it useful to hold conferences with bank managements to obtain required corrections. If it appears that compliance cannot be voluntarily obtained, a formal proceeding is instituted under Section 8 of the Federal Deposit Insurance Act looking ultimately to the issuance of a cease-and-desist order against the bank.

Violations of consumer protection laws are also discovered as a result of reviewing or investigating complaints. These violations are followed up in much

the same manner, that is, by contacting the banks concerned and requiring whatever corrections are necessary.

The FDIC endeavors to provide information and education to bankers and indirectly to consumers through the examination process itself. Bankers frequently discuss questions they may have regarding banking law and other subjects with our examiners or direct these questions to our Regional Offices. The FDIC provides all insured nonmember banks within its enforcement jurisdiction with copies of all consumer protection laws, regulations, and official interpretations. Information is also provided directly to consumers in response to complaints and inquiries received by the FDIC's Office of Bank Customer Affairs or by the Regional Offices.

6. How are your bank examiners trained, with respect to examining for violations of state and federal consumer protection laws? Would you supply the Committee copies of the training materials used, handbooks of other instructional materials for examiners on the job; and examination report forms used for assessing compliance in this area?

Newly hired assistant bank examiners are brought to the Division of Bank Supervision Training Center within three to six months of their initial employment date to attend the School for Assistant Examiners. At this school the students are given their first formalized training in consumer-related laws and regulations. A one hour block of instruction on Truth in Lending - Regulation Z is taught which includes a twenty minute slide and audio presentation and a discussion of a handout on the subject (Exhibit D). In addition, instruction is included in another one hour module relative to Fair Housing and the Fair Credit Reporting Act. The required logotype (Attachment 1 to Exhibit D) called for in the Corporation's policy statement on Fair Housing is furnished to each student along with a lecture on the current examination procedures relative to assistant examiners (see attached lecture outline Attachment 2). Matters covered during the discussion of the Fair Credit Reporting Act are included on the attached lecture outline (Attachment 3). While the Training Center staff realizes the assistant examiner's normal duties do not customarily encompass checking compliance in these areas, it is felt a minimal exposure to this future responsibility is desirable at this point in their career path.

The next formalized training for assistant examiners takes place at the School for Senior Assistant Examiners. Attendees usually possess one and one half to two and one half years of field examination experience. The present curriculum in the school includes in-depth analysis of the Fair Credit Reporting Act, Truth in Lending - Regulation Z and Advertising of Interest on Deposits.

Classroom time allocated to these topics totals four hours, however, the students are furnished rather extensive questionnaires (Attachments 4 and 5) to review prior to the classroom session. It has been our experience that the review of these questions involves a considerable amount of outside duty time. The materials used in the advertising of interest on deposits segment of this instruction block are attached (Attachment 6). Instructors review the attached questionnaires and sample advertising with the class to assure a complete understanding of the material is obtained.

An extensive modification of the aforementioned curriculum in the School for Senior Assistant Examiners is now in the planning stage. The time allocation for consumer protection related topics and other matters included in the Compliance Report will be expanded from four hours to thirty hours. In addition to expanding the coverage of the topics mentioned in the preceding paragraph, the proposed curriculum will include Fair Housing, Fair Credit Billing Act, Equal Credit Opportunity Act, Real Estate Settlement Procedures Act, and the Home Mortgage Disclosure Act. It is anticipated the new program will include lectures on the various laws, case studies dealing with violations of the statutes, simulation of discussion of violations with bankers, and the preparation and submission of a completed Compliance Report of Examination which will be reviewed by the Training Center staff. The new curriculum will be in place for the first School for Senior Assistant Examiners in 1977.* The Training Center staff expects to modify the curriculum continuously as new legislation is enacted and responsibility for enforcement is delegated to the Corporation.

The next school attended by assistant examiners is the School for Examiners which is directed toward personnel with two and one half or more years of field examination experience. This school is customarily attended shortly before the assistant examiner sits for the Progress Evaluation which assesses the individual's ability to assume the duties of a commissioned bank examiner. As to the treatment of consumer related legislation in this school, a one-hour block of instruction on Truth in Lending - Regulation Z is included. Again, a questionnaire (Attachment 7) is utilized which covers many of the highlights and more detailed portions of the regulation. The students are expected to thoroughly review the questionnaire prior to the session on the topic, an assignment which would likely take two to three hours to complete. Two case studies on Fair Housing and Fair Credit Reporting (Attachment 8) are furnished to the students for their review and class discussion.

It is expected that the curriculum on consumer-related matters in the School for Examiners will be modified in the near future in line with the aforementioned changes in the School for Senior Assistant Examiners. The new curriculum will include a review of all consumer protection regulations prior to the Progress Evaluation and will stress the importance of complete knowledge of these areas by all commissioned examiners.

In August of this year a one-week workshop on Fair Housing will be conducted at the Division of Bank Supervision Training Center. Participants at the workshop will include Washington Office staff, Regional Counsels, Regional Office personnel and field examiners. Instructors will include representatives from the Department of Housing and Urban Development, Department of Justice and various high-echelon Washington Office staff officials. The thrust of the workshop will be to instruct the participants in the identification and handling of housing discrimination. The Training Center staff intends to implement procedures discussed in the bank examination schools.

To summarize, our future training program will involve an introduction to consumer-related laws at the School for Assistant Examiners, an in-depth treatment at the Senior Assistant Examiner School, and a final overview at the School for Examiners.

As to the Progress Evaluation, separate case problems or questions are included in the rules and regulations segment with the exception of the more recently enacted pieces of legislation such as the Home Mortgage Disclosure Act and the Equal Credit Opportunity Act. These latter areas will be added to the evaluation in the near future. Samples of case problems are attached (Attachments 9 and 10).

*Effort will be made to employ this curriculum on a trial basis in conjunction with the School for Senior Assistant Examiners to be conducted October 26 to November 5, 1976.

7. How are examiners supervised, with respect to examining for violations of state and federal consumer protection laws? To what extent do supervision and training include reviewing state laws applicable to the banks?

FDIC field examiners are under the general supervision of their Regional Directors and other senior Regional Office personnel. An individual bank examination, including a compliance review, is performed under the direction of an examiner-in-charge. Field examiners are guided by instructions in the Division of Bank Supervision's Manual of Examination Policies and may at any time contact their Regional Office if they feel they need any type of special advice or assistance. Their completed reports are reviewed in the Regional Office before they are sent to the banks concerned.

The FDIC's compliance examinations and the supervision of those examinations relate almost exclusively to applicable federal laws, including consumer protection laws. (To the extent that state usury laws may be regarded as consumer protection laws, our examiners are generally familiar with state usury limitations and may be expected to note these types of violations.) We encourage our examiners to familiarize themselves with all relevant state laws applicable to the banks they normally examine, including applicable consumer credit protection laws, and they are expected to cite in their reports any violations they may discover.

8. How are bank examinations conducted, with respect to consumer protection laws? Are they comprehensive reviews of the bank's consumer transactions, or spot checks or random reviews? What systematic records of violations are maintained? How are the examiners' reports analyzed, and how are judgments made about appropriate corrective measures?

Our examiners review documentary evidence of compliance, such as, loan documents, disclosure statements, notices, and application forms, depending on the requirements of the particular consumer law under consideration. In addition, our examiners explore the bank's practices and procedures for handling the transactions regulated by the particular law. Generally, spot checks or random reviews are used. More comprehensive reviews are conducted if any serious violations are discovered. The examiner's findings with respect to any violations discovered are discussed with bank management and duly noted in the Compliance Reports.

The Regional Offices maintain records on the compliance with consumer laws by the banks in their Regions for the purpose of follow-up and supervisory actions. In addition, our Washington Office maintains a card index on each bank's history of compliance with federal consumer protection laws. Information related to the Compliance Reports, subsequent correspondence, and follow-up activities by the Regional Offices are posted to these cards.

The examiners' Reports are analyzed by senior Regional Office staff with judgments made on the type of corrective action to be required. The reports are then transmitted to the banks concerned with a cover letter requesting the corrective action deemed necessary. The Compliance Reports and cover letters are subsequently reviewed by the Washington Office staff which exercises a general oversight function.

9. Where violations are detected through bank examinations, what corrective measures are sought? E.g., formal sanctions against the bank or its officers? Compensation for the aggrieved consumers? Changes in bank practices for the future? Publicity of the violations?

When violations are discovered through bank examinations, the FDIC requires that the bank revise its practices and procedures to avoid similar violations in the future. We believe that our authority under Section 8 of the Federal Deposit Insurance Act to order "affirmative action to correct the conditions resulting from any violation" of law is broad and probably includes the authority to order restitution in appropriate cases. We have not found it necessary to use our Section 8 authority to order any type of monetary recovery to consumers.

The FDIC has not publicized discovered violations to date.

10. To what extent, and how, are enforcement policies and criteria coordinated among the various federal supervisory agencies? What coordination is done with state agencies having parallel responsibilities?

The staffs of the federal supervisory agencies frequently discuss, on an informal basis, enforcement policies and practices and exchange ideas and written materials used in the enforcement process. On a more formal basis, enforcement policies or problems are discussed at meetings of the Inter-Agency Coordinating Committee, an ongoing group of senior officials who meet to discuss and resolve problems of common interest and concern.

Our Regional Directors have an established, ongoing relationship with the various state banking officials in their respective regions. The Regional Directors coordinate a number of parallel activities with the state agencies. These activities include joint examination efforts in some states, exchange of supervisory and examination information, and joint efforts of enforcement and supervision.

11. What degree of importance or priority does the enforcement of consumer protection laws have in your agency's overall operation? What degree of importance does it have in individual bank examinations?

The enforcement of consumer protection laws is of considerable importance and has a high priority within the overall operation of the FDIC. The FDIC devotes substantial resources, particularly in terms of examiner time, to this enforcement function.

We regard enforcement of consumer protection laws as an integral part of our bank examinations. Checking for compliance with these laws is a major function during our examinations, ranking in importance with any of several functions carried out to establish the overall financial condition of the bank under examination.

12. What degree of importance or priority does the enforcement of state consumer protection laws have in your agency's overall consumer protection effort? Are state enforcement personnel involved in your efforts? Are they notified? Do they have access to information developed by your examiners?

While we believe the states have the primary responsiblity for enforcing state consumer laws, the FDIC has an interest in seeing that banks under its jurisdiction obey all laws, including the state consumer credit protection laws. Consequently, when and as we discover that any of our banks have violated an appropriate state law, we take critical exception and request that the violation be corrected. Our examinations include specific checks for violations of state Truth in Lending laws in the states which have received exemption from the federal Truth in Lending law, as noted in the answer to question 13. During those examinations which are conducted together with state enforcement personnel, the state personnel are frequently involved with the state law segment of the examination process.

The FDIC furnished copies of its Compliance Reports to the responsible state banking authorities who also routinely receive follow-up correspondence directed at achieving or assuring compliance with the laws covered in the Reports. These state officials are also interested and concerned in seeing to it that the banks within their supervisory jurisdiction comply with these federal laws. Thus, state enforcement officials are both involved in our efforts and share the information by our examiners.

13. Where a state has been exempted from federal law (E.g., Truth in Lending) on condition that there is adequate state enforcement of substantially similar state laws, who exercises enforcement responsibility with respect to banks under your jurisdiction?

In the case of Truth in Lending, the FDIC continues to exercise enforcement functions with respect to the banks within our supervisory jurisdiction, that is to say, in those exempt states, our examiners continue to check for violations and complete our Truth in Lending Compliance Report form. However, violations are cited in terms of the parallel requirements of the state law rather than the Truth in Lending Act and its implementing Regulation Z. Any violations found are followed up by our Regional Offices in the same manner as other violations of federal consumer protection laws.

14. Is there any discernible incompatibility or conflict of interest in your agency's dual responsiblilities to see to the bank's soundness and to consumer protection?

We believe that there is no basic conflict of interest in the FDIC's dual responsibilities of assuring bank safety and soundness on the one hand, and consumer protection on the other. Indeed, we think these two seemingly disparate responsibilities are related and are compatible.

One of the basic tenets of the FDIC is the maintenance of public confidence in the nation's banking system. We believe that in supporting consumer protection and the legitimate consumer interests in the banks we supervise that a safer and sounder banking system will result. We contend that both consumers and banks will benefit in total from an involvement and efforts in the area of consumer protection.

15. Regulations promulgated under the Consumer Credit Protection Act are lengthy, complex and technical. Why? Is this complexity necessary? Does this complexity serve the consumer's interests?

The regulations are lengthy, complex and technical because the laws they implement are inherently complex and technical and because of the diverse and varied activities needed to be regulated. For example, under the Truth in Lending Act, consumer credit is extended in a variety of ways with divergent terms and methods of charging for the credit.

The complexity of the regulations serve neither bank nor consumer interests. We would endorse any efforts to simplify the regulations which would also retain fundamental areas of protection necessary for the consumer's benefit.

16. What adverse effects do you perceive from the complexity of Regulations Z and B? What beneficial effects?

Compliance is more difficult and costly because of the complexity of the laws and regulations. Also, creditor support is diminished and voluntary compliance becomes more difficult to achieve. We believe that consumers' understanding and interest are lessened due to the complexity of the laws and regulations.

Complexity, in itself, has no beneficial effects. However, it must be recognized that the complexity of the laws and regulations are a result of a sincere attempt to provide necessary protections to the consumers in the very complex area of consumer credit.

17. How can this regulatory complexity be avoided?

We believe the regulatory complexity can be reduced and we support the current efforts of the Board of Governors of the Federal Reserve System in making recommendations on changes for simplifying the Truth in Lending Act and in suggesting for study additional areas for simplification of the Act. We intend to study these recommendations and suggestions in depth, and will be happy to share our conclusions and comments.

Insofar as Regulation B is concerned, we have no suggestions at this time. The complexity appears to result from the variety of specific discriminatory practices sought to be reached.

EXHIBIT A

SUMMARY OF
CONSUMER COMPLAINTS BY FUNCTION
FOR PERIOD 4-1-75 TO 12-31-75

FUNCTION	COMPLAINTS
DEPOSITS	303
LOANS	127
TRUST SERVICES	12
SAFE DEPOSIT/SAFEKEEPING SERVICES	5
INSURANCE COVERAGE	18
GENERAL	41
TOTAL	506

[illegible] TO [illegible]

NATURE OF	TOTAL	DEMAND	SAVINGS	TIME	NOW	IRA	Vacation/ Xmas Club	Escrow	Other
Advertising	41	2	8	20	1	3			7
Automatic Renewal Feature	1			1					
Deposit Not Credited	11	7	2						2
Deposit Not Credited on Day Made	2	2							
Disclosure of Account Charges/Terms	5	2	1	2					
Discrepancy in Account	61	29	25	3		1			3
Forged Signature/Endorsement	23	16	5	1					1
No Endorsement	2		1			1			
Payment of Interest	29		10	14			1	1	3
Premature Withdrawal Penalty	40			40					
Recordkeeping Requirements	3		3						
Refusal to Cash Customer's Check	1	1							
Refusal to Cash Noncustomer's Check	4	2							2
Release of Funds	23	5	16	1					1
Right of Offset	13	6	4	1					2
Service Charges	8	6							2
Stop Payment Check Paid	6	6							
Other	30	12	4	5		1		2	6
TOTAL	303	95	79	83	1	6	1	3	29

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CONSUMER Complaints - LOAN FUNCTION
FOR PERIOD [illegible] TO [illegible]

NATURE OF	TOTAL	Credit Card	Overdraft/ Check Credit	Commercial Agricultural	Installment	Mortgages	Demand	O
Acceleration Clause	2	1						
Amount of Interest Charged	6		1	2		2		
Amount of Rebate	6				2	2		
Collateral	0							
Collection Service/Attorney's Fees	0							
Collection Tactics	4				2	1		
Credit Life/Disability Insurance	4				2	2		
Discrimination/Age	3		1			1		
Discrimination/Race-National Origin	3	1		1				
Discrimination/Religion	0							
Emergency Housing Act of 1975	0							
Equal Credit Opportunity Act	12	2				5		
Fair Credit Billing Act	4	2	2					
Fair Credit Reporting Act	7	2			1			
Fair Housing	2					2		
Fair Housing Poster	0							
Flood Insurance	0							

7.

[illegible] - LOAN FUNCTION
FOR PERIOD 4-1-75 TO 12-31-75

NATURE OF Complaints	TOTAL	Credit Card	Overdraft/ Check Credit	Commercial/ Agricultural	Instal-ment	Mort-gages	Demand	Othe
Home Mortgage Disclosure Act	0							
Institutional Loan Policy	9	1	1	2		3	1	1
Late Payment Penalty Charges	4				4			
Leasing	0							
Loans Secured by Time Deposits	1							1
Real Estate Settlement Act (RESPA)	3					2		1
Recordkeeping Requirements	0							
Refusal to Renew	0							
Regulation Z - Advertising	5	1	1					3
Regulation Z - Billing Practices	2	1				1		
Regulation Z - Credit Cards	2	2						
Regulation Z - Disclosure Statement	17	2				5		10
Regulation Z - Oral Disclosures	1				1			
Regulation Z - Right of Rescission	1					1		
Repossession/Foreclosure	14			1	5	7		1
Unfair Trade Practices	0							
Other	15	1	1	1	3	3	2	4
TOTAL 127	127	16	7	7	20	37	3	37

12.

CONSUMER Complaints - OTHER FUNCTIONS
FOR PERIOD 4-1-75 TO 12-31-75

FUNCTION	TOTAL
Trust Services	
Delay in Settlement of Estates	0
Excessive Service Charges	1
Improper Disbursements	3
Investments	1
Prudent Handling of Estates or Trusts	3
Refusal to Respond for Information	1
Other	3
TOTAL 12	
Safe Deposit/Safekeeping Services	
Disappearance of Items	2
Illegal Entry	1
Service Charges	0
Other	2
TOTAL 5	
Insurance Coverage	
Advertising	13
Agency Capacity	0
Closed Banks	3
Combination of Accounts	0
Difference Between FDIC and FSLIC	0
Joint Capacity	1
Money Brokers/Pooled Funds	0
Partnerships, Corporations, and Associations	0
Public Units	0
Single Capacity	0
Trust Capacity	0
Other	0
	1
TOTAL 18	

13.

CONSUMER Complaints - OTHER FUNCTIONS
FOR PERIOD 4-1-75 TO 12-21-75

FUNCTION	TOTAL
General	
Advertising	4
Cashing U.S. Government Checks	0
Criminal Irregularities	4
Electronic Funds Transfer Systems (EFTS)	0
Foreign Currency Transaction	1
Foreign Draft Presentment	2
Freedom of Information Act	0
Incompetent or Rude Personnel	1
Information Available to Stockholders	1
Official Checks/Money Orders Lost or Stop Payment	2
Operations of FDIC	0
Privacy Act	0
Other	26
TOTAL 41	

EXHIBIT B

SUMMARY OF
CONSUMER COMPLAINTS BY FUNCTION
FOR PERIOD 1-1-76 TO 3-31-76

FUNCTION	COMPLAINTS
DEPOSITS	102
LOANS	64
TRUST SERVICES	8
SAFE DEPOSIT/SAFEKEEPING SERVICES	1
INSURANCE COVERAGE	0
GENERAL	11
TOTAL	186

FOR PERIOD 1/1/76 TO 3/31/76

NATURE OF Complaints	TOTAL	DEMAND	SAVINGS	TIME	NOW	IRS	Vacation/ Xmas Club	Escrow	Other
Advertising	8	1	2	4					1
Automatic Renewal Feature	1			1					
Deposit Not Credited	12	8							4
Deposit Not Credited on Day Made	2	1	1						
Disclosure of Account Charges/Terms	1			1					
Discrepancy in Account	4	3							1
Forged Signature/Endorsement	3	1	1						1
No Endorsement	-0-								
Payment of Interest	23		6	14		1			2
Premature Withdrawal Penalty	12		3	7		2			
Recordkeeping Requirements	-0-								
Refusal to Cash Customer's Check	4	3							1
Refusal to Cash Noncustomer's Check	-0-								
Release of Funds	9	1	4	2			1		1
Right of Offset	2	1	1						
Service Charges	9	8	1						
Stop Payment Check Paid	2	2							
Other	10	5	3						2
TOTAL	102	34	22	29	-0-	3	1	-0-	13

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CONSUMER Complaints - LOAN FUNCTION
FOR PERIOD 1/1/76 TO 3/31/76

NATURE OF Complaints	TOTAL	Credit Card	Overdraft/ Check Credit	Commercial Agricultural	Instal- ment	Mort- gages	Demand	Othe
Acceleration Clause	1					1		
Amount of Interest Charged	3	1			1	1		
Amount of Rebate	3				3			
Collateral	3			1	1			1
Collection Service/Attorney's Fees	-0-							
Collection Tactics	1							1
Credit Life/Disability Insurance	-0-							
Discrimination/Age	-0-							
Discrimination/Race-National Origin	3				1			2
Discrimination/Religion	-0-							
Emergency Housing Act of 1975	-0-							
Equal Credit Opportunity Act	14	3			4			7
Fair Credit Billing Act	5	4				1		
Fair Credit Reporting Act	4	1						3
Fair Housing	1					1		
Fair Housing Poster	-0-							
Flood Insurance	-0-							

525

CONSUMER Complaints - LOAN FUNCTION
FOR PERIOD 1/1/76 TO 3/31/76

NATURE OF Complaints	TOTAL	Credit Card	Overdraft/ Check Credit	Commercial/ Agricultural	Instal- ment	Mort- gages	Demand	Other
Home Mortgage Disclosure Act	-0-							
Institutional Loan Policy	4				1	1	1	1
Late Payment Penalty Charges	1				1			
Leasing	-0-							
Loans Secured by Time Deposits	-0-							
Real Estate Settlement Act (RESPA)	-0-							
Recordkeeping Requirements	-0-							
Refusal to Renew	-0-							
Regulation Z - Advertising	5				3	2		
Regulation Z - Billing Practices	1	1						
Regulation Z - Credit Cards	-0-							
Regulation Z - Disclosure Statement	2				1	1		
Regulation Z - Oral Disclosures	1							1
Regulation Z - Right of Rescission	-0-							
Repossession/Foreclosure	2			1	1			
Unfair Trade Practices	-0-							
Other	10			2	1	5		2
TOTAL	64	10	-0-	4	18	13	1	18

CONSUMER Complaints - OTHER FUNCTIONS
FOR PERIOD 1/1/76 TO 3/31/76

FUNCTION	TOTAL
Trust Services	
Delay in Settlement of Estates	
Excessive Service Charges	
Improper Disbursements	1
Investments	
Prudent Handling of Estates or Trusts	5
Refusal to Respond for Information	
Other	2
TOTAL	8
Safe Deposit/Safekeeping Services	
Disappearance of Items	
Illegal Entry	1
Service Charges	
Other	
TOTAL	1
Insurance Coverage	
Advertising	
Agency Capacity	
Closed Banks	
Combination of Accounts	
Difference Between FDIC and FSLIC	
Joint Capacity	
Money Brokers/Pooled Funds	
Partnerships, Corporations, and Associations	
Public Units	
Single Capacity	
Trust Capacity	
Other	
TOTAL	0

11.

CONSUMER Complaints - OTHER FUNCTIONS
FOR PERIOD 1/1/76 TO 3/31/76

FUNCTION Complaints	TOTAL
General	
Advertising	1
Cashing U.S. Government Checks	1
Criminal Irregularities	1
Electronic Funds Transfer Systems (EFTS)	
Foreign Currency Transaction	1
Foreign Draft Presentment	
Freedom of Information Act	
Incompetent or Rude Personnel	
Information Available to Stockholders	
Official Checks/Money Orders Lost or Stop Payment	1
Operations of FDIC	
Privacy Act	
Other	6
TOTAL	11

EXHIBIT C

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

______ Region ______ Compliance Examination Certificate Number ______

Examiner-In-Charge ______ Close of Business ______

COMPLIANCE REPORTS

THESE REPORTS ARE STRICTLY CONFIDENTIAL

These reports have been made by an examiner appointed by the Board of Directors of the Federal Deposit Insurance Corporation for use in the supervision of the bank. The information contained in these reports is based upon the books and records of the bank, upon statements made to the Examiner by directors, officers, and employees, and upon information obtained from other sources believed to be reliable.

It is recommended that each director, in accordance with his responsibilities both to depositors and to shareholders, thoroughly review these reports. In making these reviews, it should be kept in mind that the compliance reports do not encompass any audit tests or procedures. Therefore, these reports should not be considered audit reports.

The copies of these reports are the property of the Federal Deposit Insurance Corporation and are furnished to the bank for its confidential use. Under no circumstances shall the bank, or any of its directors, officers, or employees disclose or make public in any manner these reports or any portion thereof. If a subpoena or other legal process is received calling for production of any specific report or all reports, the Regional Office of the Federal Deposit Insurance Corporation should be notified immediately. The attorney at whose instance the process was issued and, if necessary, the court which issued it, should be advised of these restrictions and referred to Part 309 of the Federal Deposit Insurance Corporation Rules and Regulations.

Frank Wille, Chairman
Board of Directors

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC 6500/60 (12-73)

FEDERAL DEPOSIT INSURANCE CORPORATION SECURITY AND CONTROLS AGAINST EXTERNAL CRIMES *(Part 326, FDIC Rules and Regulations)*		EXAM. *(Close of business)*	NUMBER
		NO. OF OFFICES	TOTAL ASSETS
NAME OF BANK		EXAMINER IN-CHARGE	
CITY	COUNTY	STATE	

ITEM	YES	NO
1. Has a security officer been designated by the Board of Directors? *(Section 326.2)*		
2. Has a written security program been developed and approved by the Board of Directors? *(Section 326.4(a))*		
3. Have the following required provisions of the security program been implemented:		
(a) a schedule for and record of inspection, testing and servicing of security devices and the designation of an individual to assure all such devices are turned on and operating during periods of intended use? *(Section 326.4(b)(1)(7))*		
(b) a reasonable minimum requirement of currency for each teller and bank office and procedures to safely remove excess currency? *(Section 326.4(b)(2)(3))*		
(c) requirement that currency at each teller station or window include bait money? *(Section 326.4(b)(4))*		
(d) requirement that all negotiable items and similar valuables be located in a vault or safe and that such vault and safe be opened only during essential business hours? *(Section 326.4(b)(5))*		
(e) provide for the designation of an individual to inspect all areas of each banking office where valuables are handled, to assure that such items have been safely stored, that no unauthorized persons are present and that all vaults or safes and all doors and windows are securely locked? *(Section 326.4(b)(8))*		
(f) provide for the opening and inspection of each banking office for safety before employees are permitted to enter? *(Section 326.4(b)(6))*		
(g) provide for training and retraining of personnel relative to bank security procedures and conduct during and after a robbery? *(Section 326.4(b)(9))*		
4. Has a Form P-2, Report of Crime, for each instance of attempted or perpetrated external crime which has transpired since the last examination been submitted? *(Section 326.5(d))*		
5. Do the bank's files contain a record of consultation with a local law enforcement officer relative to appropriate security devices? *(Section 326.5(b))*		
6. Have the following required security measures been implemented:		
(a) a lighting system which illuminates areas around vaults during hours of darkness if the vault is visible from outside the banking office? *(Section 326.3(a)(1))*		
(b) tamper-resistant locks on exterior doors and windows designed to be opened? *(Section 326.3(a)(2))*		
(c) an alarm system or other appropriate device for notification of law enforcement authorities of an attempted or perpetrated robbery or burglary? *(Section 326.3(a)(3))*		
7. (a) If a decision was made not to install additional security devices, do the bank's records contain a statement of the reasons for such decision? *(Sections 326.3(a)(4), 326.3(b), and 326.3(c))*		
(b) If, after consultation with local law enforcement officers or after appropriate consideration by the bank, additional security devices were installed but any fail to meet the standards prescribed in Appendix A, do the bank's records contain a statement of the reasons for the decision not to meet the prescribed standards? *(Sections 326.3(a)(4), 326.3(b), and 326.3(c)) (If not applicable, indicate by "n/a" in the "Yes" column.)*		
(c) If the construction of vaults, safes, night depositories, or automatic paying or receiving machines do not meet the standards prescribed in Appendix A, do the bank's records contain a statement of the reasons therefor? *(Section 326.3(c)) (Note: Specifications, if any, varied for the periods prior to 2-15-69; 2-16-69 through 11-1-73; and, 11-2-73 to date.)*		

COMMENTS

FDIC 6500/63 (1-76)

Examiner

FEDERAL DEPOSIT INSURANCE CORPORATION VIOLATIONS		EXAM. *(Close of business)*	NUMBER
		NUMBER OF OFFICES	TOTAL ASSETS
NAME OF BANK			
CITY	COUNTY	STATE	

NOTE: *Specific reference to the statute, regulation or policy which appears to have been violated is detailed below. In each instance, management's indicated remedial action is noted.*

DESCRIPTION AND COMMENTS

FDIC 6500/58 (6-74)

Examiner

FEDERAL DEPOSIT INSURANCE CORPORATION	EXAM. *(Close of business)*	NUMBER
FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS	NO. OF OFFICES	TOTAL ASSETS
NAME OF BANK	EXAMINER IN CHARGE	
CITY / COUNTY	STATE	

Under certain circumstances, the Regulations provide civil and criminal penalties for the failure to maintain the required records or to file the required reports. The penalties become more severe when the Regulations are violated in furtherance of certain federal crimes.

The examiner should determine (1) that the bank has established an adequate system for identifying covered transactions and for insuring that they are properly reported and (2) that the employees who normally come into contact with the covered transactions are properly instructed as to their responsibility with respect to the system. Inadequacies in either of these two areas should be directed to the attention of management.

The following questions, designed to ascertain compliance with the Regulations, are answered on the basis of information obtained as a result of observations, verification of records and reports, and statements made by bank management.

DOMESTIC TRANSACTION REPORT	YES	NO
1. Does the bank file a Currency Transaction Report (Form 4789) of each deposit, withdrawal, exchange of currency or other transfer by, through, or to this bank which involves a transaction in currency, not exempted, of more than $10,000 in accordance with the regulations? (Section 103.22)		
FOREIGN TRANSACTION REPORT		
2. Except for shipments made through the postal service, or by common carrier, and certain shipments involving established depositors, does the bank file a Report of International Transportation of Currency or Monetary Instrument (Form 4790) whenever it ships to or receives from a point outside the United States currency or other monetary instruments, on any one occasion, in an aggregate amount exceeding $5,000? (Section 103.23)		
GENERAL RECORDKEEPING REQUIREMENTS*		
3. Does the bank maintain a list of those customers whose transactions have been exempted from the requirements of Section 103.22?		
4. Does the bank retain a record of each extension of credit over $5,000 except those secured by an interest in real property? (Section 103.33)		
5. Does such record contain the name and address of the borrower, the amount, the nature and purpose of the loan and the date thereof? (Section 103.33)		
6. (a) Does the bank attempt to obtain a taxpayer identification number for all new accounts? (Section 103.34)		
(b) Does it keep a list of those customers from whom it has been unable to obtain a number after making a reasonable effort? (Section 103.34)		
7. Does the bank with respect to each deposit account retain the original or a copy of the following: (Section 103.34) (a) Each document granting signature authority over such accounts? (Signature cards should be retained for five years after accounts are closed.)		
(b) Each statement, ledger card or other record on each account, showing each transaction with respect to that account?		
(c) Each item over $100 charged to deposit accounts, unless exempted by the Regulations?		
8. Does the bank retain for two years certain other bank records relating to demand deposit accounts sufficient to reconstruct a demand deposit account and trace a check in excess of $100 deposited in such account through its domestic processing system or to supply a description of a deposited check? (Section 103.36)		
9. Are required records accessible within a reasonable period of time? (Section 103.38)		
SPECIAL REQUIREMENTS FOR FOREIGN TRANSACTIONS*		
10. Does the bank retain a record of each instruction it gives or receives regarding a remittance or transfer of funds, currency, etc., of more than $10,000 sent outside the United States? (Section 103.33)		
11. Does the bank retain a copy of each item, including checks, drafts, or transfer of credit, of more than $10,000 remitted or transferred outside the United States? (Section 103.34)		
12. Does the bank retain a record (letter of transmittal, cash letter, or application for a draft or transfer, etc.) of each remittance or transfer of funds, or of currency, or other monetary instruments, checks, securities, or credit, of more than $10,000 to a person, account or place outside the United States? A complete description is required. In certain instances, the records retained to satisfy the requirements referred to in items 10 and 11 above will also satisfy this requirement. (Section 103.34)		
13. Does the bank retain a record of each check or draft in an amount in excess of $10,000 drawn on or issued by a foreign bank which the domestic bank has paid or presented to a nonbank drawee for payment? (Section 103.34)		
14. Does the bank retain a copy of each item, including checks, drafts or transfer of credit, of more than $10,000, received directly, and not through a domestic financial institution, from a bank, broker, or dealer in foreign exchange outside the United States? (Section 103.34)		
15. Does the bank retain a record (letter of transmittal, cash letter, etc.) of each receipt of currency, checks, etc. and transfer of funds of more than $10,000 received from a bank, broker, or dealer in foreign exchange from outside the United States? (Section 103.34)		
16. Does the bank, with respect to each account in a foreign country over which it has signature authority or in which it has a financial interest retain records which show: (Section 103.24) (a) the name in which the account is maintained;		
(b) the number or other designation of the account;		
(c) the name and address of the foreign bank or other person with whom the account is maintained;		
(d) the type of account; and		
(e) the maximum value of the account during the reporting period?		

Examiner

*Unless otherwise indicated, the specified records that are created after June 30, 1972 must be retained for five years. (Section 103.38)

FDIC 6500/54 (1-76)

FEDERAL DEPOSIT INSURANCE CORPORATION	EXAM *(Close of business)*	NUMBER
VIOLATIONS	NUMBER OF OFFICES	TOTAL ASSETS
NAME OF BANK		
CITY / COUNTY	STATE	

NOTE: *Specific reference to the statute, regulation or policy which appears to have been violated is detailed below. In each instance, management's indicated remedial action is noted.*

DESCRIPTION AND COMMENTS

Examiner

FDIC 6500/58 (6-74)

FEDERAL DEPOSIT INSURANCE CORPORATION TRUTH IN LENDING – FAIR CREDIT BILLING		EXAM. *(Close of business)*	NUMBER
		NO. OF OFFICES	TOTAL ASSETS
NAME OF BANK		EXAMINER-IN-CHARGE	
CITY	COUNTY	STATE	

NOTE: Answers to the following questions are based upon the results of a selected sampling, upon statements made by bank's management regarding procedures and policies, and upon observations by the examiner. In the case of negative answers, details are provided and management's promised remedial action noted.

ITEM	YES	NO
1. Is the bank correctly determining finance charges and properly handling excludable charges? (Section 226.4)		
2. Is the bank properly computing annual percentage rates? (Section 226.5)		
3. If the bank extends open end credit or is a card issuer: (a) Does the bank provide correct disclosures before the first transaction is made on the new account? (Section 226.7(a))		
(b) Does the bank provide correct disclosures on periodic billing statements? (Section 226.7(b)(1))		
(c) If a finance charge may be imposed after a time period for payment is provided, does the bank mail or deliver billing statements within the time limits specified in Section 226.7(b)(2)?		
(d) Does the bank furnish either the semi-annual statement regarding customer rights or the shorter form of statement with each periodic billing? (Section 226.7(d))		
(e) Does the bank credit payments and if necessary adjust charges in accordance with Section 226.7(g)?		
(f) Does the bank credit or refund excess payments in accordance with Section 226.7(h)?		
(g) Does the bank comply with the issuance provisions for credit cards? (Section 226.13(a))		
(h) Does the bank comply with Section 226.13(i)(4) which prohibits the reporting of disputed amounts as delinquent?		
(i) Does the bank comply with the prohibition against offsets related to credit cards? (Section 226.13(j))		
(j) Does the bank promptly credit a customer's account for credit refunds? (Section 226.13(k)(2))		
(k) Does the bank comply with Section 226.13(l) which prohibits certain acts by card issuers?		
(l) Does the bank correctly follow the billing error resolution procedure? (Section 226.14)		
4. Is the bank providing correct disclosures on credit other than open end? (Sections 226.6 and 226.8)		
5. With respect to any consumer paper purchased by the bank or held by it as collateral, are the disclosures made therein correct? (Sections 226.6 and 226.8)		
6. Is the bank properly observing the right of rescission in applicable credit transactions? (Section 226.9)		
7. Based on applicable information, is the bank making correct disclosures in its advertisements? (Section 226.10)		
8. Has the bank adopted procedures which assure that its employees are making proper oral disclosures of annual rates? (Interpretation 226.101)		

COMMENTS:

(Examiner)

FDIC 6500/55 (0-76)

FEDERAL DEPOSIT INSURANCE CORPORATION VIOLATIONS		EXAM. *(Close of business)*	NUMBER
		NUMBER OF OFFICES	TOTAL ASSETS
NAME OF BANK			
CITY	COUNTY	STATE	

NOTE: *Specific reference to the statute, regulation or policy which appears to have been violated is detailed below. In each instance, management's indicated remedial action is noted.*

DESCRIPTION AND COMMENTS

Examiner

FDIC 6500/58 (8-74)

FEDERAL DEPOSIT INSURANCE CORPORATION THE FAIR CREDIT REPORTING ACT		EXAM. *(Close of business)*	NUMBER
		NO. OF OFFICES	TOTAL ASSETS
NAME OF BANK		EXAMINER-IN-CHARGE	
CITY	COUNTY	STATE	

NOTE: In case of negative answers to the following questions, provide details and management's promised remedial action.

ITEM	YES	NO
1. Is the bank, as a user of consumer credit reports, furnishing the required certification as prescribed by the Act?		
2. If the bank is a consumer reporting agency, is it adhering to the provisions imposed by the Act?		
3. If the bank denies credit or increases the cost of credit to a customer based upon information obtained from a consumer report, is the customer advised that: (a) the report contributed to the denial or increased cost; and		
(b) the name and address of the reporting agency?		
4. When the bank requests an *investigative* consumer report from a credit agency, is the subject customer informed within three days thereafter that such a report has been requested and that the customer may require the bank to disclose the nature and scope of the investigation?		
5. If the bank denies credit or increases the cost thereof based on third-party information, is the subject customer informed that he has the right to know the nature of the information?		
6. Is the bank exercising comprehensive procedures in the safeguarding and disclosure of information within the provisions of the Act?		

COMMENTS

FDIC 6500/56 (11-74)

Examiner

FEDERAL DEPOSIT INSURANCE CORPORATION VIOLATIONS		EXAM. *(Close of business)*	NUMBER
		NUMBER OF OFFICES	TOTAL ASSETS
NAME OF BANK			
CITY	COUNTY	STATE	

NOTE: *Specific reference to the statute, regulation or policy which appears to have been violated is detailed below. In each instance, management's indicated remedial action is noted.*

DESCRIPTION AND COMMENTS

FDIC 6500/58 (6-74)

Examiner

FEDERAL DEPOSIT INSURANCE CORPORATION	EXAM. (Close of business)	NUMBER OF OFFICES	TOTAL ASSETS	NUMBER
MISCELLANEOUS COMPLIANCE REPORT	TOTAL STOCKHOLDERS	EXAMINER-IN-CHARGE		
NAME OF BANK				
CITY	COUNTY		STATE	

ITEM	YES	NO
1. EQUAL EMPLOYMENT OPPORTUNITY *(Executive Order 11246 applicable to banks with 50 or more employees)*:		
a. Has the bank filed the last Equal Opportunity Report with the appropriate agency?		
b. Does the bank have a written affirmative action program on file on its premises?		
2. FAIR HOUSING *(Civil Rights Act of 1968 - Title VIII)*:		
a. Is the bank in compliance with Section 805, Civil Rights Act of 1968?		
FAIR HOUSING *(FDIC Policy Statement)*:		
a. In all applicable advertising of loans for purchasing, improving, repairing, or maintaining a dwelling, does the bank:		
1. Prominently indicate that such loans are granted without regard to race, color, religion, or national origin?		
2. Employ the approved logotype or a facsimile thereof?		
3. Avoid the use of any words whatsoever to indicate, directly or indirectly, a discriminatory preference or policy of exclusion?		
b. Is the bank displaying on its premises *(lobby area of main office and all branches where deposits are received or areas where applicable loans are granted)* proper notice which incorporates a facsimile of the approved logotype?		
3. PART 335, FDIC RULES AND REGULATIONS:		
a. If 500 or more stockholders, is the bank registered pursuant to Part 335?		

4. REPORTS SUBMITTED SINCE LAST EXAMINATION

IN THE APPROPRIATE COLUMN, INDICATE THE DATE OF EACH REPORT CHECKED		QUALITY OF REPORT *(CHECK)*		
Report of Condition	Report of Income and Dividends	Found to be substantially correct	Contains errors which are detailed on a supplementary schedule	Management was requested to submit amended report

NAME OF OFFICER ADVISED OF ERRORS IN REPORTS	TITLE

COMMENTS

Examiner

FDIC 6500/57 (11-74)

FEDERAL DEPOSIT INSURANCE CORPORATION	EXAM. (Close of business)	NUMBER
VIOLATIONS	NUMBER OF OFFICES	TOTAL ASSETS
NAME OF BANK		
CITY	COUNTY	STATE

NOTE: *Specific reference to the statute, regulation or policy which appears to have been violated is detailed below. In each instance, management's indicated remedial action is noted.*

DESCRIPTION AND COMMENTS

Examiner

FDIC 6500/58 (6-74)

FEDERAL DEPOSIT INSURANCE CORPORATION	EXAM (Close of business)	NO. OF OFFICES	NUMBER
EMERGENCY PREPAREDNESS MEASURES	TOTAL ASSETS	EXAMINER IN CHARGE	
	TRANSIT NO.	FEDERAL RESERVE DISTRICT	

NAME OF BANK		
CITY	COUNTY	STATE

Banks have a grave responsibility in the event of a nuclear attack on this country. Continued economic activity in that event, at all levels of the economy, would depend upon the continued operation of the banking system. The ability of individual banks to support the national survival effort would depend in large part upon whether the bank, prior to an attack, had prepared the necessary plans and had taken the necessary actions for postattack operations.

The Federal bank supervisory agencies are charged by law with providing for the continued or resumed operations of banking institutions in any national emergency. In carrying out this responsibility the supervisory agencies have provided guidance for preattack planning—specifically a booklet "Preparedness Programs for Emergency Operations in Banking" published by the Board of Governors of the Federal Reserve System and the Office of Civil Defense, and emergency circulars and operating letters distributed by the several Federal Reserve banks.

The questionnaire below is designed to provide the supervisory authorities with some measure of the extent to which their guidance has been followed and of the preparedness of the nation's banking system if an attack should occur. It is designed also to remind bank management periodically of its responsibilities in this area.

It should be emphasized that many of the preparedness measures covered by the questionnaire would be of value to a bank in situations other than an attack situation. The simple measures suggested for continuity of management, for example, plus a minimum duplicate records storage program, might make the difference between an indefinite closing and a prompt resumption of operations in the event of fire, flood, hurricane, damage resulting from civil disturbances, or other disasters.

Finally, all questions are not equally applicable to all banks. For example, whether a bank feels that it needs alternate headquarters would depend upon its location and size. Similarly, the number of duplicate records and the frequency of shipment to a safe storage area would depend upon the size and type of operation of the bank. Bank management should consider the most likely consequences for the bank in all types of emergencies, and take steps necessary to meet these contingencies.

ITEM	YES	NO
GENERAL:		
1. Have written instructions for all types of emergencies, including the possibility of a nuclear attack on the United States, been prepared and distributed to officers and employees?		
2. Does the bank have readily available the emergency circulars or operating letters issued by the Federal Reserve bank in its district?		
PERSONNEL PROTECTION:		
3. Has the bank provided for fallout shelter for its employees?		
CONTINUITY OF MANAGEMENT:		
4. Have appropriate by-laws and/or resolutions been adopted to provide for continuity of the board of directors and bank management?		
5. Has the board of directors adopted resolutions to enable surviving directors and officers in a postemergency situation to take official actions?		
6. Have copies of such by-laws and resolutions been stored outside the bank for safekeeping?		
ALTERNATE HEADQUARTERS:		
7. Has the bank designated an alternate site or sites from which to operate in the event of damage to the head office or branches?		
8. Have plans for operation at alternate sites been prepared and made available to appropriate officers and employees?		
RECORD PROTECTION:		
9. Does the bank have an effective program for the duplication and safe storage of essential records, such as those that would be required to restore the asset and liability accounts?		

COMMENTS

Examiner

FDIC 6500/01 (11-74)

FEDERAL DEPOSIT INSURANCE CORPORATION	EXAM. (Close of business)	NUMBER
VIOLATIONS	NUMBER OF OFFICES	TOTAL ASSETS

NAME OF BANK		
CITY	COUNTY	STATE

NOTE: *Specific reference to the statute, regulation or policy which appears to have been violated is detailed below. In each instance, management's indicated remedial action is noted.*

DESCRIPTION AND COMMENTS

Examiner

FDIC 6500/58 (6-74)

FEDERAL DEPOSIT INSURANCE CORPORATION ADVERTISING OF INTEREST OR DIVIDENDS ON DEPOSITS	EXAM. *(Close of business)*	NUMBER
	NO. OF OFFICES	TOTAL ASSETS
NAME OF BANK	EXAMINER IN CHARGE	
CITY / COUNTY	STATE	

ITEM	YES	NO
I. GENERAL INFORMATION		
A. Does the bank advertise in connection with interest or dividends paid on deposits?		
B. If the bank advertises, describe the procedures employed by the bank to review its advertisements for conformity with Section 329.8 of the Corporation's Rules and Regulations.		
C. Does the bank maintain an advertising file?		
1. If yes, does the file adequately document all forms of advertising media employed—newspaper, radio or television script, lobby brochures, statement stuffers, etc.?		
2. If no, what means were utilized by the examiner to determine adequate documentation of all forms of advertising media utilized by the bank?		
3. List documentation exceptions.		
II. COMPLIANCE REVIEW *(Section 329.8 of the Rules and Regulations)*		
A. Based upon available information, is the bank in compliance with the following requirements of Section 329.8 *(Indicate n/a if not applicable)*? 1. *Annual rate of simple interest.* Interest or dividend rates shall be stated in terms of annual rates of simple interest or dividends. In no case shall a rate be advertised which is in excess of the applicable maximum rate for the particular deposit.		
2. *Percentage yields based on 1 year.* Where a percentage yield achieved by compounding interest during 1 year is advertised, the annual rate of simple interest shall be stated with equal prominence, together with a reference to the basis of compounding. No insured nonmember bank shall advertise a percentage yield based on the effect of grace periods permitted in §§ 329.3 (d) or 329.7 (d).		
3. *Percentage yields based on periods in excess of 1 year.* No advertisement shall include any indication of a total percentage yield, compounded or simple, based on a period in excess of a year, or an average annual percentage yield achieved by compounding during a period in excess of a year.		
4. *Time or amount requirements.* If an advertised rate is payable only on deposits that meet time or amount requirements, such requirements shall be clearly and conspicuously stated. Where the time requirement for an advertised rate is in excess of a year, the required number of years for the rate shall be stated with equal prominence, together with an indication of any lower rate or rates that will apply if the deposit is withdrawn at an earlier maturity.		
5. *Profit.* The term "profit" shall not be used in referring to interest or dividends paid on deposits.		
6. *Accuracy of advertising.* No insured nonmember bank shall make any advertisement, announcement or solicitation relating to the interest or dividends paid on deposits which is inaccurate or misleading or which misrepresents its deposit contracts.		
7. *Time deposits.* Every advertisement, announcement, or solicitation relating to the interest paid on time deposits shall include a clear and conspicuous statement that in the event the depositor is allowed to withdraw all or part of his deposit before maturity, a "substantial penalty" will be imposed.		
8. *Deposits bearing interest or dividends subject to withdrawal by negotiable or transferable instruments for the purpose of making transfers to third parties.* The dissemination of any advertisement, announcement or solicitation by an insured nonmember bank relating to any interest or dividend-bearing deposit subject to withdrawal by negotiable or transferable instruments for the purpose of making transfers to third parties shall be limited, to the extent practicable after considering the media or means chosen, to the states in which federal law permits banks to accept such withdrawals.		

B. In case of negative answers under II.A., provide details and management's promised remedial action.

Examiner

NOTE: Section 329.8(g) provides: *Solicitation of deposits for banks.* Any person or organization which solicits deposits for an insured nonmember bank shall be bound by the rules contained in Section 329.8 with respect to any advertisement, announcement or solicitation relating to such deposits. No such person or organization shall advertise a percentage yield on any deposit it solicits for an insured nonmember bank which is not authorized to be paid and advertised by such bank.

FDIC 6500/62 (11-74)

FEDERAL DEPOSIT INSURANCE CORPORATION VIOLATIONS	EXAM. *(Close of business)*	NUMBER
	NUMBER OF OFFICES	TOTAL ASSETS
NAME OF BANK		
CITY / COUNTY	STATE	

NOTE: *Specific reference to the statute, regulation or policy which appears to have been violated is detailed below. In each instance, management's indicated remedial action is noted.*

DESCRIPTION AND COMMENTS

Examiner

FDIC 6500/58 (8-74)

FEDERAL DEPOSIT INSURANCE CORPORATION EQUAL CREDIT OPPORTUNITY	EXAM. (Close of business)	NUMBER
	NO. OF OFFICES	TOTAL ASSETS
NAME OF BANK	EXAMINER IN CHARGE	
CITY / COUNTY	STATE	

NOTE: In case of negative answers to the following questions, provide details and management's promised remedial action.

ITEM	YES	NO
1. Does the bank comply with the prohibitions regarding applications under Section 202.4?		
2. Does the bank furnish each applicant with the Equal Credit Opportunity Act notice in accordance with Section 202.4(d)?		
3. In evaluating applications, does the bank only request, consider, and retain information which is permitted by Section 202.5?		
4. Does the bank comply with the provisions of Section 202.5(i) relating to a change of name or marital status involving open end credit?		
5. If applicable, does the bank consider credit history in accordance with Section 202.5(j)?		
6. Does the bank provide notifications of action on applications and, if requested, the reasons for credit denial or termination as required by Section 202.5(m)?		
7. Does the bank comply with provisions of Section 202.6 relating to accounts involving both spouses?		
8. Does the bank request the signature of a spouse or other person only as permitted under Section 202.7?		
9. Does the bank comply with the requirements of Section 202.8 regarding permissible finance charges and loan limits required by law?		
10. Does the bank retain applications, statements alleging discrimination, and other related information in accordance with Section 202.9?		
11. Does the bank refrain from any other discriminatory practices which are prohibited by Section 202.2?		

COMMENTS

Examiner

FDIC 6500/51 (4-76)

FEDERAL DEPOSIT INSURANCE CORPORATION VIOLATIONS	EXAM. (Close of business)	NUMBER
	NUMBER OF OFFICES	TOTAL ASSETS
NAME OF BANK		
CITY / COUNTY	STATE	

NOTE: *Specific reference to the statute, regulation or policy which appears to have been violated is detailed below. In each instance, management's indicated remedial action is noted.*

DESCRIPTION AND COMMENTS

Examiner

FDIC 6500/58 (6-74)

FEDERAL DEPOSIT INSURANCE CORPORATION

COMPLIANCE REPORTS *(SUPERVISORY SECTION)*

FEDERAL DEPOSIT INSURANCE CORPORATION COMPLIANCE REPORTS (SUPERVISORY SECTION)			NUMBER
NAME OF BANK			
CITY	COUNTY		STATE
REGION		FIELD OFFICE	
EXAMINATION COMMENCED TIME / DATE	EXAMINATION COMPLETED TIME / DATE	DATE OF LAST EXAM. BY FDIC	DATE OF LAST EXAM. BY STATE AUTHORITY
		TOTAL OFFICES *(Including main office)*	NO. OFFICES EXAMINED
NUMBER OF PERSONNEL REQUIRED: MAIN OFFICE	BRANCHES	TRAVEL TIME REQUIRED: IN	OUT

WORKING HOURS

REPORTS	IN	OUT	PERSONNEL	IN	OUT
External Crime					
Transactions Reporting					
Regulation Z					
Fair Credit					
Advertising					
Miscellaneous					
TOTAL			TOTAL		

SUMMARY

ITEM	RATING: SATISFACTORY	FAIR	UNSATISFACTORY
Administrative Competency			
Knowledge of Laws			
Adherence to Laws			

COMMENTS

FDIC 6500/59 (8-74)

EXAMINER

EXHIBIT D

TRUTH IN LENDING - FEDERAL RESERVE REGULATION Z LECTURE OUTLINE

1. Introduction

2. Effective Date

   July 1, 1969

3. Purpose

   To promote the informed use of credit.

4. Businesses Affected

   Any individual or organization that extends or arranges credit for which a finance charge is or may be payable or which is repayable in more than four instalments.

5. Credit Subject to Regulation Z - Four Requirements

   A. To natural persons

   B. Primarily for family, personal, household, or agricultural purposes.

   C. For $25,000 or less, except if in connection with a real estate transaction.

   D. Have a finance charge imposed or be payable in more than four instalments.

6. "Finance Charge" and "Annual Percentage Rate"

   The two most important disclosures required by the regulation. Indicate how much one is paying for his credit and its relative cost in percentage terms.

7. Right of Rescission

   Covered credit transactions in which a security interest will be retained in real property used or expected to be used as the customer's principal residence result in the customer having the right to rescind the transaction until midnight of the third business day following the date of consumation or the date of delivery of the disclosures required by this regulation, whichever is later, by notifying the creditor in writing.

   Exception -- Where a first lien or equivalent security interest to finance the acquisition of the customer's residence or expected residence is or will be acquired, such notice is not required.

8. Enforcement

   Nine Federal Agencies
   Insured nonmember banks - Board of Directors of the FDIC

TRUTH IN LENDING - FEDERAL RESERVE REGULATION Z LECTURE OUTLINE (Continued)

9. Penalties

A. Criminal -- If convicted, a fine of up to $5,000, or imprisonment for one year, or both.

B. Civil -- The customer may sue the creditor for twice the amount of the finance charge, subject to a minimum of $100 and a maximum of $1,000, plus court costs and attorneys' fees.

10. Finding the Rate for Selected Transactions

Examples

The following comments are a condensed version of instructions issued to Examiners and Assistant Examiners by the Director of the Division of Bank Supervision in a memorandum dated August 26, 1974, regarding procedures to be followed in examining for compliance with Regulation Z - Truth in Lending. The instructions and guidelines are applicable to all compliance examinations for Truth in Lending. Examiners should continue to abide by instructions issued previously in connection with compliance examinations in the states of Georgia, Iowa and Washington.

I. Examination Procedures

A. Scope of the Examination
1. Examiners must determine the areas of bank operations covered by the regulation.
2. The law covers five general areas:
   a. Credit disclosures.
   b. Right of Rescission.
   c. Advertising disclosures.
   d. Issuance of and liability on credit cards.
   e. Oral disclosures of annual rates.
3. Except for provisions relating to credit card issuance and liability, Regulation Z is applicable to <u>consumer credit</u> such as instalment loans, single-payment loans, demand loans, purchased dealer paper, real estate loans, and agricultural loans. Consumer credit is not always readily identifiable with some consumer loans included in commercial loans or similar loan categories.

B. Sampling
1. Review a reasonable number of the various consumer credit transactions giving consideration to the composition, volume, and source of the bank's consumer credit.
2. Include a number of new extensions of credit in the sample to determine whether disclosures are being given prior to the consummations of the transaction.
3. Where numerous or serious violations are encountered, the size of the sample should be expanded.

C. Credit Disclosures
1. Open end (credit cards) and closed end (credit sale and nonsale credit) credit have separate disclosure requirements under the law.
2. Review of the disclosure statement should include:
   a. Study of the printed form for inclusion of required disclosures and correctness of terminology.
   b. Check for proper completion of the form.
   c. Determination of accuracy of finance charge in some cases.
   d. Calculation of annual percentage rate in some cases.
3. To adequately assess the accuracy and completeness of the disclosures, a knowledge of the bank's actual terms and conditions for credit is mandatory.

D. Consumer Paper (Dealer Paper)
1. The Examiner should include in his sample any consumer paper purchased or held as collateral as the bank is open to civil suit in the event of incorrect disclosures or failure to notify the borrower of rescission rights.
2. Frequently, dealers who prepare the disclosure forms may be unfamiliar with Truth in Lending requirements and a greater possibility of errors may exist.

E. Right of Rescission
   1. Check for the following:
      a. Correctness of the right of recission.
      b. Bank's retention of such notice or other evidence of disclosure.
      c. Procedures relative to withholding of proceeds and correct determination of rescission period.

F. Advertising Disclosures
   1. Review of the bank's advertising file if one is maintained.
   2. Absence of an advertising file is not a violation; however, maintenance of such a file should be urged.

G. Issuance of and Liability on Credit Cards
   1. Issuance of unsolicited credit cards is prohibited.
      a. Any evidence of this practice through the review of correspondence, through any complaints, or through any other source should be investigated.
   2. Disclosure is not required where the bank chooses not to meet all the requirements necessary for establishing a consumer's liability up to $50 for unauthorized use of the credit card.
      a. The Examiner should investigate whether the bank is erroneously representing that potential liability may exceed $50 or that potential liability exists when, in fact, it does not.

H. Oral Disclosure of Annual Rates
   1. The Examiner should determine that the bank has established policies, directives or procedures related to oral disclosure of annual percentage rates and toward avoidance of quoting any add-on or discount rate.
   2. Where necessary the Examiner may question management and employees as to the required oral disclosure in response to a consumer inquiry.

I. State Exemptions
   1. Certain states have been exempted from Chapter 2 of the Truth in Lending Act for certain classes of transactions where state law is substantially similar and adequate provision for enforcement exists.
      a. The advertising requirements under Chapter 3 are applicable to all states.
      b. While responsibility for insuring compliance resides with the state authority, the Corporation remains vitally interested in compliance under our enforcement jurisdiction with these state laws.
   2. In exempted states, the Examiner will complete the Compliance Report on the basis of state or federal law as applicable. As circumstances dictate, the Examiner may solicit and accept assistance from state banking department personnel in completing the report. Any such assistance should be noted in the comments section of the report.

II. Reporting Procedures

A. Regulation Z - Truth in Lending Compliance Report
   1. Except in states involved in the selective examination withdrawal program, the Regulation Z - Truth in Lending Compliance Report will be prepared at all regular examinations and submitted as part of the separate Compliance Reports.
      a. In such instances, a separate comment should be inserted on the Examiner's Comments and Conclusions page stating that a separate compliance examination covering certain laws and regulations was conducted in conjunction with the regular examination.
      b. All other references to Regulation Z or Truth in Lending should be omitted from the Report of Examination.
   2. The report questions are designed so a yes answer denotes compliance and a no answer indicates noncompliance except for question 9 where a no answer may indicate a deficiency in procedures.
      a. If any violations are uncovered, questions should be answered in the negative.
      b. If violations are few in number, inadvertent, or corrected by the bank, an explanation should be included in the comments section.
   3. Listing of violations under the comments section.
      a. A listing of a few examples of each violation will suffice. A detailed listing should be included in the workpapers. If applicable, include a comment that violations listed are only a representative sample of violations discovered.
      b. To assure the efficacy of future referral, each extension of credit should be sufficiently described.
      c. The nature of violations must be clearly stated with reference to the applicable section of Regulation Z.
   4. To facilitate Regional Office follow-up procedures, the comments should include the following:
      a. The reasons for the violations.
      b. Any corrections or promises to comply obtained at the examination.
      c. Reference to any previous violations of the Truth in Lending Act.
      d. An estimate of the number of consumer extensions of credit in violation as a percentage of the Bank's total consumer credit.
      e. The Examiner may furnish his opinion on the degree of noncompliance.
   5. Comments regarding Regulation Z - Truth in Lending should be confined to the Compliance Report page and supplemental violations pages.

B. Transmittal Letter
   1. Regional policy will dictate whether the letter transmitting the Compliance Report is prepared in the field or by Regional Office staff.
   2. Any major deficiency or noncompliance should receive comment in the letter.
   3. The letter should request review of the Compliance Report by the bank's board of directors and, if noncompliance is indicated therein, request a reply to the Regional Director regarding board of director's action to assure compliance.

C. Letter-Report to Other Federal Agency
   1. Whenever errors are discovered in loans purchased by the bank or held as collateral, a letter-report to the appropriate federal agency having jurisdication over the creditor (dealer) should be prepared for transmittal by the Regional Office.
      a. The Federal Trade Commission is usually the recipient of such letter-reports. Letter-reports to this agency should be addressed to the appropriate Regional Office of the Federal Trade Commission for direct referral by the Regional Office.

D. Criminal Letter-Report
   1. The Truth in Lending Act provides for criminal penalties in the event of willful and knowing violation of the law. Where violations are of

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a criminal nature, the Examiner should prepare a criminal letter-report to the appropriate United States Attorney in accordance with existing instructions.

E. Section 8(b) Action

1. Continued or serious violations of Truth in Lending may require the use of the Corporation's Cease and Desist powers Since this action requires an administrative hearing, certain information and documentation regarding noncompliance must be collected and preserved.
   a. Workpapers must be preserved for reference at the next two examinations.
   b. Such workpapers may serve as a basis for supporting a criminal letter-report or the advisability of Section 8(b) action.
   c. Where Section 8(b) action may be warranted, the Examiner should discuss the situation with the Regional Office and determine the advisability of reproducing copies of the documents exhibiting violations of the law or preparing a detailed list of the appropriate documents with sufficient information regarding the terms of the transactions and nature of the violations.
   d. All documentation and workpapers from the current and previous examinations should be forwarded to the Regional Office for review and consideration of recommending Section 8(b) action.

REGULATION Z EXAMINATION GUIDE

Section 226.4 - Determination of Finance Charge

1. Are all charges that are not excludable which are payable directly or indirectly by the customer and imposed directly or indirectly by the bank as an incident to or as a condition of the extension of credit included in the finance charge? Section 226.4(a)

2. If the bank excludes the premium for credit life, accident, health, or loss of income insurance written in connection with any credit transaction from the finance charge, are the following requirements met? Section 226.4(a)(5)

   a) The bank does not require this insurance coverage and this fact is clearly and conspicuously disclosed in writing to the customer.

   b) The cost, type, and term of the initial insurance policy are disclosed in writing to the customer. Interpretation 226.402

   c) The customer separately signs a specifically dated affirmative written statement that he desires this insurance after receiving written disclosure of the cost of such insurance.

3. If the bank excludes the premium for property or liability insurance written in connection with any credit transaction from the finance charge, are the following requirements met? Section 226.4(a)(6)

   a) If the insurance is obtained from or through the bank, the cost, type, and term of the initial insurance policy are disclosed clearly and conspicuously in a specific written statement to the customer. Interpretation 226.402

   b) A clear, conspicuous, and specific written statement is furnished to the customer that he may choose the person through which the insurance is to be obtained.

4. Are Section 226.4(b) excludable charges which are handled by the bank itemized and disclosed to the customer even if paid in cash?

5. Are excludable charges under Section 226.4(e) in connection with a real property transaction excluded from the finance charge? (If these excludable charges are paid in cash, disclosure and itemization are not required.)

6. Is the amount of the finance charge (and APR) computed on the basis of 1/2 year maturity for demand obligations which are not alternately payable upon a stated maturity? Section 226.4(g)

Section 226.5 - Determination of APR

1. Are APR computations correct?

2. If the bank utilizes charts or tables other than those supplied by the Federal Reserve System, are these publications in compliance with Section 226.5(c)(2)?

Section 226.6 - General Disclosure Requirements

1. Are required disclosures made clearly, conspicuously, and in meaningful sequence? Section 226.6(a)

2. Except with respect to advertising, are the terms "FINANCE CHARGE" and "ANNUAL PERCENTAGE RATE," where required, printed more conspicuously than other required terminology? Section 226.6(a)

3. Except with respect to advertising, are percentages and amounts stated in figures and printed at least in minimum size required or legibly handwritten? Section 226.6(a)

4. Except with respect to advertising, is the bank retaining disclosure records for a minimum of 2 years after the date disclosures are required to be made? Section 226.6(i)

5. If inconsistent disclosures required by state law are made on the same statement on which disclosures required by Regulation Z are made, are these inconsistent disclosures properly located and identified? Section 226.6(c)(2)

Section 226.7 - Open End Credit - Specific Disclosures

1. Are customers furnished with a single written statement of initial disclosures which they may retain before the first transaction is made on any open end credit account? Section 226.7(a)

2. To the extent applicable, do these initial statements contain the required disclosures and the prescribed terminology? (Refer to Open End Credit - New Accounts, Appendix I.)

3. Are required periodic statements mailed or delivered to customers in accordance with Section 226.7(b)?

4. To the extent applicable, do these periodic statements contain the required disclosures and the prescribed terminology? (Refer to Open End Credit - Periodic Statements, Appendix II.)

5. Do disclosures on these periodic statements meet the location requirements? (Refer to Open End Credit - Periodic Statements [Location Requirements], Appendix III.)

6. When required by Section 226.7(e), is proper notice being given of changes in the terms of open end accounts?

...ion 226.8 - Credit Other Than Open End - Specific Disclosures

General requirements: Section 226.8(a)

a) Except for requests made by telephone or mail, are disclosures being provided before consummation of the credit transaction?

b) Is the customer provided with a copy of the disclosures?

c) Is the creditor identified on the customer's copy of the disclosure?

d) Are all disclosures made together on either the credit contract on the same side of the page above or adjacent to the place for the customer's signature or on one side of a separate statement which identifies the transaction? (Refer to Interpretation 226.801 for exception.)

...s the bank providing correct disclosures for loans and other nonsale ...redit? (Refer to Closed End Credit - Nonsale Credit, Appendix IV.)

...f the bank purchases consumer paper or accepts consumer paper as collateral, has it carefully reviewed all disclosures made by the original ...reditor to determine the completeness and accuracy of the disclosures? ...efer to Closed End Credit - Nonsale Credit, Appendix V.)

...re disclosures in connection with loans requested by mail or telephone ...ade within the time specified in Section 226.8(g)? (Refer to Interpretation 226.802.)

...re proper disclosures furnished whenever credit is refinanced, consolidated, ...r increased? Section 226.8(j)

...re proper disclosures furnished to a subsequent customer who assumes an ...isting obligation by written agreement? Section 226.8(k) and Interpretation 226.807

...f the bank imposes a charge or a fee for extension or deferral, are proper ...isclosures being made? Section 226.8(l)

...n periodic billing statements, if elected for closed end credit transactions, disclose both the APR and the date by which payment must be made in ...rder to avoid late payment or delinquency charges? Section 226.8(n)

...ection 226.9 - Right to Rescind Certain Transactions

1. Does each customer who is entitled to rescind a transaction under Section 226.9 receive two copies of the notice of the opportunity to rescind?

2. Does the notice of the right to rescind meet the requirements of Sections 226.9(b) and (d)?

3. With the exception of credit primarily for agricultural purposes, does the bank withhold disbursement of any funds, other than in escrow, until the three-business-day rescission period has expired and it is reasonably satisfied that that customer has not exercised his right of rescission? Section 226.9(c)

4. Does the bank begin to count the three-business-day rescission period only after all material disclosures have been furnished to the customer and the credit transaction has been consummated? Section 226.9(a)

NOTE: For the effect of refinancing and increasing credit on the right of rescission, refer to Interpretation 226.903.

Section 226.10 - Advertising Credit Items

1. Does the bank maintain an advertising file?
2. If the bank states in an advertisement that a specific amount of credit or instalment amount is available or that a specific amount of down payment or no down payment will be accepted, does it usually and customarily arrange and accept such terms? Section 226.10(a)
3. If the bank advertises open end credit, do the advertisements comply with Section 226.10(c)? (Refer to Advertising - Open End Credit, Appendix VI.)
4. If the bank advertises closed end credit, do the advertisements comply with Section 226.10(d)? (Refer to Advertising - Closed End Credit, Appendix VII.)

Section 226.13 - Credit Cards - Issuance and Liability

1. Does the bank issue any unsolicited credit cards? Section 226.13(b)
2. If the bank utilizes a notice to cardholders regarding their potential liability, is the notice in acceptable form? Section 226.13(e)

General Questions

1. Are bank personnel sufficiently knowledgeable of the Regulation and the interpretations?
2. Has a program been established for reviewing the accuracy and completeness of disclosure statements before their release to customers?
3. Has the bank adopted procedures and training with respect to oral disclosures by employees, particularly the avoidance of quoting add-on or discount rates?
4. If the State has received certain exemptions from the Truth in Lending law, is the bank complying with the applicable State law?

REGULATION Z
APPENDIX I
OPEN END CREDIT - NEW ACCOUNTS

Disclosures Required if Applicable - Terminology Must Be Consistent with Requirements of Section 226.7(b)

Conditions under which a finance charge may be imposed

Explanation of time period within which credit extended may be paid without incurring a finance charge (free ride period)

Method of determining the balance on which a finance charge may be imposed

Method of determining the finance charge

Method of determining any minimum, fixed, or other similar charge which may be imposed as a finance charge

Periodic rate(s), Applicable Range of Balances, and Corresponding Annual Percentage Rate(s)

Comparative Index of Credit Cost (optional)

Conditions under which other charges may be imposed and method of determining these charges

Conditions under which any security interest may be retained or acquired and a description of the security interest(s)

Required minimum periodic payment

NOTE: Terms "finance charge" and "annual percentage rate" must be more conspicuous than other required terms.

REGULATION Z
APPENDIX II
OPEN END CREDIT - PERIODIC STATEMENTS

Disclosures Required if Applicable - Required Terminology in Quotes

"Previous Balance"

Extension of Credit (date extended or debited to account, amount, and, unless previously furnished, identification)

Purchase (date purchased or debited to account, amount, and, unless previously furnished, identification)

"Payments" (amount[s])

"Credits" (amount[s] and, unless previously furnished, identification of each item)

"FINANCE CHARGE" (amount[s] and component charges itemized and identified)

"Periodic Rate(s)," Applicable Range of Balances, and "Corresponding Nominal Annual Percentage Rate(s)" (these disclosures are required whether or not a finance charge is assessed - other annual percentage rate terminology is permitted - the term, annual percentage rate, need not be more conspicuous than other required terms)

Amount of any minimum charge which may be imposed

"ANNUAL PERCENTAGE RATE(S)" (applicable when finance charge is imposed - must be more conspicuous than other required terms)

"Comparative Index of Credit Cost" (optional)

Balance on which finance charge computed

Explanation of how above balance determined (if the balance is determined without deducting all credits for the billing cycle, this should be disclosed along with the amount of such credits)

Billing cycle closing date

"New Balance"

Date or period of payment to avoid additional charge

Insurance disclosures (refer to Section 226.4)

Minimum payment required (optional disclosure, but must not be overemphasized)

Notices (on face of periodic statement if applicable)

"NOTICE: See reverse side for important information"
"NOTICE: See accompanying statement(s) for important information"
"NOTICE: See reverse side and accompanying statement(s) for important information"

REGULATION Z
APPENDIX III
OPEN END CREDIT - PERIODIC STATEMENTS
(LOCATION REQUIREMENTS)

The following disclosures may be made on the reverse side of the periodic statement or on separate accompanying statement(s):

1. Extensions of credit and purchases - itemized (total must appear on the face of the periodic statement)
2. Credits - itemized (total must appear on the face of the periodic statement)
3. Finance Charge - itemized (amount[s] must appear on the face of the periodic statement)

The following disclosures may be made on the reverse side of the periodic statement or on the face of a single supplemental statement which accompanies the periodic statement:

1. Periodic Rate(s), Applicable Range of Balances, and Corresponding Nominal Annual Percentage Rate(s)
2. Amount of any minimum charge which may be imposed
3. Explanation of how balance on which finance charge computed is determined (if the balance is determined without deducting all credits for the billing cycle, this should be disclosed along with the amount of such credits)

All other disclosures must be made on the face of the periodic statement. Appropriate "notice" must appear on the face of the periodic statement if any of the above optional locations of disclosures are utilized. (Refer to Appendix II for appropriate notice disclosures)

REGULATION Z
APPENDIX IV
CLOSED END CREDIT - NONSALE CREDIT

Disclosures Required if Applicable - Required Terminology in Quotes

Identification of creditor

Identification of transaction (if separate statement)

Proceeds

Other Charges (itemized)

"Prepaid Finance Charge" (total amount and itemization of component charges - total amount required but itemization of component charges not required in the case of a loan secured by a first lien on a dwelling for purchase of that dwelling)

"Required Deposit Balance"

"Total Prepaid Finance Charge and Required Deposit Balance"

"Amount Financed"

"FINANCE CHARGE" (total amount and itemization of component charges - disclosures not required in the case of a loan secured by a first lien on a dwelling for purchase of that dwelling)

"Total of Payments" (no disclosure required in the case of a loan secured by a first lien on a dwelling for purchase of that dwelling)

"ANNUAL PERCENTAGE RATE" (except for certain small extensions of credit)

Date finance charge begins to accrue if other than transaction date

Number, Amount, and Due Dates or Periods of Payments

"Balloon Payment" and conditions under which it may be refinanced

Amount or method of computing any delinquency or default charges for late payment

Description of security interest and property pledged (including any interest in after-acquired property or in future indebtedness)

Prepayment penalty (description, method of computation, and conditions under which imposed)

Method of computing any rebate, or no rebate provided

Insurance disclosures (refer to Section 226.4)

REGULATION Z
APPENDIX V
CLOSED END CREDIT - CREDIT SALES (DEALER PAPER)

Disclosures Required if Applicable - Required Terminology in Quotes

Identification of creditor

Identification of transaction (if separate statement)

"Cash Price"

"Cash Down Payment"

"Trade-In"

"Total Down Payment"

"Unpaid Balance of Cash Price"

Other Charges (itemized)

"Unpaid Balance"

"Prepaid Finance Charge" (total amount and itemization of component charges - total amount required but itemization of component charges not required in the case of a sale of a dwelling)

"Required Deposit Balance"

"Total Prepaid Finance Charge and Required Deposit Balance"

"Amount Financed"

"FINANCE CHARGE" (total amount and itemization of component charges - disclosures not required in the case of a sale of a dwelling)

"Total of Payments" (except for sale of dwelling)

"Deferred Payment Price" (except for sale of dwelling)

"ANNUAL PERCENTAGE RATE" (except for certain small credit sales)

Date finance charge begins to accrue if other than transaction date

Number, Amount, and Due Dates or Periods of Payments

"Balloon Payment" and conditions under which it may be refinanced

Amount or method of computing any delinquency or default charges for late payment

Description of security interest and property pledged (including any interest in after-acquired property or in future indebtedness)

APPENDIX V (continued)

...epayment penalty (description, method of computation, and conditions under which imposed)

...thod of computing any rebate, or no rebate provided

...surance disclosures (refer to Section 226.4)

REGULATION Z
APPENDIX VI
ADVERTISING - OPEN END CREDIT

... one of these items disclosed...	Then, all of these items must be disclosed, if applicable, in terminology prescribed by Section 226.7(b)
...tions under which a finance charge ...e imposed	Explanation of time period within which credit extended may be paid without incurring a finance charge (free ride period)
...ation of time period within which ...it extended may be paid without ...ring a finance charge (free ride ...)	Method of determining the balance on which a finance charge may be imposed
Me... of determining the balance on ... a finance charge may be ...ed	Method of determining the finance charge
... of determining the finance charge	Method of determining any minimum, fixed, or other similar charge which may be imposed as a finance charge
... of determining any minimum, fixe..., or other similar charge which ... be imposed as a finance charge	Annual percentage rate(s)
Comparative Index of Credit Cost	Applicable range of balances if more than one corresponding annual percentage rate
Conditions under which other charges may ... posed and the method of deter... these charges	
Conditions under which any security ...erest may be retained or acquired and ...description of the security interest(s)	
...red periodic payment (in dollars or ... percentage)	
...ied down payment (in dollars or as a ...ntage)	
... of repayment	

REGULATION Z
APPENDIX VII
ADVERTISING - CLOSED END CREDIT

If ... one of these items disclosed...	Then, all of these items must be disclosed, if applicable, in terminology prescribed under Section 226.8
...own payment required	Cash price (credit sale) or amount of of loan (nonsale credit)
...t of down payment (in dollars or ... a percentage)	Amount of down payment or no down payment required (credit sale)
...t of any instalment payment (in ...llars or as a percentage)	Number, amount, and due dates or period of payments
...lar amount of any finance charge	Annual percentage rate
...er of instalments or period of ...payment	Deferred payment price (credit sale) or total of payments (nonsale credit) (except for sale of dwelling or loan secured by first lien on dwelling to purchase that dwelling)
N... charge for credit	

...: The term "annual percentage rate" may be advertised by itself. No other rate of finance charge may be stated except:

1. Simple annual rate, if it is a component of the total finance charge, and stated in conjunction with, but not more conspicuously than, the annual percentage rate.

2. Periodic rate, if the finance charge is computed solely by the application of this rate to the unpaid balance, and it is stated in conjunction with, but not more conspicuously than, the annual percentage rate.

No. 410

§ 226.6(e) Customers entitled to receive a disclosure
§ 226.9(a) statement and rescission notices in a
§ 226.9(b) rescindable transaction.

Dear

This is in response to your letter of September 17, 1970, inquiring as to the proper persons to receive disclosures and the Notice of Right of Rescission in rescindable transactions.

Section 226.6(e) of Regulation Z provides that a statement of disclosures need be furnished to only one customer in a nonrescindable transaction. This section leaves open the question of which customers must receive a disclosure statement in a rescindable transaction and which customers must receive the Notice.

Originally, we took the position that in a rescindable transaction, every "customer" as defined under section 226.2(o) must be given a disclosure statement and each customer whose principal residence was security for the obligation was entitled to receive two copies of the Notice. Since that time, however, we have changed our position concerning the persons entitled to receive a disclosure statement in a multiple customer situation. It is now our view that any customer entitled to rescind the transaction must receive a copy of the disclosure statement and two copies of the Notice. However, any customer, other than the customer primarily liable, whose principal residence is not security for the obligation need not be given either a copy of the disclosure statement or the Notice. In the event that the customer primarily liable for the obligation in a rescindable transaction does not place his principal residence as security for the obligation, he need receive only a copy of the disclosure statement. Such a customer need not be given a copy of the Notice since he would not be entitled to rescind the transaction.

Sincerely yours,

Tynan Smith,
Assistant Director.

FEDERAL DEPOSIT INSURANCE CORPORATION

EXAMINER

Board of Directors

Gentlemen:

While conducting an examination of the
as of the close of business February 22, 1971, apparent violations of the Federal Reserve Regulation Z were noted.

These apparent violations are due to the failure on the part of bank personnel to complete the disclosure portion of the combination note and disclosure form with regard to the dollar amount of interest or the annual percentage rate and also in the failure to provide the borrower, in the case of real estate loans with a right to rescind form.

The following loans are apparent violations of Sections 226.6 and 226.8 of the regulation:

Note #	Name of borrower		Original amount of the note
51473	W.	an	4,174.92
50876	Ed		226.00
50155	Jos	nis	4,251.60
16891	W.	baugh	21,127.59
17006	Rob	ey	10,000.00
6250	Ro		19,674.69

The following loans are apparent violations of Section 226.9 of the regulation:

Note #	Name of borrower		Original amount of the note
17059	Ken	lund et ux	8,000.00
16911	Hug	n et ux	14,000.00
16290	Har	et ux	8,500.00
16644	Mur	y et ux	35,000.00
-	O'C	. W.	15,000.00
16910	Rob	ore	9,200.00
16694	Tyl	nd et ux	66,000.00
16442	Wal	t ux	10,000.00
16972	Car	don et ux	10,500.00

As the Truth in Lending Act provides for both civil and criminal liability, the failure to make disclosures as required by the regulation is a matter of serious concern and one which requires immediate and complete correction. It is requested that the Regional Director of this Corporation be promptly advised of steps taken to correct existing violations and also those taken to avoid future infractions.

Very truly yours,

Examiner

FINDING THE RATE for REGULAR TRANSACTIONS

Single advance transactions involving equal payments and equal payment periods.

FC/100 = Finance charge per $100 of amount financed = (Finance charge) × 100 divided by (Amount financed)

PAYMENT PERIOD a MONTH (or a MULTIPLE or a FRACTION of a MONTH)

Example:

Finance charge ....$ 65.11
Amount financed $332.20
Number of payments 24

Solution:

(1) FC/100 = $65.11 × 100 divided by $332.20 = ... $19.60

(2) Read across on the 24 payment line of the monthly rate table to the value nearest $19.60. This is $19.53 in the 17.75% column. If payments are monthly the annual percentage rate = . . 17¾%*

(3) In this example, if the 24 payments are scheduled

(a) every ½ month, divide the rate determined in step (2) by ½, (17¾% ÷ ½) = ... 35½%**

(b) every 1½ months, divide the rate determined in step (2) by 1½, (17¾% ÷ 1½) = 11¾%

(c) every 2 months, divide the rate determined in step (2) by 2, (17¾% ÷ 2) = ... 9%

(d) every 3 months, divide the rate determined in step (2) by 3, (17¾% ÷ 3) = ... 6%

(e) etc.

PAYMENT PERIOD a WEEK (or a MULTIPLE of a WEEK)

Proceed as in the example above except use the *weekly* table in step (2). In step (3) divide by 2 if the payments are every 2 weeks, by 3 if they are every 3 weeks, etc.

*If the FC/100 falls exactly halfway between two adjacent columns, use the higher rate. For interpolation between columns see Appendix C.

**Round to the nearest ¼%. In case the rate falls midway between two adjacent ¼% values, round up if the rate was rounded down in step (2), and round down if the rate was rounded up in step (2). If interpolation is used in step (2), the quotient in step (3) may be expressed with the same degree of precision.

ANNUAL PERCENTAGE RATE TABLE FOR MONTHLY PAYMENT PLANS
SEE INSTRUCTIONS FOR USE OF TABLES

FRB-104-M

NUMBER OF PAYMENTS	ANNUAL PERCENTAGE RATE															
	14.00%	14.25%	14.50%	14.75%	15.00%	15.25%	15.50%	15.75%	16.00%	16.25%	16.50%	16.75%	17.00%	17.25%	17.50%	17.75%
	(FINANCE CHARGE PER $100 OF AMOUNT FINANCED)															
1	1.17	1.19	1.21	1.23	1.25	1.27	1.29	1.31	1.33	1.35	1.37	1.40	1.42	1.44	1.46	1.48
2	1.75	1.78	1.82	1.85	1.88	1.91	1.94	1.97	2.00	2.04	2.07	2.10	2.13	2.16	2.19	2.22
3	2.34	2.38	2.43	2.47	2.51	2.55	2.59	2.64	2.68	2.72	2.76	2.80	2.85	2.89	2.93	2.97
4	2.93	2.99	3.04	3.09	3.14	3.20	3.25	3.30	3.36	3.41	3.46	3.51	3.57	3.62	3.67	3.73
5	3.53	3.59	3.65	3.72	3.78	3.84	3.91	3.97	4.04	4.10	4.16	4.23	4.29	4.35	4.42	4.48
6	4.12	4.20	4.27	4.35	4.42	4.49	4.57	4.64	4.72	4.79	4.87	4.94	5.02	5.09	5.17	5.24
7	4.72	4.81	4.89	4.98	5.06	5.15	5.23	5.32	5.40	5.49	5.58	5.66	5.75	5.83	5.92	6.00
8	5.32	5.42	5.51	5.61	5.71	5.80	5.90	6.00	6.09	6.19	6.29	6.38	6.48	6.58	6.67	6.77
9	5.92	6.03	6.14	6.25	6.35	6.46	6.57	6.68	6.78	6.89	7.00	7.11	7.22	7.32	7.43	7.54
10	6.53	6.65	6.77	6.88	7.00	7.12	7.24	7.36	7.48	7.60	7.72	7.84	7.96	8.08	8.19	8.31
11	7.14	7.27	7.40	7.53	7.66	7.79	7.92	8.05	8.18	8.31	8.44	8.57	8.70	8.83	8.96	9.09
12	7.74	7.89	8.03	8.17	8.31	8.45	8.59	8.74	8.88	9.02	9.16	9.30	9.45	9.59	9.73	9.87
13	8.36	8.51	8.66	8.81	8.97	9.12	9.27	9.43	9.58	9.73	9.89	10.04	10.20	10.35	10.50	10.66
14	8.97	9.13	9.30	9.46	9.63	9.79	9.96	10.12	10.29	10.45	10.62	10.78	10.95	11.11	11.28	11.45
15	9.59	9.76	9.94	10.11	10.29	10.47	10.64	10.82	11.00	11.17	11.35	11.53	11.71	11.88	12.06	12.24
16	10.20	10.39	10.58	10.77	10.95	11.14	11.33	11.52	11.71	11.90	12.09	12.28	12.46	12.65	12.84	13.03
17	10.82	11.02	11.22	11.42	11.62	11.82	12.02	12.22	12.42	12.62	12.83	13.03	13.23	13.43	13.63	13.83
18	11.45	11.66	11.87	12.08	12.29	12.50	12.72	12.93	13.14	13.35	13.57	13.78	13.99	14.21	14.42	14.64
19	12.07	12.30	12.52	12.74	12.97	13.19	13.41	13.64	13.86	14.09	14.31	14.54	14.76	14.99	15.22	15.44
20	12.70	12.93	13.17	13.41	13.64	13.88	14.11	14.35	14.59	14.82	15.06	15.30	15.54	15.77	16.01	16.25
21	13.33	13.58	13.82	14.07	14.32	14.57	14.82	15.06	15.31	15.56	15.81	16.06	16.31	16.56	16.81	17.07
22	13.96	14.22	14.48	14.74	15.00	15.26	15.52	15.78	16.04	16.30	16.57	16.83	17.09	17.36	17.62	17.88
23	14.59	14.87	15.14	15.41	15.68	15.96	16.23	16.50	16.78	17.05	17.32	17.60	17.88	18.15	18.43	18.70
24	15.23	15.51	15.80	16.08	16.37	16.65	16.94	17.22	17.51	17.80	18.09	18.37	18.66	18.95	19.24	19.53
25	15.87	16.17	16.46	16.76	17.06	17.35	17.65	17.95	18.25	18.55	18.85	19.15	19.45	19.75	20.05	20.36
26	16.51	16.82	17.13	17.44	17.75	18.06	18.37	18.69	18.99	19.30	19.62	19.93	20.24	20.56	20.87	21.19
27	17.15	17.47	17.80	18.12	18.44	18.76	19.09	19.41	19.74	20.06	20.39	20.71	21.04	21.37	21.69	22.02
28	17.80	18.13	18.47	18.80	19.14	19.47	19.81	20.15	20.48	20.82	21.16	21.50	21.84	22.18	22.52	22.86
29	18.45	18.79	19.14	19.49	19.83	20.18	20.53	20.88	21.23	21.58	21.94	22.29	22.64	22.99	23.35	23.70
30	19.10	19.45	19.81	20.17	20.54	20.90	21.26	21.62	21.99	22.35	22.72	23.08	23.45	23.81	24.18	24.55
31	19.75	20.12	20.49	20.87	21.24	21.61	21.99	22.37	22.74	23.12	23.50	23.88	24.26	24.64	25.02	25.40
32	20.40	20.79	21.17	21.56	21.95	22.33	22.72	23.11	23.50	23.89	24.28	24.68	25.07	25.46	25.86	26.25
33	21.06	21.46	21.85	22.25	22.65	23.06	23.46	23.86	24.26	24.67	25.07	25.48	25.88	26.29	26.70	27.11
34	21.72	22.13	22.54	22.95	23.37	23.78	24.19	24.61	25.03	25.44	25.86	26.28	26.70	27.12	27.54	27.97
35	22.38	22.80	23.23	23.65	24.08	24.51	24.94	25.36	25.79	26.23	26.66	27.09	27.52	27.96	28.39	28.83
36	23.04	23.48	23.92	24.35	24.80	25.24	25.68	26.12	26.57	27.01	27.46	27.90	28.35	28.80	29.25	29.70
37	23.70	24.16	24.61	25.06	25.51	25.97	26.42	26.88	27.34	27.80	28.26	28.72	29.18	29.64	30.10	30.57
38	24.37	24.84	25.30	25.77	26.24	26.70	27.17	27.64	28.11	28.59	29.06	29.53	30.01	30.49	30.96	31.44
39	25.04	25.52	26.00	26.48	26.96	27.44	27.92	28.41	28.89	29.38	29.87	30.36	30.85	31.34	31.83	32.32
40	25.71	26.20	26.70	27.19	27.69	28.18	28.68	29.18	29.68	30.18	30.69	31.19	31.68	32.19	32.69	33.20
41	26.39	26.89	27.40	27.91	28.41	28.92	29.44	29.95	30.46	30.97	31.49	32.01	32.52	33.04	33.55	34.08
42	27.06	27.58	28.10	28.62	29.15	29.67	30.19	30.72	31.25	31.78	32.31	32.84	33.37	33.90	34.44	34.97
43	27.74	28.27	28.81	29.34	29.88	30.42	30.96	31.50	32.04	32.58	33.13	33.67	34.22	34.76	35.31	35.86
44	28.42	28.97	29.52	30.07	30.62	31.17	31.72	32.28	32.83	33.39	33.95	34.51	35.07	35.63	36.19	36.76
45	29.11	29.67	30.23	30.79	31.36	31.92	32.49	33.06	33.63	34.20	34.77	35.35	35.92	36.50	37.08	37.66
46	29.79	30.36	30.94	31.52	32.10	32.68	33.26	33.84	34.43	35.01	35.60	36.19	36.78	37.37	37.96	38.56
47	30.48	31.07	31.66	32.25	32.84	33.44	34.03	34.63	35.23	35.83	36.43	37.04	37.64	38.25	38.86	39.46
48	31.17	31.77	32.37	32.98	33.59	34.20	34.81	35.42	36.03	36.65	37.27	37.88	38.50	39.13	39.75	40.37
49	31.86	32.48	33.09	33.71	34.34	34.96	35.59	36.21	36.84	37.47	38.10	38.74	39.37	40.01	40.65	41.29
50	32.55	33.18	33.82	34.45	35.09	35.73	36.37	37.01	37.65	38.30	38.94	39.59	40.24	40.89	41.55	42.20
51	33.25	33.89	34.54	35.19	35.84	36.49	37.15	37.81	38.46	39.12	39.79	40.45	41.11	41.78	42.45	43.12
52	33.95	34.61	35.27	35.93	36.60	37.27	37.94	38.61	39.28	39.96	40.63	41.31	41.99	42.67	43.36	44.04
53	34.65	35.32	36.00	36.68	37.36	38.04	38.72	39.41	40.10	40.79	41.48	42.17	42.87	43.57	44.27	44.97
54	35.35	36.04	36.73	37.42	38.12	38.82	39.52	40.22	40.92	41.63	42.33	43.04	43.75	44.47	45.18	45.90
55	36.05	36.76	37.46	38.17	38.88	39.60	40.31	41.03	41.74	42.47	43.19	43.91	44.64	45.37	46.10	46.83
56	36.76	37.48	38.20	38.92	39.65	40.38	41.11	41.84	42.57	43.31	44.05	44.79	45.53	46.27	47.02	47.77
57	37.47	38.20	38.94	39.68	40.42	41.16	41.91	42.65	43.40	44.15	44.91	45.66	46.42	47.18	47.94	48.71
58	38.18	38.93	39.68	40.43	41.19	41.95	42.71	43.47	44.23	45.00	45.77	46.54	47.32	48.09	48.87	49.65
59	38.89	39.66	40.42	41.19	41.96	42.74	43.51	44.29	45.07	45.85	46.64	47.42	48.21	49.01	49.80	50.60
60	39.61	40.39	41.17	41.95	42.74	43.53	44.32	45.11	45.91	46.71	47.51	48.31	49.12	49.92	50.73	51.55

CONTINUED

6 OF 7

PROBLEM - DETERMINE ANNUAL PERCENTAGE RATE USING VOLUME I
FOR CREDIT TRANSACTIONS INVOLVING BALLOON PAYMENTS

Amount Financed	$3,000	Repayment Schedule:	
Finance Charge	180	11 payments at $100	$1,100
Total of payments	$3,180	Balloon final payment	2,080
			3,180

Monthly payments with first payment due one month from date of consummation of loan.

Volume I Reference

See note 1 attached

DETERMINE ADJUSTED NUMBER OF PAYMENTS

$$\text{Adjustment} = \frac{(\text{Final Payment} - \text{First Payment}) \times (\text{No. of Pmts.} - 1)}{\text{Total of Payments}}$$

$$= \frac{(2080 - 100) \times (12 - 1)}{3180}$$

$$= \frac{1980 \times 11}{3180}$$

$$= \frac{21780}{3180}$$

$$= 6.8$$

$$\text{Adjusted Number of Payments} = \text{Scheduled Payments} + \text{Adjustment}$$

$$= 12 + 6.8$$

$$= 18.8$$

Table on Page A4

DETERMINE FINANCE CHARGE PER HUNDRED

$$FC/100 = \frac{\text{Finance Charge} \times \text{Factor from Table on Page A4}}{\text{Amount Financed}}$$

$$= \frac{180 \times 96}{3{,}000}$$

$$= \frac{17280}{3{,}000}$$

$$= 5.76$$

See note 2 attached

ADJUST FRACTIONAL NUMBER OF PAYMENTS SO THAT VOLUME I TABLES CAN BE USED

18 payments (less than 60 payments; therefore use whole number portions of adjusted number of payments). = 18 payments

FRB 102 M

DETERMINE ANNUAL PERCENTAGE RATE

Read 18 payment line to $5.84, closest figure to $5.76 (finance charge per hundred)

Annual Percentage Rate is 7-1/4%

PROBLEM - DETERMINE ANNUAL PERCENTAGE RATE USING VOLUME I
FOR CREDIT TRANSACTIONS INVOLVING BALLOON PAYMENTS (Continued)

Note #1: If the adjusted number of payments is less than 60, use the rate table payment line which corresponds to the whole number portion of the adjusted number of payments. If it is 60 or greater use the payment line corresponding to the nearest whole number (numbers ending in .5 are rounded down). If it is less than 1, use the 1 payment line.

Note #2: Adjustment = (Final payment - First payment) x (Number of payments less 1) divided by (Total amount to be repaid). This formula, which was used in the preparation of the above table, may be used to compute more precise or additional adjustments, if desired, particularly if the final payment exceeds 2½ times a regular payment. However, the use of the formula in the case of large balloon payments results in overstatement of the rate (see Appendix D).

TABLE for COMPUTING FC/100

FC/100 = (FINANCE CHARGE) × (FACTOR FROM TABLE BELOW) divided by (AMOUNT FINANCED)

In the example on Page A1 the adjusted number of payments is 20.5, the finance charge is $31.00, and the amount financed is $210.00. In the table below read down the column headed ".5" to the factor opposite 20 in the left hand column. This factor is 98. Using the formula above, FC/100 = $31.00 × 98 ÷ $210.00 = $14.47.

Adjusted number of payments: Whole number portion	.0	Decimal portion 1	.2	.3	.4	.5	.6	.7	.8	.9
	Factor for finding FC/100									
0	—	182	167	154	143	133	125	118	111	105
1	100	95	91	87	83	80	77	74	71	69
2	100	97	94	91	88	86	83	81	79	77
3	100	98	95	93	91	89	87	85	83	82
4	100	98	96	94	93	91	89	88	86	85
5	100	98	97	95	94	92	91	90	88	87
6	100	99	97	96	95	93	92	91	90	89
7	100	99	98	96	95	94	93	92	91	90
8	100	99	98	97	96	95	94	93	92	91
9	100	99	98	97	96	95	94	93	93	92
10	100	99	98	97	96	96	95	94	93	92
11	100	99	98	98	97	96	95	94	94	93
12	100	99	98	98	97	96	96	95	94	94
13	100	99	99	98	97	97	96	95	95	94
14	100	99	99	98	97	97	96	96	95	94
15	100	99	99	98	98	97	96	96	95	95
16	100	99	99	98	98	97	97	96	96	95
17	100	99	99	98	98	97	97	96	96	95
18	100	99	99	98	98	97	97	96	96	95
19	100	100	99	99	98	98	97	97	96	96
20	100	100	99	99	98	98	97	97	96	96
21	100	100	99	99	98	98	97	97	96	96
22	100	100	99	99	98	98	97	97	97	96
23	100	100	99	99	98	98	98	97	97	96
24	100	100	99	99	98	98	98	97	97	97
25	100	100	99	99	98	98	98	97	97	97
26	100	100	99	99	99	98	98	97	97	97
27	100	100	99	99	99	98	98	98	97	97
28	100	100	99	99	99	98	98	98	97	97
29	100	100	99	99	99	98	98	98	97	97

Adjusted number of payments: Whole number portion	.0	Decimal portion 1	.2	.3	.4	.5	.6	.7	.8	.9
	Factor for finding FC/100									
30	100	100	99	99	99	98	98	98	97	97
31	100	100	99	99	99	98	98	98	98	97
32	100	100	99	99	99	99	98	98	98	97
33	100	100	99	99	99	99	98	98	98	97
34	100	100	99	99	99	99	98	98	98	97
35	100	100	99	99	99	99	98	98	98	98
36	100	100	99	99	99	99	98	98	98	98
37	100	100	99	99	99	99	98	98	98	98
38	100	100	99	99	99	99	98	98	98	98
39	100	100	100	99	99	99	99	98	98	98
40	100	100	100	99	99	99	99	98	98	98
41	100	100	100	99	99	99	99	98	98	98
42	100	100	100	99	99	99	99	98	98	98
43	100	100	100	99	99	99	99	98	98	98
44	100	100	100	99	99	99	99	98	98	98
45	100	100	100	99	99	99	99	99	98	98
46	100	100	100	99	99	99	99	99	98	98
47	100	100	100	99	99	99	99	99	98	98
48	100	100	100	99	99	99	99	99	98	98
49	100	100	100	99	99	99	99	99	98	98
50	100	100	100	99	99	99	99	99	98	98
51	100	100	100	99	99	99	99	99	98	98
52	100	100	100	99	99	99	99	99	99	98
53	100	100	100	99	99	99	99	99	99	98
54	100	100	100	99	99	99	99	99	99	98
55	100	100	100	99	99	99	99	99	99	98
56	100	100	100	99	99	99	99	99	99	98
57	100	100	100	99	99	99	99	99	99	98
58	100	100	100	99	99	99	99	99	99	98
59	100	100	100	100	99	99	99	99	99	98
60 & over	100	100	100	100	100	100	100	100	100	100

NOTE: Factor = (1 plus whole number portion of adjusted number of payments) divided by (1 plus adjusted number of payments). This formula was used in the preparation of the above table except for the first line and for 60 or more payments. It may be used to compute more precise or additional factors for shifting the FC/100 to the rate table payment line which corresponds to the whole number portion of the adjusted number of payments. However, use of the formula results in overstatement of the rate as the number of payments and the size of the rate increase.

ANNUAL PERCENTAGE RATE TABLE FOR MONTHLY PAYMENT PLANS
SEE INSTRUCTIONS FOR USE OF TABLES

FRB-102-M

NUMBER OF PAYMENTS	ANNUAL PERCENTAGE RATE 6.00%	6.25%	6.50%	6.75%	7.00%	7.25%	7.50%	7.75%	8.00%	8.25%	8.50%	8.75%	9.00%	9.25%	9.50%	9.75%
	(FINANCE CHARGE PER $100 OF AMOUNT FINANCED)															
1	0.50	0.52	0.54	0.56	0.58	0.60	0.62	0.65	0.67	0.69	0.71	0.73	0.75	0.77	0.79	0.81
2	0.75	0.78	0.81	0.84	0.88	0.91	0.94	0.97	1.00	1.03	1.06	1.10	1.13	1.16	1.19	1.22
3	1.00	1.04	1.09	1.13	1.17	1.21	1.25	1.29	1.34	1.38	1.42	1.46	1.50	1.55	1.59	1.63
4	1.25	1.31	1.36	1.41	1.46	1.51	1.57	1.62	1.67	1.72	1.78	1.83	1.88	1.93	1.99	2.04
5	1.50	1.57	1.63	1.69	1.76	1.82	1.88	1.95	2.01	2.07	2.13	2.20	2.26	2.32	2.39	2.45
6	1.76	1.83	1.90	1.98	2.05	2.13	2.20	2.27	2.35	2.42	2.49	2.57	2.64	2.72	2.79	2.86
7	2.01	2.09	2.18	2.26	2.35	2.43	2.52	2.60	2.68	2.77	2.85	2.94	3.02	3.11	3.19	3.28
8	2.26	2.36	2.45	2.55	2.64	2.74	2.83	2.93	3.02	3.12	3.21	3.31	3.40	3.50	3.60	3.69
9	2.52	2.62	2.73	2.83	2.94	3.05	3.15	3.26	3.36	3.47	3.57	3.68	3.79	3.89	4.00	4.11
10	2.77	2.89	3.00	3.12	3.24	3.35	3.47	3.59	3.70	3.82	3.94	4.05	4.17	4.29	4.41	4.52
11	3.02	3.15	3.28	3.41	3.53	3.66	3.79	3.92	4.04	4.17	4.30	4.43	4.56	4.68	4.81	4.94
12	3.28	3.42	3.56	3.69	3.83	3.97	4.11	4.25	4.39	4.52	4.66	4.80	4.94	5.08	5.22	5.36
13	3.53	3.68	3.83	3.98	4.13	4.28	4.43	4.58	4.73	4.88	5.03	5.18	5.33	5.48	5.63	5.78
14	3.79	3.95	4.11	4.27	4.43	4.59	4.75	4.91	5.07	5.23	5.39	5.55	5.72	5.88	6.04	6.20
15	4.05	4.22	4.39	4.56	4.73	4.90	5.07	5.24	5.42	5.59	5.76	5.93	6.10	6.28	6.45	6.62
16	4.30	4.48	4.67	4.85	5.03	5.21	5.40	5.58	5.76	5.94	6.13	6.31	6.49	6.68	6.86	7.05
17	4.56	4.75	4.95	5.14	5.33	5.52	5.72	5.91	6.11	6.30	6.49	6.69	6.88	7.08	7.27	7.47
18	4.82	5.02	5.22	5.43	5.63	5.84	6.04	6.25	6.45	6.66	6.86	7.07	7.28	7.48	7.69	7.90
19	5.07	5.29	5.50	5.72	5.94	6.15	6.37	6.58	6.80	7.02	7.23	7.45	7.67	7.89	8.10	8.32
20	5.33	5.56	5.78	6.01	6.24	6.46	6.69	6.92	7.15	7.38	7.60	7.83	8.06	8.29	8.52	8.75
21	5.59	5.83	6.07	6.30	6.54	6.78	7.02	7.26	7.50	7.74	7.97	8.21	8.46	8.70	8.94	9.18
22	5.85	6.10	6.35	6.60	6.84	7.09	7.34	7.59	7.84	8.10	8.35	8.60	8.85	9.10	9.36	9.61
23	6.11	6.37	6.63	6.89	7.15	7.41	7.67	7.93	8.19	8.46	8.72	8.98	9.25	9.51	9.77	10.04
24	6.37	6.64	6.91	7.18	7.45	7.73	8.00	8.27	8.55	8.82	9.09	9.37	9.64	9.92	10.19	10.47
25	6.63	6.91	7.19	7.48	7.76	8.04	8.33	8.61	8.90	9.18	9.47	9.75	10.04	10.33	10.62	10.90
26	6.89	7.18	7.48	7.77	8.07	8.36	8.66	8.95	9.25	9.55	9.84	10.14	10.44	10.74	11.04	11.34
27	7.15	7.46	7.76	8.07	8.37	8.68	8.99	9.29	9.60	9.91	10.22	10.53	10.84	11.15	11.46	11.77
28	7.41	7.73	8.05	8.36	8.68	9.00	9.32	9.64	9.96	10.28	10.60	10.92	11.24	11.56	11.89	12.21
29	7.67	8.00	8.33	8.66	8.99	9.32	9.65	9.98	10.31	10.64	10.97	11.31	11.64	11.98	12.31	12.65
30	7.94	8.28	8.61	8.96	9.30	9.64	9.98	10.32	10.66	11.01	11.35	11.70	12.04	12.39	12.74	13.09
31	8.20	8.55	8.90	9.25	9.60	9.96	10.31	10.67	11.02	11.38	11.73	12.09	12.45	12.81	13.17	13.53
32	8.46	8.82	9.19	9.55	9.91	10.28	10.64	11.01	11.38	11.74	12.11	12.48	12.85	13.22	13.59	13.97
33	8.73	9.10	9.47	9.85	10.22	10.60	10.98	11.36	11.73	12.11	12.49	12.88	13.26	13.64	14.02	14.41
34	8.99	9.37	9.76	10.15	10.53	10.92	11.31	11.70	12.09	12.48	12.88	13.27	13.66	14.06	14.45	14.85
35	9.25	9.65	10.05	10.45	10.85	11.25	11.65	12.05	12.45	12.85	13.26	13.66	14.07	14.48	14.89	15.29
36	9.52	9.93	10.34	10.75	11.16	11.57	11.98	12.40	12.81	13.23	13.64	14.06	14.48	14.90	15.32	15.74
37	9.78	10.20	10.63	11.05	11.47	11.89	12.32	12.74	13.17	13.60	14.03	14.46	14.89	15.32	15.75	16.19
38	10.05	10.48	10.91	11.35	11.78	12.22	12.66	13.09	13.53	13.97	14.41	14.85	15.30	15.74	16.19	16.63
39	10.32	10.76	11.20	11.65	12.10	12.54	12.99	13.44	13.89	14.35	14.80	15.25	15.71	16.17	16.62	17.08
40	10.58	11.04	11.49	11.95	12.41	12.87	13.33	13.79	14.26	14.72	15.19	15.65	16.12	16.59	17.06	17.53
41	10.85	11.32	11.78	12.25	12.72	13.20	13.67	14.14	14.62	15.10	15.57	16.05	16.53	17.01	17.50	17.98
42	11.12	11.60	12.08	12.56	13.04	13.52	14.01	14.50	14.98	15.47	15.96	16.45	16.95	17.44	17.94	18.43
43	11.38	11.87	12.37	12.86	13.36	13.85	14.35	14.85	15.35	15.85	16.35	16.86	17.36	17.87	18.38	18.89
44	11.65	12.15	12.66	13.16	13.67	14.18	14.69	15.20	15.71	16.23	16.74	17.26	17.78	18.30	18.82	19.34
45	11.92	12.44	12.95	13.47	13.99	14.51	15.03	15.55	16.08	16.61	17.13	17.66	18.19	18.71	19.26	19.79
46	12.19	12.72	13.24	13.77	14.31	14.84	15.37	15.91	16.45	16.99	17.53	18.07	18.61	19.16	19.70	20.25
47	12.46	13.00	13.54	14.08	14.62	15.17	15.72	16.26	16.81	17.37	17.92	18.47	19.03	19.59	20.15	20.71
48	12.73	13.28	13.83	14.39	14.94	15.50	16.06	16.62	17.18	17.75	18.31	18.88	19.45	20.02	20.59	21.16
49	13.00	13.56	14.13	14.69	15.26	15.83	16.40	16.98	17.55	18.13	18.71	19.29	19.87	20.45	21.04	21.62
50	13.27	13.84	14.42	15.00	15.58	16.16	16.75	17.33	17.92	18.51	19.10	19.69	20.29	20.89	21.48	22.08
51	13.54	14.13	14.72	15.31	15.90	16.50	17.09	17.69	18.29	18.89	19.50	20.10	20.71	21.32	21.93	22.55
52	13.81	14.41	15.01	15.62	16.22	16.83	17.44	18.05	18.66	19.28	19.89	20.51	21.13	21.76	22.38	23.01
53	14.08	14.69	15.31	15.92	16.54	17.16	17.78	18.41	19.03	19.66	20.29	20.92	21.56	22.19	22.83	23.47
54	14.36	14.98	15.61	16.23	16.86	17.50	18.13	18.77	19.41	20.05	20.69	21.34	21.98	22.63	23.28	23.94
55	14.63	15.26	15.90	16.54	17.19	17.83	18.48	19.13	19.78	20.43	21.09	21.75	22.41	23.07	23.73	24.40
56	14.90	15.55	16.20	16.85	17.51	18.17	18.83	19.49	20.15	20.82	21.49	22.16	22.83	23.51	24.19	24.87
57	15.17	15.84	16.50	17.17	17.83	18.50	19.18	19.85	20.53	21.21	21.89	22.58	23.26	23.95	[illegible]	25.34
58	15.45	16.12	16.80	17.48	18.16	18.84	19.53	20.21	20.91	21.60	22.29	22.99	23.69	24.39	[illegible]	25.80
59	15.72	16.41	17.10	17.79	18.48	19.18	19.88	20.58	21.28	21.99	22.70	23.41	24.12	24.84	[illegible]	26.27
60	16.00	16.70	17.40	18.10	18.81	19.52	20.23	20.94	21.66	22.38	23.10	23.82	24.55	25.28	26.01	26.75

FOR TRAINING USE ONLY

Attachment 1

Property of
Federal Deposit Insurance Corporation
DOS Training Center

EQUAL HOUSING
LENDER

We Do Business in Accordance With the Federal Fair Housing Law

IT IS ILLEGAL, BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN, TO:

- Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or
- Discriminate in fixing of the amount, interest rate, duration, application procedures or other terms or conditions of such a loan.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU MAY SEND A COMPLAINT TO:

Assistant Secretary for Equal Opportunity,
Department of Housing and Urban Development,
Washington, D.C. 20410.

or call your local HUD or FHA office.

FOR TRAINING USE ONLY

Attachment 2

Property of
Federal Deposit Insurance Corporation
DOS Training Center

TITLE VIII - CIVIL RIGHTS ACT OF 1968 FAIR HOUSING

I. Section 805 of Title VIII of the Civil Rights Act of 1968 among other things, makes it unlawful for a bank to:

1. Deny a person a loan or other financial assistance for purchasing, constructing, improving, repairing or maintaining a dwelling, or

2. Discriminate against a person in the fixing of the amount, interest rate, duration, or other terms and conditions of such loan or financial assistance, because of his race, color, sex, religion or national origin.

II. The Corporation has issued a statement of policy on "Nondiscrimination in Real Estate Loan Activities". The policy statement sets forth the following procedures which all financial institutions subject to its supervisory authority should utilize.

1. Advertisement Notice of Nondiscrimination Compliance.

a. After 5-1-72, all State nonmember insured banks shall prominently indicate in advertisements of loans for purchasing, improving, repairing or maintaining a dwelling that it makes such loans without regard to race, color, religion or national origin. Furthermore, bank is prohibited from using any words or means whatsoever to indicate, directly or indirectly, a discriminatory preference or policy of exclusion in violation of the above law.

b. In any written advertisements relating to such loans a facsimile of the logotype at 9019.12 of Prentice Hall book must be included. See handout.

2. Lobby Notice of Nondiscrimination Compliance

a. After 5-1-72, every State nonmember bank engaged in making loans of the type described previously must conspicuously display in the public ~~floor~~ lobby of each floor where deposits are received and in the public area of each office where such loans are made, a notice that incorporates a facsimile of the logotype

b. The Secretary of Housing and Urban Development has responsibility for the enforcement of the law. HUD has regulations substantially similar to the FDIC policy statement. Failure to comply with the lobby notice segment of the ~~law~~ policy statement also constitutes a violation of HUD regulations.

i. There is no comparable regulation with respect to the advertising portion of the FDIC policy statement.

III. Reporting of Violations

1. Failure to comply with at least part of the policy is not technically a violation of applicable law or regulation. Nevertheless, to facilitate reporting procedures, the Examiner should report all such noncompliance in the Violations of Laws and Regulations schedule of the report under Group I Other Violations

a. Exercise particular care in designating noncompliance as a violation of FDIC policy statement and not as a violation of law or regulation. There is no need to refer to or cite the HUD regulation.

TITLE VIII - CIVIL RIGHTS ACT OF 1968 FAIR HOUSING (Continued)

III. Reporting of Violations (Continued)

2. In addition, if the Examiner finds evidence that such a nonmember insured bank has been or is discriminating against any person in violation of Section 805 he shall file a letter report of such violation with his R.D. together with a copy to the Director of Bank Supervision, Washington D.C.

   a. Violation of Section 805 exposes the violator to, among other things, an action for money damages by the person aggrieved which may include reasonable attorney's fees. Also HUD may cancel in whole or in part any agreement or contract with the bank providing for a loan, grant, contribution or other Federal aid or for the payment of a commission or fee.

FOR TRAINING USE ONLY

Attachment 3

FAIR CREDIT REPORTING ACT
(Lecture Notes)

I. Introduction.

A. Effective 4-25-71; as part of Consumer Credit Protection Act.

B. The Act generally regulates credit reports (consumer reports) for employment purposes, for credit or insurance for personal family and household purposes.

1. Consumer report - any written oral or other communication by a consumer reporting agency bearing on a consumers credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used for establishing elegibility for:

   a. Credit or insurance used primarily for personal family or household purposes.

   b. Employment purposes.

   c. Other purposes listed in Section 604 of the Act.

2. The term consumer report does not include:

   a. Any report containing information solely as to transactions between the consumer and the person reporting.

   b. Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device.

   Third party info -

   c. Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision on such request, if the third party advises the consumer of the name & address of the person to whom the request was made & such person makes the disclosures to the consumer required under Section 615 of the Act.

II. Purpose

A. To achieve balance between the creditor's need for information on which to base a sound credit decision and the consumers right to:

1. Demand credit information to be fair, relevant and accurate.

2. Be protected from incorrect and out-of-date information in the files, a "consumer reporting agency"

a. "Consumer reporting agency" is any person or organization which for monetary fees, dues or on a cooperative non-profit basis engages in whole or part in assembling or evaluating credit information for a third party.

B. The ultimate objective of the Act is to prevent private individuals from being unjustly damaged by inaccurate, arbitrary or obsolete information contained in a credit report.

III. Scope

A. With the exception of agricultural credit, the Act's requirements apply to the general type of consumer credit covered under Reg. Z.

1. Reports for loans for business purposes are exempt from the "user" disclosure requirements.

B. Effects banks as:

1. Users of Credit Information.

2. Suppliers of Credit Information.

IV. Banks as users of credit information.

A. Banks are users of four types of credit information.

1. Consumer reports

2. Investigative consumer reports.

3. Outside third party information received from someone other than a consumer reporting agency.

4. Banks own prior transactions and experiences with its customers.

B. Banks as users of credit information are encouraged to maintain reasonable procedures to assure compliance. Important because the Act expressly provides that if a bank can show that it maintains reasonable procedures, it may not be held liable for violating the applicable provisions of the Act.

C. Banks as users of consumer reports.

1. Act does not prohibit the obtaining or use of such reports

a. Imposes restrictions on the acquisition or use of such reports.

2. To obtain a consumer report, the bank must certify it will be used only for purposes stated in the Act. Purposes applicable to banks are (for other purposes see P-H par. 11,804)

a. Use in connection with an extension of credit to or review or collection of an account.

b. For employment purposes.

3. A blanket certification covering all requests to the same consumer reporting agency may be furnished rather than certify on each request of information.

4. If credit is denied or cost is increased (applies also to employment) it must advise the consumer orally or in writing:

a. That the report contributed to the denial or increased cost

b. The name & address of the consumer reporting agency.

5. Increase in cost or denial - condition imposed where otherwise the credit would not be granted such as larger down payment, higher interest rate, shorter maturity, co-signor, collateral or guarantor.

D. Banks as users of investigative consumer reports.

1. Investigative consumer report.

a. Information on consumer's character, general reputation, personal characteristics obtained through interviews with neighbors, friends or associates.

b. Such information shall not include factual data on a consumer's credit record obtained from creditors or the consumer.

2. Certification mentioned before is needed.

3. Must inform the consumer in writing within 3 days of its request that:

a. An investigative consumer report has been requested.

b. The consumer may request the disclosure of the nature and scope of the investigation.

4. If the consumer, within a reasonable time, request a disclosure, the bank must make a complete & accurate report in writing of the nature & scope of the investigation, within 5 days after the request for disclosure is received or the report was first requested, whichever is later.

5. The disclosures do not apply in employment situations where the consumer has not specifically applied for the position.

6. The denial or increase in cost of credit on the basis of such report triggers the same disclosure requirements mentioned previously.

E. Banks as users of third party information

1. Denial or increased cost based on 3rd party information i.e. someone other than a consumer reporting agency - former or present employer, associate employee or another bank or creditor imposes on the bank the duty to inform the consumer that he has a right to know the information which formed the basis for the action.

a. If within 60 days after such action, the consumer makes a written request, the bank within a reasonable time must make the required disclosure.

b. The source of information need not be disclosed nor are there any disclosure requirements of any kind in connection with denials of employment or insurance based on this info.

F. Banks as users of Information based upon their own experience.

1. No restrictions.

V. Banks as suppliers of Credit Information.

A. If information is taken from bank's own experience, the bank may transmit same to other banks or creditors without becoming a consumer reporting agency.

1. Do not become a consumer reporting agency if shares data from outside sources to another party in the transaction.

B. Bank becomes a consumer reporting agency if, for fees, dues, or on a cooperative non-profit basis, it regularly engages in the practice of evaluating consumer credit info for the purpose of furnishing same to third parties.

1. Where info is exchanged other than that which has been gathered from their own experiences.

C. Duties and Requirements of a Consumer Reporting Agency.

1. Obtain certification from all users of such information.

2. Establish & maintain procedures to purge obsolete info. cons. reports - no requirement to remove from files.

a. Obsolete if antedate the report by more than 7 years; except bankruptcies where limit is 14 years.

b. The restrictions on obsolete data do not apply to:

i. Credit transactions over $50M in principal

ii. Underwriting insurance over $50M face value

iii. Information on employee at annual salary over $20M

c. Upon request and proper identification of any consumer, the bank must disclose

i. The nature & substance of all info, except medical, in its files.

ii. Sources of information, except on investigative consumer reports.

iii. Recipients of any consumer reports within 6 months preceding the request (2 years on employment reports)

d. Adhere to certain procedural requirements as to when, how & under what circumstances the information requested shall be disclosed, such as providing trained personnel to explain information in the file.

e. If customer questions the accuracy of a consumer report, the bank must reinvestigate unless the dispute is frivolous or irrelevant.

i. If reinvestigation discloses the disputed information is inaccurate or cannot be verified, the information must be deleted from the file.

ii. If reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute.

iii. In the case of deletion or consumer statement of dispute, bank must notify prior recipients (6 months on credit & 2 years on employment), at the customer's request, of the deletion or consumer's statement.

iv. The bank must notify the consumer of his right to request such reports.

VI. Liabilities and Penalties

A. Willful violation - liability for actual damages sustained, punitive damages and attorneys fees & costs.

B. Negligent violation - same liability except no punitive damages.

C. Criminal sanctions

1. Up to $5,000 fine and/or imprisonment of not more than one year for:

a. Any person obtaining information from a consumer reporting agency under false pretenses

b. Any officer or employee of an agency who willfully provides consumer information from files to an unauthorized person for unauthorized purposes.

VII. Examination Procedure

A. Disclosure of information to an examiner in connection with examination does not make the bank a consumer reporting agency.

B. The Examiner through random sampling or tests of consumer loans should ascertain whether the bank is a user or supplier of consumer credit information, or both within the meaning of the act and in compliance with its provisions.

C. Random sampling of employee records should also be done.

D. Reporting Violations.

1. Reporting procedure is same as Regulation Z.

2. If facts reveal apparent violations of the Act by an entity other than a "state non-member insured bank", such violations should be reported to the appropriate Federal agency and forwarded to the Regional Office for review and distribution.

Attachment 4

GROUP A

REGULATION Z

1. What types of credit transactions are covered under Regulation Z?

2. How long should the bank keep records as evidence of compliance?

3. Are there any penalities for violating the Act?

4. Would any of the following loans be exempt from Regulation Z?

   a. A loan to the Jazz Corporation for operating funds for a large truck farm operation.
   b. A loan to Mr. Paul for inventory in his shoe store with a second real estate mortgage on his home offered as additional collateral.
   c. A loan to a partnership operating an orange grove in California.
   d. A loan to School District #99.
   e. A $40,000 loan for a cotton picker to Mr. Smith who farms.
   f. $85,000 real estate loan for the purchase of a home by an individual.
   g. A $12,000 loan to Mr. Jones, who is a mechanic for 100 shares of American Telephone and Telegraph.

5. Should any of the following charges be included in the finance charge of a consumer loan not involving real estate:

   a. Service charge
   b. Fee for filing a financing statement
   c. Investigation report
   d. Non-filing insurance
   e. Appraisal fee
   f. Credit disability insurance is not required by the credit; however, a borrower desiring the insurance has failed to sign and date a separate statement of his desires to purchase the insurance.

6. Should any of the following charges be included in the finance charge involving a real estate loan:

   a. Title search
   b. Appraisal fee
   c. Points paid by the buyer
   d. Commitment fee
   e. Survey fee
   f. FHA Insurance

7. If Bill Smith signs a note for the purchase of a boat, his father cosigns, and an uncle endorses the note; the bank has furnished only one disclosure statement to Bill Smith. Is this adequate?

8. A three year note requires that the borrower carry property insurance on his automobile. After one year the borrower refuses to renew his insurance and the bank purchases the insurance and adds the cost to the balance of his loan are new disclosures required?

9. A note for $85.00 has a finance charge of $7.25 but the annual percentage rate is not disclosed. Is this a violation?

10. What is the bank's obligation in accepting dealer paper?

11. Is real estate credit covered under Regulation Z?

12. Are there any special provisions that apply to real estate credit?

13. Does the bank have to give a rescission notice to the following individuals?

   a. A real estate loan to Mr. Spark secured by a first mortgage on a dwelling in which he expects to reside and for the purpose of purchasing that dwelling.
   b. A second real estate mortgage to Mr. Hayes taken on his residence to secure previous debt to this bank.
   c. Mr. Rock quarantees a personal loan for another individual and gives a second mortgage on his home as additional security.
   d. A real estate loan to Mr. Snyder secured by a first mortgage on a vacant lot on which he expects to construct his residence.

14. The bank should furnish each owner of the property subject to rescission who is also a party to the transaction one copy of the rescission notice?

15. At closing, the required disclosures are given to the borrower and a real estate transaction subject to the right of rescission is consummated. The rescission notice was given to the borrower a week ago. May the bank disburse the proceeds to the borrower immediately after closing?

GROUP B

REGULATION Z

1. Would any of the following loans be exempt from Regulation Z?

   a. A loan to the Jazz Corporation for operating funds for a large truck farm operation.
   b. A loan to Mr. Paul for inventory in his shoe store with a second real estate mortgage on his home offered as additional collateral.
   c. A loan to a partnership operating an orange grove in California.
   d. A loan to School District #99.
   e. A $40,000 loan for a cotton picker to Mr. Smith who farms.
   f. $85,000 real estate loan for the purchase of a home by an individual.
   g. A $12,000 loan to Mr. Jones, who is a mechanic for 100 shares of American Telephone and Telegraph.

2. What is the finance charge?

3. In what form is the finance charge to be shown to the customer?

4. What is the annual percentage rate?

5. How accurate must the annual percentage rate be?

6. Should any of the following charges be included in the finance charge of a consumer loan not involving real estate:

   a. Service charge
   b. Fee for filing a financing statement
   c. Investigation report
   d. Non-filing insurance
   e. Appraisal fee
   f. Credit disability insurance is not required by the credit; however, a borrower desiring the insurance has failed to sign and date a separate statement of his desires to purchase the insurance.

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   a. Title search
   b. Appraisal fee
   c. Points paid by the buyer
   d. Commitment fee
   e. Survey fee
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8. If Bill Smith signs a note for the purchase of a boat, his father cosigns, and an uncle endorses the note; the bank has furnished only one disclosure statement to Bill Smith. Is this adequate?

9. A three year note requires that the borrower carry property insurance on his automobile. After one year the borrower refuses to renew his insurance and the bank purchases the insurance and adds the cost to the balance of his loan are new disclosures required?

10. A note for $85.00 has a finance charge of $7.25 but the annual percentage rate is not disclosed. Is this a violation?

11. How does the cancellation provision of the Right of Rescission apply to a first mortgage?

12. Does the bank have to give a rescission notice to the following individuals?

    a. A real estate loan to Mr. Spark secured by a first mortgage on a dwelling in which he expects to reside and for the purpose of purchasing that dwelling.
    b. A second real estate mortgage to Mr. Hayes taken on his residence to secure previous debt to this bank.
    c. Mr. Rock guarantees a personal loan for another individual and gives a second mortgage on his home as additional security.
    d. A real estate loan to Mr. Snyder secured by a first mortgage on a vacant lot on which he expects to construct his residence.

13. The bank should furnish each owner of the property subject to rescission who is also a party to the transaction one copy of the rescission notice?

14. At closing, the required disclosures are given to the borrower and a real estate transaction subject to the right of rescission is consummated. The rescission notice was given to the borrower a week ago. May the bank disburse the proceeds to the borrower immediately after closing?

GROUP C

REGULATION Z

1. Would any of the following loans be exempt from Regulation Z?

   a. A loan to the Jazz Corporation for operating funds for a large truck farm operation.
   b. A loan to Mr. Paul for inventory in his shoe store with a second real estate mortgage on his home offered as additional collateral.
   c. A loan to a partnership operating an orange grove in California.
   d. A loan to School District #99.
   e. A $40,000 loan for a cotton picker to Mr. Smith who farms.
   f. $85,000 real estate loan for the purchase of a home by an individual.
   g. A $12,000 loan to Mr. Jones, who is a mechanic for 100 shares of American Telephone and Telegraph.

2. Should any of the following charges be included in the finance charge of a consumer loan not involving real estate:

   a. Service charge
   b. Fee for filing a financing statement
   c. Investigation report
   d. Non-filing insurance
   e. Appraisal fee
   f. Credit disability insurance is not required by the credit, however, a borrower desiring the insurance has failed to sign and date a separate statement of his desires to purchase the insurance.

3. Are maximum or minimum rates specified in Regulation Z?

4. Should any of the following charges be included in the finance charge involving a real estate loan:

   a. Title search
   b. Appraisal fee
   c. Points paid by the buyer
   d. Commitment fee
   e. Survey fee
   f. FHA Insurance

5. If Bill Smith signs a note for the purchase of a boat, his father cosigns, and an uncle endorses the note; the bank has furnished only one disclosure statement to Bill Smith. Is this adequate?

6. A three year note requires that the borrower carry property insurance on his automobile. After one year the borrower refuses to renew his insurance and the bank purchases the insurance and adds the cost to the balance of his loan are new disclosures required?

7. A note for $85.00 has a finance charge of $7.25 but the annual percentage rate is not disclosed. Is this a violation?

8. The bank only shows the balance due on its delinquency notices. Are any disclosures required on a delinquency notice?

9. What is open end credit?

10. What must an open end credit customer be told under this law?

11. What sort of information must accompany a monthly statement?

12. Does the bank have to give a rescission notice to the following individuals?

    a. A real estate loan to Mr. Spark secured by a first mortgage on a dwelling in which he expects to reside and for the purpose of purchasing that dwelling.
    b. A second real estate mortgage to Mr. Hayes taken on his residence to secure previous debt to this bank.
    c. Mr. Rock quarantees a personal loan for another individual and gives a second mortgage on his home as additional security.
    d. A real estate loan to Mr. Snyder secured by a first mortgage on a vacant lot on which he expects to construct his residence.

13. The bank should furnish each owner of the property subject to rescission who is also a party to the transaction one copy of the rescission notice?

14. At closing, the required disclosures are given to the borrower and a real estate transaction subject to the right of rescission is consummated. The rescission notice was given to the borrower a week ago. May the bank disburse the proceeds to the borrower immediately after closing?

GROUP D

REGULATION Z

1. Would any of the following loans be exempt from Regulation Z?

   a. A loan to the Jazz Corporation for operating funds for a large truck farm operation.
   b. A loan to Mr. Paul for inventory in his shoe store with a second real estate mortgage on his home offered as additional collateral.
   c. A loan to a partnership operating an orange grove in California.
   d. A loan to School District #99.
   e. A $40,000 loan for a cotton picker to Mr. Smith who farms.
   f. $85,000 real estate loan for the purchase of a home by an individual.
   g. A $12,000 loan to Mr. Jones, who is a mechanic for 100 shares of American Telephone and Telegraph.

2. Should any of the following charges be included in the finance charge of a consumer loan not involving real estate:

   a. Service charge
   b. Fee for filing a financing statement
   c. Investigation report
   d. Non-filing insurance
   e. Appraisal fee
   f. Credit disability insurance is not required by the credit; however, a borrower desiring the insurance has failed to sign and date a separate statement of his desires to purchase the insurance.

3. Should any of the following charges be included in the finance charge involving a real estate loan:

   a. Title search
   b. Appraisal fee
   c. Points paid by the buyer
   d. Commitment fee
   e. Survey fee
   f. FHA Insurance

4. If Bill Smith signs a note for the purchase of a boat, his father cosigns, and an uncle endorses the note; the bank has furnished only one disclosure statement to Bill Smith. Is this adequate?

5. A three year note requires that the borrower carry property insurance on his automobile. After one year the borrower refuses to renew his insurance and the bank purchases the insurance and adds the cost to the balance of his loan are new disclosures required?

6. A note for $85.00 has a finance charge of $7.25 but the annual percentage rate is not disclosed. Is this a violation?

7. Are there restrictions on issuance of credit cards?

8. Is a cardholder liable for unauthorized use of a credit card?

9. What must the credit customer be told in other than open end credit?

10. Regarding credit sales is there any additional information that must be disclosed?

11. Does the bank have to give a rescission notice to the following individuals?

    a. A real estate loan to Mr. Spark secured by a first mortgage on a dwelling in which he expects to reside and for the purpose of purchasing that dwelling.
    b. A second real estate mortgage to Mr. Hayes taken on his residence to secure previous debt to his bank.
    c. Mr. Rock guarantees a personal loan for another individual and gives a second mortgage on his home as additional security.
    d. A real estate loan to Mr. Snyder secured by a first mortgage on a vacant lot on which he expects to construct his residence.

12. If required disclosures have not been given to the borrower does the right of rescission run the full term of a real estate loan?

13. The bank should furnish each owner of the property subject to rescission who is also a party to the transaction one copy of the rescission notice?

14. At closing, the required disclosures are given to the borrower and a real estate transaction subject to the right of rescission is consummated. The rescission notice was given to the borrower a week ago. May the bank disburse the proceeds to the borrower immediately after closing?

Attachment 5

FAIRCREDIT

1. What are some of the legitimate purposes for which a consumer report can be obtained from a consumer reporting agency?

Reports may be furnished in the following circumstances:

(a) In response to a court order;
(b) In accordance with the written instructions of the consumer to whom it relates;
(c) In connection with an extention of credit involving the consumer;
(d) For employment;
(e) For insurance underwriting purposes; and
(f) For any other legitimate business need in connection with a business transaction involving a consumer.

2. Are there any requirements that the user of a consumer report must comply with?

Yes, users must:

1. Identify themselves.
2. Certify the purpose for which the information is sought.
3. Certify that the information will be used for no other purpose.

The consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. The consumer report will not be furnished to any person if the consumer reporting agency has reasonable grounds for believing that the report will not be used for ligitimate purposes.

It is also incumbent on the consumer reporting agency to follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

3. Must certification be given each time a consumer report is requested?

No. A written blanket certification by the financial institution could cover all inquiries to a particular consumer reporting agency.

4. What is a consumer reporting agency?

The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

5. Under what circumstances, if any, may a bank pass on credit information to another institution without coming under the Act?

As long as the information is gleaned from a bank's own experiences with consumers, the bank can transmit or pass on such information to other banks or creditors without becoming a consumer reporting agency. Under these conditions the bank would not need to be concerned with all of the duties and responsibilities described in the Act.

6. What provisions are imposed by the Act on a consumer reporting agency?

A. They may furnish a consumer report under the following circumstances and no other:

1. In response to the order of a court having jurisdiction to issue such an order.
2. In accordance with the written instructions of the consumer to whom it relates.
3. To a person which it has reason to believe -
   a. intends to use the information to connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;
   b. intends to use the information for employment purposes;
   c. intends to use the information in connection with the underwriting of insurance involving the consumer;
   d. intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status
   e. otherwise has a legitimate business need for information in connection with a business transaction involving the consumer.

B. No consumer reporting agency may make any consumer report containing any of the following items of information:

1. Bankruptcies which from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen years.
2. Suits and judgements which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.
3. Paid tax liens which, from date of payment, antedate the report by more than seven years.
4. Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.
5. Records of arrest, indictment, or conviction of crime which from date of disposition, release, or parole, antedate the report by more than seven years.
6. Any other adverse item of information which antedates the report by more than seven years.
7. The provisions listed above are not applicable in the case of any consumer credit report to be used in connection with -
   a. Credit transaction involving, or which may reasonably be expected to involve, a principal amount of $50,000 or more.
   b. Underwriting of life insurance involving, or which may reasonably be expected to involve a face amount of $50,000 or more.
   c. Employment of any individual at an annual salary which equals, or which may reasonably be expected to equal $20,000 or more.

7. If a bank deni credit or increases the cost c credit to a customer based upon information obtained from a consumer report what are his responsibilities to that customer?

If a financial institution denies credit, or if it increases the cost, even partially because of information in a consumer report from a consumer reporting agency, it must make disclosures to the consumer. It must advise him orally or in writing that information in the report caused or contributed to the denial or increase in cost, and inform him of the name and address of the consumer reporting agency issuing the report. The financial institution is not required to disclose the nature of the information in the report.

8. Does the financial institution have any responsibilities to the prospective employee if employment is denied on the basis of a consumer report?

Yes. If employment is denied, even partially on the basis of information in a consumer report from a consumer reporting agency, the individual must be given the name and address of the consumer reporting agency making the report. However, if employment is denied because of information from a source other than a consumer reporting agency, no disclosures are necessary.

9. What is the difference between a consumer report and an investigative consumer report?

A consumer report is any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(1) Credit or insurance.
(2) Employment purposes.
(3) Other purposes authorized under the Act.

An investigative consumer report is a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

10. What are the responsibilities of a financial institution as a user of an investigative consumer report?

When such a report is requested from a consumer reporting agency, the financial institution must mail or deliver written notice to the consumer within three days that an investigative report including information as to his character, general reputation, personal characteristics, and mode of living may be made. He must also be informed that he may make a written request for the "nature and scope" of the investigation. If the consumer makes a written request within a reasonable period of time, the financial institution must make a complete and accurate disclosure of the "nature and scope" of the investigation. One way to do this (although not required by the law) would be to furnish the consumer a copy of any questionnaires to be used in the investigation. Within 5 days after the consumer's request (or 5 days after the time the report was first requested by the financial institution, whichever is later) these disclosures must be made in writing by mailing them or otherwise delivering them to the consumer.

11. Does a financial institution have any responsibility to the consumer when it obtains information from someone other than a consumer reporting agency?

Disclosures must be made when credit for personal, family, of household purposes is denied or the charge is increased even partially because of information obtained from someone other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. Disclosure would not be required if the denial is based on the financial institution's own experience with the consumer, on his credit application, or on the institution's own credit policies. Where disclosures are required they must be made regardless of whether the information is obtained currently, or is already in the files. At the time credit is denied or the charge is increased, the financial institution must inform the consumer orally or in writing of his right to make a written request for disclosure of the "nature" of the information. If the consumer requests this information within 60 days, the financial institution must tell him the nature of the information orally or in writing. Note that these requirements apply only in the case of credit, and not in the case of insurance or employment where disclosures are required when a report from a consumer reporting agency is involved.

12. What are the civil liabilities for failing to comply with the Act?

Any consumer reporting agency or user of information that is found in willful noncomplience of the act is liable to the consumer in an amount equal to the sum of:

1. Actual damages sustained by the consumer as a result of the failure
2. Amount of punitive damages as the court may allow
3. In case of successful action to enforce any liability under this section, the cost of action together with reasonable attorney's fees as determined by the court.

Any consumer reporting agency or user of information that is found in negligent noncompliance of the act is liable to the the consumer in an amount equal to the sum of:

1. Actual damages sustained by the consumer as a result of the failure
2. In case of successful action to enforce any liability under this section, the cost of action together with reasonable attorney's fees as determined by the court.

13. Is there any protection under the Act for the consumer reporting agency or the user of information contained in a consumer report?

Unless there is willful or negligent noncompliance, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to the Act, except as to false information furnished with malice or willful intent to injure such consumer.

14. Are there any criminal penalties?

The Act provides for a fine of not more than $5,000 or imprisonment of not more than one year, or both, in the case of any person who willfully and knowingly provides information from a consumer reporting agency under false pretenses. The same criminal penalty can be imposed upon any officer or employee of a financial institution which is a consumer reporting agency who willfully and knowingly provides information from a financial institution's files about a consumer to a person not authorized to receive it.

Questions to be used in the case study covering Fair Credit Reporting Act:

1. What are some of the legitimate purposes for which a consumer report can be obtained from a consumer reporting agency?
2. Are there any requirements that the user of a consumer report must comply with?
3. Must certification be given each time a consumer report is requested?
4. What is a consumer reporting agency?
5. Under what circumstances, if any, may a bank pass on credit information to another institution without coming under the Act?
6. What provisions are imposed by the Act on a consumer reporting agency?
7. If a bank denies credit or increases the cost of credit to a customer based upon information obtained from a consumer report what are his responsibilities to that customer?
8. Does the financial institution have any responsibilities to the prospective employee if employment is denied on the basis of a consumer report?
9. What is the difference between a consumer report and an investigative consumer report?
10. What are the responsibilities of a financial institution as a user of an investigative consumer report?
11. Does a financial institution have any responsibility to the consumer when it obtains information from someone other than a consumer reporting agency?
12. What are the civil liabilities for failing to comply with the Act?
13. Is there any protection under the Act for the consumer reporting agency or the user of information contained in a consumer report?
14. Are there any criminal penalities?

FOR TRAINING USE ONLY

Attachment 6

1981

If 1981 seems a long time to wait to read this, it could be a nice long time to be sure your money is still earning a good rate of interest.

Utopia State's new investment Certificate offers you 6 years of 7½% interest. Guaranteed.

So no matter what happens to other interest rates or other investments, you can be sure of a 7½% return for 6 full years. Until 1981.

Minimum deposit is $1000. And for growth, your interest can be compounded quarterly. For income, interest can be paid monthly, quarterly or annually.

If our guarantee looks attractive, but six years is a bit too long for you, turn this card over and read about our 7¼% Four-Year Certificates.

Federal law and regulation prohibit the payment of a time deposit prior to maturity unless three months of the interest thereon is forfeited and interest on the amount withdrawn is reduced to the passbook rate.

UTOPIA STATE BANK

1979

If 1979 seems a long time to wait to read this, it could be a nice long time to be sure your money is still earning a good rate of interest.

Utopia State's Four-Year Certificate offers you 4 years of 7¼% interest. Guaranteed.

So no matter what happens to other interest rates or other investments, you can be sure of a 7¼% return for a full 4 years. Until 1979.

Minimum deposit is $1000. And for growth, your interest can be compounded quarterly. For income, interest can be paid monthly, quarterly or annually.

If you'd like to guarantee your return even longer — in fact, as long as possible — turn this card over and read about our new Six-Year Investment Certificate.

Federal law and regulation prohibit the payment of a time deposit prior to maturity unless three months of the interest thereon is forfeited and interest on the amount withdrawn is reduced to the passbook rate.

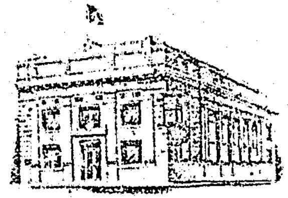
UTOPIA STATE BANK

$100 EARNS

5.50% for 90 days

6.00% for 1 year

6.50% for 2 ½ years



UTOPIA STATE BANK

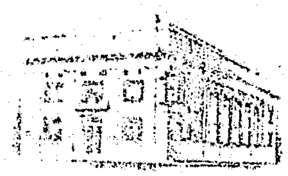
Accounts insured to $40,000 by FDIC

We'll Help Your Money Make The Most.

WITH CONTINUOUS COMPOUNDING

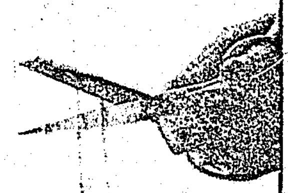
ANNUAL YIELD	MINIMUM	TERM
7.32 %	$1,000.00	4 YEARS
6.62 %	$1,000.00	2½ YEARS
6.18 %	$1,000.00	1 YEAR
5.62 %	$1,000.00	3 MONTHS
5.14 %	PASSBOOKS	NO MINIMUM

UTOPIA
STATE
BANK



Accounts insured to $40,000 by FDIC

UTOPIA STATE BANK GIVES YOU ABSOLUTELY FREE CHECKING



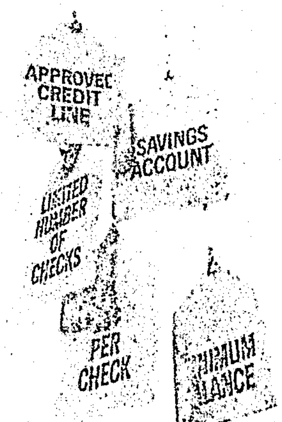
Yes, at USB you get really Free Personal Checking—Checking with absolutely no strings attached. Look:

- No minimum balance required
- No limit on number of items per month
- No charge for regular USB checks
- No savings account required
- No approved credit line required

It's no strings free!

You may also wish to open a USB Savings account now paying 5%

PROFIT FROM DAY OF DEPOSIT TO DAY OF WITHDRAWAL



UTOPIA
STATE
BANK

No strings attached!

Accounts insured to $40,000 by FDIC

76-557 O - 76 - 39

A regular savings program is your key to financial well being. Let us help you choose the Utopia State Bank savings plan that's best for you.

Regular Savings

- Earn at the rate of 5% from the date of deposit.
- Quarterly statements.
- Interest paid quarterly.
- Withdrawal privileges.
- Automatic transfer from checking.

Savings Certificates

Guaranteed high interest yield at fixed rates, depending on maturity set by you.

- 90 Day 5¼ % *($100 Minimum)*
- 12 Months 6 % *($100 Minimum)*
- 30 Months 6½ % *($100 Minimum)*
- 4 Years 7¼ % *($1,000 Minimum)*
- 6 Years 7½ % *($1,000 Minimum)*

Certificates of Deposit

Ask about special rates on deposits of $100,000 or more.

Savings Clubs

A systematic way to save for specific purposes, like Christmas money. Ask any Utopia State Bank teller to explain how to open a savings club account.

Your Savings Insured

Your accounts are protected against loss up to $40,000 by the Federal Deposit Insurance Corporation.

UTOPIA STATE BANK

Accounts insured to $40,000 by FDIC

Attachment 7

TRUTH IN LENDING CASE PROBLEM

You are an experienced senior assistant examiner who has been delegated the duty of reviewing the loan portfolio and other records for conformance with Regulation Z and the Truth in Lending Act at the Bent Twig Trust Company.

During your review of a sample of the loans, the following questions are raised which may be answered by either a Yes or a No. (You may use any of the source material furnished to you regarding Truth in Lending.)

REFERENCE		YES	NO
226.2(c) 226.2(k)	1. Is a loan to Mr. Jones, who is not a farmer, for a delivery truck to be used for the sole purpose of transporting agricultural products for local farmers covered under Regulation Z?	___	___
226.2(k)	2. The bank has purchased some loans payable in six monthly instalments without a finance charge from a door to door magazine salesman. Are these notes covered under the Regulation?	___	___
	3. Are any of the following loans exempt from Regulation Z:		
226.3(a)	a. A loan to Mr. Brown for inventory in his grocery store with a second real estate mortgage on his home offered as additional collateral?	___	___
226.3(a), 226.301, 226.2(s)	b. A loan to the XYZ Corporation for operating money to sustain its large cattle feeding operation?	___	___
226.3(a), 226.301 226.2(s)	c. A loan to Smith and Son (partnership) operating an orange grove in Florida?	___	___
226.3(a), 226.2(s)	d. A loan to School District #40?	___	___
226.3(c)	e. A 30,000 loan on a self-propelled combine to Mr. James who farms?	___	___
226.3(c)	f. A 75,000 real estate loan to Mr. Rich for the purchase of a home?	___	___
226.3(b)	g. A 10,000 loan to Mr. Green, who is a carpenter, for 100 shares of General Motors Corporation?	___	___
226.3(a), 226.302	h. A loan to Mr. Hood for remodeling his 10 unit apartment house secured by a second mortgage on the apartment?	___	___
	4. Should any of the following charges be included in the finance charge of consumer loans not involving real estate:		
226.4(a)(2)	a. Transaction fee?	___	___
226.4(b)(1)	b. Fee for filing a financing statement?	___	___
226.4(a)(4)	c. Credit report?	___	___

REFERENCE		YES	NO
226.4(b)(2)	d. Non-filing insurance?		
226.4(a)(5)	e. Credit life insurance required by the creditor?		
226.4(a)(6)	f. Fire insurance required by the creditor with a statement of the cost and a statement that the customer may choose the person through which the insurance is to be obtained?		
226.4(a)(5)	g. Credit disability insurance is not required by the creditor; however, a borrower desiring the insurance has failed to sign and date a separate statement of his desire to purchase the insurance?		
	5. Should any of the following charges be <u>included</u> in the finance charge involving a real estate loan:		
226.4(e)(1)	a. Title search?		
226.4(e)(5)	b. Appraisal fee?		
226.4(a)(3)	c. Points paid by the buyer?		
226.4(a)	d. Commitment fee?		
226.4(e)(1)	e. Survey fee?		
226.4(a)(7)	f. FHA Insurance?		
226.4(g)	6. Demand loans are considered to have a maturity of one year for the purpose of computing the amount of finance charge and the annual percentage rate?		
226.4(h), 226.402	7. The annual premium should be disclosed in cases where the insurance premium is required to be included in the finance charge?		
226.5(a), 226.5(b)(1)	8. The annual percentage rate should be disclosed with an accuracy at least to the nearest 1 per cent?		
226.5(d)(1)(i)	9. You are reviewing an instalment note with 13 monthly payments of 60.00 and a final payment of 90.00. Interest begins to accrue at date of note. May this final payment be considered regular in amount in determining the annual percentage rate?		
226.6(a)	10. The amount of the finance charge and the annual percentage rate on a disclosure statement should be printed more conspicuously than the other amounts and percentages?		
226.6(e), 226.603	11. John Doe signs a note for the purchase of an automobile, his father cosigns, and an uncle endorses the note. The bank has furnished only one disclosure statement to John Doe. Is this adequate?		

REFERENCE		YES	NO
226.6(g)	12. A three year note requires that the borrower carry property insurance on his automobile. After one year the borrower refuses to renew his insurance and the bank purchases the insurance and adds the cost to the balance of his loan. Are new disclosures required?		
226.6(i)	13. Since the state of limitations is one year for civil liability, the banker has been disposing of completed disclosures forms after one year. Is this correct?		
226.8(a)(1), 226.801	14. The bank uses separate disclosure forms in some cases but does not obtain the customer's signature on these forms that the customer has received the disclosures. Is this a violation?		
226.8(b)(2)	15. A note for 90.00 has a finance charge of 6.25, but the annual percentage rate is not disclosed. Is this a violation?		
226.8(b)(3), 226.8(d)(3)	16. A note secured by a first lien on a dwelling made to finance the purchase of that dwelling does not disclose the total of payments or the total amount of the finance charge. Is this all right?		
226.8(j)	17. A borrower wishes to refinance his note and borrow an additional 1,000.00. Does the bank have to give a new disclosure?		
226.8(1)	18. A borrower wishes to extend his original six month note for four months, and the bank will not charge an extension fee. Must new disclosures be made?		
226.8(n), Footnote 13	19. The bank sends out reminder notices on its instalment notes showing the annual percentage rates and the date by which payment must be received in order to avoid late charges. Are these disclosures adequate?		
226.8(n)	20. The bank only shows the balance due on its delinquency notices. Are any disclosures required on a delinquency notice?		
	21. Does the bank have to give a rescission notice to the following individuals:		
226.9(g)(1)	a. A real estate loan to Mr. Spark secured by a first mortgage on a dwelling in which he expects to reside and for the purpose of purchasing that dwelling?		
226.9(a)	b. A second real estate mortgage to Mr. Hayes taken on his residence to secure a previous debt to this bank?		
226.9(b), 226.902	c. Mr. Rock guarantees a personal loan for another individual and gives a second mortgage on his home as additional security?		
226.9(a)	d. A real estate loan to Mr. Snyder secured by a first mortgage on a vacant lot on which he expects to construct his residence?		

TRUTH IN LENDING CASE PROBLEM - 4 -

REFERENCE			YES	NO
226.9(a)	22.	The right of rescission may run the full term of a real estate loan if the required disclosures have not been given to the borrower?	___	___
226.9(a), 226.9(c)(1)	23.	At closing, the required disclosures are given to the borrower and a real estate transaction subject to the right of rescission is consummated. The rescission notice was given to the borrower a week ago. May the banker disburse the proceeds to the borrower immediately after closing?	___	___
226.9(b)	24.	The bank should furnish each owner of the property subject to rescission who is also a party to the transaction one copy of the rescission notice?	___	___
226.10(d)(1)	25.	Is it all right for a bank to advertise 4-1/2% add-on in addition to showing a 8.21% annual percentage rate?	___	___
226.10(d)(2)	26.	If a bank advertisement for new automobile loans shows the number and amount of instalment payments, then it must state the dollar amount of the finance charge as one of the required disclosures?	___	___
226.13(b)	27.	May this bank send out unsolicited credit cards to select groups of individuals after careful credit screening?	___	___
226.13(c)	28.	May this bank under certain conditions hold a customer responsible for up to 100.00 in liability for unauthorized use of its credit card?	___	___
130(a)	29.	May a consumer sue this bank for inadequate advertising disclosures under Regulation Z?	___	___
131 and Examiner Memo (6-30-71)	30.	Does this bank take any risk in accepting dealer paper with inadequate disclosures?	___	___
R/D Memo (6-23-69)	31.	A letter-report should be written to the bank's Board of Directors in almost all cases where violations of Regulation Z are found in the bank?	___	___
R/D Memo (6-23-69) and 112	32.	A criminal letter-report should be written to the U.S. Attorney where bankers have willfully and knowingly given false or inaccurate information or failed to give information required under Regulation Z and the Truth in Lending Act?	___	___
R/D Memo (8-11-71)	33.	State consumer protection laws may be ignored by you because these laws are usually enforced by State officials?	___	___
Examiner Memo (6-30-71) and R/D Memo (6-23-69)	34.	When you find improper disclosures with respect to dealer paper that the bank has purchased or holds as collateral, you should write a letter-report to the bank's Board of Directors and, in addition, notify the proper Federal Agency having jurisdiction over the dealer by a letter-report?	___	___

TRUTH IN LENDING CASE PROBLEM - 5 -

REFERENCE			YES	NO
XXXXXX	35.	In writing letter-reports to the bank's Board of Directors, you may cite violations from Sections 226.1, 226.2, 226.3, and 226.12 of Regulation Z?	___	___

ANSWERS TO TRUTH IN LENDING CASE PROBLEM

1. No. This is a loan for a business purpose other than an agricultural purpose. In order to have an agricultural purpose, a natural person must cultivate, plant, propagate, or nurture the agricultural products involved. 226.2(c), 226.2(k), PIL-41

2. Yes. Irrespective of the lack of a finance charge, this credit is payable, pursuant to an agreement, in more than 4 instalments and defined as consumer credit. 226.2(k), PIL-11

3. a. Yes. This loan is for a business purpose and a second mortgage on the customer's residence does not affect the exemption from the Regulation. 226.3(a), PIL-277

   b. Yes. Corporations (organizations) are exempt from Regulation Z even if the loan is for an agricultural purpose. 226.3(a), 226.2(s), 226.301

   c. Yes. Partnerships (organizations) are exempt from Regulation Z even if the loan is for an agricultural purpose. 226.3(a), 226.2(s), 226.301

   d. Yes. Governmental subdivisions (organizations) are exempt from Regulation Z. 226.3(a), 226.2(s)

   e. Yes. This is a non-real estate transaction over $25,000. 226.3(c)

   f. No. A real estate transaction to a natural person is covered regardless of amount. 226.3(c)

   g. No. This loan is considered to be consumer credit since the individual is not directly involved in the business in which he is investing. 226.3(b), 226.2(k), PIL-241, PIL-368

   h. Yes. Credit to an owner of a dwelling containing more than four family units for the purpose of remodeling that dwelling is considered credit for a business purpose. 226.3(a), 226.302

4. a. Yes. 226.4(a)(2)

   b. No. 226.4(b)(1)

   c. Yes. 226.4(a)(4)

   d. No. 226.4(b)(2), PIL-35

   e. Yes. 226.4(a)(5)

   f. No. 226.4(a)(6)

   g. Yes. 226.4(a)(5)

5. a. No. 226.4(e)(1)

   b. No. 226.4(e)(5)

   c. Yes. 226.4(a)(3)

   d. Yes. 226.4(a), PIL-272, PIL-309

   e. No. 226.4(e)(1)

   f. Yes. 226.4(a)(7), PIL-317

6. No. Demand loans are considered to have a maturity of one-half year for computing the amount of finance charge and the annual percentage rate. 226.4(g)

7. No. The amount of premium covering the entire period of time that the creditor requires the customer to maintain the insurance should be disclosed. 226.4(h), 226.402

8. No. The annual percentage rate should be disclosed with an accuracy at least to the nearest quarter of one percent. 226.5(a), 226.5(b)(1)

9. Yes. The creditor may consider the 90.00 payment as regular since the period from the date the finance charge begins to accrue and the date the final payment is due is more than a year and the 90.00 payment is not more than 50 percent greater than the regular payment. 226.5(d)(1)(i)

10. No. The terms "finance charge" and "annual percentage rate" where required should be printed more conspicuously than other required terms. 226.6(a)

11. Yes. In a nonrescindable transaction, the creditor need only furnish one disclosure statement to one of the direct borrowers. 226.6(e), 226.603

12. No. The increase in the loan as a result of the customer's failure to renew his insurance is considered a subsequent occurrence not requiring additional disclosures. 226.6(g), PIL-113, PIL-202

13. No. The creditor shall preserve evidence of compliance with the Regulation for a period of not less than two years after the date each disclosure is required to be made. 226.6(i)

14. No. There is no requirement under the Regulation that the customer sign any disclosure statement. Reference to a signature in the Regulation is a reference to the contract signature. Requiring a signed receipt for a disclosure statement may be recommended as a good practice. 226.8(a)(1) & (2), 226.801, PIL-106, PIL-333

15. No. The annual percentage rate need not be disclosed since the amount financed exceeds $75 and the finance charge does not exceed $7.50. 226.8(b)(2)(ii)

16. Yes. Both disclosures may be excluded in a loan secured by a first lien on a dwelling and made to finance that dwelling. 226.8(b)(3), 226.8(d)(3)

17. Yes. When an existing obligation is increased, this is considered a new transaction subject to disclosure requirements. 226.8(j)

18. No. In the case of an obligation where there is no fee for an extension, no new disclosures need be made. 226.8(1), PIL-223

19. Yes. These are the two required disclosures for a permissable periodic statement (reminder notice). 226.8(n), Footnote 13, PIL-110, PIL-324

20. No. There are no disclosures required for a delinquency notice. 226.8(n), PIL-110

21. a. No. The right of rescission is not applicable to the creation, retention, or assumption of a first lien to finance the acquisition of a dwelling in which the customer resides or expects to reside. 226.9(g)(1)

    b. Yes. Since a security interest is being taken on a residence, the right of rescission is applicable. 226.9(a), PIL-217, PIL-300

    c. Yes. The right of rescission and the right to receive disclosures apply to all joint owners of the property who are parties to the transactions. 226.9(b), 226.902, PIL-361, PIL-410

    d. Yes. The exception for a purchase money first mortgage applys to a dwelling and not to a vacant lot. 226.9(a), 226.9(g)(1), PIL-162, 226.2(y)

22. Yes. If the required disclosures are not made and the notice of rescission is not given, the right of rescission could continue indefinitely. 226.9(a), PIL-219 *Limited to 3yrs.*

23. No. The creditor shall not disburse any money until the rescission period has expired and he is reasonably satisfied that the customer has not exercised his right of rescission. The right of rescission continues until midnight of the third business day following the date of consummation or date of delivery of the required disclosures, whichever is later. 226.9(a), 226.9(c)(1)

24. No. The bank should furnish each owner of the property who is also a party to the transaction two copies of the notice of rescission as well as one copy of the disclosure statement. 226.9(b), PIL-410

25. No. "No use should be made in advertising, or in other communications with consumers, of the add-on or discount rates (whether in percentages or dollars-per-hundred). Under the Act and Regulation, only the annual percentage rate may be used in advertising the cost of consumer credit." Executive Officer Memorandum 9-27-71, 226.10(d)(1), PIL-465

26. No. The amount of the finance charge is not one of the required items to be stated in advertising of credit other than open end. The amount of the finance charge is expressed as an annual percentage rate. 226.10(d)(2)(iv)

27. No. "No credit card shall be issued except: (1) In response to a request or application therefor, or (2) As a renewal of, or in substitution for, an accepted credit card whether such is issued by the same or a successor card issuer." 226.13(g)

28. No. A cardholder's liability is limited to $50.00 for unauthorized use of a credit card. 226.13(c)

29. No. Civil action for advertising violations is not provided for under the Act. 130(a)

30. Yes. "A bank may be held to have direct responsibility in civil litigation for improper dealer disclosures." Memorandum to Examiners and Assistant Examiners (6-30-71)

31. Yes. "Other violations" --Regulation Z-- "and comment shall be detailed in a letter-report addressed to the Board of Directors of the bank, and forwarded to the Supervision Examiner along with the completed Report of Examination." Memorandum to Supervising Examiner (6-23-69)

32. Yes. "Criminal violations" --Regulation Z-- "will be reported to the United States Attorney in accordance with existing instructions." Criminal liability is defined in Section 112 of the Act. Memorandum to Supervising Examiners (6-23-69) and 112

33. No. "While the responsibility for insuring compliance with such State laws justly resides with the State authorities, we share the Commission's" (National Commission on Consumer Finance) "belief that effective enforcement will be encouraged by the availability to Corporation examining personnel of State check lists or other material relating to State consumer protection laws applicable to banks." Memorandum to Regional Directors (8-11-71)

34. Yes. "When improper disclosures are noted with respect to dealer paper purchased or held as collateral, violations by the bank should be reported in accordance with existing instructions. In addition, the Federal Agency having jurisdiction over the dealer should be notified of the improper disclosures by the dealer as well as the corrective action contemplated by the bank." Memorandum to Examiners and Assistant Examiners (6-30-71)

35. No. It is improper to cite violations of Sections 226.1, 226.2, 226.3, and 226.12. These are explanatory Sections of Regulation Z. However, reference may be made to these Sections for the purpose of explanation or interpretation.

Attachment 8

FOR TRAINING USE ONLY

Springfield, Anystate is a community with about 25 percent of its population being of foreign origin. The bank consistently advertises that it is an equal opportunity lender, but a review of mortgages made to these immigrants suggests otherwise. Larger downpayments are required, interest rates are higher and repayment terms are more stringent than for other mortgage loans. When questioned on what appears to be discrimination, the president countered by stating his bank was the only one in the community to lend money to "those people". As far as the terms of these loans were concerned, he was only protecting his depositors' funds by trying to insure repayment of these loans. Do you think the bank is complying with Section 805 of the Civil Rights Act of 1968?

While discussing the bank's weak security portfolio, the bank president asks if he can get a copy of the Manual of Examination Policies section on securities. What would your answer be to this request?

Former Chairman of the Board, I. B. Small, now deceased, owned 56% of the common stock of Sunset State Bank (now under examination) and 28% of the common stock of the First State Bank. Prior to his death, Mr. Small was also chairman of the Board of the First State Bank. His estate is being handled by his attorney, Joe Smith, who has full powers under the terms of the will. All of Mr. I. B. Small's stocks and bonds will be inherited by his two sons, Mr. W. E. Small, president of Sunset State Bank, and Mr. O. U. Small who is vice president of Sunset State Bank and president of First State Bank. The sons divided the inheritance equally. President W. E. Small stated that it was his father's desire to keep the stock in the family even though this additional stock made his sons the majority stock holders in both institutions. He also stated he would be glad when the estate was settled so he could "get things organized". Is any action required by the examiners or the executive officers of the two banks?

Attachment 9

OFFICE MEMORANDUM	Federal Deposit Insurance Corporation

DATE: 4/28/70

TO : Review Examiner Hoskins

FROM : R/D Pierce

SUBJECT: Regulation Z

Several of our younger examiners and senior assistant examiners are apparently having difficulty understanding the basic requirements for an extension of credit to be subject to this regulation. Prepare a Regional Office memorandum to all Examiners and Assistant Examiners indicating what the requirements are and what they should do if a violation is disclosed.

Regulation Z

1. Must be a natural person.

2. Primarily for personal, family, household or agricultural purposes.

3. For which a finance charge is or may be imposed, or which is repayable in more than four instalments.

4. Credit transactions of more than $25,000 are exempt except real property transactions which are covered regardless of amount.

5. Finance charge and annual percentage rate are two most important concepts. They are designed to tell customer at a glance how much he is paying for credit and the relative cost of that credit in percentage terms.

Business and commercial credit, other than agricultural, is exempt.

SHOULD DO

1. Discuss with management pointing out deficient areas.

2. Write Reg. Z letter pointing out areas of noncompliance and requesting they advise the Regional Office of corrective action.

3. Letter should be addressed to Board of Directors.

4. Letter sent to Regional Office with report of examination for editing before sent to bank.

5. Follow-up on corrective action and procedures initiated by bank for compliance in the future is handled by Regional Office.

What are the penalties under the Truth in Lending Act?

If you fail to make disclosures as required under this legislation, your customer may sue you for twice the amount of the finance charges - for a minimum of $100, or up to a maximum of $1,000 - plus court costs and attorney's fees. And if you willfully or knowingly disobey the law or Regulation Z and are convicted you could be fined up to $5,000, or be imprisoned for one year, or both.

How many Federal agencies have specific responsibilities for enforcement of Regulation Z?

Nine. Corporation has all nonmember insured banks.

What is the finance charge?

It is the total of all costs which the customer may pay, directly or indirectly for obtaining credit. (Reg. Z - 226.4)

Some of the more common items:
- Interest
- Loan fee
- Finders fee or similar charge
- Time price differential
- Amounts paid as a discount
- Service, transaction or carrying charge
- Points
- Appraisal fee (except in real estate transactions)
- Premium for credit life or other insurance, should you make this as a condition for giving credit
- Investigation or credit report fee (except in real estate transactions)

What is the annual percentage rate?

Simply put, it is the relative cost of credit in percentage terms. (Reg. Z - 226.5(c))

How accurate must the annual percentage rate be?

Accurate to the nearest one quarter of one percent. (Reg. Z - 226.5)

Attachment 10

OFFICE MEMORANDUM	Federal Deposit Insurance Corporation

DATE: 5-20-7x

TO : Review Examiner

FROM : ARD Oldfield

SUBJECT: Fair Credit Reporting Act

Please write a memorandum to all examiners and assistants explaining how banks can be suppliers of credit information and what the bank must do if it qualifies as a supplier of credit information.

FDIC 3020/04(1-76)

As long as the information is gleaned from a bank's own experiences with consumers, the bank can transmit or pass on such information to other banks or creditors without becoming a consumer reporting agency, and thus need not be concerned with all of the duties and responsibilities attendant on such status under the Fair Credit Reporting Act.

A bank comes within the definition of consumer reporting agency if, for fees, dues or on a cooperative nonprofit basis, it regularly engages in the practice of evaluating consumer credit information for the purpose of furnishing consumer reports to third parties. Consumer reporting agency status would be accorded to banks in any situation in which they exchange consumer information other than that which relates solely to their own experiences.

If a bank qualifies as a consumer reporting agency:

1. It must obtain a certification from all users of its consumer reports that they will only be used for one or more purposes authorized under the Act

2. It must establish and maintain procedures to insure that obsolete information is not included in any consumer report. In all cases, the items of information listed in the Act become obsolete if they antedate the report by more than 7 years, except for bankruptcies where the time limit is 14 years. (There are 3 restrictions on obsolete material)

3. Upon request and proper identification of any consumer, the bank must disclose to him (1) the nature and substance of all information, except medical, that it has in its files concerning such consumer, (2) the sources of the information, except in the case of an investigative consumer report, and (3) the recipients of any consumer reports within six months preceeding the request, two years in the case of reports furnished for employment purposes.

4. The bank must adhere to certain procedural requirements mandating how, when and under what circumstances the information requested by the consumer shall be disclosed, such as providing trained personnel to explain to the consumer any requested information furnished to him

5. If a consumer questions the completeness or accuracy of any information in his file, the bank must, within a reasonable time, reinvestigate and record the current status of the questioned information, unless it has reasonable grounds to believe the dispute is frivolous or irrelevant. This part also explains the procedure that is used when the disputed information is inaccurate, can no longer be verified, or the dispute is not resolved after the reinvestigation.

OTHER FAIR CREDIT REPORTING QUESTIONS that could be asked:

1. Purpose: The act attempts to achieve a balance between the needs of business for continued access to consumer credit information necessary to sound business decisions and the consumer's right (1) to demand that credit information be fair, relevant and accurate and (2) to be protected from incorrect and out-of-date information in the files of a " consumer reporting agency".

2. In a general sense, a consumer reporting agency might be termed a ___________.

   (Credit bureau)

3. What class of borrowers are not covered by this act, but are covered by regulations Z?

   (Agricultural borrowers)

4. Can a bank use its records for consumer credit information?

   (Yes. There is no restriction on a bank's use of information based upon its own prior experiences or dealings with a consumer.)

5. Is the bank allowed to give a consumer report to an Examiner?

   (Yes. Furnishing an examiner with such consumer information constitutes a privileged and confidential communication and is, therefore, in legal contemplation, a "nondisclosure" by the bank.)

Other questions regarding reports and regulations that have to be checked by Examiners during examinations.

1. What reports does an examiner have to look for when bank under examination has 50 or more employees?

(1. To determine that the bank has filed Equal Opportunity Reports. Reports have to be filed annually by March 31 with the U. S. Treasury department (50 to 99 employees) or with Joint Reporting Committee (100 or more employees)
 2. All banks with 50 or more employees must have a written Affirmative Action Program on file at the bank.)

Note: The findings are to be included on page D-1.

2. Regarding Fair Housing:

   What must the bank display in the lobby of the bank? What does the Examiner do if such is not displayed?

   (The fair housing poster. Failure to display poster: The examiner should show it in the schedule for Violations of Laws and Regulations (Group I) Such non-compliance should be shown as a contravention of the Corporation policy statement and not a violation of law or regulation.)

END