Y4
.D 63/2
In 8

1036

INTEREST AND USURY

Y4 D63/2 In8

GOVERNMENT DOCUMENTS
Storage
OCT 25 1971
THE LIBRARY
KANSAS STATE UNIVERSITY

HEARING

BEFORE THE

COMMITTEE ON THE DISTRICT OF COLUMBIA UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 1938

TO AMEND CERTAIN PROVISIONS OF SUBTITLE II OF TITLE 28, DISTRICT OF COLUMBIA CODE, RELATING TO INTEREST AND USURY

AUGUST 5, 1971

Printed for the use of the
Committee on the District of Columbia

U.S. GOVERNMENT PRINTING OFFICE
66-583 WASHINGTON : 1971

COMMITTEE ON THE DISTRICT OF COLUMBIA

THOMAS F. EAGLETON, Missouri, *Chairman*

DANIEL K. INOUYE, Hawaii
ADLAI E. STEVENSON III, Illinois
JOHN V. TUNNEY, California
CHARLES McC. MATHIAS, Jr., Maryland
LOWELL P. WEICKER, Jr., Connecticut
JAMES L. BUCKLEY, New York

Robert Harris, *Staff Director and Counsel*
Gene E. Godley, *General Counsel*
Carolyn W. Johnson, *Minority Staff Director*

CONTENTS

BILL

Page

S. 1938 ---- 2

WITNESSES

Burke, Vincent C., executive vice president, Riggs National Bank ---- 121
Danzansky, Joseph B., president, Giant Foods, and president, Metropolitan Washington Board of Trade ---- 57
Hahn, Gilbert, Jr., Chairman, District of Columbia Council ---- 4
Janeway, Eliot, president, Janeway Publishing & Research Corp., New York N.Y ---- 62
Jennings, L.A., chairman of the board, Riggs National Bank ---- 36
Kass, Benny L., law firm of Boasberg, Granat & Kass, District of Columbia Commissioner, National Conference of Commissioners on Uniform State Laws ---- 66
Kessler, Miss Gladys; Greater Washington Chapter, Americans for Democratic Action; law firm of Berlin, Roisman & Kessler ---- 124
White, Kirk staff member, District of Columbia Council ---- 4

MATERIAL SUBMITTED

Burns, Arthur F., Chairman of the Board of Governors, Federal Reserve System, letter to the chairman, August 4, 1971 ---- 38
Camp, William B., Comptroller of the Currency, letter to the chairman, August 10, 1971 ---- 133
Danzansky, Joseph B., president, The Metropolitan Washington Board of Trade, letter to the chairman, September 8, 1971 ---- 135
District of Columbia City Council report, September 15, 1970 ---- 31
District of Columbia Uniform Consumer Credit Code ---- 75
Hahn, Gibert, Jr., Chairman, District of Columbia Council, prepared statement ---- 7
Hechinger, John W., former Chairman, District of Columbia Council,and president, Hechinger, letter to the chairman, August, 24, 1971 ---- 134
Jennings, L.A., chairman of the board, Riggs National Bank, addenda to statement:
(1) Legislation since 1902 affecting bank interest rate ceilings in District of Columbia ---- 50
(2) Average ceiling rates authorized by the 50 States for unsecured installment loans, direct automobile installment loans, and revolving credit accounts ---- 50
(3) Ceiling rates—unsecured installment loans ---- 51
(4) Ceiling auto rates ---- 52
(5) Revolving credit accounts ---- 53
Kass, Benny L., Executive Director, District of Columbia Commission on Interest Rates and Consumer Credit:
Letter to district manager, Silver Spring, Md., April 10, 1970 ---- 25
Letter to the chairman, May 28, 1971 ---- 74
Memorandum from Edward Gross re bank interest rates on auto loans in the District of Columbia ---- 71
Map of District of Columbia metropolitan area showing number of banks and offices in each jurisdiction ---- 54
Phillips, Channing E., District of Columbia Democratic National Committeeman, prepared statement ---- 133
Proposed regulation exempting certain loans and mortgages from the usury law of the District of Columbia ---- 34

MATERIAL SUBMITTED—Continued

	Page
Report and recommendations to the city council from Commission on Interest Rates and Consumer Credit	7
Separate report from members of the District of Columbia Commission on Interest Rates and Consumer Credit	28
Smith, Joseph F, executive director; Neighborhood Consumer Information Center, letter to Benny Kass, September 30, 1970	19
Shanogle, John A., attorney at law, letter to the chairman, August 26, 1971	134
Supplementary statement of Commissioners Burke, Kennedy, McBrier, Stadtler, and West	26
West, Martin R., Jr., Weaver Bros., letter to Benny Kass, October 1, 1970	20

TABLES

District of Columbia commercial banks: Gross loans 1967–69	21
Functional cost analysis consumer installment loan breakeven points—1968	22
Loans granted by amount 1968–69	25
Principal assets, liabilities, and capital accounts of national banks in the District of Columbia, Maryland, and Virginia, December 31, 1969	21
UPO consolidated comparative credit union report—April 30, 1970	23
UPO Credit monthly release—April 30, 1970	24

APPENDIX

Economic Report on Installment Credit and Retail Sales Practices of District of Columbia Retailers	141

INTEREST AND USURY

THURSDAY, AUGUST 5, 1971

U.S. Senate,
Committee on the District of Columbia,
Washington, D.C.

The committee met at 9:30 a.m., pursuant to notice, in room 6226, New Senate Office Building, Senator Thomas F. Eagleton (chairman of the committee) presiding.

Present: Senator Eagleton.

Also present: Robert Harris, staff director; Gene E. Godley, general counsel; Robert B. Washington, counsel; and Carolyn W. Johnson, minority staff director.

The Chairman. Good morning. The Senate District of Columbia Committee is in order to hear and take testimony on S. 1938, a bill to amend the banking laws to allow the District of Columbia banks to charge the lower of the interest rates which are legally allowed in Maryland and Virginia.

The bill under consideration, S. 1938, is as follows:

(The bill S. 1938 follows:)

92D CONGRESS
1ST SESSION

S. 1938

IN THE SENATE OF THE UNITED STATES

MAY 25, 1971

Mr. EAGLETON introduced the following bill; which was read twice and referred to the Committee on the District of Columbia

A BILL

To amend certain provisions of subtitle II of title 28, District of Columbia Code, relating to interest and usury.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the text of section 28-3301 of subtitle II of title 28,
4 District of Columbia Code, is amended to read as follows:
5 "Except as otherwise provided in section 28-3301a,
6 the parties to an instrument in writing for the payment of
7 money at a future time may contract therein for the payment
8 of interest on the principal amount thereof at any rate not
9 exceeding 8 percent per annum.".
10 SEC. 2. Subtitle II of title 28, District of Columbia Code,

1 is amended by inserting immediately after section 28-3301
2 of such subtitle the following new section:
3 **"§ 28-3301a. Rate of interest for banking institutions**
4 "Any banking institution may loan money at any rate
5 not exceeding the lesser of the rate which is in effect and
6 which would be applicable under the laws of the State of
7 Maryland or of the Commonwealth of Virginia at the time
8 of making such loan, and interest at such rate may be re-
9 ceived or taken in advance to the same extent permitted
10 under such laws. The word 'banking institution' as used in
11 this section shall mean any incorporated bank which accepts
12 deposits and holds itself out to the public as engaged in the
13 business of banking.".
14 SEC. 3. The text of section 28-3303 of subtitle II of title
15 28, District of Columbia Code, is amended to read as follows:
16 "If a person or corporation contracts in the District—
17 "(1) verbally, to pay a greater rate of interest than
18 6 percent per annum, or
19 "(2) in writing, to pay a greater rate than is per-
20 mitted under section 28-3301 or 28-3301a, the creditor
21 shall forfeit the whole of the interest so contracted to be
22 received.
23 This section does not affect sections 26-601 to 26-611."

The CHAIRMAN. This morning we will hear from the Chairman of the City Council, Mr. Gilbert Hahn, who I hope will give the committee the benefit of the work that the City Council has done on the entire subject of interest rates and consumer credit as well as his comments on the merits of the specific bill before us.

We will then hear from members of the banking and business community, an economist, the District of Columbia Commissioner to the National Conference of Commissioners on Uniform State Laws, who I hope will tell us about the proposed uniform consumer credit code and modifications of it which were made by a committee appointed by the City Council, and from representatives, of various citizens groups.

Let me say at the outset I am not a banking expert and I stand ready to be educated by all of the excellent witnesses we will have here before us this morning.

Our first witness, then, will be Mr. Gilbert Hahn, the Chairman of the District of Columbia City Council.

STATEMENT OF GILBERT HAHN, JR., CHAIRMAN, DISTRICT OF COLUMBIA COUNCIL, ACCOMPANIED BY KIRK WHITE, STAFF MEMBER, DISTRICT OF COLUMBIA COUNCIL

Mr. HAHN. Good morning, Mr. Chairman, I would like to introduce Mr. Kirk White of the City Council staff, who is with me here this morning.

The CHAIRMAN. We welcome you, Mr. White.

Mr. WHITE. Thank you, sir.

Mr. HAHN. Mr. Chairman, thank you for requesting the opinion of the District of Columbia City Council on S. 1938.

I am very intrigued by the bill which has been introduced which basically provides that the ceiling on interest rates for banking shall be the lesser of applicable rates set either in the State of Maryland or the Commonwealth of Virginia.

It would be our view on this specific bill that while this is an ingenious method of fixing rates competitive to those in the Greater Washington metropolitan area, it has the weakness of the Congress delegating its power to fix interest rates and credit charges to the sovereign States of Virginia and Maryland.

In our opinion, it would be preferable, either for the Congress itself to fix these rates suitably to the needs of the District of Columbia or, if it is to be delegated by Congress, preferably that it be given the City Council.

As you mentioned in your opening statement, Mr. Chairman, a blue ribbon panel of the District of Columbia Commission on Interest Rates and Consumer Credit, set up by the City Council pursuant to Resolution 70–12, rendered a report on September 22, 1970, on interest rates and consumer credit.

A copy of this report and recommendation is attached to my statement. I believe you have copies of it.

That Commission was chaired by then attorney, and now judge, Theodore R. Newman, Jr., of the Superior Court of the District of Columbia.

The Commission contained a distinguished panel of community leaders, representatives of consumer interest groups, and businessmen of the District of Columbia.

The recommendations, which are summarized in the letter of transmittal to me and the summary attached, were concerned with consumer protections and limitations on creditors' remedies such as repossession, garnishment, and debt collection practices. They provided for a Consumer Credit Administrator and dealt with many of the issues that are provided for in the Uniform Consumer Credit Code.

With respect to the question of interest rate ceilings or consumer credit charge ceilings, the panel made two recommendations—or perhaps it is more accurate to state that we present two alternative recommendations for your consideration:

(A) The City Council, after full hearings, recommend rates to the Congress to be enacted into law as part of the proposed District of Columbia Consumer Credit Code; or

(B) ——

The CHAIRMAN. Where are you reading from?

Mr. HAHN. I am reading from the report itself. There is a letter of transmittal to me, and following that letter of transmittal there is something called "Summary of Major Recommendations." I had started at the bottom of the first page and am at the top of the second.

(B) The City Council ask Congress for full authority to set rates after our proposed District of Columbia Consumer Credit Code has been enacted by Congress.

Returning again to my written statement, I mention in my written statement references to these two recommendations.

From the point of view of bill S. 1938, this bill would reject both of these recommendations.

From the point of view of the City Council, the Council would recommend the second of the two views; that is, that the power, if it is going to be delegated, should be delegated to the Council rather than to the States of Maryland and Virginia, and that the rates be set by the City Council after public hearing.

As the Council has been increasing in its scope, authority and power, we believe that this is a power which should now be delegated to the City Council. Congress, of course, always has the ability, if it makes such a delegation, either to remove the power or to veto actions of the Council.

Congress has, in fact, taken a step in this direction already, when it enacted legislation in 1970 to give the power to the City Council to remove the interest ceiling on FHA and VA guaranteed or insured loans.

For your information there is submitted the report of Vice Chairman Tucker's committee, after hearings into this matter on the regulation 70–38 of September 22, 1970, which did at that time remove the usury ceiling so that FHA and VA loans could be granted at the time.

As it happened, shortly after that, interest rates went down by themselves, but this power could conceivably be necessary again if, unhappily, the interest rates should make it impossible to grant these loans in the city.

As to the report itself, which is a major work, it was done with the assistance and cooperation of the community and the business community. Mr. Benny Kass acted as Executive Director of the Commission.

The report has a great many recommendations which I think as a side issue should be of great interest to your committee, dealing with the matter of the "holder in due course" doctrine, "balloon" payments, referral sales, door-to-door solicitations, as well as the recommendations that I have cited to you about ceilings on interest rates and consumer credit.

The CHAIRMAN. Thank you very much. Does that complete your statement, Mr. Hahn?

Mr. HAHN. Yes, Mr. Chairman.

The CHAIRMAN. Do I take it from your statement you believe the City Council should set all interest rates, or would you limit it just to interest rates with regard to banks specifically, or how much or how little?

Mr. HAHN. We think it would be desirable that the City Council be given the power to increase ceilings on interest rates of all kinds as well as credit charges of all kinds. Actually, that is the critical power.

The CHAIRMAN. Now, is that irrespective of the Uniform Consumer Credit Code?

Mr. HAHN. In the case of the Uniform Consumer Credit Code, this report does have recommendations that have to do with other credit practices. We would also, of course, recommend that the recommendations of that report be implemented. The interest rates and consumer credit charges are a part of that report.

As to that issue, the Commission had two parallel views. One is that those rates should continue to be fixed by Congress. Of course, in that sense, the bill before us is another form of the Congress setting interest rates. That is not inconsistent with the first recommendation.

But the Council feels that it prefers the second view. It would like the power to set ceilings for FHA and VA loans, and with what I hope has been viewed by everybody as a good experience in that venture, that we should go to the major issue and give the entire power to the city government.

The CHAIRMAN. Has the Council implemented that authority which Congress gave to it last year, and has it set rates?

Mr. HAHN. What it had the power to do, actually, was for periods of time to remove the ceiling, and that is what it did in 1970 when the crisis required it. It permitted those loans to be granted at the rates which were then fixed by the FHA and the VA.

The CHAIRMAN. Since the prime rate and other rates have dropped, is the ceiling now in effect?

Mr. HAHN. The ceiling is not in effect, but the Council should, and probably will, restore the ceiling again.

The CHAIRMAN. Are current FHA and VA loans below the 8 percent?

Mr. HAHN. Yes.

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

Mr. HAHN. Thank you, Mr. Chairman.

The CHAIRMAN. The report to the City Council from the Commission on Interest Rates and Consumer Credit, and the documents from Mr. Tucker to the chairman of the Housing and Urban Development Committee, and such other documents as Mr. Hahn has submitted, will be made part of the record.

(The documents follow:)

PREPARED STATEMENT OF CITY COUNCIL CHAIRMAN GILBERT HAHN, JR.

Good morning, Senator Eagleton and distinguished members of the Senate District Committee.

Thank you for requesting the opinion of the District of Columbia City Council on this legislation.

I am very intrigued by the bill which Senator Eagleton has introduced which basically provides that the ceiling on interest rates for banking shall be the lesser of applicable rates set either in the State of Maryland or the Commonwealth of Virginia.

It would be our view that while this is an ingenious method of fixing rates competitive to those in the greater Washington metropolitan area, it has the weakness of the Congress delegating its power to fix interest rates and credit charges to the sovereign states of Virginia and Maryland.

In our opinion, it would be preferable, either for the Congress itself to fix these rates suitably to the needs of the District of Columbia, or for the power to reside in the Mayor and Council to set them.

As it happens, a blue ribbon panel, the District of Columbia Commission on Interest Rates and Consumer Credit, set up by the City Council pursuant to Resolution 70–12, rendered a report on September 22, 1970, on interest rates and consumer credit.

A copy of this report and recommendation is attached. It was chaired by then attorney, and now Judge, Theodore R. Newman, Jr., of the Superior Court of the District of Columbia. It contained a distinguished panel of community leaders, representatives of consumer interest groups and businessmen of the District of Columbia.

All of the recommendations of this panel were unanimous, with the exception of their recommendation on how to set ceilings on interest rates and consumer credit charges.

In this respect, the Commission made two parallel recommendations:

(1) That the rates should be set by the Congress of the United States.

(2) That the rates should be set by the City Council, subject, of course, to the veto of the Mayor.

From the point of view of Bill S. 1938, this bill would reject both of these recommendations.

From the point of view of the City Council, the Council would recommend the second of the two views of the Commission, which is that the rates be set by the City Council after public hearing.

As the Council has been increasing in its scope, authority and power, we believe that this is a power which should now be delegated to the City Council. Congress has the ability, if it makes such a delegation, either to remove the power or to veto actions of the Council.

The Congress has, in fact, taken one small step in this direction already when it enacted legislation in 1970 to give the power to the City Council to remove the interest ceiling on FHA and VA guaranteed or insured loans.

We submit for your information, as I have stated, the report of the Commission and also the regulation and report of the Council action removing the ceiling on FHA and VA loans.

DISTRICT OF COLUMBIA COMMISSION ON INTEREST RATES AND CONSUMER CREDIT

(Established by City Council Resolution 70–12)

REPORT AND RECOMMENDATIONS TO THE CITY COUNCIL FROM COMMISSION ON INTEREST RATES AND CONSUMER CREDIT

Theodore R. Newman, Jr., *Chairman*

Joseph Beavers
Albert Beveridge, III
Vincent C. Burke, Jr.[1]
James W. Cobb
Maribeth Halloran
Raymond A. Kennedy
C. Robert McBrier
Professor Jack Murphy
Jeanus B. Parks
Clarence A. Robinson
Joseph F. Smith
Arnold C. Sternberg
John W. Stadtler
Martin R. West, Jr.

Benny L. Kass, *Executive Director*

---

[1] Replaced Frances G. Addison, III

DISTRICT OF COLUMBIA COMMISSION
ON INTEREST RATES AND CONSUMER CREDIT,
Washington, D.C., September 22, 1970.

Hon. GILBERT HAHN,
Chairman, District of Columbia City Council,
Washington, D.C.

DEAR MR. CHAIRMAN: As Chairman of the Commission on Interest Rates and Consumer Credit, it is an honor and a privilege to present to the City Council our final report. The accompanying material, which includes proposed legislative recommendations, represents the product of many, many hours of discussion and deliberation by consumers and industry, borrowers and bankers, buyers and sellers, poor and rich.

Yet, as the fifteen Commissioners were meeting, it became quite clear that there were several goals to which nearly all subscribed.

First, all were concerned with economic development for the District of Columbia. Whether in terms of competition, job opportunities, or the housing and construction market, it was generally agreed that we did not want to recommend legislation so onerous that business and industry would find no incentives for staying or moving into the District of Columbia.

Second, there was full recognition that consumer credit legislation in the District of Columbia was either non-existent or sadly out of date. The small loan law, for example, enacted more than sixty years ago, has had, as its only practical effect an anti-competitive posture, insofar as there are no small loan companies operating within the geographical boundaries of the District.

Third, there was general agreement that more credit must be made available to District of Columbia residents. Several approaches are suggested in our report, ranging from a reevaluation of the District's interest and usury laws to full encouragement and support of the nine low-income community credit unions that function here.

And finally, we all recognized the value and impact of two-way communication. To our knowledge, this was the first time that citizens of all walks of life and shades of opinion sat down in formal organization to discuss consumer problems in the District of Columbia. If I can express a personal note, shared I am confident by all Commission members, it was a very worthwhile and educational experience. We all listened, and we all learned.

The Commission's final recommendations are patterned after the Uniform Consumer Credit Code, and we are indeed grateful for the full cooperation given us by its sponsors, the National Conference of Commissioners on Uniform State Laws. But our proposed Code is not the Uniform Consumer Credit Code; we have both modified and changed it. Many of our amendments are local in origin, based on particular problems within our jurisdiction. Many of the changes, however, are taken from the proposed National Consumer Act, sponsored by the National Consumer Law Center at Boston College Law School, and we are most appreciative of their assistance.

To our able Executive Director, Benny L. Kass, who put in many long and frustrating hours, we can only say "thank you".

Mr. Chairman, I have been gratified by the deep concern and serious purpose of the members of this Commission in helping to find solutions to the problems raised by the widespread use of consumer credit. I am confident that the Commission's recommendations will make a real contribution in this area, and thus it has been a pleasure and a privilege to serve as Chairman.

With kind personal regards,

Sincerely,

THEODORE R. NEWMAN, Jr., *Chairman.*

SUMMARY OF MAJOR RECOMMENDATIONS

I. INTEREST RATES

We recommend that the existing District of Columbia interest rates and usury laws be changed to permit financial institutions and others extending credit in the District to be competitive with those in the surrounding jurisdictions of Maryland and Virginia. We strongly urge, in order to permit small loan companies to do business here, that interest rates be raised from existing levels. We have considered, but reject—perhaps only out of political reality—the concept that there be no rate ceilings at all, leaving the free money market to keep rates competitive. And we were in support of the regulation recently enacted by the City Council, which exempts FHA–VA transactions from the existing usury laws.

Your commission is divided, however, on how to accomplish our recommendations. There was strong support for the rate ceilings proposed by the Uniform Consumer Credit Code, to be enacted by the Congress of the United States, recognizing that competition will set the actual rates. There was equally strong support for recommending that Congress grant authority to the City Council to set its own rates, based of course on the premises of our recommendations.

Accordingly, we make no recommendations in this area. Or perhaps it is more accurate to state that we present two alternative recommendations for your consideration:

(A) The City Council, after full hearings, recommend rates to the Congress to be enacted into law as part of the proposed District of Columbia Consumer Credit Code;

(B) The City Council ask Congress for full authority to set rates after our proposed District of Columbia Consumer Credit Code has been enacted by Congress.

We further recommend that business corporations and non-profit corporations be treated alike for purposes of the usury statute. As the law now stands, profit corporations cannot plead usury as a defense, but the law is silent on non-profit corporations. During the recent tight-money period, this inconsistency had the effect of denying needed capital to non-profit corporations engaged in housing or educational purposes. Accordingly, we recommend that no corporation in the District of Columba be permitted to plead the defense of usury.

II. CONSUMER PROTECTIONS

We recommend that the consumer protections incorporated in the accompanying proposed District of Columbia Consumer Credit Code be enacted by Congress. We fully recognize that the consumer credit laws governing the District of Columbia do not afford the full protection needed by consumers against that small minority who engage in unscrupulous, fraudulent or otherwise unconscionable practices. If our recommendations are incorporated into law, the following major protections would be operative:

A. *Holder in Due Course.* This doctrine, fully explained in our report, would be severely restricted. In sales transactions, the buyer would be able to assert all claims and defenses he may have against the seller against any assignee that is collecting his money. And the same would apply in loan transactions where there is less than an arm's-length relationship between the lending institution and a seller of goods or services.

B. *Balloon Payments* would be restricted to protect the consumer from having to face one payment so large that he ends up in default of the entire transaction.

C. *Referral Sales, Confessions of Judgment and Wage Assignments* would be prohibited.

D. *Door-to-Door* solicitations would be subject to a three-day "cooling-off" period.

III. LIMITATIONS ON CREDITORS' REMEDIES

We have exhaustively reviewed creditors' remedies which exist in the District of Columbia, including those which are permitted by law and those which are extralegal in nature. We believe that the judgment to extend credit to a consumer in the District of Columbia should be based not on potential creditors' remedies but on existing facts available at the time of the transaction: past credit history, present and future income, and employment, to name a few criteria. Accordingly, we recommend the following limitations on existing creditors' remedies:

A. *Repossession.* Under our proposal, a debtor is given 30 days after default in the payment of money to cure said default. In other words, goods purchased cannot be repossessed just because the consumer is a few days late in his payments. Furthermore, the consumer has an opportunity to redeem his property within 15 days after repossession by paying the amount he owes.

Repossession itself would be limited to either judicial authorization or to those situations where the taking can be accomplished without breach of the peace and without entry into the consumer's home. And, if the cash price of the goods in question is $2,000 or less, the creditor is limited to an election of his remedies: he can either sue for the amount of the deficiency owed, or repossess the goods—he cannot do both.

B. *Garnishment.* We believe our proposals in this area go well beyond the new Federal law recently enacted. We recommend elimination of the procedure known as "attachment before judgment" (ABJ), severe limitations on the amount of a

person's wages that can be attached, and—perhaps most significantly—no discharge from employment for garnishment.

C. *Debt Collection Practices.* We are concerned with those debt collection practices which harass and intimidate the District consumer. These practices, we are told, are especially pernicious in many low-income areas of our City, and—although we have no specific language due to time limitations—we recommend that legislation or regulations be enacted to curtail such practices.

D. *Unconscionability.* This is perhaps one of the strongest limitations on creditors' remedies. Our recommendation permits a court to void or otherwise limit a contract if, as a matter of law, it was unconscionable at the time it was made, induced or was subsequently enforced by unconscionable conduct.

IV. CONSUMER CREDIT ADMINISTRATOR

We recommend the creation, within the District of Columbia government, of the office of Consumer Credit Administrator, with full powers to investigate and curtail unconscionable or otherwise unsavory practices. We further recommend the establishment of a council of Advisors on Consumer Credit, to be composed of sixteen members who shall advise and consult with the Administrator concerning the exercise of his powers under this Act. Our own experience as a Commission supports the concept of consumers and industry representatives engaging in meaningful and constructive two-way communication. We urge that this Council be appointed as soon as possible, even before the legislative package is enacted by the Congress.

I. INTEREST RATES

On February 9, 1970, the District of Columbia City Council established a Commission on Interest Rates and Consumer Credit, authorizing it—among other items—to make a comprehensive study of existing laws and regulations affecting interest rates. At the very first meeting of the Commission, the members directed the Executive Director to gather relevant statistical and other information for the purpose of preparing a comprehensive economic survey of the availability of housing and consumer money in the District of Columbia.

Much of this statistical data was, in fact, collected. Unfortunately, the Commission was unable to raise the needed funds to enable us to hire an economist to analyze all the information. Accordingly, we have no economic report on which to base our recommendations in this area. We do urge, however, that the City Council give full consideration to hiring an economist to make the necessary studies.

A. Existing Usury Laws and Exemptions

Usury in the District of Columbia is governed by section 28–3303 of the D.C. Code, which prescribes a maximum rate of 8 percent per annum on all instruments in writing. In the absence of express contract, the maximum rate is 6 percent per annum. If a person or corporation contracts in the District to pay a higher rate, the code provides that "the creditor shall forfeit the whole of the interest so contracted to be received."

Typical of most states, however, there are many exemptions from this usury statute:

1. *Credit unions* are governed by Federal law, and are permitted to charge not to exceed one percent per month—or 12% per annum.
2. *Money lenders* are covered under 26–601 through 26–611 of the D.C. Code. If properly licensed, small loan companies can charge up to 1% per month (12% per annum); the maximum loan size which can be made to any one person is $200. There are no small loan companies operating in the District of Columbia today.
3. *FHA–VA* transactions have just been exempted from the existing usury law by City Council Regulation, effective September 22, 1970. This Regulation permits FHA–VA loans in the District to be made at the maximum rate authorized for such loans by the Secretary of the Department of Housing and Urban Development.
4. *Cooperative associations* which loan money to members engaged in utility operations are exempt from the usury laws. This is a recent development, having been enacted by Congress on August 28, 1970 (Public Law 91–385).
5. *Out-of-state contracts.* The District Code permits interest to be recovered at a rate higher than is lawful in the District if the contract is made or to be performed in another jurisdiction where the contract rate is lawful. (15–110)

6. *Auto loans.* Section 40–902 of the D.C. Code sets maximum finance charges on different classes of automobiles. The District of Columbia government has implemented motor vehicle regulations, and the applicable rate ceilings are as follows:

a. Class 1—new cars: $8 per $100 per year or 14.45%;

b. Class 2—used cars less than 2 years old: $11 per $100 per year, or 19.72%;

c. Class 3—used cars not more than 4 years old: $14 per $100 per year, or 24.91%;

d. Class 4—all other used cars: $16 per $100 per year, or 28.33%.

7. *Pawn brokers.* Section 2–2009, D.C. Code, provides that the City Council shall from time to time, determine what maximum rate of interest shall be permitted for pawn brokers operating in the District. In the absence of such determination, the section set maximum rates as follows: 2 percent per month up to $200 (24% per annum); 1 percent per month from $200–1,000 (12% per annum), and 8% per annum on loans over $1,000.

In 1957, the-then District Commissioners issued Order 57–1638, setting the following rates for pawnbrokers:

36% per year on loans not exceeding $100;
30% per year from $100–200;
24% per year up to $500;
12% per year from $500–1,000, and 8% per year on loans over $1,000.

B. Uniform Consumer Credit Code Rates

The Commission has considered the rate ceilings proposed by the Uniform Consumer Credit Code, which provides the following rate structure:

1. credit service charge for consumer credit sales (other than revolving charge) and loan finance charge for supervised loans:
36%—to $300;
21%—between $300 and $1,000;
15%—over $1,000, or
18%—per year on the unpaid balances of the principal.
2. loans other than supervised loans—sets a ceiling of 18% per annum.
3. revolving credit—24% to $500, and 18% over $500.

The theory of the Code rates is that the economic forces of free enterprise and supply and demand should set rates through improved competition within maximum ceilings prescribed in the consumer credit area. Accordingly, the draftsmen of the Code did not intend to fix rates, but rather attempted to set ceilings. Combined with provisions permitting freedom of entry into the credit field and truth-in-lending requiring full disclosure of credit terms, the intent of the Uniform Consumer Credit Code is to foster greater competition than now exists in the consumer marketplace.

Former Senator Paul Douglas, principal architect of the Truth-in-Lending Law, has testified before the legislature of the Commonwealth of Massachusetts on the rate structure of the Code, stating: "I strongly endorse the Code's attempt to foster meaningful price competition on credit charges through uniform rate disclosure and a policy of free entry. To the extent feasible, rates on consumer credit transactions should be set by market forces rather than state legislatures" (January 29, 1969).

Our Commission has thoroughly d scussed the problem of rates for the District of Columbia. We are generally in agreement that the current rates are, in effect, anti-competitive. We have considered the rates proposed by the Uniform Consumer Credit Code, and neither accept nor reject them. Although there was strong support among many Commissioners for these or similar rates, there was an equally strong feeling that we needed a full economic analysis prior to making any recommendation for the District.

We have also considered the concept that there be no rate ceilings at all, leaving the free money market to keep rates competitive. This proposal has been suggested by many economists, and by a prominent sociologist, Dr. David Caplovitz, author of "The Poor Pay More". During recent testimony before the National Commission on Consumer Finance, Dr. Caplovitz urged what he termed a "radically different system of consumer credit," but one which is "nothing more than a free enterprise model based on the market mechanism, the bulwark of all conservative economic theory." According to Dr. Caplovitz:

"This model would do away with all restrictions now imposed on those who want to sell money. In short, it would accept the principle of free entry now embodied in the UCCC. Second, it would go further than the UCCC by abolishing all

ceilings on interest rates and letting the rates be determined by the market mechanism. Third, in this system the same creditor would be free to charge interest commensurate with the amount of risk that he believes the would-be debtor represents." (Testimony on June 22, 1970.)

Senator Douglas echoed this concept when he stated that "in establishing an appropriate limit, a high ceiling is not necessarily pro-creditor and a low ceiling, pro-consumer. Finance companies and other lenders have a way of earning about the same level or profit regardless of rate ceilings. There is no evidence that high rate ceilings lead to high profits . . . Higher or lower rate ceilings do not raise or lower finance company profits but rather, determine credit availability. The higher the ceiling, the more marginal risk borrowers can be accommodated. This is confirmed by data showing a high positive correlation between the rate ceiling and bad debt charge-offs. The higher the ceiling, the riskier the loans and the higher the incidence of bad debts."

We have thus considered this concept of no rate ceilings but reject it—perhaps only out of political reality. There are those on the Commission who fully support this view, and there are those who are in total opposition. But many of the Commission members honestly do not know the effect, in the District of Columbia, of such an economic theory without at least having the benefit of any economic studies.

The Commission is about equally divided as to whether the rate structure should be set by Congress or by the City Council.

Accordingly, the Commission makes no recommendation in this area as to how to accomplish our objectives of bringing competition into the District of Columbia. This does not mean—and should not be interpreted—that we were divided on what rates should be set for the District; we just did not consider this in other than general terms.

Perhaps, then, it is more accurate to state that we present two alternatives for City Council consideration:

(A) The City Council, after full hearings, recommend rates to the Congress to be enacted into law as part of the proposed District of Columbia Consumer Credit Code;

(B) The City Council ask Congress for full authority to set rates after our proposed District of Columbia Consumer Credit Code has been enacted by Congress.

C. Where Does a Consumer Get Credit in D.C.?

What follows is largely speculative, based on bits and pieces of research and analytic data. It is presented to the City Council not to justify—or refute—our recommendations, but to call attention to a problem that every Commission member recognizes: there just is not enough consumer (including housing) money coming into the District of Columbia.

That, of course, is where our agreement ends. When it comes to answering "why" the money is not here, there are about as many reasons as there are Commissioners—indeed, if not more. Some say the existing rates are too low; others say financial mobility (in and out of the District) is restricted. And yet others have said that there is no basic commitment on the part of financial institutions for the problems of an urban city such as Washington.

For obvious reasons, then, we present no answers to the City Council. But we believe it is important to document what facts we have ascertained, so as to call attention to these problems. One thing is clear: we must do something to permit our financial institutions in the District to be competitive with those in the surrounding jurisdictions of Maryland and Virginia.

1. Banks

It is safe to state that the average consumer in the District of Columbia cannot borrow less than $700–1,000 from any one of the 14 banks that do business here. Of course, if one is a valued and long-standing depositor, he may get special consideration; then again, he may not.

We asked the Comptroller of the Currency for a loan breakdown of all commercial banks in the District of Columbia as of year-end 1967, 1968 and 1969. These statistics are attached as Appendix A.

In and of itself, there would appear to be a gradual growth in the amount of loans made over the three-year period. But this does not indicate that the banks were competing adequately with our neighbors to the north or the south. In a recent survey conducted by the Federal Reserve Bank of Richmond, it was determined that the profitability of D.C. banks compared rather poorly with other banks in the same Reserve District.

The study, entitled "Operating Ratios 1969", showed that the 12 banks here had a profitability—the percentage of equity capital including all reserves, or operating ratios—of 7.82 before securities gains and losses and 8.07 on net income. For all banks in the Fifth Federal Reserve District, the comparable figures were 10.60% before securities gains or losses and 10.27% on net income. Maryland and Virginia, which surround the District, revealed operating ratios approximating that average, although these figures were somewhat higher for the suburban areas closest to Washington.

Two particularly important statistical measures are worthy of mention, for they reveal that District banks have a pattern of loan distribution that differs from the Fifth District as a whole. First, D.C. banks had proportionately lower distributions of consumer and real estate loans in their portfolios. In the Washington banks, for example, 26.8% of gross loans in 1969 were classified as consumer loans as contrasted with a Fifth Federal Reserve District average of 35.0%; the mortgage lending contrast was 23.5% for D.C. banks as against a 34.6% average for the Fifth District.

Second, Washington banks designated a higher percentage of total operating income—3.88 percent—as a provision for loan losses, while the Federal district figure was only 2.20 percent, Maryland 1.76% and Virginia 2.42%.

Other relevant statistics include:

	District of Columbia	Virginia	Maryland
Total assets (in millions):			
1962	$1,952	$4,256	$2,960
1968	3,009	7,674	5,054
1969	3,065	8,347	5,393
Percent change:			
1962–69	57.0	96.1	82.2
1968–69	1.9	8.8	6.7
Loans and discounts:			
1962	$969	$2,099	$1,391
1968	1,473	4,397	2,795
1969	1,557	4,779	2,943
Percent change:			
1962–69	60.7	127.9	118.7
1968–69	1.4	8.7	5.3
Demand deposits:			
1962	$491	$1,519	$910
1968	1,039	3,501	1,789
1969	968	3,709	1,931
Percent change:			
1962–69	95.1	144.2	112.2
1968–69	−6.8	6.0	7.9

Thus, we see a record of poor profitability and even poorer growth compared to the surrounding jurisdictions, especially the suburbs of Washington.

And finally, we have analyzed roughly what it costs to make a loan in the District of Columbia, and submit the following Federal Reserve Board's calculations for City Council consideration. (See Appendix B.)

2. Credit Unions

There are 177 credit unions in the District of Columbia, serving a total of 479,192 members. As of December 31, 1969, there were a total of 256,550 loans outstanding, for a total of $284,819,000. The prevailing rate for credit union loans is 12% per annum, the maximum permitted by Federal law.

Of particular interest in this area, however, are the nine United Planning Organization sponsored Credit Unions—the so-called community credit unions. Because they have a very interesting growth pattern we wish to call them to the attention of the City and the City Council. The relevant statistics can be found in Appendix C. Suffice it to say that as of December 31, 1969, there were a total of 12,601 members, with assets of over $1.4 million. As of June, 1970, these nine credit unions had a total of 3,949 loans outstanding, for a total of $1,236,000. In and of itself, these statistics would be extremely impressive. But when these loans are broken down into size categories, they clearly show the *real* impact of the low-income credit union.

Without going into too many statistics, in 1969 these nine community credit unions made 435 loans for rent, 173 for food, 296 for medical purposes, and 492 for clothing, to name but a few. As already mentioned, banks in this area are not making loans of under $700–$1,000. Savings and Loan Associations are not organized for these purposes. Who, then, services the needs of these low-income consumers? Loan sharks at exorbitant rates, or small loan companies at 30–36%? Clearly, we must not ignore the credit union, with its reasonable 12% rates, as a means of assistance for low-income consumers.

But, here in Washington—and indeed around the country—the community credit unions have limited assets. The dollars really go out as fast as they come in. It is our understanding that a program of share and deposit insurance will soon pass the Congress. This would probably be the least expensive way for credit unions to increase their capital assets.

If such insurance plan is enacted, we encourage all citizens of the District, including governmental units, to put their moneys on deposit with these credit unions. A similar deposit program is already underway for black banks and savings and loan institutions, and we encourage all these programs.

3. Small Loan Companies

As mentioned earlier in this report, there are no small loan companies in the District of Columbia. But this does not mean that there is no small loan activity in the Washington metropolitan area. On the contrary, the City of Washington is literally surrounded with small loan companies, many of which are directly on the borders of Maryland and Virginia.

To develop the needed information, the Commission sent a questionnaire to the 60 small loan companies in Maryland and 20 in Virginia that are somewhat contiguous to the District of Columbia. (Appendix D). To our regret, many of the companies were unwilling to cooperate with the Commission. But many were helpful, and we believe we have sufficient information on which to base our recommendations.

Much of the information must be held confidential. But it is important to note that it appears that a sizable percentage of customers at many of these companies—especially those in Maryland—are D.C. residents. Thus, in addition to the fact that the City government has no control over the practices of these out-of-state companies, it is our concern that the District of Columbia is losing valuable revenues by virtue of the non-existence of these companies.

II. CONSUMER PROTECTIONS

We have considered the Uniform Consumer Credit Code and the National Consumer Act in the deliberations of the Commission and in the preparation of our recommendations. We suggest that both these Acts be appended to our recommendations if the City Council transmits them to Congress.

What follows is not an exhaustive recitation of each and every paragraph in the proposed District of Columbia Uniform Consumer Credit Code. Rather, only the major consumer protections will be highlighted. The Commission members and its Executive Director stand ready, however, to present a more detailed analysis to the City Council and to the City in general.

A. General Observations.

Many jurisdictions have, in response to consumer problems, enacted such legislation as installment loan laws, retail installment sales acts, revolving sales credit acts, home solicitation acts, and home improvement sales and loan acts, to name a few. In the District of Columbia, there are very few such consumer protections on the statute books. We are sadly reminded of the language written more than seven years ago by a District Court of Appeals Judge, in the now-famous case of *Ora Lee Williams* v. *Walker-Thomas Furniture Company:*

"We cannot condemn too strongly appellee's conduct. It raises serious questions of sharp practice and irresponsible business dealings. A review of the legislation in the District of Columbia affecting retail sales and the pertinent decisions of the highest court in this jurisdiction disclose, however, no ground upon which this court can declare the contracts in question contrary to public policy. We note that *were the Maryland Retail Installment Sales Act* . . . in force in the District of Columbia, we could grant appellant appropriate relief. We think Congress should consider corrective legislation to protect the public from such exploitive contracts as were utilized in the case at bar." [Emphasis added.] (198 A2d. 914, 1964)

A lot has happened over these past seven years in the area of consumer protection, yet the District lags far behind. But rather than point an accusative finger, and rather than lament our state of affairs, this Commission believes the time is now to act. Each of the Commission members is personally committed to do his or her part to obtain Congressional enactment of our recommended legislation.

There will be those who call our recommendations "compromise legislation". But, in our opinion, if recommending legislation which is literally 100 percent better than the existing laws is considered a "compromise", then we accept the challenge.

B. Specific Provisions

1. Disclosure

Truth-in-Lending is the law in the District of Columbia today. Our recommendations would incorporate all of the disclosures required by that law into the District's law, so that the Consumer Credit Administrator will be able to enforce its provisions. Although the Federal Trade Commission is primarily responsible for enforcing much of Truth-in-Lending, we believe that the job of the Federal government must be supplemented by local enforcement.

But our recommendations do not stop at just those disclosures required by Federal law. We propose additional information be given the consumer, so that he will truly be able to make an educated purchase in today's complex marketplace. Accordingly, we would prohibit allowing of a consumer to sign a contract until all essential provisions have been filled in. We would require the creditor to give a consumer, without request, a written receipt for each payment made in cash. And, upon request by the consumer, a creditor must furnish a written statement showing the current status of his account, including one that is all paid-up.

2. Holder-in-Due-Course

Simply stated, and in terms relevant to consumer transactions, where a merchant sells his paper to a third-party finance company or bank who is able to qualify as a holder in due course, the consumer is unable to assert any of his defenses against that third party. (Uniform Commercial Code 3–305.) According to the Federal Trade Commission, in its June 1968, "Report on District of Columbia Consumer Protection Program":

"* * * it is simply unfair to permit a vendor to sell shoddy or defective goods, which sometimes are not even delivered, coax, wheedle or coerce the buyer into signing a negotiable instrument, disappear, or dissipate the funds, and, by assigning the instrument, prevent the deceived or defrauded consumer from asserting his legitimate defenses in an action on the note" (at p. 18).

Accordingly, we recommend that the holder in due course doctrine be eliminated from consumer credit transactions. Section 2.403 of our proposal would prohibit negotiable instruments in consumer credit sales or leases. Furthermore, Section 2.404 subjects the assignee to all claims and defenses of the consumer arising out of the sale or lease—even if the consumer may have waived his rights when he signed the contract. And, in Section 3.410, where there is an interlocking, less than arm's-length relationship between a lender and a seller, that lender is also subject to the claims and defenses of the consumer.

We have given careful consideration to the effect of limiting negotiability of consumer paper on the financial institutions in the District. After full discussion, it is our considered opinion that our recommendations in this area will not cause any serious difficulties regarding normal commercial and financial affairs. We are in general agreement with the Senate District Committee's report on Senate Bill 2589 which concluded that the holder in due course doctrine "has no proper or necessary commercial purpose in relation to retail installment transactions. Moreover, the (Senate) committee is satisfied that abolition of the doctrine will not restrict the availability of credit to consumers or to legitimate, fair-dealing retail merchants. Finance companies can protect themselves from loss by inquiring into the reputation, reliability and financial resources of the merchants whose paper they purchase." (S. Rept. 1519, 90th Congress.)

3. Balloon Payments

Although there can be legitimate uses of balloon payments—where one payment is exceedingly larger than others—all too often the purpose of a final ballon is to hit the unsuspecting consumer with an unexpected large payment, thus forcing his default. Our proposed language for both sales and loans would permit the consumer, where any scheduled payment is more than one-fourth as large as the average of earlier scheduled payments, to refinance the amount of the payment

at the time it is due without penalty. And the consumer shall be notified of his rights at the time the balloon payment falls due.

We believe our recommended language will eliminate fraudulent use of balloon payments without removing a potentially useful tool from the consumer.

4. Add-ons

The *Ora Lee Williams* case cited earlier dealt with a situation where a consumer entered into a series of installment contracts with a local merchant. Each of the contracts provided, in fine print, that payments on such contracts were to be prorated on all purchases made thereunder, and that the purchaser did not own the goods until all of the contracts were paid in full. The consumer defaulted on the last few payments under the last of these contracts, and the seller repossessed all of the items purchased under all of the contracts.

This type of add-on transaction is clearly unconscionable. The language we propose in Section 2.409 would prevent a seller from retaining a security interest in all of the goods until the buyer's entire debt is paid, by adopting a "first-payments-against-first-debts" rule.

5. Prohibited Practices

Three specific creditor practices which often plague consumers would be completely prohibited:

a. *Wage assignments,* where the consumer assigns his earnings (wages) for payment or as security for payment of a consumer credit debt. (This is in accord with present law. See 28–2305 of the D.C. Code.)

b. *Referral sales.* The typical example of such a sale which would be barred by proposed Section 2.411 is one in which the seller, before closing the sale, offers to reduce the price by $25 for every name of a person the buyer supplies who will agree to buy from the seller. The misuse of the referral sale scheme has been so pervasive, both in the District and in surrounding jurisdictions, that this provision not only makes agreements in violation of this section unenforceable but also allows the buyer to retain the goods sold or the benefit of services rendered with no obligation to pay for them. Alternatively, the consumer may rescind the agreement, return the goods, and recover any payment. It is the desire of the Commission that these practices be completely eliminated.

c. *Confessions of judgment.* Although case law in the District would appear to prohibit confessions of judgment, our proposed section 2.415 would codify and clarify this prohibition by statute.

d. *Attorney's fees.* Consumers cannot be required to pay the costs of creditor's lawyers in the event legal action is required.

C. Door-to-Door Solicitation

Although the Commission did not document the door-to-door sales situation, we take notice of the fact that it may, indeed, be a serious problem in the District of Columbia. Mrs. Theresa Clark, consumer action specialist for the United Planning Organization, in testimony before the Senate District Committee on Senate Bill 2589, recommended:

"Require that every retail sale arising from home solicitation must be accompanied by a notice-of-cancellation form. This is particularly important to the educationally deprived consumer since he seldom knows the name or the address of the company of the salesman which comes to his home and sells him merchandise." (December 5, 1967)

The Commission recommends that every sale involving a personal solicitation by the seller at or near the residence of the buyer be subject to a three-day "cooling-off" period. Truth-in-Lending provides a similar right of rescission for any consumer credit transaction in which a security interest is retained or acquired in any real property which is the principal residence of the consumer (Section 125), and our recommendation is but a logical extension of that right.

We further recommend that the door-to-door seller not be permitted to retain any cancellation fee. There are correlative obligations on the buyer, however, to take reasonable care of the goods in his possession before cancellation or revocation, and for a reasonable time thereafter.

III. LIMITATIONS ON CREDITORS' REMEDIES

The Commission exhaustively reviewed creditors' remedies which exist—or are permitted—in the District of Columbia. Some of these remedies are authorized by law, such as replevin of property, and garnishment of wages; some are extra-legal in nature, such as self-help repossession or harassing debt-collection practices.

Too often, we regret to report, the decision to extend credit to a consumer is based only on the availability of these potential creditor remedies. If the creditor knows that he can easily garnish a debtor's wages, or quickly repossess a car, then the temptation is great to over-extend credit. This benefits neither the consumer nor the creditor. We believe that the judgment to extend credit to consumers be based on existing facts available at the time of the transaction, such as past credit history, present and future income potential, employment, and present indebtedness, to name but a few criteria. We encourage the credit bureaus which service District creditors to seek new and better ways to obtain and maintain their credit files. We further encourage these credit bureaus to become more responsive to the needs of the District resident, and especially the low-to-moderate income citizen who often does not have complete and accurate records on file. We hope that credit unions and credit bureaus will begin to cooperate in the dissemination of credit histories, so that complete and up-to-date files will be available.

Accordingly, we recommend the following limitations on existing creditors' remedies:

A. Repossession

When there is a default with respect to a secured consumer credit transaction, the rights of the creditor and debtor in the District of Columbia are presently controlled by Part 5 (Default) of the Uniform Commercial Code, Article 9. Under the UCC, a creditor has the right to take possession of the collateral on default, and may proceed without judicial process "if this can be done without breach of peace" (D.C. Code 28:9-503). The creditor may sell, lease or otherwise dispose of the collateral in public or private proceedings, and may buy his own sale. The debtor is entitled to reasonable notification of the time after which the collateral will be disposed of privately. (D.C. Code 28:9-504(1) and (2)).

Proceeds are applied first to the expenses of repossession and disposition and then to satisfaction of the indebtedness. Any excess is paid to the debtor and the debtor is liable for any deficiency (D.C. Code 28:9-504 (1) and (2)).

If the debtor has paid 60% of the cash price in the case of a sale, or 60% of the principal in the case of a loan, and has not signed after default a statement renouncing his rights, the creditor must dispose of the collateral. If the creditor fails to dispose of the collateral within 90 days after repossession the debtor may recover in conversion. In all other cases the creditor may retain the collateral in satisfaction of the debt, if the debtor does not object after receipt of notification (D.C. Code 28:9-505). The debtor has a right to redeem the collateral at any time before the disposition of the collateral or satisfaction of the obligation, by tendering fulfillment of all obligations secured by the collateral as well as expenses of the creditor (D.C. Code 28:9-506).

The Senate District Committee, in its report relating to consumer protection in the District of Columbia (S. Rept. 90-1519), made the following finding:

"Repossession of goods after a substantial amount of the purchase price has been paid can work hardship in additional ways. Consumer goods depreciate in value relatively quickly after purchase. When goods are repossessed after default and are resold, the resale price often is a small fraction of the original contract price. In these circumstances, under present law a deficiency judgment is often obtainable against the defaulting purchaser who no longer possesses the goods.

"For example, the subcommittee was informed of an elderly District resident who had purchased a bed, a television set, and a chair from a store and had been making payments of $35 per month regularly for 3 years. Her daughter became ill and she had to assume responsibility for her three grandchildren and could not continue to meet her full payments. When the furniture company refused her offer to continue making smaller payments, the woman defaulted. The company repossessed all of the three pieces she had bought from them, even though she had paid more than $1,200 on her bill. Despite her large payment, and the fact that she had nothing for herself and the three children to sleep on except the floor after having paid more than $1,200 she was required to pay over an additional $200 to the company."

Mindful of these and many other difficulties encountered in the area of repossession, our Commission gave full consideration to amending the law to provide better protection for the consumer. Under existing D.C. law, for example, it is possible (and indeed happens) that automobiles are repossessed when the buyer is only one day late; under our proposal, a debtor would be given 30 days after default in the payment of money to cure said default. In other words, goods purchased cannot be repossessed just because the consumer is a few days late in his

payments. Furthermore, the consumer has an opportunity to redeem his property within 15 days after repossession by paying the amount he owes.

Repossession itself would be limited to either judicial authorization or to those situations where the taking can be accomplished without breach of the peace and without entry into the consumer's home. And, if the cash price of the goods in question is $2,000 or less, the creditor is limited to an election of his remedies: he can either sue for the deficiency owed, or repossess the goods—he cannot do both.

The Commission believes these are significant improvements in the District law. Although we have not specifically addressed ourselves to the process of replevin permitted under 16–3731 of the D.C. Code, the Commission must take notice of a recent case which held that the New York replevin statute permitting the seizure of chattels without an order of a judge or of a court of competent jurisdiction is unconstitutional in that it violates the search and seizure provisions of the Fourth Amendment and the procedural due process requirements of the Fourteenth Amendment. (*LaPrease* v. *Raymours Furniture Company*, U.S. District Court for the Northern District of New York, filed July 30, 1970.)

B. Garnishment

On July 1, 1970, the Federal Wage Garnishment Law became the law of the land. This new law sets limits on the amount of an employee's earnings which may be garnished. According to the statute, the maximum part of the total disposable earnings of an individual which can be garnished, in any workweek, may not exceed the *lesser* of: 25% of the disposable earnings for that week, or, the amount by which his disposable earnings for that week exceeds 30 times the Federal minimum hourly wage.

To some extent, however, existing District law on garnishment provides better protection for the consumer than does Federal law, and accordingly it is not totally repealed. It would thus appear that the current situation on garnishment here is as follows:

(1) If an individual's disposable earnings for a month are $208 or less, his earnings may not be garnished in any amount;

(2) if an individual's disposable earnings for a month are more than $208 but less than $260, only the amount above $208 is subject to garnishment; and

(3) if an individual's disposable earnings for a month are over $260:

(a) 20% of his wages up to $500 can be garnished;

(b) 25% of the balance due or to become due (over $500) is subject to garnishment.

Thus, compared to the new Federal law, existing D.C. statutes on garnishment are better for some workers and worse for others. But Section 307 of the Federal law states that it does not annul, alter or affect the laws of any State "prohibiting garnishments or providing for more limited garnishments than are allowed" by Federal law.

Accordingly, we believe our proposals in this area go well beyond the new Federal law. In order to best illustrate this, we have prepared the following chart:

	Present law	Proposed law
No garnishment	Under $208	Under $325.
20 percent subject to garnishment	Between $208–$500	
10 percent subject to garnishment		Between $325 to $500.
25 percent subject to garnishment	Over $500	Over $500.

We further recommend elimination of the procedure known as "attachment before judgment" (ABJ). Recently, this practice was severely critized by General Sessions Court Judge James A. Belson, when he stated:

". . . it is notorious that the broad garnishment procedures of this jurisdiction are utilized frequently by nonresident plaintiffs against nonresident defendants in cases where the only connection between this jurisdiction and the cause is that the defendant's employer does business in and is amenable to suit in the District of Columbia. It is regrettably true also that District of Columbia attachments are sometimes resorted to for the sole purpose of circumventing the wage exemption laws of other jurisdictions which protect wage earners who live and work there." (Memorandum Order, *Department of Labor Federal Credit Union v. Raynor*, filed September 2, 1970.)

And finally, perhaps most significantly, we recommend there be no discharge from employment for any garnishment. This is considerably broader than the new Federal law, which prohibits employers from discharging any employee because his earnings have been subjected to garnishment for *"any one indebtedness."*

C. Unconscionability

We submit that this is perhaps one of the strongest limitations on creditor's remedies, because the court—in determining whether a particular sale or practice is unconscionable—looks at the matter from the bench in hindsight. Often, the web has been spun, and although the spider is gone, the effects of unconscionability remain.

This is not a new concept, for it can be found in Section 2.302 of the Uniform Commercial Code. Under UCC, evidence can be presented as to the contract or clause's commercial setting, purpose and effects. We propose to eliminate the word "commercial" from our Consumer Credit Code, since we are here concerned with consumer transactions. Accordingly, the relevant standard of conduct for purposes of our proposal is not that which might be acceptable as between knowledgeable merchants but rather that which measures acceptable conduct on the part of a businessman toward a consumer.

Our recommendation, then, would permit a court to void or otherwise limit a contract if, as a matter of law, it was unconscionable at the time it was made, induced, or was subsequently enforced by unconscionable conduct.

IV. CONSUMER CREDIT ADMINISTRATOR

There is need for a strong consumer credit administrator in the District of Columbia, who shall have full powers to investigate and curtail unconscionable or otherwise unsavory practices. Accordingly, we recommend the creation of such an administrator, with such powers to: (1) receive and act on citizen complaints; (2) counsel persons and groups on their consumer rights and duties; (3) establish consumer education programs; (4) make such studies as are appropriate; (5) hold public hearings, and (6) subpoena witnesses to obtain needed information.

In effect, we recommend a form of Consumer Ombudsman for the District of Columbia. Our charge from the City Council limited us to consumer credit problems, and accordingly we take no position on whether this office should be expanded into a full office of Consumer Affairs, responsible for the full panoply of problems from product safety to environmental pollution.

We are convinced, however, that there is strong need for at least a consumer credit administrator.

We further recommend the establishment of a Council of Advisors on Consumer Credit, to be composed of sixteen members who shall advise and consult with the Administrator concerning the exercise of his powers under this Act. Our own experience as a Commission supports the concept of consumers and industry representatives engaging in meaningful and constructive two-way communication. Such a dialogue and a Council has been recommended by such groups as the President's Committee on Consumer Interests and the Chamber of Commerce of the United States.

We urge that this council be appointed as soon as possible, even before the legislative package is enacted by the Congress.

NEIGHBORHOOD CONSUMER INFORMATION CENTER,
Washington, D.C., September 30, 1970.

Mr. BENNY KASS,
Washington, D.C.

DEAR MR. KASS: As per your request, I am forwarding my comments on the packages which you mailed to me.

The Consumer Protection part of the recommendations seems to be a monumental step in resolving the problems with which we are confronted. I do wish however, that the recommendations had been much stronger than they were. They touched the surface of the problems, but did not deeply enough penetrate the heart of the inner-city merchants.

In reference to the interest rates, the recommendations are all right to the extent that it is stated that we did not do what should have been done. I have some

definite doubts whether an increase in the interest rates is necessary. However, it would be impossible for me, or for anyone else, to be able to make an accurate determination until a study is made of the economical structure of the District of Columbia. Only then could a clear understanding of the problem be obtained.

Some of the questions to be considered in the above mentioned study would be: How is the money flowing; why is the money going out of the District of Columbia; are interest rates outside of the District of Columbia higher or lower, or are the financial institutions providing to the residents of the District of Columbia services that the industries are not providing?

Again I would emphasize the importance of having an appropriate analysis of the District of Columbia's economical structure before the D.C. Council attempts to determine interest rates.

Yours sincerely,

JOSEPH F. SMITH,
Executive Director.

WEAVER BROS., INC.,
Washington, D.C., October 1, 1970.

Mr. BENNY L. KASS,
Executive Director, District of Columbia Commission on Interest Rates and Consumer Credit, Washington, D.C.

DEAR BENNY: First, I would like to congratulate you on drafting a report which I believe reflects the essence of our meetings and certainly, with the wide divergence of opinion, is an excellent job.

With regard to the proposed District of Columbia Uniform Consumer Credit Code, I have discussed this with representatives of the Mortgage Bankers, the Savings and Loan Associations and several Institutional Investors and it is the consensus of opinion that Article 2, Section 2.104 and Article 3, Section 3.105 should be further amended to delete " . . . Disclosure (Section) . . . ". The Federal Truth In Lending Law and, in Maryland, the State Truth In Lending Law cover mortgage transactions. It is felt that an additional Disclosure would be merely a perfunctory gesture only. Further, the language regarding the Disclosure sections does not fit a real estate transaction and we would be at a loss as to where to mechanically incorporate the required Notices into Mortgage Forms. I, therefore, would request that the references be deleted.

I also noted an omission in your report in interest rates. Although you discuss the exemptions from the Usury Statutes and the rates for Consumer Loans and similar loans, you make no recommendations for rates of mortgage loans. You will recall that there was considerable discussion and general agreement with respect to the deterrent effect of the 8% ceiling in the District of Columbia.

For your information, the following table shows the going rate of mortgages in the Metropolitan area:

	District of Columbia	Maryland	Virginia
Conventional	[1] 8	[1] 8	8¼–8½
FHA	8½	8½	8½
VA	8½	8½	8½
Commercial	[2] 9¾–10¼	9¾–10¼	9¾–10¼

[1] Very few loans being made due to 8 percent ceiling.
[2] Corporations only.

As you can see, the bordering states of Maryland and Virginia provide a more favorable investment from an Institutional Lender's viewpoint. I believe that to encourage the flow of mortgage money, it will be necessary to raise the ceiling to a minimum of 9% or to exempt all First Mortgages and First Deeds of Trust. Incidentally, our sister state to the south, Virginia has alreay exempted all First Mortgages and First Deeds of Trust. The exemption was for a two year period which seems to be a very good answer to the present dilemma of high interest rates and low usury ceilings.

Thank you again for your excellent job, and be assured that I am ready to join in a unamimous report from the Commission to the City Council.

Sincerely,

MARTIN R. WEST, Jr., *President.*

DISTRICT OF COLUMBIA COMMERCIAL BANKS[1]

GROSS LOANS 1967–69

[In thousands]

Classification	As of Dec. 31 1969	1968	1967
Real estate loans (loans secured primarily by real estate)	$509,971	$470,843	$473,982
Loans to financial institutions (banks, finance companies, savings and loans, etc.)	186,329	169,989	177,436
Loans for purchasing or carrying securities:			
To brokers and dealers	14,479	24,861	28,220
To others	9,393	9,354	13,225
Commercial and industrial loans	356,644	375,496	345,474
Loans to individuals for personal expenditures:			
To purchase private automobiles on installments	117,337	107,684	100,029
To repair and modernize residential property on installments	23,567	24,149	24,441
Other installment loans	151,162	101,654	95,575
Single-payment loans	138,041	137,827	134,581
All other loans (to farmers, churches, hospitals, educational institutions, etc.)	50,760	51,744	41,480
Total gross loans	1,557,683	1,473,601	1,434,443

[1] Includes 14 commercial banks supervised by the Comptroller of Currency.

APPENDIX A

PRINCIPAL ASSETS, LIABILITIES, AND CAPITAL ACCOUNTS OF NATIONAL BANKS IN THE DISTRICT OF COLUMBIA, MARYLAND, AND VIRGINIA, DEC. 31, 1969

[In millions of dollars]

Account	District of Columbia (all)[1]	Maryland	Virginia
Assets:[2]			
Cash assets	565	470	687
U.S. Government obligations	511	315	576
State and local	288	280	600
Other	14	9	14
Securities, gross	813	604	1,190
Loans, gross	1,558	1,459	2,882
Federal funds sold	49	121	74
Direct lease financing	3	3	1
Total assets	3,065	2,728	4,981
Liabilities:[2]			
Total deposits	2,692	2,329	4,276
Demand deposits, total	1,666	1,397	2,010
Time and savings deposits, total	1,026	932	2,266
Federal funds purchased	17	75	88
Total liabilities	2,792	2,498	4,554
Reserves on loans and securities	27	28	53
Capital accounts:			
Debentures	13	3	2
Preferred stock	2	0	0
Common stock	50	51	113
Surplus	113	94	167
Undivided profits	66	46	89
Capital reserves	2	8	2
Total capital accounts	246	202	373

[1] Includes national and non-National banks in the District of Columbia, all of which are supervised by the Comptroller of the Currency.
[2] Residual accounts are excluded, so accounts presented do not sum to totals.

1968 FUNCTIONAL COST ANALYSIS CONSUMER INSTALMENT LOAN BREAK-EVEN POINTS[1]—245 BANKS, DEPOSITS $50,000,000 TO $200,000,000—11 FEDERAL RESERVE DISTRICTS

	Size of loan required to break even at various annual charges in dollars per 100											
	$3.00	$3.50	$4.00	$4.50	$5.00	$5.50	$6.00	$6.50	$7.00	$8.00	$9.00	$10.00
1—6-month loan	$7,172	$4,548	$3,330	$2,626	$2,168	$1,846	$1,608	$1,424	$1,277	$1,060	$905	$790
2—9-month loan	4,870	3,210	2,394	1,909	1,587	1,358	1,187	1,054	948	789	676	591
3—12-month loan	3,889	2,607	1,961	1,571	1,311	1,124	984	875	788	657	564	493
4—15-month loan	3,335	2,259	1,708	1,373	1,148	986	865	770	693	579	497	435
5—18-month loan	2,992	2,039	1,546	1,245	1,043	896	786	700	631	527	453	397
6—21-month loan	2,755	1,885	1,433	1,155	968	833	731	651	587	491	421	369
7—24-month loan	2,576	1,769	1,347	1,088	912	785	689	614	554	463	398	349
8—30-month loan	2,339	1,613	1,231	995	835	719	632	563	508	425	365	320
9—36-month loan	2,182	1,509	1,153	933	784	676	594	529	478	400	343	301
10—42-month loan	2,074	1,437	1,099	890	748	645	567	505	456	382	328	288
11—48-month loan	1,992	1,382	1,058	857	720	621	546	487	440	368	316	278

[1] Costs include loss factor and cost of money.

UPO CONSOLIDATED COMPARATIVE CREDIT UNION REPORT (9) FINANCIAL AND STATISTICAL REPORT FOR PERIOD ENDING APR. 30, 1970

	Number	March	Number	April
ASSETS				
Delinquent loans:				
2 to 6 months	254	46,225.02	250	48,751.74
6 to 12 months	174	23,775.54	182	24,385.34
12 months and over	347	58,248.54	319	39,583.32
Subtotal	775	128,249.10	751	112,720.40
Current and less than 2 months	3,126	1,070,863.42	2,825	1,077,780.04
Total loans	3,901	1,199,112.52	3,576	1,190,500.44
Accounts receivable		16,093.44		108,046.85
Cash on hand and in banks		119,645.38		167,517.76
Savings and loan shares		73,502.34		63,991.98
Loans to other credit unions		23,000.00		23,000.00
I.C.U. Government securities		6,100.00		45,164.47
Furniture, fixtures and equipment		1,387.75		1,387.75
Prepaid insurance		241.90		411.56
Deferred expenses		125,298.00		260.00
Leasehold improvements		2,207.14		2,207.14
Other assets		7,127.14		8,299.66
Total assets		1,573,715.61		1,610,787.61
LIABILITIES AND CAPITAL				
Accounts payable		187,809.50		177,244.07
Notes payable		24,575.00		29,514.85
Withholding taxes payable		3,103.59		1,892.02
Social security taxes payable		1,090.30		803.35
Unemployment compensation tax payable		218.93		152.83
Deferred income		(5,133.15)		(5,370.40)
Shares		1,242,757.38		1,296,850.13
Regular reserves		42,675.97		37,580.90
Special reserves		977.33		1,156.59
Reserves for contingencies		18,472.00		13,472.00
Undivided earnings		30,065.19		20,062.83
Gain or loss		27,103.57		37,428.44
Total liabilities and capital		1,573,715.61		1,610,787.61
ADDITIONAL INFORMATION				
Accounts at end of period	13,275		13,579	
Potential members	65,000		65,000	
Loans made year to date	721	362,859.28	1,019	499,177.76
Loans made since organization	18,141	4,911,651.26	18,435	5,047,969.74

U.P.O. CREDIT MONTHLY RELEASE—APR. 30, 1970

Credit union	Charter date	Assets	Savings	Loans outstanding	Number	Loans delinquent	Number	Delinquent ratio (percent)	Reserves	Members
Anacostia	Jan. 4, 1965	$508, 222. 70	$306, 771. 03	$330, 741. 03	1, 065	$56, 031. 12	395	16. 9	$5, 832. 83	3, 1
Hospitality	Oct. 13, 1965	218, 548. 95	201, 354. 13	126, 540. 23	283	6, 698. 16	29	5. 2	10, 736. 71	1, 5
Friendship	Jan. 13, 1965	155, 706. 99	141, 581. 28	129, 596. 34	270	2, 337. 10	16	1. 8	8, 174. 03	1, 5
Fides	July 16, 1961	146, 880. 91	131, 674. 07	112, 248. 25	206	4, 820. 86	15	4. 2	6, 722. 82	7
Central Cardozo	Mar. 16, 1964	145, 539. 31	140, 182. 67	123, 371. 60	301	11, 710. 50	64	9. 4	297. 62	1, 0
Armstrong	Mar. 28, 1966	126, 842. 31	112, 882. 21	84, 291. 15	337	5, 815. 64	36	6. 8	7, 832, 32	1, 4
Change	June 30, 1965	118, 820. 67	110, 700. 56	100, 510. 17	413	12, 289. 13	104	12. 2	4, 884. 99	1, 3
Southwest	May 19, 1965	98, 439. 33	87, 137. 39	92, 619. 69	380	9, 557. 18	55	10. 3	4, 156. 51	1, 48
Far East	Oct. 13, 1965	91, 786. 44	64, 566. 79	90, 581. 98	321	3, 460. 71	37	3. 8	3, 571. 66	1, 27
Total		1, 610, 787. 61	1, 296, 850. 13	1, 190, 500. 44	3, 576	112, 720. 40	751	9. 4	52, 209. 49	13, 5

Note: Ratio of reserves to delinquent loans 46.3 percent. Average share per member $95.50. Average loan per borrower $332.91. Average delinquent loan per borrower $150.09.

District of Columbia Commission
on Interest Rates and Consumer Credit,
Washington, D.C., April 10, 1970.

District Manager,
Silver Spring, Md.

Dear Sir: As you may have heard, the City Council of Washington, D.C. recently created a Study Commission on Interest Rates and Consumer Credit. Our purpose is to determine the extent of consumer credit in the Washington metropolitan area, and to report back to the City Council, making some recommendations as to updating and modernizing our D.C. laws.

Accordingly, we seek your cooperation and request that you answer the following questions:

1. How many offices do you have immediately surrounding the city of Washington, D.C.?
2. Approximately how many Washingtonians have obtained loans in the past year from your company? What percentage of your total customers is from D.C.?
3. How many Washingtonians have been denied credit in the past year by your company?
4. What criteria, if any, is used in determining the credit-worthiness of an individual seeking a loan? Does the amount of the loan sought make a difference?
5. What laws and regulations govern your operations in the District of Columbia, Maryland, and Virginia?
6. If your company makes consumer loans, can you tell us the total amount for the past fiscal year?
7. Do you buy consumer paper in and around the District of Columbia? Can this be broken down by types of transaction, i.e., automobile, furniture, etc.?
8. How much of your paper is taken subject to "recourse"? How much is taken "without recourse"? Why this distinction?
9. What laws and regulations govern the purchase of consumer paper in Maryland, Virginia, and the District of Columbia?
10. Can you supply the Commission with sample contracts?
11. Can you furnish us with an analysis of what it costs your company to make a loan, and what the break-even point is—in terms of annual percentage rates?

Your answers to these questions would be very helpful. Any additional information that you think would be of assistance to the deliberations of the Study Commission would be appreciated.

I can assure you that the information you give us will be treated in the strictest confidence. We are interested only in totals and trends.

Please call me for any additional information.

Kind regards.

Sincerely,

Benny L. Kass,
Executive Director.

LOANS GRANTED BY AMOUNT 1968–69

Scale	1968		1969	
	Numbers	Amount	Numbers	Amount
0 to 50	867	$30,658.18	454	$17,789,05
51 to 100	803	65,616.42	799	116,327.99
101 to 150	540	66,489.09	519	116,564.16
151 to 200	599	104,486.81	589	113,183.44
201 to 300	614	153,438.00	797	210,582.86
301 to 400	313	112,340.29	495	162,479.80
401 to 500	229	102,454.56	460	192,442.27
501 to 600	132	72,799.28	294	138,503.50
601 to 700	45	27,942.84	105	66,450.35
701 and over	212	363,688.42	552	680,106.05
Totals	4,354	1,099,913.89	5,065	1,814,429.47

Supplementary Statement of Commissioners Burke, Kennedy, McBrier, Stadtler, and West

To fully inform the Council, and to aid future Commissions, we respectfully set forth our views to supplement the principal report. At the outset, however, each of us wishes to express our personal appreciation to the Council for being extended the honor and privilege of serving on the Commission.

Substantial progress was made by the Commission in developing recommended legislation which would consolidate and modernize the consumer credit laws of the District of Columbia, but we can not stress too strongly that the product of our efforts is incomplete. Our recommendations should not be implemented until the gaps we left regarding interest rates and credit charges are adequately filled. To achieve the progress that the citizens of the District need, our work will have to be completed at some other time by some other body.

It has been recognized for many years that community requirements for credit in the District of Columbia were not being met. The lack of sufficient capital for the credit financing of real estate purchases and consumer products, as well as business enterprise, is suppressing economic progress particularly of lower and middle income individuals and small business. The lack of wide-spread credit availability may contribute to social ills as well.

Piecemeal efforts to improve particular segments of the multi-faceted credit market have failed. Mortgage loans and consumer goods financing are highly restricted. This situation is partially a reflection of the credit squeeze affecting the total economy, but nonetheless, it is apparent that credit conditions are tighter in the District than they are in surrounding states within the single metropolitan marketing area.

One reason for the disparity is that the market rate for mortgage and consumer loan financing exceeds the usury law in the District. Whereas Virginia, for example, quickly reacted and exempted from its usury laws *all* mortgage financing in response to market conditions the District has not. The recent temporary exemption of federally insured mortgages in the District of Columbia may give some partial relief, but it points out the incongruous situation in which conventional, uninsured mortgage loans yield a lesser return than F.H.A. and V.A. mortgage loans which are virtually risk free. As a result, home ownership is unattainable to a very broad segment of the community. Clearly, the interest rate ceiling for housing loans must be raised to assure the smooth flow of mortgage funds adequate to serve the needs of the District.

Moreover, most states, including Maryland and Virginia, provide an interest rate structure which can support small loans, but the District does not. The lack of small loan availability is directly attributable to economically unreasonable interest rate ceilings, a further demonstration of the fact that credit availability is materially governed by the level of credit rates.

It was in this context that the Council in February of this year adopted Resolution No. 70–12. The Resolution created this Commission for the purpose of implementing the Council's earlier commitment "to undertake *a comprehensive study of interest rates* and consumer credit." Section 1 of the Resolution states that the Council established the Commission "*to study interest rates, usury laws* and consumer credit problems, and to make recommendations, including specific suggested regulations and legislation to the Council." Section 3 of the Resolution states that the Commission shall undertake a comprehensive study * * * including "*laws affecting interest rates and consumer credit,*" and "ways of stimulating availability of consumer credit in low income areas." (Emphasis added)

We set out these portions of the Resolution to support our understanding of why the Council convened this Commission. The breadth of the study areas requested by the Council indicated a recognition that consumer credit problems must be dealt with as a whole if a successful program is to be formulated. The scope of the Resolution wisely acknowledged the economic inter-relationship between credit rates and credit availability and between debtors' rights and creditors' remedies. The Resolution directed us to study all these factors, report the facts as we found them and recommend remedial measures.

We further emphasize the language of the Council's Resolution to define the nature and role of the Commission. By calling for a "*comprehensive study*" of interest rates and other issues, it seemed clear that the Commission was established to gather facts, draw conclusions, report findings and recommendations on all issues specified by the Council.

The draft legislation we submit is modeled with significant modifications upon the Uniform Consumer Credit Code (U.C.C.C.). There are two major differences. The first is that our proposal substantially strengthens the provisions

of the Code dealing with consumer remedies and debtors' rights, and correspondingly limits the rights and remedies of creditors.

The second major difference is that our draft does not provide for a system of credit service charges. The basic question of consumer credit and mortgage rate ceilings is left for resolution by either the Council or the Congress. This Commission should have done it and could have done it.

In drafting the U.C.C.C. after six years of study, the special committee of the National Conference of Commissioners on Uniform State Laws explicitly recognized and acted on two critical points which a majority of this Commission has declined to examine, endorse or refute:

> "(a) a combination of too low ceiling rates, too substantial restrictions on creditors' rights and remedies, or too great enhancements of debtors' rights or remedies, might deprive the less credit-worthy of lawful sources of credit and drive them to 'loan sharks' and other illegal credit grantors in whose hands they will enjoy no legal protections; it was to remedy the 'loan shark' evil that the Russell Sage Foundation proposed its uniform Small Loan Laws; and
>
> "(b) the provisions governing ease of entry into the market, uniform disclosure of costs and terms, rate ceilings, restriction of creditors' rights and remedies, enlargement of debtors' rights and remedies, and powers granted to the Administrator are so inextricably interrelated that any substantial change in one area requires a major review of the balance struck in all other areas."

These two points go to the heart of the issues we were requested to study.

The numerous meetings held between February and September were almost totally devoted to the subjects of debtors' rights and creditors' remedies. These are admittedly important subjects. However, no real effort was made to study credit charge rates, an equally important subject which bears directly on the availability of credit.

This Commission's failure to study and to make recommendations with respect to credit charges, so as to supply a background for Council or other legislative action, will, we fear, substantially delay remedial steps as well as impose a heavy burden on the Council.

In the world of commerce duties and obligations are not assumed without cost nor are benefits bestowed without price This is a simple economic truth. Economically realistic rates must be set to bring about increased availability of credit. It follows too that a shift in the present balance between borrowers' and buyers' rights and remedies, and lenders' and sellers' duties and obligations, which this Commission deems desirable, must be accompanied by a credit charge structure which will support the changes and fairly apportion costs. In a real sense credit rates cannot be separated from other changes in our credit laws. They are inextricably intertwined. If fair and compensatory rate ceilings are not established, credit will be further restricted for the same economic reasons the District of Columbia has not attracted small loan financing. The Commission's failure to supply the vital ingredient of rate ceilings in the debtor-creditor mix is a serious omission, and, in our opinion, is unresponsive to the request and needs of the Council.

In our view, a recommended schedule of consumer credit and mortgage rate ceilings is a distinct issue quite apart from the question of what body should have the power to prescribe them. It is our position that the Commission should have recommended realistic ceilings to the Council which then would have been in a position to take whatever steps it deemed advisable in the way of review, revision and implementation. But, because we did not, the Council is now confronted with the task of gathering basic facts, evaluating evidence, drawing conclusions and making findings on the complicated, but most fundamental issue of interest rate ceilings. Clearly the Commission passed up its opportunity to complete its work for the Council and for all citizens of the District. The Commission's failure to differentiate the economic question of consumer credit and mortgage rate ceilings from other considerations prevented a full and adequate response to the Council.

As businessmen thoroughly committed and involved in the District of Columbia, we share a deep concern for the economic development of the city. We share further the conviction that a healthy business environment requires that the law must protect all citizens from abuses and exploitation and must at the same time provide incentives to attract business investment and to maintain growth. The

Commission's recommended reforms relating primarily to the rights of buyers and borrowers goes only half way to our goal. An adequate schedule of consumer credit and mortgage rate ceilings must be provided to reach it.

VINCENT C. BURKE.
RAYMOND A. KENNEDY.
C. ROBERT MCBRIER.
JOHN W. STADTLER.
MARTIN R. WEST, Jr.

SEPARATE REPORT FROM MEMBERS OF THE D.C. COMMISSION ON INTEREST RATES AND CONSUMER CREDIT

The Council's mandate to this Commission was to study and make recommendations pertinent to (a) existing laws and regulations affecting interest rates and consumer credit; (b) means of stimulating availability of consumer credit and competition in low-income areas; (c) general consumer credit problems existing within the District; (d) extortinate loan operations within the District; and (e) other matters related to consumer credit and consumer affairs.

That mandate offered exciting possibilities for both full investigation of problems and imaginative designs for remedying those problems. For example, in the area of FHA–VA interest rates, an issue that precipitated the establishment of the Commission, the Council's mandate would have allowed the Commission to study not only industry and consumer needs, but to identify sources of money not currently committed to mortgage financing in the District, and to design the means necessary to make those sources available to bring sanity to the mortgage market.

But that task requires more than basic authorization. The task requires the means to perform it—an experienced staff and the money to hire expertise and imagination. This Commission had neither staff nor money. Sixteen already busy and fully committed commission members were no substitute for that need.

As the result, the Commission added little new knowledge or advice to mortgage financing issues. The interest rates were raised, in spite of our knowledge that "higher rates may be ineffective at least as often as they are effective in attracting either a large total of funds or a larger share of the funds available to all borrowers." [1] The interest rates were raised in spite of our knowledge that interest increases have the affect of pricing poor people out of the FHA–VA market. By mid-1967, when FHA interest rates were lower than they are now, less than half of all American families could afford to maintain the average FHA-financed new home. The triple increase of FHA rates in 1966 resulted in approximately 40% fewer FHA financing arrangements for families with incomes under $5,000.

The Commission was, however, able to fruitfully discuss some of the major problems existing in retail credit sales and small loans. It has made a valuable contribution by making the basic recommendations that holder in due course status should be abolished; creditors should be required to elect between repossession and a suit on the unpaid contract balance, with the resulting abolition of the deficiency judgment; garnishment law should be rewritten to reserve a larger portion of very small pay checks for subsistence; and attachment before judgment should be outlawed. And, of course, we can only agree with the Commission recommendations codifying existing statutory and case law declaring illegal certain practices like referral sales, confessions of judgment, wage assignments and false advertising.

But, because the Commission was pressed by staff and time limitations it appears to us that it is now accepting by default a revised version of the Uniform Consumer Credit Code that still retains many of the defects that have caused opposition to the Code from consumers across the country. Among the Code's deficiencies that in fairness must be examined before it is approved or accepted are the following:

1. INTEREST RATES

The UCCC proceeds on the premise that it is fair to allow market competition, rather than legislation, to fix interest rates. That premise is unfounded in fact. The historical reason for usury ceiling is that competition is lacking in some segments of the loan market and that the necessitous borrower must be protected from exploitation. We believe that proposition still pertains to the loan market

---

[1] Report of the Commission on Mortgage Interest Rates to the President of the United States and to Congress, August 1969, *Dissent* by Congresswoman Sullivan and Congressman Patman, p. 128.

available to District residents and that the District of Columbia has a duty to protect especially poor borrowers from the greed now evinced in the market.

The interest rates now recommended by the UCCC (up to 36% for loans under $300) are much too high to accept without a throughgoing analysis of the loan market, its needs, and alternatives for making cheaper money available.

Finally, it must be realized that the UCCC sets general usury statutes for consumer related transactions including those secured by real estate, like home improvement sales, that have been subject to an 8% limitation. We believe that the legislative body setting interest rates, whether Congress or the Council, should be required to differentiate between the types of security in setting new ceilings—a distinction that is nowhere referred to in the revised UCCC as it is presented to you.

The proposal presented to you by the Commission contains broad authorization for charges additional to the maximum interest that literally fit within the classic definition of interest as all costs incident to the extension of credit. Independent justification for each of these charges was not shown the Commission, and should be required before the charges are accepted.

2. SCOPE

The UCCC and the revised version presented to you applies only to those creditors and lenders "regularly engaged" in their respective businesses (See, e.g., Sections 1.301(8), (11), (30). Because the recommended legislation is not a licensing law, we recommend that this restriction be dropped to the end that every consumer is afforded some basic protection before he ventures into the market.

3. FINE PRINT WAIVERS AND DISCLAIMERS

Disclaimers of implied or express warranties, "as is" clauses, for example, exist in fine print clauses in universal use in the District and present recurring problems of consumer abuse. We believe such clauses, presenting as they do one of the principal sources for exploitation, should be totally prohibited. The Commission did not study this problem. The UCCC does not deal with it; its failings are repeated the revised version presented to you.

4. FALSE AND MISLEADING ADVERTISING

The Commission's recommendation relating to false advertising adds little, if anything, to existing law. The truth-in-Lending Act restricts some forms of false advertising relating to consumer credit. The provisions of Regulation Z are rather precise in further defining these restrictions. The provisions of Truth-in Lending are not subject to exemption from Federal enforcement. §22–1411, D.C. Code, now prohibits the use of "any false, untrue, or misleading statement, representation, or advertisement with intent to sell . . . any goods, . . . or anything of value . . . ."

The UCCC does little more than repeat existing provisions of Truth-in-Lending and does not go as far as the District's criminal law because it limits its provisions to "false or misleading advertising . . . concerning the terms or conditions of credit." § 22–1411 extends to all sales. The revised UCCC presented to the Council continues the mistake. Why make any effort if the new law is not going to advance consumer protection?

The defects of existing laws are that consumers are often required to prove an intent to deceive and cannot carry the heavy burden of proof, that the failure to disclose material facts is not generally considered fraudulent, and that the law has little real teeth because consumers have difficulty proving damages and establishing their right to a remedy.

Because we believe that a new law should ameliorate these problems, we recommend a provision that (1) extends to all sales of goods and services, as well as credit sale and loan transactions; (2) prohibits any representation that omits material information necessary to make the statement not false, misleading, or deceptive; and (3) permits the consumer to rescind the resulting transaction upon discovery of the fraud or deception.

5. HOLDER IN DUE COURSE

The Commission made the commendable commitment to outlaw the holder in due course sanctuary used by finance companies to isolate themselves from consumer defenses. However, section 4.112 of the revised UCCC recommended by the Commission still continues remnants of that law that we now agree is no

66–583—71——3

longer justifiable, in restricting the consumer's ability to assert his defenses against the seller's assignee. We believe that the restrictions are inconsistent with the Commission's commitment. Further, we think the restrictions are unnecessary, because the existing law pertaining to assignments protects the ordinary assignee from liability that exceeds his investment.

6. INSURANCE

The Commission gave no special consideration to the many problems caused by consumer insurance, its price, its coverage, and its being imposed regardless of need. Many consumers have taken the position that the UCCC provisions on insurance do nothing to advance the effort to deal with the problems. Because Article 6 of the revised legislation presented to the Council by the Commission only repeats the UCCC provisions, we believe that a new effort to examine insurance problems and remedies should precede any approval of the UCCC provisions.

7. REPOSSESSION

The Commission version of the UCCC proposes banning deficiency judgments for contracts and loans not exceeding $2000. Again, the Commission did not go far enough in our opinion. The Commission version requires the creditor to resell repossessed collateral that is not the subject of the sale, but secures a loan or sale, in order to assure that proper credit be given a buyer in the situation where the collateral's value exceeds the unpaid balance of the obligation. But, it does not extend the same protection when a creditor repossesses collateral that is the subject of the sale—and provides for compulsory resale only where the buyer has paid over 60% of his obligation. We believe that serious consideration sould be given to requiring compulsory resale in all cases.

8. REMEDIES

The remedies provided by the UCCC are too weak to effect substantial deterrents to violations of the new law. The Commission's proposal continues that weakness.

In some instances, the remedies are so weak that they provide positive incentives to violate the law. For example, Sec. 7.202 provides that the ultimate civil penalty for charging excessive interest rates on supervised loans is the greater of either the finance charge or ten times the amount of the excess charge. But to claim that penalty, the borrower must first demand a refund of the excess charge from the creditor, the creditor must refuse to make the refund, and the debtor must prove that the excess charge was made "in deliberate violation of or in reckless disregard for this Act." This penalty system allows a creditor to take excess charges, refund only when he is caught in the act, and then, only to the extent of the excess, and escape penalty altogether.

9. CREDITOR HARASSMENT

We believe that insofar as the UCCC and this revised version attempt to present compreiensive overhauling of consumer credit law, the law should also deal with the problems of creditor harassment. Much needs to be accomplished to protect District residents from the kind of extortion and haranguing accompanying present collection tactics. Some proposals have been accepted or are being considered in other jurisidctions that would serve as a sufficient basis from which to design remedies for District problems, to fill the substantial omission in the package of laws presented by the Commission to the Council.

10. STRUCTURE OF THE LAW

The Commission's proposal is a series of laws intended to be enacted by Congress, with specific authorization to be granted to the Council to regulate interest and other facets of consumer problems. This structure merely continues the existing bifurcated legislative power in the District that has fractured District law relating to consumer protection to the point that the laws appears in small pieces in the D.C. Code and D.C. regulations.

Of course, the fracturing of District law, has been caused in part by the retention by Congress of some of the power to legislate in areas pertinent to consumer protection, like interest rates and insurance requirements.

Many problems of consumer abuse are purely local in nature and require flexibility in attempting to design remedies—a flexibility that makes action by the Council more appropriate than action by Congress.

Because of these considerations, we request that the Council before forwarding any proposed package of consumer legislation to Congress, consider seeking from Congress, instead, the broadest authorization possible to legislate in all areas relating to consumer credit sales and loan abuses, including interest rates, insurance requirements, and other areas where Congress, by already enacting specific laws has reserved to itself power to further legislate. With that authorization the Council itself could enact comprehensive consumer protection laws of the type now proposed by the Commission.

MARIBETH HALLORAN,
Neighborhood Legal Services Program,
Washington, D.C.

JOSEPH F. SMITH,
Neighborhood Consumer Information Center,
Washington, D.C.

DISTRICT OF COLUMBIA CITY COUNCIL REPORT

To: Council Members.
From: Sterling Tucker, Chairman, Housing and Urban Development Committee.
Date: September 15, 1970.
Subject: FHA/VA Regulation

The Housing and Urban Development Committee has often outlined the vast dimensions of the housing crisis confronting the District of Columbia. Within this larger crisis, there has developed a critical shortage of mortgage financing with which to rehabilitate and build decent, affordable housing for our low and moderate income citizens. Housing construction under the Government subsidy programs has come to a complete standstill. Other moderate income housing supported by FHA mortgage insurance has been smothered by the large discount that must be paid in order to obtain financing. The lack of mortgage financing in some measure has been caused by the fact that the current 8½% interest rate on FHA insured mortgages is in excess of the District's 8% usury ceiling. Under current law, the interest rate applicable to FHA and VA mortgages is established by the Secretary of Housing and Urban Development.

Though mortgage financing has been in short supply in the District of Columbia for several years, the situation initially reached a critical point when the Federal National Mortgage Association (FNMA) last fall announced that it was withdrawing from the secondary mortgage market in the District of Columbia because of its legal judgment that the prevailing interest rate in combination with discount points paid by the seller was in violation of the District's usury law. FNMA subsequently rescinded this action and agreed to purchase FHA and VA mortgages in the District. Shortly thereafter, the Secretary of HUD raised the interest rate on government-supported housing loans from 7½% to 8½%, a rate which on its face exceeds the District's 8% interest rate limit.

In response to these developments, the Council and the Mayor submitted legislation to the Congress that would exempt FHA and VA mortgages from the District's interest rate limit. I testified before both the House and Senate District Committees in support of the legislation. The bill gained easy passage in the Senate, was approved by the House District Committee, but was defeated on the floor of the House. On the same day that the House of Representatives rejected the bill, it passed and sent to the Senate a separate bill that exempted loans granted to rural electrification cooperatives from the District's usury limit. In the Senate, that bill was amended by adding a section that would authorize the D.C. Council to exempt from time to time FHA and VA mortgages from the effect of the usury law. Several weeks ago, this bill passed the House and was adopted by a House-Senate conference and later by both houses of Congress. This Committee has moved expeditiously to implement this legislation by, first, securing immediate publication in the D.C. Register, as is required by the Administrative Procedure Act, and then by setting a date for a public hearing.

On September 8, 1970, the Committee held a public hearing to review the major issues surrounding a regulation to implement the terms of the legislation. All invited witnesses were sent a copy of the legislation and a proposed regulation that would have exempted all FHA and VA mortgages. In addition, letters were sent to leading banks and savings and loan institutions asking for comments on the proposed legislation and an indication of the extent to which they were involved in FHA and VA mortgage financing in the District of Columbia.

Testifying at the hearing were Walter Fauntroy and Channing Phillips, representing MICCO and HDC; Henry Nichols and Rudolph Taylor, representing real estate groups involved in selling FHA and VA supported housing; Thornton Owen and Joseph Mahoney, representing financial institutions involved with providing mortgage money. The Committee also heard from witnesses representing consumer groups and other organizations deeply concerned with housing in the District.

There is universal agreement that, at a minimum, the Council should exempt FHA and VA mortgages receiving government interest rate subsidies. However, there are two other issues about which there was some disagreement: (1) the length of time the exemption should be in effect and method of reviewing it, and (2) whether or not the exemption should cover all FHA and VA mortgage programs or only those receiving interest subsidy.

Method of Reviewing the Exemption and Length of Time

The Committee has narrowed to three the alternatives on the question of how the Council should review the exemption. First, the Council could adopt a regulation that would be open-ended, subject only to periodic Council review of existing mortgage market conditions. Second, the regulation could provide for an automatic repeal after a specified period. Third, the regulation could expressly direct the Housing and Urban Development Committee to review mortgage market conditions and the impact of the exemption during a specified period, requiring the Committee to make a specific recommendation at the end of that time as to whether or not the exemption should be continued.

It is the recommendation of the Committee that the third alternative be adopted. The first laternative—that of an open-ended exemption—is unacceptable, in our judgment, becuase the higher interest rates that will result from the exemption, as a matter of public policy, demand formal review procedures. As this Committee has observed on many occasions, higher interest rates are not the solution to the problem of mortgage financing, and a FHA/VA usury exemption can only be a short term solution. The second alternative of automatically repealing the regulation at the end of a specified period also poses many difficulties. It will take several months before the impact of the regulation can be measured, and an automatic repeal provision may serve to artificially inhibit the willingness of financial institutions to commit funds for FHA and VA mortgages. The alternative the Committee is proposing has the advantage of providing flexibility, while at the same time, creating a formal review procedure under which the Council will be required to make a judgment as to whether the exemption should be continued. It would seem that this would not inhibit investment in quite the same way as an automatic repeal provision.

It is further recommended that the Council direct the Housing and Urban Development Committee to report at the end of a ten month period. This gives the Committee a sufficient amount of time to gauge the impact of the exemption, and at the same time allows mortgage financing to develop some momentum. We believe this is a sound approach and strongly recommend it to you. It should be added, however, that this ten month time period is not intended to preclude the Council from repealing the exemption at an earlier time should there be some dramatic development requiring such a change.

Extent of Exemption

The central remaining question is whether the Council should adopt a regulation exempting all FHA and VA mortgages or only those receiving federal interest rate subsidies. This question does not resolve itself easily, but it is the recommendation of this Committee that the Council, at least for the present, adopt a full exemption which includes all FHA and VA programs.

The issue arises because where the federal government provides an interest rate subsidy, all interest over 1% is absorbed by the federal government. Thus, the increased interest cost is not passed on to the housing consumer. We are assured that upon Council adoption of the exemption several hundred units of low and moderate income housing will receive financing. Most of these projects have been stalled solely because of the interest rate crisis. As I mentioned, all witnesses testifying at our public hearing supported, at a minimum, exempting FHA interest rate subsidy mortgages.

The larger question remains, however, as to whether a broad exemption for all FHA and VA mortgages should be adopted. One disadvantage of the broad exemption is obvious. Any additional interest rate that is charged as a result of the exemption must be borne by the purchaser of the housing and not by the federal government, as is true under the interest rate subsidy program. The Committee has been urged, for this reason, not to exempt such mortgages. We are deeply

sympathetic with the plight of the moderate income home buyer who must pay increased amounts for his housing. But we are not convinced that this is a greater evil than denying them the right to purchase a home. We believe that moderate income families who desire to purchase a home and who are willing to pay a higher but still reasonable interest rate should be allowed to do so. If the Council were to fail to exempt these mortgages, returning Viet Nam veterans would find it very difficult, if not impossible, to obtain the highly favorable benefits available under the Veteran's Administration Program. This is also true for other moderate income families, such as teachers, policemen, and firemen, who often can only obtain housing with the assistance of FHA programs. We believe it is unfair to deny these families an opportunity to own a home.

Also, this has some importance to the well-being of the District, because by denying the exemption to the moderate income families we only deny them the opportunity to buy a house in the District of Columbia. They can go to Maryland or Virginia to purchase a home, paying 8½% interest. The District can no longer afford to lose middle class, home owning citizens who provide needed tax revenue and stability to our community.

As we have said, higher interest rates are not the solution to the problems of mortgage financing in the District. It is clear that even when interest rates in the District were competitive, many financial institutions did not significantly contribute to the providing of financing for low and moderate income District families, but rather invested in slum speculation and suburban housing. According to statistics developed by Congresswoman Leonore Sullivan's Ad Hoc Subcommittee on Home Financing Practices and Procedures, 35% of the loans given by a sample of District's financial institutions were to absentee owners. Fifty-six percent of the mortgages by the savings and loan institutions were to borrowers living in middle-upper income neighborhoods in the District and in the suburbs.

As Mrs. Sullivan's subcommittee observed:

"The time has arrived to call the private money sector of the Nation's economy to account and to determine whether it can and will meet the housing requirements of all the Nation's people or whether new public vehicles must be designed and established to fill the unmet need."

It may be that the ultimate answer is national legislation. Congressman Wright Patman and Congresswoman Leonore Sullivan in their dissent to the *Report of the Commission on Mortgage Interest Rates* recommended a number of solutions, such as making available for mortgage financing government trust funds like social security. This Committee does not have sufficient evidence to know what a final answer might be, but we do know that we must search for more adequate solutions.

Between now and the time when we must report back to the Council, this Committee will explore the extent to which local financial institutions are contributing to the solving of our housing crisis. We will meet with representatives of local financial institutions to assess their ability and willingness to enlarge their involvement in financing low and moderate income housing. Periodically, over the next ten months we shall ask them to supply us with firm data and statistics relating to their participation in FHA and VA financing.

We have been asked to develop some guidelines as to the specific amount of investment expected by the Committee. We believe it is too early to develop specific figures, but at a minimum, if the FHA and VA interest rate exemption is to continue, our expectation is that all financial institutions must substantially increase their involvement in providing financing for low and moderate income home purchases. We note from recently gathered statistics that there are a number of institutions with substantially less than 50% of their in-force loans made in low and moderate income areas of the District. We are reluctant to establish a firm formula at this time, but we believe that it is an idea worth pursuing. We would expect that a savings and loan institution chartered to do business in the District would be willing to serve the community by providing at least one-half of its loans to low and moderate income families in the District, who are most in need of such assistance. This sets an expectation and a basis for our reviewing the impact of the regulation so that we can make a recommendation to the Council in ten months not only with respect to whether the exemption should be continued, but also with respect to legislative solutions that might be necessary, should an exemption not result in substantially more mortgage financing for low and moderate income families in the District.

Mr. Chairman, I move that the Council adopt the attached Regulation which exempts FHA and VA mortgages from the District's usury law and directs the Council's Housing and Urban Development Committee to review the impact of the regulation and make a recommendation as to whether it should be continued no later than August 1, 1971.

Regulation No. ---------

Enactment Date

Regulation
of the
District of Columbia

TITLE EXEMPTION OF CERTAIN LOANS AND MORTGAGES FROM THE USURY LAW OF THE DISTRICT OF COLUMBIA

Vice Chairman Sterling Tucker Presents the following regulation:

1 WHEREAS, chapter 33 of title 28 of the District of Columbia Code provides
2 that interest on loans made in the District shall not exceed eight percent per
3 annum; and
4
5 WHEREAS, the District of Columbia Council is authorized by Section 2 of the
6 Act approved August 28, 1970 (Public Law 91-385) to exempt from the provisions
7 of such chapter 33 mortgages and loans insured or guaranteed under the National
8 Housing Act or chapter 37 of title 38 of the United States Code, if the interest
9 rate on the mortgages and loans is subject to regulation by an officer or agency
10 of the Federal Government; and
11
12 WHEREAS, Section 3(a) of the Act approved May 7, 1968 (Public Law 90-301)
13 authorizes the Secretary of Housing and Urban Development to establish the
14 maximum interest rates for certain mortgage insurance programs authorized by
15 the National Housing Act, and the Secretary, pursuant to such authority, has
16 fixed at eight and one-half percent the maximum rate of interest on mortgages
17 insured under such programs on and after January 5, 1970 (35 F.R. 179; 24 CFR,
18 Chapter II); and
19
20 WHEREAS, Section 1803 (c)(1) of chapter 37 of title 38 of the United States
21 Code authorizes the Administrator of Veteran's Affairs to establish the maximum
22 interest rate on loans guaranteed or insured under that chapter and the Administrator,
23 pursuant to such authority, has fixed at eight and one-half percent the maximum
24 rate of interest on real estate loans made on and after January 5, 1970 (35 F.R. 181;

RECORD OF COUNCIL VOTE

COUNCILMAN	AYE	NAY	N.V.	A.B.	R.A.	COUNCILMAN	AYE	NAY	N.V.	A.B.	R.A.	COUNCILMAN	AYE	NAY	N.V.	A.B.	R.A.
HAHN						DAUGHERTY						ROBINSON					
TUCKER						HAYWOOD						VEAZEY					
ANDERSON						MOORE						YELDELL					

X—Indicates Vote A. B.—Absent N. V. Not Voting R. A.—Readopted

Submitted on first reading at a meeting of the District of Columbia City Council on ------------------------

Adopted on second and final reading --

Presented to the Mayor-Commissioner --------------- Date ------------------------ Secretary of the City Council

Approved ------------------------------------ Mayor-Commissioner ------------------ Date

Enacted W/O signature of the Mayor according to ten day limitation rule: ------------------ Date

Disapproved and returned to the City Council ---------------------------- Mayor-Commissioner ------------------ Date

Readopted -------------------------------------- Date

I hereby certify that this regulation is true and adopted (or readopted) as stated therein.

Secretary of the City Council

F-251

Certified copies are available.

38 CFR § 36.4311 (a)); and

WHEREAS, the Council has determined that if the urgent housing needs of the people be met, the present state of the mortgage market in the District requires that mortgage and loans insured or guaranteed under the National Housing Act or chapter 37 of title 38 of the United States Code not be subject to the interest rate limitations of chapter 33 of title 28 of the District of Columbia Code.

NOW, THEREFORE, BE IT ENACTED by the District of Columbia Council that:

Section 1. Mortgages and loans insured or guaranteed under the National Housing Act or chapter 37 of title 38 of the United States Code, the Interest rates of which are subject to regulation by an officer or agency of the Federal Government, are exempt from the provisions of chapter 33 of title 28 of the District of Columbia Code.

Section 2. The Housing and Urban Development Committee of the District of Columbia Council shall review the effect of the exemption provided in Section 1 to assess the extent to which such exemption results in a greater availability of mortgage financing for low and moderate income families and to gauge the impact of such exemption on such families. The Committee shall report its findings and shall make a recommendation as to whether such exemption should be extended and as to legislation to remedy the shortage of mortgage financing, should that continue to be the case, no later than August 1, 1971.

Section 3. This Regulation shall take effect immediately upon enactment.

The CHAIRMAN. Mr. L. A. Jennings, president of the Riggs National Bank, Washington, D.C.

STATEMENT OF L. A. JENNINGS, CHAIRMAN OF THE BOARD, RIGGS NATIONAL BANK, WASHINGTON, D.C.

Mr. JENNINGS. Thank you, Mr. Chairman.

My name is L. A. Jennings. I am chairman of the board of the Riggs National Bank, of Washington, D.C., and I appear before you today on behalf of the District of Columbia Bankers Association to testify on S. 1938, a bill to amend certain provisions of subtitle II of title 28, District of Columbia Code, relating to interest and usury.

The enactment of S. 1938 would establish maximum interest rate ceilings applicable to District of Columbia banks equal to the lower of the maximum ceiling rates authorized for banks either under the laws of the State of Virginia or the State of Maryland.

The bill is sound, is needed, and should be enacted. It is supported by all the banks in the District of Columbia.

Maximum interest rate ceilings established by law and made applicable to banks, in the absence of unusual economic circumstances, do not represent the interest rates actually charged by banks. Competition brings about a lower rate, which we call the competitive rate and which is lower than the legal ceiling rate.

As an example, the present prime rate of 6 percent charged the strongest corporate and noncorporate business borrower for short-term loans is well under the maximum ceiling contract rate of 8 percent per annum presently authorized for loans of this type by the laws of Virginia, Maryland, and the District of Columbia.

Corporations operating for profit may not plead usury, so there is no legal maximum rate ceiling applicable to such loans. Yet, the stronger corporate borrowers receive the prime rate of 6 percent. This is the highest interest rate established by competitive and economic forces for such borrowers at this time.

Also, the present competitive rates in the District of Columbia for normal business or commercial loans to corporate and noncorporate entities enjoying less than the strongest financial positions are 6¼ to 7¾ percent, notwithstanding that by law the maximum ceiling rate is 8 percent.

The Washington metropolitan area has a population in excess of 2.8 million, with some 760,000 residing in the District of Columbia. The District is a 61-square-mile "island" surrounded by the States of Virginia and Maryland.

The 11 largest banks of Virginia and Maryland operate on the boundaries of the District by means of branch banks, banks owned by holding companies, or actual head offices. Competition between banks of the two States and the banks in the District of Columbia, which should be intense for the best interests of the public, is impaired by current conditions in the consumer credit field.

Just as competition among banks brings about a lower rate than the ceiling rate when competitive factors are operative, similarly when banks are hampered in maintaining their competitive position, borrowers are frequently denied the opportunity to borrow if the ceiling rate is inadequate to warrant granting the loans.

This is the condition which is now developing in the District of Columbia and which S. 1938 is designed to remedy.

An important phase of banking competition is the ability to make consumer loans; that is, personal unsecured installment loans and direct automobile installment loans, at interest rates which permit a fair profit. Competitive forces are strong in this field of bank lending activity, and, if the factors governing the granting of such loans are approximately even, the rates charged by banks are governed by competition.

If ceiling rate restrictions require that consumer installment loans be made on about a break-even basis from the standpoint of profit, or at a small operating loss for the average loan, or even at a negligible profit, the lending policy governing the granting of such loans must be unduly conservative, because the latitude for a normal small percentage of loan losses does not exist.

Banks faced with this dilemma are not competitive with banks able to make consumer installment loans at rates which produce a fair profit. When consumer loans can be made on the latter basis, the lending policy can safely be liberalized to serve far more people.

While loan losses under the more liberal policy will increase to some extent, earnings are sufficient to absorb them and provide a reasonable profit to the bank. A better and more constructive job has been done for all concerned.

In the installment credit and small loan fields, Virginia and Maryland are permitted a ceiling rate enabling banks in those States to make such loans to District of Columbia residents who are frequently denied such loans by District banks because of the lower interest ceilings.

Such lower ceilings in the District of Columbia for these types of loans, which involve a higher degree of risk and higher reserves, have caused District of Columbia banks to refuse such loans.

This requires District of Columbia residents, and many residents of Virginia and Maryland who work in Washington and also maintain banking relations here, to borrow in Virginia and Maryland at higher but fair rates. The anomalous situation thus exists that borrowers borrow where the interest rates are higher rather than where they are lower.

This anomaly is created by lenders frequently refusing to lend at the lower rates which do not compensate for the average losses sustained, and provide no profit margin. Statistics show that the growth of such loans in Virginia and Maryland on June 30, 1970, over June 30, 1969, was 11.7 percent, whereas in the District of Columbia there was a decline of 3.5 percent.

The disparity in interest rate ceilings between the District of Columbia and the two States contained in the Washington metropolitan area, has produced this inequitable result. The failure to correct it by enacting S. 1938 will further impair the health of consumer credit lending by District of Columbia banks, and provide an unfair competitive advantage to banks across the river in Virginia or across the street in Maryland.

S. 1938 makes the correction by equalizing the ceiling rates with the lower of the rates in effect in its two neighboring jurisdictions, instead of seeking to establish a rate which might be higher and conceivably viewed as not being in the public interest.

General and basic interest rates are not changed; S. 1938 would effect no changes in the maximum interest rate ceilings presently in force in the District of Columbia for general loans, whether oral or written or on judgments. The District of Columbia maximum interest rate ceilings for such loans and judgments are identical to those of Virginia and Maryland.

In other words, in the District of Columbia, the legal rate is 6 percent; the contract rate is 8 percent; the judgments, 6 percent. Those ceilings are identical in both Maryland and Virginia.

Going on to other specific types of loans, corporation loans, in the District, usury is no defense; that is true also in Virginia and Maryland.

Coming to first mortgage loans, the ceiling rate is 8 percent on those loans; that is the ceiling rate in Maryland. Virginia had its ceiling lifted by the State legislature last year, and there will be no ceiling until July 1, 1972. However, the District of Columbia banks will be held to 8 percent, which is the rate applicable in Maryland.

The CHAIRMAN. The first mortgage loan would be typically a homeowner's loan, I presume.

Mr. JENNINGS. Yes. I might say, Senator, it also covers loans on income-producing properties, the ceiling rate is 8 percent.

The CHAIRMAN. There is no ceiling in Virginia. What is the current rate being charged here for a homeowner's loan in the three jurisdictions?

Mr. JENNINGS. At the present time, between 7½ percent and 7¾ percent. Actually, I would say, the great bulk of the loans in that State for home loans are at the rate of 7½ percent.

The CHAIRMAN. The staff has just handed me a letter from the Chairman of the Federal Reserve Board, Arthur F. Burns.

We will put the entire letter in the record.

(The letter follows:)

CHAIRMAN OF THE BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
Washington, D.C., August 4, 1971.

Hon. THOMAS F. EAGLETON,
Chairman, Committee on the District of Columbia U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: You have asked for the views of the Board on S. 1938, a bill to amend certain provisions of subtitle II of title 28, District of Columbia Code, relating to interest and usury.

Under present law in the District of Columbia, 8 per cent per annum is apparently the maximum rate which may be charged on loans not specifically otherwise covered by law. S. 1938 would, in effect, modify this rule by providing that, in the case of any loan made by a banking institution, the rate shall not exceed the legal maximum for the type of loan in question under the laws of Virginia or Maryland whichever is less.

Existing law may operate to deprive the public of potential sources of funds as well as to inhibit competition by making certain types of lending activities unattractive to depositary institutions. Under the prevailing structure of interest rates, this effect is most notably felt with respect to home improvement loans, automobile finance, and personal loans repayable in installments.

The Board favors the objective of the proposed legislation. The Board suggests, however, that, as a matter of policy, the considerations which are applicable in the case of banks are equally applicable in the case of savings and loan associations. Also, to eliminate any uncertainty as to whether any given institution is covered by the legislation, as well as to effectuate the apparent policy of confining the legislation to regulated lenders, it is suggested that it cover only Federally insured institutions.

To carry out the foregoing suggestions, the bill could be amended by striking out lines 3 through 13 on page 2 and inserting in lieu thereof the following:

"§ 28–3301a. *Rate of interest for depositary institutions.*

"Any Federally insured bank or savings and loan association may lend money at any rate not exceeding the maximum rate which would be permissible for such a loan under the laws of the State of Virginia or the State of Maryland, whichever is less, as in effect at the time the loan is made. Interest on such a loan may be received or taken in advance to the same extent as permitted under the laws of the State whose maximum rate governs that loan. As used in this section, the term 'Federally insured bank or savings and loan association' means an insured bank as defined in section 3 of the Federal Deposit Insurance Act or an insured institution as defined in section 401 of the National Housing Act."

The Board appreciates the opportunity to comment on this legislation.

Sincerely yours,

ARTHUR F. BURNS.

The CHAIRMAN. I will read one paragraph from the letter to you and then ask for your commeut on it, because I think it is pertinent at this point.

The Board favors the objective of the proposed legislation. The Board suggests, however, that, as a matter of policy, the considerations which are applicable in the case of banks are equally applicable in the case of savings and loan associations.

Also, to eliminate any uncertainty as to whether any given institution is covered by the legislation, as well as to effectuate the apparent policy of confining the legislation to regulated lenders, it is suggested that it cover only Federally insured institutions.

The CHAIRMAN. How does that strike you?

Mr. JENNINGS. So far as covering only federally insured institutions, that would cover, I believe—I am almost positive—every bank and every savings and loan in the District of Columbia and the two States.

Now, the other point on savings and loans particularly, the savings and loans do not make consumer loans; their job is to make home loans, as you know. The contract rate of 8 percent is applicable to them, the same as it is to the banks. With Maryland at 8 percent, that would be the rate in the District.

I cannot conceive of Maryland increasing the ceiling rate on mortgages. Virginia did this a year ago by just lifting it entirely when money was so tight that mortgage loans were not available. I believe it is the only State in the Union that took this action.

I do not see any reason for savings and loans being included in this bill. But I have no objection whatsoever, and I am sure my associates would have no objection, if savings and loans were so included. But they are mortgage lending institutions, and the rate which affects them is the contract rate of 8 percent for mortgage loans.

The CHAIRMAN. Fine. Will you continue with this chart that you have on page 4 of your prepared statement.

Mr. JENNINGS. On business loans, usually to unincorporated companies, the District of Columbia contract rate of 8 percent is applicable. Virginia has an 8-percent ceiling rate, whereas in Maryland in this instance, over $5,000, the loan is exempt from usury. We would of course remain at 8 right across the board.

The FHA and VA real estate loans, 7 percent in all jurisdictions; the rates are set by HUD for FHA and by the Veterans' Administration for VA loans.

I think I might point out that these are the loans referred to by Chairman Hahn where the usury ceiling was dispensed with in the District of Columbia. But he did not point out that the authority was turned over to these agencies. So, it is not just wide open. I don't remember his saying that it was turned over to these Federal agencies to regulate.

The Congress gave the District of Columbia City Council the authority to set rates on FHA and VA. The Distict of Columbia City Council then took action to turn the authority over, waiving their own authority, to HUD for FHA loans and to the Veterans' Administration for VA insured loans. There is nothing wrong with this; it was the proper thing to do.

But when they said they waived it, nevertheless, it was turned over to Federal agencies who control the rates.

The CHAIRMAN. But the authority was delegated to the Council, and the Council in turn redelegated it, as it were, to the respective agencies.

Mr. JENNINGS. That is right.

(The chart previously discussed follows:)

General	District of Columbia	Identical in both Virginia and Maryland
Legal rate	6 percent	6 percent.
Contract rate	8 percent	8 percent.
Judgments	6 percent	6 percent.

Other specific types of loans	District of Columbia	Virginia	Maryland
Corporation loans	Usury, no defense	Usury, no defense	Usury, no defense.
1st mortgage loans	8 percent	No ceiling until July 1, 1972.	8 percent.
Business loans	8 percent	8 percent	Over $5,000 exempt from usury.
FHA and VA real estate loans (rates set by HUD for FHA and by Veterans' Administration for VA loans).	7 percent	7 percent	7 percent.

The CHAIRMAN. I might as well ask you at this point, because I will get to the question later, what would be your attitude as to Mr. Hahn's basic proposal on behalf of the city council that the entire interest rate setting procedure be delegated to the city council?

Mr. JENNINGS. We would be opposed to that. We believe that one of the things that Chairman Hahn is trying to do is to bring about a situation where finance companies will come into the District of Columbia.

In order to do that, the ceiling rates are going to have to be set at a very high rate. We believe that if the uniform consumer credit code were to come up here for consideration—it is a 100-page bill on both sides of the paper—we have studied it with great care in the banking fraternity and had a member of the banking fraternity on the commission that was chaired by Judge Newman.

One thing they didn't do, they didn't finish the work. They found that bankers were in general agreement in connection with all of the protective measures to insure that consumers were handled properly. All of those things we have no objection to.

But the crux of the uniform consumer credit code is that competition will set the rates rather than ceilings dictated by the Government. In order to do that, very high rates have to be established.

I hasten to add that the ceilings do not mean that those are the rates which will be charged, but I think it would be interesting at this point to mention that the ceilings that are provided in the consumer credit code—and this law has been enacted in six States—

Oklahoma, Wyoming, Colorado, Idaho, Utah, and Indiana—all of those have been enacted very recently, but they are all in the Southwest and in the West. No States in the East have adopted them.

Now, the contract rates are as follows: 36 percent per year on that part of the unpaid balance of the principal which is $300 or less; 21 percent per year on that part of the unpaid balance of the principal which is more than $300 but does not exceed $1,000; and 15 percent per year on that part of the loan which exceeds $1,000.

Or you could forget all that I have said and make the loan with the ceiling of 18 percent.

Now, when it comes to legal and judgment rate, that remains at 6 percent.

First mortgage loans are not really covered under the code if the interest rate does not exceed 10 percent; but if the interest rate exceeds 10 percent, then the contract rate applies.

Noncorporate business loans, ceiling of 18 percent if consumer-related. Personal, unsecured installment loans, 18 percent and/or 36 percent, 21 percent, 15 percent. Automobile loans, the same, 36 percent, 21 percent, 15 percent in graduate amounts. Then if you want to waive all that, there is a ceiling of 18 percent.

Now, when the study was almost completed, we then came to the matter of these rates: what rates would be recommended to the Congress? Bear in mind, they have to be fairly high, particularly if you are going to bring finance companies in.

The State of Maryland at the present time permits finance companies—not banks, but finance companies—to charge 36 percent up to $300 and then 30 percent up to $500; and finally ends up at a 12 percent per annum ceiling for the remainder.

Over in Virginia, for finance companies it starts out at 30 percent per annum up to $300, and then graduates down to a final figure of 6-percent discount.

Now, it was considered by, I think—certainly, I believe, it was considered by Chairman Hahn, certainly by Mr. Kass, that it really wasn't politically feasible to send a bill to Congress with interest ceilings that were this high.

Well, we suggested than an economic study be made of our region to determine what the ceiling should be. That was not agreed to, and the study was not made.

As Chairman Hahn has indicated, I believe, he would like to send the bill up with no interest rate ceilings in it but with all protective safeguards, and ask the Congress to do one of two things: Either to authorize the District of Columbia City Council to set these ceiling rates—and they would have to be pretty high. If it is not politically feasible for the Congress, I don't know how it can be politically feasible for the District of Columbia Council to set these higher rates.

We simply felt that there had to be something definite on the interest rate ceilings, how it was going to be handled, before the bill was sent up here, and we so informed Chairman Hahn, and there the matter has rested.

But he did say this morning that the ceilings could either be set by the Congress or, as he would prefer, to have the ceiling rates authorized for establishment by the District of Columbia City Council. But that is the problem here.

Now, one of the basic assumptions is that competition will determine what the interest rate ceilings are. I am inclined to believe, without question, that they will. However, it remains to be seen. We have six States, and some time has to go by to see just how it works.

None of the Eastern States have accepted it as yet. I hope many of them will. But maybe some time is needed. Maybe 4 or 5 years, before this is adopted by the Federal Congress.

I have read in the paper that Chairman Wright Patman of the House Banking Committee has come out strongly against the action in the six States I have mentioned. He thinks it is terrible to provide these high ceilings and expect that competition will keep the rates at a much lower level.

So we know as of now that if the bill came to the Congress, when it got to the House, at least, it would have a really tough time of it in the House Banking and Currency Committee. So we believe that until the time is ripe for this type of bill, we need relief now, not 3 years or 5 years from now.

The CHAIRMAN. In those six States that have enacted the uniform credit code, can you give me any comments as to the effective rates? Are they at or near the maximum ceilings set forth in those statutes or would it vary all over the lot?

Mr. JENNINGS. You mean what is actually being charged by the banks in those States?

The CHAIRMAN. Yes.

Mr. JENNINGS. I cannot. I will say, Colorado and Wyoming enacted the code only a few months ago. Part of it is effective in October. The oldest is Oklahoma; they were the first to adopt the code. I could get those rates, but I don't know them.

The CHAIRMAN. If we need them for the record, we will ask you at a later time, Mr. Jennings.

Mr. JENNINGS. All right.

The CHAIRMAN. I have interrupted you too much, as it is.

Mr. JENNINGS. The code is a very important subject and I am glad you did.

Notwithstanding that the District of Columbia rates in the foregoing types of loans are either the same or not higher than the lesser of the rates in Virginia and Maryland, some uncertainty has recently arisen as to whether the practice of discounting personal unsecured installment paper at, or more usually below, the maximum contract ceiling rate in the District of Columbia, in order to achieve competitive equality with Virginia and Maryland banks, constitutes usury where the effective annual percentage rate exceeds 8 percent per annum.

The practice of discounting has been in effect in the District of Columbia since time immemorial, and the Supreme Court of the United States held more than 50 years ago in *Evans* v. *National Bank* (251 U.S. 108) that discounting of installment paper at the applicable legal contract rate was not usurious.

Although it is believed the practice is proper and its continuous use for over a half century makes clear that it is not a taking of usury "knowingly" so as to render a bank liable under National Bank Act provisions enacted more than 100 years ago (R.S. 5198, 12 U.S.C. 86), it is preferable to eliminate any uncertainty by enacting S. 1938.

This would clarify the rights of District of Columbia banks to discount installment paper at the lower of the Virginia and Maryland rates which is at 6 percent discounted.

The following table shows the present District of Columbia, Virginia, and Maryland ceiling rates on personal unsecured installment loans and the new District of Columbia rate which would be established under S. 1938 as the lesser of the Virginia and Maryland rates.

The CHAIRMAN. At the bottom of page 4, you say that some uncertainty has recently arisen, and then describe the *Evans* case.

Mr. JENNINGS. Well, the uncertainty arose in the spring of 1969, in April, when a suit was brought against four banks in the District of Columbia, alleging that the discounting of personal loans at a rate which was in excess of 8 percent simple interest constituted usury.

If they were discounted at 5 percent, that would be a rate of 9½; if they were discounted at 6, it would be about 11½. Some of those loans were being made on roughly that basis, on the basis that they had been made for 50 years, and a class suit was brought against the four banks. It has been going now for over 2 years, without decision.

When that suit was filed, because of the uncertainty which arose, the banks that had been discounting at a rate which created an effective simple interest rate in excess of 8 percent, drew back and started making the loans at 8 percent until the matter had been adjudicated.

So, 8 percent simple interest, that is what they are making the loans at. As we will point out here, there is no profit in it whatsoever. As a matter of fact, there is a small loss in every loan we make when we make it at an 8-percent contract rate. That is where the uncertainty arose.

The CHAIRMAN. Is that suit still pending?

Mr. JENNINGS. Yes.

The CHAIRMAN. Did I gather from your comment on it that the four banks named in the suit have discontinued the practice of discounting loans?

Mr. JENNINGS. They have brought it down, until the suit is determined, they have the practice of charging 8 percent simple interest. It is not just the four banks involved in the suit, because if it were decided adversely, it would then fall against the remaining banks. So, I would say, to the best of my knowledge, all banks in town changed their practice and started charging 8 percent simple interest.

The CHAIRMAN. Because I don't comprehend all of the intricacies of banking, how did this discounting practice actually function? When was it in effect? Give me a typical loan and how it was handled.

Mr. JENNINGS. Well, on a discount basis, for a thousand dollars, 6 percent discount, $60 would be subtracted from the thousand dollars——

The CHAIRMAN. This would be an unsecured personal loan?

Mr. JENNINGS. Unsecured personal loan. I brought along two examples. On the discount payable in 12 equal monthly installments, $1,000 total note, $60 would be the finance charge, that is the discount. The individual receives $940. He pays it off over the 12-month period, and the annual percentage rate against the borrower is 11.58 percent. That is on a 6-percent discount.

The CHAIRMAN. That would be the effective rate after the $60 had been taken out at the beginning?

Mr. JENNINGS. Yes. So the effective rate is 11.58 percent.

The CHAIRMAN. Are the banks in the District of Columbia area making a substantial number of loans of this type or is it a relatively small item in the total operations of the District of Columbia banks?

Mr. JENNINGS. It would depend on the bank. The smaller banks would have a bigger percentage of their total loans in installment loans. The large banks, by virtue of making $2 million–$5 million loans, would have a smaller percentage of their overall portfolio in unsecured personal installment loans.

But, believe me, every bank in town was out to get personal loans; they wanted to serve the community at a 6-percent discount figure, there was some profit in it. They could have reasonably liberal lending policies in connection with the making of such loans.

While the losses were somewhat greater, nevertheless it came out as a profit item in the overall result. But if you hold it down to 8-percent simple interest—no profit.

The CHAIRMAN. Since you have discontinued the discounting has the volume of these personal loans dropped off?

Mr. JENNINGS. Yes. As I pointed out earlier, comparing Virginia and Maryland with the District, the slide-off in our loans was about 3.58 percent, whereas the other two jurisdictions went up about 11½ percent.

I would like to add this, too. Those figures are from June 30, 1969, to June 30, 1970. The suit was started in 1969 and there was some delay in going into this. I am positive when the figures are available as of June 30, 1971, you will see a much more dramatic slide.

I was told by a banker only yesterday that his personal loans had gone off 50 percent. Ours have gone off not as much.

But we are not actively seeking those loans, whereas formerly we actively sought them, we wanted to make them. We wanted to look at the needs of the small borrower. We still do, but we find it very difficult to do this with enthusiasm under the current conditions.

The CHAIRMAN. Insofar as your bank is concerned, yours is the biggest, isn't it, in the District of Columbia?

Mr. JENNINGS. Yes, sir.

The CHAIRMAN. Operating at the 8 percent figure, do you, by and large, restrict the granting of personal loans at the present time, because of the 8 percent limitation, to depositors?

Mr. JENNINGS. No, we don't restrict it just to depositors, but we have cut its standards, whether the borrower is a depositor or not, we have far tighter credit standards which are calculated to not produce other than a minimum amount of losses.

That isn't the proper way to run a consumer personal loan portfolio. You have to take some risks. If you have a little more income out of it, then you can take these additional losses and, as we all know, loans that we may feel have a good deal of risk in them in the personal loan field frequently pay off; some that we don't think have so much risk in them are the ones that fall by the wayside.

There is not any human being that can say with complete accuracy in connection with a given loan portfolio of personal loans, which ones are going to slide. On the average, when you do liberalize your lending policy, it creeps up.

The present ceiling rates in connection with installment loans, personal, 8 percent for the District of Columbia—and I have put an asterisk there, to indicate:

Washington banks have considered their legal top ceiling for unsecured installment loans to be 8 percent discounted. As a matter of practice, they have maintained their competitive discount rate for such loans at from 5 to 6 percent for many years, similar to the competitive rates in Virginia and Maryland.

The effect of S. 1938 is to lower the District of Columbia ceiling rate from 8 percent discount to 6 percent discount and relieve the uncertainty as to whether usury is involved, because of the suit.

Virginia has 6 percent discounted, Maryland 12 percent simple. The new District of Columbia rate would be 6 percent discounted up to 16 months, with 12-percent simple with longer maturities. That is brought about because if we just use 6 percent discounting on through for a longer period, it would exceed the 12-percent established by Maryland, so we have to stay within the 12-percent limit.

The CHAIRMAN. As between the 6-percent discount in Virginia and the 12 percent simple in Maryland, I am not an actuary or very good at figures, but the 12-percent simple in Maryland is the lower; is that right?

Mr. JENNINGS. It is when you get up to over 16 months. Up to 16 months, the 6-percent discount is lower than 12 percent simple.

The CHAIRMAN. So that under the bill, S. 1938, the new District of Columbia rate would be sort of a combination of the two; up to certain amount it would be Virginia and under a certain amount it would be Maryland.

Mr. JENNINGS. It is the only interest of its type that would appear to arise in the bill.

Now, the banks in the Washington metropolitan area of Virginia and Maryland are not charging 12 percent per annum or 6-percent discount for personal loans. They are charging more than 8-percent simple interest. A fair estimate would be that these banks are charging in the neighborhood of 10 percent or 10½ percent per annum for personal installment loans, and 8½ percent to 9 percent per annum on direct new automobile loans.

This, again, serves to prove that effective competition is the determining factor in establishing interest rates, not the ceilings, unless abnormal economic conditions force interest rates up to their ceiling levels for specific types of loans.

The following analysis shows the difference between the current ceiling rates in Maryland and Virginia on a $1,000 loan due in installments for 12 months; also in the District of Columbia if the 8-percent ceiling is made applicable at an annual percentage rate instead of discount.

We would find on a $1,000 loan in Virginia at a 6-percent discount, the finance charge would be $63.82; the effective rate would be 11.58. In Maryland, on 12-percent simple on an annual basis, $66.20 would be the finance charge, with an effective rate of 12 percent. In the District of Columbia, 8-percent simple, we get $43.90 finance charge.

It is thus seen that the yield on the same loan in Maryland and Virginia is roughly 50 percent higher than in the District of Columbia.

As the term of the loan is extended to 3 years instead of 1 year, the disparity is even greater. In Virginia, the 6-percent discount, $219.51 and 13.38 percent effective rate. In Maryland, 12-percent simple, $195.70, and 12 percent. In the District of Columbia, 8-percent simple, we get $128.10 on the 8-percent simple rate.

66-583—71——4

On the subject of direct automobile installment loans, the following table shows the present District of Columbia, Virginia, and Maryland ceiling rates on direct installment automobile loans. These loans are made to an owner who pledges the automobile as security. They are not related to the so-called two-name paper transactions involving the purchase of the automobile through a dealer where the paper is then purchased by a bank with the dealer's endorsement, or the establishment of reserves to reduce the risk of the bank.

The table also shows the new District of Columbia rate which would be established under S. 1938 as the lesser of the Virginia and Maryland rates.

Present rates for District of Columbia—this law was enacted in 1960—$8 per $100 on new cars, and graduated up to $16 per $100 on used cars. The District of Columbia motor vehicle law and regulations thereunder permit consumer credit lenders to charge these rates which would be unaffected by S. 1938.

The effect of S. 1938 would be to set the ceiling rate for banks at 6 percent discount and would make moot the uncertainty as to whether banks qualify as consumer lenders under the present District of Columbia motor vehicle law.

For Virginia, 6-percent discount, new and used cars.

For Maryland, $9 per $100 up to $15 per $100. And for District of Columbia, the new rate would be 6 percent discount on new and used cars, or 11.5 annual effective rate.

Actually, for automobile dealers and other consumer credit lenders, the District of Columbia law is a very fine rate (Maryland is even higher), $8 per $100 would be about 15.5 percent on a new car and up to $16 per $100 on a used car would be about 29 to 30 percent.

Maryland would be $9 per $100; that would be 17.5 percent, maybe 17 percent. The $15 would be about 28 percent.

So the 6-percent discount is well below what Maryland permits or well below what the District of Columbia permits for automobile dealers and consumer credit lenders, but this is not being adjudicated in the District of Columbia. But on the other hand, our lawyers differ materially as to whether the 1960 motor vehicle law is applicable to banks in the District of Columbia. Some say it is, some say it is not. We want to be sure. Therefore, we are perfectly happy to take a 6-percent discount ceiling—we can live within that very nicely—and forget trying to determine whether the far more liberal law on the books in the District of Columbia is applicable to banks.

The CHAIRMAN. Let me see if I understand that. I am at the bottom of page 7. I haven't gotten over to page 8 yet. The last line indicates the current effective rates: 13.38 in Virginia, 16.24 in Maryland, and 14.55 in the District of Columbia. Is that right?

Mr. JENNINGS. Yes.

The CHAIRMAN. Under S. 1938, if it is to be the lower of the rates in the neighboring jurisdictions, then the effective rate for the District of Columbia would be 13.38; is that right?

Mr. JENNINGS. Yes; 13.38, which is the same as Virginia.

The CHAIRMAN. So it would be lower than the current rate being charged in the District of Columbia.

Mr. JENNINGS. That is correct.

The CHAIRMAN. Now, are banks, yours particularly—let us talk about yours—are you making automobile loans?

Mr. JENNINGS. Yes, we are.

The CHAIRMAN. At 14.55?

Mr. JENNINGS. No; there is some uncertainty. We happen to be among the banks who think that the District of Columbia motor vehicle law enacted in 1960 would be applicable to banks. The District government promulgated regulations; we have followed all the regulations they have issued. Our lawyers have gone into it with care and they believe that we are all right.

But we are charging at the present time for new auto loans, 8½ percent simple interest. That is what they are charging in Virginia and Maryland—8½, 8¾. We are charging 8½ simple interest.

The CHAIRMAN. What is the dispute, as to whether that 8½ percent simple interest is in violation of the overall usury act?

Mr. JENNINGS. Yes; because it would exceed the contract rate of 8 percent. Unfortunately, in the legislative history and in the bill when it was enacted, banks were never mentioned. Unfortunately, they did not define "consumer credit lenders" to include banks.

However, we have excellent lawyers on both sides of the argument, but the Lord knows we don't want to have it adjudicated, we want it clarified. The competitive rate for automobile loans in our whole region here is 8½–8¾ simple interest, on new car loans.

It was previously mentioned that Virginia and Maryland banks located in the metropolitan area of Washington are not charging the permitted ceiling rates on direct installment automobile loans. They are charging the equivalent of 8½ percent to 9 percent simple interest per annum—I said 9 here because I was not positive, but in my opinion it is 8½ to 8¾—and there is no reason to believe that District of Columbia banks in a competitive atmosphere should charge any higher rates.

It seems to us in the banking industry that S. 1938 would not only help restore a more rigorous competition for banking business, which would enure to the benefit of the citizens of the area, but it is only fair and equitable that the banks in the District of Columbia should not suffer the loss of business to their neighbors because they operate in the Federal City and at times find it more difficult, for perfectly understandable reasons, to obtain the same degree of responsiveness to its local banking problems from the Federal Congress as banks in the several States receive from their State legislatures.

Nor is the current problem one to be settled by the courts where relief is also available through the time-consuming judicial process. The regulation of business is for the legislature, and in particular the banks of this city must look to the Congress for legislative aid.

The CHAIRMAN. Mr. Jennings, I think I will interrupt you there. There is a vote. I don't think you would be able to finish your testimony by the time I would have to leave anyway. So I will go over and vote early, and be right back. So we will be in recess for a few minutes.

(A brief recess was taken.)

The CHAIRMAN. We are now back on the Jennings lecture on banking and interest rates. Let us get into the subject of revolving credit accounts, Mr. Jennings.

Mr. JENNINGS. Revolving credit accounts are an old and well-established method whereby credit is extended in connection with the sales of goods and services on time. It has expanded on a national basis

in recent years. Large merchants have, for many, many years, used credit cards to facilitate purchases and the handling of their customers' accounts, and levied a service charge when the sale terms provided a period of time to effect repayment.

Credit cards usually provide a free period of from 25 days to 1 month within which the bill may be paid without a service charge. More recently, commencing in the early 1950's, in order to provide smaller merchants unable to issue their own credit cards with a credit card service, and to enable the public to make purchases at such stores, companies were formed such as Central Charge Service, Inc.

Even more recently, banks became active in this field. The two largest appear to be the Bank of America's Bank Americard and Master Charge. In the bank credit card operations, the smaller merchants receive the added advantage of receiving cash for their receivables turned over to the credit card companies and are relieved of all collection expenses, administrative expense, and bad debt losses.

A credit card company is literally a "paper factory" and is expensive to operate because of the hundreds of thousands of small monthly bills involved. It would be absolutely impossible to operate such a company profitably on the basis of a service charge rate equivalent to an 8-percent contract interest rate per annum.

The cost of rendering the service far exceeds that amount. Factors involved are these: A significant number of people pay within the initial "no service charge" period; an even more significant number pay within a few months; administrative and operating expenses are high, and the very nature of the business is conducive to a higher percentage of losses than other types of consumer credit since the obligations are unsecured and there is no recourse for bad debts against the merchants.

Thousands of smaller merchants benefit materially from the credit card service provided by banks and their business is enhanced by having the service available to them.

Washington, D.C., has only one locally based credit card company, previously referred to as Central Charge Service, Inc., a subsidiary of the Riggs National Bank. It currently sends out monthly statements to 270,000 cardholders, and serves in excess of 6,000 merchants.

Competition is provided in very adequate measure by 35 Virginia and Maryland banks with 235 offices in the metropolitan area of Washington who issue Bank Americard and Master Charge cards. These two competitive cards are held by thousands of District residents who pay their bills and service charges to the banks concerned in Maryland and Virginia, and, to a much lesser extent, to card-issuing banks throughout the country.

Because the function of the credit card company is not to lend money but rather to render a service to card holders, enabling them to use the credit cards as a basis for purchasing at the cash price at any of over 6,000 metropolitan area stores, it has always been accepted that usury statutes were not applicable because the transactions involve the purchase of goods and not the loan of money. Even if some portion of charges for the service were characterized as interest, that portion would be well below the contract interest rate of eight percent.

The Internal Revenue Service sets the portion of the service charge as eligible for an "interest paid" tax deduction at 6 percent unless

the particular issuer sets a higher or lower portion of the service charge as "interest."

In the past it was, therefore, not felt necessary to seek any legislation of rates affecting a credit card company. Many State legislatures have in very recent years, because of litigation problems arising in some States, dealt with the revolving credit financing of sales of services and merchandise.

Consumer credit statutes have been enacted fixing a ceiling on finance charges equal to 1½ percent per month on balances up to $500 and 1 percent on the excess in Maryland, and 1½ percent on all balances in Virginia.

Although the District of Columbia usury statute is not believed to have any bearing on Central Charge's finance charges, the legality of those charges, which are the same as the Maryland charges, is now being attacked in the courts as usury. To avoid the need for further litigation on this subject, it is submitted that S. 1938 would resolve the uncertainty in the revolving credit area by adopting for the District of Columbia the lesser of the Virginia and Maryland finance charge rates, the lesser (Maryland) being the same as that now in effect in the District.

Absent such legislation, Central Charge will be embroiled in long-term and expensive litigation and would have no alternative but to close its doors and go out of business if its finance charges were held to be purely interest, subject to the 8 percent per annum contract ceiling rate. Such a result would be unfortunate for business in the District of Columbia.

The present card holders of Central Charge, over 600,000 in number, would no doubt shift to the Master Charge and Bank Americards issued by Maryland and Virginia banks and pay their service charges to them. It could mean a loss of sales in District of Columbia stores as some of the smaller stores in the District presently use only Central Charge.

No saving to the citizens of the District would result—only a loss of local business and a further expansion of Virginia and Maryland business.

Incorporated as a part of my statement are five addenda which are informative. The addenda cover the following subjects:

Addenda No. 1—Legislation since 1902 affecting bank interest rate ceilings in the District of Columbia.

Addenda No. 2—Average ceiling rates authorized by the 50 States for unsecured installment loans, automobile installment loans, and revolving credit accounts, and the ceiling rates which would be authorized for banks in the District of Columbia if S. 1938 were enacted into law.

Addenda No. 3—Ceiling rates authorized by each of the 50 States for unsecured installment loans.

Addenda No. 4—Ceiling rates authorized by each of the 50 States for direct automobile installment loans.

Addenda No. 5—Service charge ceiling rates authorized by each of the 50 States for revolving credit accounts.

(The addenda referred to follow:)

Addenda No. 1

Legislation since 1902 affecting bank interest rate ceilings in the District of Columbia

Date	Substance
June 30, 1902	Contract rate ceiling authorized at 10 percent.
April 19, 1920	Contract rate ceiling reduced from 10 percent to 8 percent.
April 22, 1960	Authorized installment sales of motor vehicles. Ceiling rates $8.00 per $100 per annum for new cars; up to $16.00 per $100 for used cars authorized to "Consumer Credit Lenders." Banks not specifically mentioned.
June 8, 1954, and September 3, 1963.	Profit corporations formed in District of Columbia excluded from right to plead usury. Non-profit corporations may not be charged a rate in excess of 8 percent unless exempt by statute.
August 20, 1970	D.C. City Council authorized to provide by Regulation for exemption from June 30, 1902 Act, as amended April 19, 1920, any mortgage loan insured or guaranteed under National Housing Act (FHA-VA loans) the interest rate of which is subject to regulation by an officer or agency of the Federal Government. D.C. City Council did exempt both types of loans and the rates are now set for FHA by Housing and Urban Development and by Veterans' Administration for VA loans. Rates presently 7 percent for both types of loans.

The above legislation pertains to banks with the possible exception of legislation governing motor vehicle installment sales.

As a matter of interest, on February 4, 1913, the Congress enacted into law a Small Loan Act (not applicable to banks) for the District of Columbia which remains in force and effect. It provided that Finance Companies and Pawn Shops may charge 1 percent per month (12% per annum) on loans not in excess of $200. This forced Finance Companies and Pawn Shops out of the District of Columbia into Maryland and Virginia. On August 6, 1956 the Congress amended the Act to permit Pawn Shops to charge 2 percent per month (24% per annum) on loans not in excess of $300. The Pawn Shops, in part, returned to Washington. Finance Companies continue to be limited to 1 percent per month on loans up to $200, and do not operate in the District of Columbia.

Addenda No. 2

The average ceiling rates authorized for banks in each of the fifty states for Unsecured Installment Loans, Direct Automobile Loans and Revolving Credit Accounts and the ceiling rate which would be authorized for banks in the District of Columbia for the same category, if S. 1938 is enacted into law, are set forth below:

	Annual percentage rate
Unsecured installment loans:	
Average ceiling rate, 49 States (1 State has no limitation)	13.81
Ceiling rate for District of Columbia	11.58
Direct automobile installment loans:	
Average ceiling rate, 50 States	13.99
Ceiling rate for District of Columbia	11.58

Revolving credit accounts	Annual percentage rate	
26 States, 1½ percent per month, no limit on amount	18	----------
7 States, 1½ percent per month, up to $500, 1 percent over $500	18	12
2 States, 1½ percent per month, up to $1,000, 1 percent per month over $1,000	18	12
1 State, 2 percent per month, no limit on amount	24	----------
2 States, 1¼ percent per month, no limit on amount	15	----------
1 State, 1.7 percent per month, no limit on amount	20.4	----------
1 State, 2 percent per month up to $200, 1½ percent, next $200, 1 percent over $400	24, 18, 12	----------
1 State, 1½ percent per month up to $500, ¾ percent over $500	18	9
1 State, 1½ percent per month up to $300, 1 percent over $300	18	12
1 State, 1⅓ percent per month, no limit on amount	16	----------
1 State, 2 percent per month up to $500, 1¼ percent over $500	24	15
1 State, 2½ percent per month to $100, 1 percent over $100	30	12
1 State, 2 percent per month up to $550, 1½ percent over $550	24	18
3 States, 1 percent per month, no limit on amount	12	----------
1 State, 10 percent per annum	10	----------
Average	18.08	15.80
Ceiling rate for District of Columbia, 1½ percent per month up to $500, 1 percent over $500	18	12

Addenda No. 3

CEILING RATES—UNSECURED INSTALLMENT LOANS

State	Ceiling rate	Ceiling annual percentage rate
Alabama	6 Add on	10.90
Alaska	6 Discount	11.58
Arizona	8 Add on to $1,000; 6 Add on over $1,000	14.45/10.90
Arkansas	10 Contract rate	10.00
California	10 percent Discount	19.91
Colorado	36 percent on 1st $300; 21 percent on next $699; 15 percent on $1,000 and over, or 18 percent for entire loan. Effective Oct. 1, 1971.	[1] 20.30
Connecticut	12 percent	12
Delaware	6 Add on	10.90
Florida	6 Discount	11.58
Georgia	6 Add on	10.90
Hawaii	18 percent to $499; 16.20 percent $500 to $999; 13.20 percent $1,000 to $1,499	18/16.20/13.20
Idaho	18 percent	18
Illinois	7 Add on	12.68
Indiana	8 Add on	14.45
Iowa	6 Add on	10.90
Kansas	10 Contract rate	10.00
Kentucky	6 Add on to $2,000; 5 Add on over $2,000	10.90
Louisiana	8 Add on	14.45
Maine	16 percent over $2,000 Contract rate	16
Maryland	12 percent	12
Massachusetts	2½ percent per month to $200; 2 percent monthly to $600: 1¾ percent monthly to $1,000; ¾ percent monthly over $1,000.	[2] 24
Michigan	7 Add on	12.68
Minnesota	6 Discount	11.58
Mississippi	8 Add on	14.45
Missouri	$15 per $100 on 1st $500; 8 percent simple on amounts in excess of $500; on a $1,000 loan, the annual percentage rate is—	11.50
Montana	7 Add on over $1,000	12.68
Nebraska	18 percent to $1,000; 12 percent over $1,000	18.00/12.00
Nevada	8 Discount to $500; 7 Discount over $500 to $1,500; 6½ Discount over $1,500	[1] 12.90
New Hampshire	No usury statute	[3]
New Jersey	1 percent per month	12
New Mexico	7 Add on	12.68
New York	6 Discount	11.58
North Carolina	15 percent to $5,000 maximum	15.00
North Dakota	6 Discount	11.58
Ohio	8 Discount	15.68
Oklahoma	18 percent	18.00
Oregon	8 Add on to $500; 6 Add on excess over $500 to $1,000; 10 percent over $1,000	[1] 11.34
Pennsylvania	6 Add on	10.90
Rhode Island	21 percent	21.00
South Carolina	7 Add on	12.68
South Dakota	8 Add on to $1,000; 6 Add on excess over $1,000	14.45/10.90
Tennessee	6 Discount	11.58
Texas	8 Add on	14.45
Utah	18 percent	18.00
Vermont	6 Add on or Discount	10.90/11.58
Virginia	6 Discount	11.58
Washington	12 Contract rate	12.00
West Virginia	6 Discount	11.58
Wisconsin	12 Contract rate	12.00
Wyoming	36 percent on 1st $300; 21 percent on next $699; 15 percent on $1,000 and over or 18 percent for entire loan.	[1] 20.30

[1] On $2,000 loan.
[2] On $1,000 loan.
[3] No limit.

ADDENDA NO. 4

CEILING AUTO RATES

State	New	Used	Annual	
			New	Used
Alabama	6 Add on		10.90	
Alaska	10 percent		10.00	
Arizona	8 Add on	12 Add on	14.45	21.46
Arkansas	10 Contract rate		10.00	
California	12 percent Discount		24.28	
Colorado	36 percent on 1st $300; 21 percent on next $699; 15 percent on $1,000 and over, or 18 percent fo entire loan. Effective Oct. 1, 1971.		[1] 20.30	
Connecticut	7 Add on	9 to 15 Add on	12.68	16.22–26.62
Delaware	6 Add on	10 to 13 Add on	10.90	17.97–23.19
Florida	8 Add on	11 to 17 Add on	14.45	19.72–30.03
Georgia	do	do	14.45	19.72–30.03
Hawaii	10.68 percent new cars; 13.80 percent 1 to 3 years old		10.68	[2] 13.80
Idaho	18 percent		18.00	
Illinois	8 Add on	11 to 16 Add on	14.45	19.72–28.33
Indiana	do	9 to 14 Add on	14.45	16.22–24.91
Iowa	15 percent	21 to 27 percent	15.00	21.00–27.00
Kansas	7 Add on	10 to 13 Add on	12.68	17.97–23.19
Kentucky	9 Add on	13 to 15 Add on	16.22	23.19–26.62
Louisiana	15 percent	21 to 27 percent	15.00	21.00–27.00
Maine	7 Add on	11 to 13 Add on	12.68	19.72–23.19
Maryland	9 Add on	12 to 15 Add on	16.22	21.46–26.26
Massachusetts	5 Add on		9.10	
Michigan	6 Add on	9 to 12 Add on	10.90	16.22, 21.46
Minnesota	8 Add on	11 to 13 Add on	14.45	19.72–23.19
Mississippi	7 Add on	10 to 15 Add on	12.68	17.97–26.62
Missouri	do	10 to 13 Add on	12.68	17.97–23.19
Montana	do	9 to 11 Add on	12.68	16.22–19.72
Nebraska	18 Percent up to $1,000;	12 Percent over $1,000	18.00	12.00
Nevada	12 Percent		12	
New Hampshire	7 Add on	9 to 12 Add on	12.68	16.22–21.46
New Jersey	do	10 to 13 Add on	12.68	17.97–23.19
New Mexico	8 Add on	10 to 14 Add on	14.45	17.97–24.91
New York	7 Add on	10 to 13 Add on	12.68	17.97–23.19
North Carolina	15 Percent to 5,000 maximum		15	
North Dakota	7 Add on	10 to 13 Add on	12.68	17.97–23.19
Ohio	8 Discount		15.68	
Oklahoma	18 Percent¢		18.00	
Oregon	8 Add on	10 to 12 Add on	14.45	17.97–21.46
Pennsylvania	6 Add on	9 to 12 Add on	10.90	16.22–21.46
Rhode Island	21 Percent		21.00	
South Carolina	7 Add on	8 to 16 Add on	12.68	14.45–28.33
South Dakota	15 Percent	18 to 27 percent	15.00	18.00–27.00
Tennessee	6 Discount		11.58	
Texas	7½ Add on	10 to 18 Add on	13.57	17.97–31.72
Utah	18 Percent		18.00	
Vermont	7 Add on	9 to 11 Add on	12.68	16.22–19.72
Virginia	6 Discount		11.58	
Washington	12 Percent		12	
West Virginia	5 Add on	6 Add on	9.10	10.90
Wisconsin	7 Add on	9 to 15 Add on	12.68	16.22–26.62
Wyoming	36 Percent on 1st $300; 21 percent on next $699; 15 percent on $1,000 and over, or 18 percent for entire loan.		[1] 20.30 On 2,000 loan.	

[1] On $2,000 loan.
[2] 1 to 3 years old.

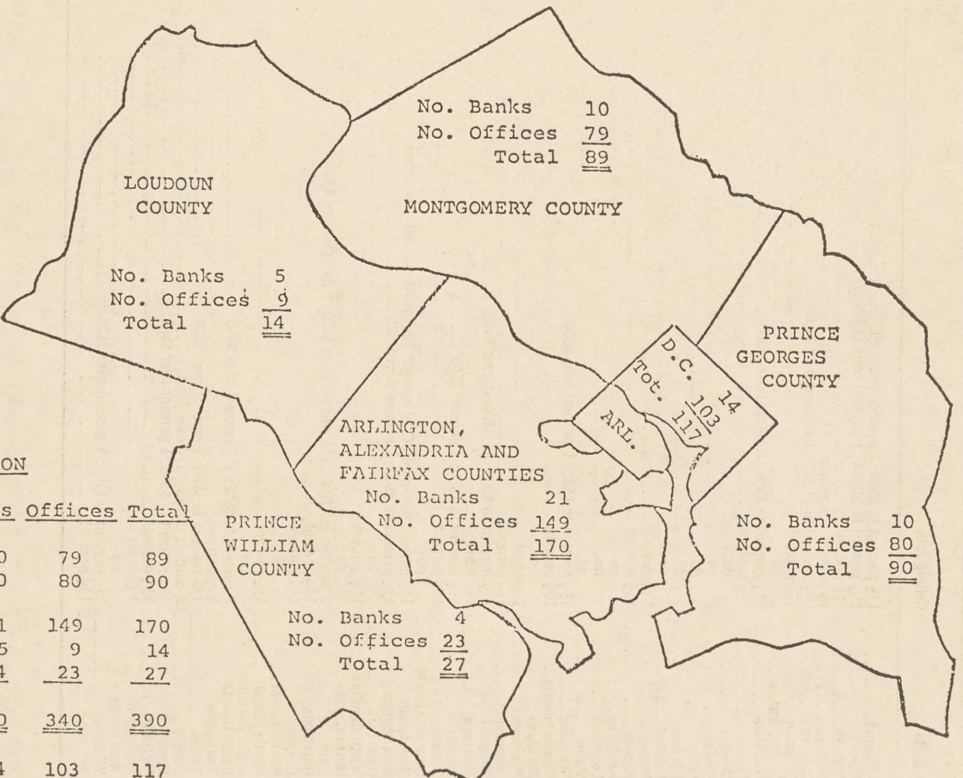
ADDENDA NO. 5

REVOLVING CREDIT ACCOUNTS

[Rates on amonthly basis unless noted]

State	Ceiling rate	Annual percentage rate
Alabama	1½ percent to $300; 1 percent over $300	18/12
Alaska	1½ percent to $1,000; 1 percent over $1,000	18/12
Arizona	1⅓ percent	16
Arkansas	10 percent per annum	10
California	1½ percent to $1,000; 1 percent over $1,000	18/12
Colorado	1½ percent	18
Connecticut	do	18
Delaware	1½ percent to $500; 1 percent over $500	18/12
Florida	1½ percent	18
Georgia	do	18
Hawaii	do	18
Idaho	do	18
Illinois	do	18
Indiana	do	18
Iowa	1 percent	24
Kansas	1½ percent	18
Kentucky	do	18
Louisiana	do	18
Maine	do	18
Maryland	1½ percent to $500; 1 percent over $500	18/12
Massachusetts	1½ percent	18
Michigan	do	18
Minnesota	1 percent	12
Mississippi	1½ percent	18
Missouri	1½ percent to $500; ¾ percent over $500	18/9
Montana	1½ percent	18
Nebraska	1½ percent to $500; 1 percent $500	18/12
Nevada	1½ percent	18
New Hampshire	do	18
New Jersey	1½ percent per month (1¼ percent per month on cash advances)	18/15
New Mexico	1½ percent to $500; 1 percent over $500	18/12
New York	do	18/12
North Carolina	1½ percent	18
North Dakota	do	18
Ohio	2 percent 1st $200; 1½ percent next $200; 1 percent over $400	24/18/12
Oklahoma	1½ percent	18
Oregon	1¼ percent	15
Pennsylvania	do	15
Rhode Island	1½ percent	18
South Carolina	do	18
South Dakota	2 percent to $500; 1¼ percent over $500	24/15
Tennessee	1½ percent	18
Texas	1½ percent to $500; 1 percent over $500	18/12
Utah	2 percent to $550; 1½ over $550	24/18
Vermont	1½ percent to $500; 1 percent over $500	18/12
Virginia	1½ percent	18
Washington	1 percent	12
West Virginia	do	12
Wisconsin	2½ percent to $100; 1 percent over $100	30/12
Wyoming	1½ percent	18

DECEMBER 31, 1970



RECAPITULATION

County	Banks	Offices	Total
Montgomery	10	79	89
Prince Georges	10	80	90
Arl., Alex. and Fairfax	21	149	170
Loudoun	5	9	14
Prince William	4	23	27
Total	50	340	390
Wash. D. C.	14	103	117

Mr. JENNINGS. I would like to mention in connection with the addenda, in connection with the competitive picture in the District of Columbia, and there is a map at the very end, you will see this in the recapitulation, there are 50 banks with 340 offices, or 390 banking offices, actually operating in the counties surrounding the District of Columbia.

We have 14 banks with 103 offices, or 117 all told, concentrated of course in this little small area that is the District of Columbia. We have all kinds of competition. Some people who are not well informed are not aware of it.

Here is just one point I would like to point out. In the 4-year period ending December 31, 1970, 4 years—the end of 1966 to the end of 1970—deposits in the District of Columbia increased $532 million.

The CHAIRMAN. Where are you reading from now?

Mr. JENNINGS. I just put this on in pen and ink after I had made the map.

Deposits increased $532 million in the District of Columbia. Over the same 4-year period, Maryland and Virginia banks, just including the deposits in the offices and in the banks in this area, not going outside of the metropolitan area, had a deposit increase of $1.1 billion, or 68 percent of the total deposit increase of $1.640 billion.

I can tell you that we have never competed more strongly in our lives than we have in the city of Washington in recent years. We have terrific competition. No matter how hard we work, why, it swings against us, 68 percent going to the surrounding area, and we get 32 percent of it.

The CHAIRMAN. Of course, during that period, there has been the enormous growth of suburbia.

Mr. JENNINGS. That is right.

The CHAIRMAN. As suburbia grows, banking institutions grow up where people are.

Mr. JENNINGS. That is right.

The CHAIRMAN. You are not saying that this enormous growth in deposits in suburbia is attributable to this differential in lending rates?

Mr. JENNINGS. I do not mean to imply that at all. It is just to emphasize the competitive posture.

The CHAIRMAN. Let me backtrack to revolving credit. I am asking a general question. Is the general standard around the country on revolving credit 1½ percent a month?

Mr. JENNINGS. Yes. Addenda No. 5 goes into that specifically, revolving credit accounts. You will see on the right-hand side simple interest, an actual percentage rate. You will see many that are the same as ours, 1½ percent a month, or 18 percent per annum; many that permit the 1½ percent up to $500, and then drop to 1 percent per month or 12 percent per annum, which is what we do here. We have many that are just straight 18 percent with no cutoff.

Going through the whole picture, you find some 24 percent per annum, one is 30 percent per annum. And 18 percent up to $500 and 12 percent over $500 is the lower of the two States.

The CHAIRMAN. A few are below 1½ percent: Iowa, Minnesota, Arkansas.

Mr. JENNINGS. I can only say that maybe their costs are less there.

The CHAIRMAN. Pennsylvania is one and a quarter.

Mr. JENNINGS. That is right.

The CHAIRMAN. As a practical matter, if you lose your lawsuit, the holding presumably would be that the usury statute does apply to revolving credit, you would be restricted to 8 percent.

Mr. JENNINGS. The contract rate of 8 percent.

The CHAIRMAN. It is your professional judgment that you cannot operate a revolving credit system profitably at an 8-percent rate?

Mr. JENNINGS. It is utterly impossible.

The CHAIRMAN. On your sheet, there is no State as low as 8. I notice the lowest is Arkansas—10 percent.

Mr. JENNINGS. I don't believe that anyone in Arkansas is operating a credit card there. That is just their contract rate of 10 percent. But in that situation, you may rest assured that many people in Arkansas hold Bank Americard and Master Charge, the issue being outside the State, and they go ahead and operate it, and they pay their service charges which are on the basis you see here.

The CHAIRMAN. That is my second point. If you went out of business because you could not make a profit at 8 percent, the other card operators that are based elsewhere, Bank Americard and Master Charge, it would still be legally permissible for them to operate, financing the credit outside of the District of Columbia, but card holders could be here in the District and purchase goods under those cards.

Mr. JENNINGS. Yes.

The CHAIRMAN. Presumably, many of your card holders—how many do you have?

Mr. JENNINGS. We have about 600,000.

The CHAIRMAN. 6,000 stores, 600,000 card holders?

Mr. JENNINGS. That is right.

The CHAIRMAN. Most of those, or many, would transfer to other credit cards?

Mr. JENNINGS. I would say if we went out of business, our card holders would shift over to Master Charge or Bank Americard. There are many, many stores in our community that have agreements with Bank Americard and Master Charge, and they would go into those stores to buy their merchandise. The bills would go to Baltimore or to Richmond or to Norfolk or to Silver Spring, the Suburban Trust Co., and they would pay their charges to those banks at the 1½ percent a month up to $500, 1 percent over, in Maryland; or 1½ percent a month without any cutoff in the State of Virginia.

They are doing it now, you see. We have thousands of card holders in the District of Columbia who are doing that right now, who have a Bank Americard or Master Charge.

The CHAIRMAN. Do many of the larger merchants recognize more than one card?

Mr. JENNINGS. Yes; quite a lot of them.

The real large merchants—Hecht's, Garfinckel's, stores like that—have a Washington shopping plate. It is a group of stores. When they issue a card, let us say they issue it at Garfinckel's, it has a little mark on it. If they take the same card over and are approved at Woodward & Lothrop's, then they have a "W" on that card so that that card can be used in any one of the shopping plate stores.

There are only about eight stores involved in that, and they are all very large.

The CHAIRMAN. Would this be an accurate summary of your position and of your testimony that insofar as corporate loans are concerned, nothing in S. 1938 affects those?

Mr. JENNINGS. Nothing. All over the country, corporations may not use usury as a defense.

The CHAIRMAN. Home owner loans in terms of interest rates would not be affected?

Mr. JENNINGS. Would not be affected.

The CHAIRMAN. So the three types of loans which would be affected are personal unsecured loans, automobile loans, and revolving credit.

Mr. JENNINGS. Yes, sir.

The CHAIRMAN. Thank you, Mr. Jennings.

Mr. JENNINGS. Thank you.

The CHAIRMAN. Mr. Joseph Danzansky, president of the Metropolitan Washington Board of Trade.

STATEMENT OF JOSEPH B. DANZANSKY, PRESIDENT, GIANT FOODS, INC.; AND PRESIDENT, METROPOLITAN WASHINGTON BOARD OF TRADE

Mr. DANZANSKY. Thank you, Mr. Chairman.

The CHAIRMAN. Good morning, Mr. Danzansky.

Mr. DANZANSKY. Good morning.

My name is Joseph B. Danzansky, and I am president of the Metropolitan Washington Board of Trade. I should mention that I have also served as a director of the National Bank of Washington since January 1969. These three areas of responsibility, and many others in my capacity as a lawyer and in connection with my civic work, provide me with at least a reasonable background of experience to comment on the merits of S. 1938. I am strongly in favor of this proposed legislation and believe it is in the best interests of local consumers, businesses, and banks.

It would serve no purpose for me to repeat the points enunciated in Mr. Jennings' statement. I think it has been made crystal clear that the 14 banks domiciled in Washington should not be placed at a competitive disadvantage with those in the Washington metropolitan area of Virginia and Marlyand, because it clearly reacts to the detriment of both consumers and businesses in the District of Columbia.

As a businessman, I am impressed by the fact that since at least 1902 no legislation has been enacted by the Federal Congress for the District of Columbia pertinent to consumer lending by banks with the sole exception of the automobile loan law enacted in 1960, and it, as we heard earlier today, is not clear as to its applicability to banks.

The States have enacted legislation in this field, as set forth in material provided with Mr. Jennings' statement. Certainly, the needs of banks and the people they serve in Washington are not different from those in the States.

It interests me very much to learn that while finance companies operate throughout the United States, they have, in effect, been outlawed since 1913 in the District of Columbia. They do operate in the Virginia metropolitan area of Washington with 60 offices and

in the Maryland metropolitan area of Washington with 134 offices. Both States permit finance companies to charge rates which enable them to take levels of risk not possible for banks.

I am sure that many residents of the District of Columbia patronize them for legitimate and productive purposes. S. 1938 does not deal with this matter. However, the absence of finance companies in the District adds weight to the need for banks in the District of Columbia to be permitted to serve consumer borrowing needs on a basis at least comparable to that permitted banks in Virginia and Maryland.

Until very recently I had not been aware of the fact that the States throughout the country have authorized ceiling rates for unsecured installment loans that on an average amount to 13.81 percent simple interest per annum and the average ceiling rate for direct automobile installment loans is 13.99 percent simple interest.

When I reviewed the specific ceiling percentage rates for the various States, I found a certain uniformity which fits in very well with the proposed ceiling rates for the District of Columbia of 11.58 percent for these two categories of consumer loans. The authorized ceiling rates for revolving credit accounts throughout the country are in line with the proposed rate which would be made applicable in the District of Columbia, and it seems clear to me that it would be wrong not to authorize for the District the service charge rate as provided in the Maryland statutes, it being the lower of the rates authorized for Virginia and Maryland.

I have been concerned for some time that the Washington banks have been forced into the position of having an inadequate incentive for the making of personal loans because it is an unprofitable field for them at an 8 percent simple interest rate.

I am told that a study made by the Federal Reserve Bank of Richmond covering the Fifth Federal Reserve District discloses that on an average the cost of making and servicing a personal installment loan was $47.11 in 1970. An 8-percent simple interest rate would return $43.50 on a $1,000 installment loan for 1 year.

Because of litigation instituted July 28, 1969, the Washington banks have felt compelled to charge not in excess of 8 percent simple interest for such loans until the matter has been finally adjudicated. Some of this business goes to Virginia and Maryland banks and, I assume, a portion of the remainder is unsatisfied. You will appreciate that people living in the District of Columbia are not always in the best position to convince banks in Virginia and Maryland that their credit applications warrant favorable consideration.

On the other hand, the District of Columbia banks are in the best position, both from the standpoint of location and motivation, to make such decisions. You have to remember that the directors of District banks are residents of this area with a deep and abiding interest in the citizens of our town. Whether it be a selfish interest or an enlightened selfish interest or completely enlightened interest, they are motivated to have an interest in the consumers of our town. So they are in the best position to make that decision provided they are given an opportunity to make the loans on other than a loss leader basis.

I consider myself to be intimately familiar with a majority of the problems confronting the District of Columbia. As you know, I also serve as chairman of the mayor's economic development committee.

We are very anxious to keep business in our town and to keep the businesses that are here viable.

Scores of thousands of customers of Washington businesses and banks have moved out of the District of Columbia into Maryland and Virginia. Washington business concerns, particularly the larger firms, have been able to establish business offices in Maryland and Virginia to serve the convenience of their customers. This, of course, has not been true in the instance of Washington banks or a majority of our small businesses.

It is well known to me that too many Washington business concerns have left Washington and moved into Virginia and Maryland because they consider the business climate in the suburbs to be more conducive to a profitable operation. A high priority should and must be given to every logical and sensible measure to make the city of Washington a more competitive and attractive city in which to do business.

The enactment of S. 1938 is one important step in this direction.

I commend the chairman for having introduced this bill. It is simple, and I think it comes within the realm of propriety. I think it follows the art of the possible.

It is something that is easy to understand. It is fair. It won't take 2 or 3 years to enact as would any legislation like the uniform consumer credit law because of its implications, both political and otherwise, and it is just wrong for that period of time to shackle these banks unnecessarily in this field of consumer credit. The competitive position of the banks should be strengthened to facilitate this result.

To repeat, consumer credit policies which must be based on a loss leader philosophy have no place in our city or, in fact, in our economy.

It is my sincere hope that his committee will take every necessary step toward the enactment of this useful and necessary piece of legislation—S. 1938.

Thank you.

The CHAIRMAN. Thank you, Mr. Danzansky.

I will ask you, and perhaps I should have asked it of Mr. Jennings, but he is still with us, and we can get his comments also. Will you come forward again, Mr. Jennings, and we will put this on the record.

Mr. Hahn in his testimony offered, as you know, several alternatives based on the report of the Commission on Interest Rates filed last year. Would another alternative that perhaps this committee should consider, rather than permitting the rate to be the lowest of the two neighboring jurisdictions, be to fix the rate direct? That is, in response to Mr. Hahn's objection, it seems that if you let it be the lower of the two adjacent rates, that in effect delegates to the legislatures of either Maryland or Virginia the determination of what the maximum ceiling rate will be in the District.

His other alternative would be to give it to the City Council, and you have already commented on that. What about Congress setting the rate?

Mr. JENNINGS. For Congress to set our ceiling rate in the District of Columbia, picking out the lower of the two States, we would have absolutely no objection. Just picking those figures out and giving us a 6-percent discount rate in the personal installment loan field and in the automobile field and for revolving credit 1½ percent up to $500 and 1 percent for over that.

We gave this a great deal of thought. We recognize that we are in a pocket, but our economic area includes Virginia and Maryland. We do lots of business there despite all the competition, and they do more business than we would like to see them do in the city of Washington.

So, we are an economic unit. We felt that the best approach would be to gear that to the lower of the two States, feeling that as time went on, if one State found it necessary to make a change, well, maybe within a few years the other one would.

I just feel that there is a great deal of merit to the lower of the two States. But I have to say this to you, that if it were just a plain bill amending the District of Columbia Code and establishing these rates just in the areas I have enumerated, automobile, personal, and revolving, certainly we could have no objection.

Mr. DANZANSKY. Mr. Chairman, I would respectfully say, just speaking politically, from my limited knowledge, I think you are opening up a can of worms that would mean the death knell of this bill if you acually set the rates.

I think the way you have worded it, sir, is ingenious, and it is entirely proper. I think that will assure its passage through the Congress. I think if you start setting definite rates, you will find some of your Maryland and Virginia colleagues, all of whom we know and respect, would be out to be sure that their constituency was not placed at a disadvantage as a result of the bill.

The CHAIRMAN. Assuming the rate we set was a competitive rate——

Mr. DANZANSKY. It would be the lower today, but what would happen if their legislature moved? Then we would have to go through the whole process of this whole magnificent Congress to get it reset. Whereas, if you assure them that for all time the rate will be competitive, already they have responded, I mean the banks, as I understand it, in the outlying areas have responded and said they would support the bill—they would not oppose the bill.

Whereas, I think that if you did it in any other way except the ingenious way you have done it, you might run into some political problems. But that is just a thought.

Mr. JENNINGS. I can certainly add to that and say that our experience in more recent years in trying to get legislation geared specifically to an amendment to the District of Columbia Code has been rather bad.

I do not believe really that the Maryland and Virginia banks on the basis of rates which are the lower of the two, if we just incorporated them in the District of Columbia Code, I don't believe that the Virginia and Maryland bankers would oppose this, but I don't know that.

I do think that the bill as it is worded, the lower of the two States, has a certain appeal from the standpoint of winning acceptance that just a straight amendment to the District of Columbia Code would not have.

Mr. DANZANSKY. I would also like to make it abundantly clear, Mr. Chairman, that the Board of Trade is not through this testimony indicating its displeasure or disfavor of any other consumer credit bill. We are dealing again with what we think is the importance of keeping an industry in our town viable, at the same time serving our consumers.

The CHAIRMAN. Mr. Jennings, aren't there certain portions of the Uniform Credit Code—getting away from the interest rate provisions that you previously described, these very high figures that have been written into the laws in six Midwestern and Far Western States—aren't there certain of the provisions that the banking fraternity view as being at least acceptable or even as progressive steps in the right direction in terms of protecting the consumer?

Mr. JENNINGS. Absolutely. There are many very fine protective steps that are incorporated in the Uniform Consumer Credit Code. But your basic foundation is that there shall be unlimited competition.

The CHAIRMAN. If the bill were to be drawn that at least attempted to equalize competition, either the present draft of the bill or alternative of fixing the rates precisely or in a competitive manner, would there be any objection to incorporating in the bill some of the provisions of the Uniform Credit Code that have at least been partially tested and have developed some degree of acceptability?

Mr. JENNINGS. I would say they could be. When I said it provides unlimited competition, we are not against that, but the unlimited competition factor then goes into leveling off these very high ceiling rates. We are not against competition. It can be unlimited. We welcome it.

The CHAIRMAN. Have you studied the provisions of the credit code—I know you have studied the whole code—but have you focused attention on what changes that code makes in the holder in due course doctrine?

Mr. JENNINGS. Yes; and we are for it.

The CHAIRMAN. You are for it?

Mr. JENNINGS. Yes. It provides that when an individual, let us say, buys an automobile and within 30 days he finds a lot of things wrong with it, the deal can be wiped out and the car goes back. Factories have no objection to this. Automobile dealers might not be too happy about it. What the banks would do, if the banks bought paper of an automobile dealer, and the code were in effect, we would have to have an agreement from him, from the automobile dealer, that if this car broke down, was inadequate, there were flaws in it and it came back, why, our note would go back to the dealer, and he would pay us for it. So you protect yourself in that way.

The CHAIRMAN. We have had a terrific volume of abuses in my home State on door-to-door salesmen selling you all sorts of things on credit, selling books, magazine subscriptions, aluminum siding for your house, and so forth, where the person signs up and the paper is immediately discounted to a holder in due course, and it has created quite a problem in our State.

I take it that the Uniform Consumer Credit Code would be a step in the direction of trying to control that situation?

Mr. JENNINGS. Very definitely it would be a long step toward controlling it. But to try to incorporate that into this bill at this time, I simply want to say this, the Uniform Consumer Credit Code is controversial. Merchants may not feel so good about it. It will take time to get that type of legislation through.

I can promise you that if we get this bill through, there isn't a banker in town who will not cooperate and work toward another bill that would have all or most of the uniform consumer credit consent embodied in it. But I just think it is going to take at least 2 or 3 or 4 or 5 years before it wins wide acceptance.

66-583—71——5

The CHAIRMAN. Thank you.

Mr. DANZANSKY. Just one more word, Mr. Chairman.

The committee could do an awful lot for the climate in this town by pushing through this kind of legislation for this industry to indicate to businesses that Congress is interested in keeping business in our town strong, viable, and competitive. It is very important.

The CHAIRMAN. Thank you, Mr. Danzansky.

Mr. DANZANSKY. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Eliot Janeway, Janeway Publishing & Research Corp., New York, N.Y.

STATEMENT OF ELIOT JANEWAY, PRESIDENT, JANEWAY PUBLISHING & RESEARCH CORP., NEW YORK, N.Y.

Mr. JANEWAY. My name is Eliot Janeway, and I am president of the Janeway Publishing & Research Corp. of New York City. I appear before you today as a professional student of financial and economic affairs who has for over 35 years specialized in analyzing the reciprocal effect of government regulations upon marketplace performance.

I am a nonresident director of the National Bank of Washington, serving since January 1971, and my purpose in submitting this statement is to associate myself with the District of Columbia Bankers Association in expressing my support for S. 1938, the bill to amend the provisions of subtitle II of title 28, District of Columbia Code, relating to interest and usury.

While I have no special experience in the local financial and business affairs of the District of Columbia as the unique community it is, nevertheless I have devoted the better part of a generation of continuous intensive study to precisely the kind of dislocation and inequity which S. 1938 is aimed at curing; namely, differentials in market rates created by artificial and arbitrary regulatory actions.

"The Struggle for Survival," the book I published during the Korean emergency, dealt with the philosophy and administration of such regulatory exercises during the years of war mobilization following Pearl Harbor and made a special study of such market differentials. Subsequently, I updated this work in many articles published in the Harvard Business Review, the Yale Review and other professional journals when the emergency regulations provoked by the Korean war emergency were in force.

Consequently, I do consider myself qualified by virtue of experience and, I am gratified to say, by the recognition accorded my writings as well, to comment on the impact of regulatory differentials on regulatees frozen on the short end of gaps decreed by regulators and allowed to do their costly work—to borrow a controversial phrase from other arguments—under the benign neglect of inertia.

The main point I am concerned to establish is that I do not regard S. 1938 as in any sense a measure aimed at raising interest rates, or at all likely to have the effect of doing so generally.

Let me go on record with this committee as saying that I unreservedly deplore higher interest rates and that I yield to no writer with a national audience in the zeal with which I have explained that higher interest rates are to be feared as a toll taken by inflation. As a matter of record, I am anxious to put it on the record of this committee's

deliberations over this bill that I have consistently and continuously warned that recourse to higher interest rates would not cure the inflation squeezing our economy and its markets, or ward off the present condition known as "stag-flation."

Finally, in this connection, I deem it a personal and professional privilege to associate my reason for supporting S. 1938 with the rationale expressed by the distinguished Chairman of the Federal Reserve Board on the occasion of his last appearance before a congressional committee when, explaining that he concurred with the action of the Federal Reserve Board in its recent action raising the discount rate and would have voted for it if he had been present, he reasserted his desire to see a return to lower interest rates.

The parallel is unmistakable: the Federal Reserve Board, in raising the discount rate, was following the market and moving to close a gap in it. In market after market, the opening of the gaps and their subsequent freezing by regulatory action has systematically and inescapably made for higher costs of everything and higher interest rates. Contrarywise, allowing gaps to be closed by removing artificial restrictions in the way of market movements has just as systematically and just as predictably opened the way for costs to fall.

The freezing of gaps in any market is not the effective way to bring the high side of the market down. But it is the way to keep the low side of the market at its permissive ceiling and, in the process, to bleed the vigor out of the low end of the market. The practical expertise of the late, great Bernard Baruch is not needed to paraphrase Hamlet in arriving at the judgment that something is rotten in the District of Columbia.

The passage of S. 1938 would close artificially frozen gaps which may be nuisances to entrepreneurial borrowers and sophisticated and substantial individuals. But they are not deterrents blocking corporate access to credit; nor are they a form of insurance against exorbitant interest costs.

The entrepreneurial borrower has long since developed a knee-jerk reaction to regulatory gaps of this kind which whets the appetite for overborrowing on the high side of the gap. Moreover, the entrepreneurial sophisticate enjoys the advantage of mobility and, more than incidentally, carries sophistication to the point of shrugging off interest costs as a tax deduction.

The average and subaverage claimants for credit—and, unfortunately, the deterioration in the District has endowed it with more than its fair share of subaverage claimants—lack such mobility and are the real victims of the protection presumably provided by the freezing of such gaps as this one.

My studies of what may be technically termed regulatory gapping leave me in no doubt whatever that the present interest rate freeze in effect under subtitle II of title 28, District of Columbia Code, has accentuated the trend toward distress and decay in the center city of this banner metropolitan area, and has correspondingly swollen the growth which would have occurred in any event in the surrounding Maryland and Virginia suburbs.

I am now engaged on a work aimed at formulating policies and programs to close the gap between America's depressed, deflated urban centers and her inflated suburban fringes. My studies in connection

with this work leave me convinced that the swollen state of suburbia is becoming at least as unwieldy to finance as the depressed condition of our big cities.

Accordingly, as a matter of general policy, I find myself opposed to any regulation or legislation having the effect of further handicapping our urban centers in need of reconstruction by discriminating against them and forcing more inflation on suburbia than it is able to handle, much less to finance. I have no doubt whatever that the discriminatory freeze on interest rates inside the District of Columbia has been and is responsible for making the urban-suburban gap in the Washington metropolitan area more discriminatory and more uneconomic than it is elsewhere, or than is desirable or supportable.

I am prepared to stake my professional reputation on the judgment that, notwithstanding the general upward trend of interest rates now reflecting the acceleration of inflation throughout the country, passage of S. 1938 will have the effect of relieving the excess credit demand on the Maryland and Virginia suburban lending institutions and permitting an accumulation of liquidity in the District banks, which will have the effect of easing the present upward bias on costs in the District.

Normalization between the District of Columbia and the Maryland-Virginia suburban area will result from the passage of S. 1938, not the inflation of costs inside the District—and certainly not the further inflation of costs in the surrounding suburban belt.

Again and again, actions permitting the lower side of market gaps to rise have had the effect of enabling the upper side of the gap to fall; and the resultant normalization of market conditions has ended by bringing costs down more effectively than ceilings have held them down. I am confident that such normalization and relief will result from passage of S. 1938.

Thank you.

The CHAIRMAN. Thank you, Mr. Janeway, for your very interesting analysis. I take it that the thrust of your position is that sophisticated borrowers and borrowers with identifiable assets, that can either be pledged as collateral or are there to be attached if needed, have the mobility to shop around in suburbia or elsewhere to borrow money. Whereas one with less affluence or, indeed, less sophistication in the borrowing community, if the rates in the District are burdensomely low, is left no alternative but to go to suburbia and pay what may on occasion be an abnormally high rate.

Have you analyzed the rates in suburban Maryland and Virginia to the point of concluding whether they are normal or high, to give them any label?

Mr. JANEWAY. My impression is that rates in all of the growth suburban areas of the country, even say in the suburbs of Detroit, where they are not supported by the stability of the Government payroll are definitely on the highest side of the band.

Moreover, I have observed a decided gravitational tug on the part of the sophisticated borrower to suburban bank accommodation, not just in this area.

The existence of these gaps or spreads, Mr. Chairman, is that they act like the oat bag on the horse's nose, they are a constant incentive to the sophisticated or the entrepreneurial borrower, or the borrower

running scared, to "get it while you can." The spread encourages the incentive perhaps to overborrow but certainly to borrow.

The existence of the spread guarantees a constant pressure of demand on the high side of the spread which equalization automatically eliminates.

I suggest that if we look back at the very adroit and cool-headed and effective action which Chairman Burns initiated at the time of the Penn Central crisis, when the best borrowers in the country were really unable to get money for a time, when he took the limit off high cost, what we call "high rent," certificates of deposit, for a week or two those rates went up.

The effect of removing the ceiling, however, in a matter of weeks resulted in breaking the rate. You ended by having lower rates. It resulted in rate relief for the better part of a year.

The CHAIRMAN. Is this an oversimplification of your rationale that if the District of Columbia banks are permitted to compete more vigorously in the marketplace for consumer loans——

Mr. JANEWAY. As first-class participants in the market, not even more vigorously, just unshackled.

The CHAIRMAN (continuing). And competitive with Maryland and Virginia banks, that in the realm of consumer loans and automobile loans, that that will make a greater money supply for lending available and will generate competitive forces which, absent other trends in the economy and monetary policies fixed by the Federal Reserve Board, you think might reduce interest rates in this area?

Mr. JANEWAY. In the entire area, including the suburban area, given a bit of time.

To bring it right down to the curbstone level, Mr. Chairman, your automobile manufacturers, for example, your appliance manufacturers, are understandably concerned with the credit status of their dealings, with their franchises. I am confident, without having looked at the books, that your major manufacturers have greater confidence in the ability of dealers in the suburban belt to absorb cars, to absorb appliances.

They are bound to be struck by the rising rate of vacancies in the District as, indeed, in all center cities. There is this handicap in center cities where there are no additional burdens such as accentuate the problem here, that is to this inequitable ceiling that we have.

I think you will find that dealers will be less apt to go out of busines,s you might have more franchises, you would have a better chance of dealers making it, fewer vacancies if the banks here were given a chance to compete as first-class citizens in the area.

I suggest that the premise guiding me is that we consider the area, the market and financing area, as one area, and following through or picking up what I took to be the implication of the first question you put to me, it appears to me that those living in poverty, those with subaverage incomes, those suffering before we failed to provide child care centers and so forth, lacking the mobility to get auto and appliance loans elsewhere, are the real victims of this.

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

I wish we had some time to go into some general questions on the nature of the economy, itself, but I guess we will postpone that for some other occasion.

Mr. JANEWAY. We will leave this in a more cheerful atmosphere in this case.

The CHAIRMAN. Let me ask one question about the economic condition of our country. Are you an optimist or a pessimist?

Mr. JANEWAY. I am a great optimist because I think we can face the realities of this disturbing situation and overcome them. If you are asking me about what I expect in fact in the months ahead, I am afraid that I am obliged to say that our fortitude will be tested severely and sorely.

The CHAIRMAN. Thank you.

We will recess once again for a few minutes for a vote.

(A brief recess was taken.)

The CHAIRMAN. Back in session again.

Our next witness is Mr. Benny L. Kass, of the law firm of Boasberg, Granat & Kass, Washington, D.C.

STATEMENT OF BENNY L. KASS, OF THE LAW FIRM OF BOASBERG, GRANAT & KASS, DISTRICT OF COLUMBIA COMMISSIONER, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

Mr. KASS. For the record, my name is Benny Kass. I am an attorney in Washington. I am not appearing here on behalf of anybody other than perhaps the National Conference of Commissioners on Uniform State Laws, of which I am the Commissioner appointed by the Mayor 2 years ago for the District of Columbia.

It is a privilege to appear before the District Committee this morning, for in a real sense I view this hearing as the first step in the culmination of the work I have been doing in the District for the past 9 years. As many of you know, I have actively worked to obtain meaningful consumer legislation for Washington, D.C., for many years. Perhaps this hearing—and this committee—will recognize the tremendous need for consumer protection in Washington, and will turn S. 1938 into a bill that all of us can be proud to support.

I might say in Missouri, Senator, the consumer protection laws are significantly better than they are in the District of Columbia. In my opinion we have the worst consumer protection laws of any State or any jurisdiction in the country.

But S. 1938, as presently drafted, is not such a bill. Basically, it would permit "banking institutions" in the District of Columbia to loan money at any rate not exceeding the lesser of the rate which is in effect and would be applicable under the laws of the State of Maryland or of the Commonwealth of Virginia at the time of making such loan.

Let us carefully analyze what that means for the banks in Washington, D.C., and what that means for consumers in Washington, D.C. As you will soon see, it is my considered opinion that the bill really does nothing for anyone in the District.

Permit me to briefly describe the interest rate picture in the District of Columbia. Usury is governed by section 28–3303 of the District of Columbia Code, which prescribes a maximum rate of 8 percent per annum on all instruments in writing. In the absence of express contract, the maximum rate is 6 percent per annum. If a person or corporation contracts in the District to pay a higher rate, the code

provides that "the creditor shall forfeit the whole of the interest so contracted to be received."

Typical of most States, however, there are many exemptions from this usury statute:

(1) Credit unions are governed by Federal law, and are permitted to charge up to 12 percent per annum.

(2) Money lenders are covered under 26–601–611 of the District of Columbia Code. If properly licensed, small loan companies can charge up to 12 percent per annum, and the maximum loan size which can be made to any one person is $200. Because of the economics of operating a small loan company—and because the rates for similar loans are considerably higher in Maryland and in Virginia—there are no small loan companies operating in the District of Columbia today.

They are not prohibited by law as was suggested earlier. They just are not here.

The CHAIRMAN. Mr. Kass, is that good or bad, that we don't have small loan companies in the District of Columbia?

Mr. KASS. I am not an advocate of or representing small loan companies, although I do think we desperately need small loan companies in the District of Columbia for two reasons:

(1) I have some photographs that we took of the Maryland line which I would like to submit to the committee showing the extent of loan companies that literally hover over and congregate around the area.

(2) By bringing small loan companies in the District of Columbia, I submit that the banks will start to realize that competition exists, and perhaps the other financial institutions will start making loans to the people who are not getting the loans today.

Under this bill, as I will point out later on, I don't believe that the banks are going to be making the loans that are being made by the small loan companies.

I don't know whether we have a loan shark operation, but I was executive director of that study commission, and we did point out that 60–70 percent of the customers in Maryland and Virginia are Washingtonians, many of them black.

As a result, not only is the District of Columbia losing an economic base because the money is going to Maryland and Virginia, but also we have no control as a practical matter from the consumer protection point of view. People are having to go out to Maryland to borrow. Not because I necessarily subscribe to the practices of small loan companies, but I do believe from a competition point of view we need to bring them into the District.

Recently, the District of Columbia Commission on Interest Rates and Consumer Credit, of which I was executive director, issued its final report, stating:

> There are no small loan companies in the District of Columbia. But this does not mean that there is no small loan activity in the Washington metropolitan area. On the contrary, the City of Washington is literally surrounded with small loan companies, many of which are directly on the borders of Maryland and Virginia.

(3) FHA–VA transactions have recently been exempted from the existing usury law by City Council regulation. This regulation permits FHA–VA loans in the District to be made at the maximum rate authorized for such loans by the Secretary of the Department of Housing and Urban Development, even in those periods when the prevailing rates exceed the statutory maximums.

I think there was a little bit of an error. This committee and the Congress gave the authority to the City Council to work in the FHA and VA area, the City Council did not abdicate its responsibility or delegate it to FHA. It said if the rates are over 8 percent we will exempt for that period of time the FHA–VA transaction.

As a result money did start to come back to the District of Columbia from FHA and VA when the rate went up.

(4) Cooperative associations which loan money to members engaged in utility operations are exempt from the usury laws. This is a recent development, having been enacted by Congress on August 28, 1970 (Public Law 91–385).

(5) *Out-of-State contracts.*—The District of Columbia Code permits interest to be recovered at a rate higher than is lawful in the District if the contract is made or to be performed in another jurisdiction where the contract rate is lawful. (15–110.)

(6) *Auto loans.*—Section 40–902 of the District of Columbia Code sets maximum finance charges on different classes of automobiles. The District of Columbia government has implemented motor vehicle regulations, and the applicable rate ceilings are appended to this statement.

I have a table showing the applicable rates in the District of Columbia which I will submit for the record.

I might say, Mr. Chairman, that our study commission did a survey of auto loans and the competition in the auto loan field. We found that because the rates were higher the banks in the District of Columbia did not charge the prevailing ceilings but that they were highly competitive.

So this leads to my philosophy, and I differ with a lot of consumers on this, but my philosophy is to get rid of all ceilings, if there is true competition, competition will keep the rates down.

(7) *Pawnbrokers.*—Section 2–2009, District of Columbia Code, provides that the City Council shall, from time to time, determine what maximum rate of interest shall be permitted for pawnbrokers operating in the District. In the absence of such determination, the section sets maximum rates as follows: 2 percent/month up to $200 (24 percent per annum); 1 percent/month from $200–$1,000 (12 percent per annum), and 8 percent per annum on loans over $1,000.

In 1957, the then District Commissioners issued Order 57–1638, setting the following rates for pawnbrokers:

36 percent per year on loans not exceeding $100;
30 percent per year from $100–200;
24 percent per year up to $500;
12 percent per year from $500–1,000, and
8 percent per year on loans over $1,000.

Pawnbrokers are exempt from the usury statute. I think we have five or six pawnbrokers in the District of Columbia right now. It is not an active trade in the District.

Now the banks in the District would have Congress carve out yet another exemption from the District of Columbia usury law. I assume that this committee has a table of what S. 1938 would, in fact, do if enacted, but permit me to highlight just a few items of particular interest to consumers:

(1) *Installment loans*—the so-called consumer loans.—Presently, the maximun rate in District of Columbia for such loans is 8 percent

simple. If S. 1938 is enacted, banks in District of Columbia could charge up to approximately 12 percent simple interest. National Bank of Washington, for example, is presently advertising widely that one need not pay any more than 8 percent. The specific ad is worded, "Should anyone pay more than 8 percent annual rate for a consumer loan?"

And yet the banks—including National Bank of Washington want the consumer to pay at least 4 percent more.

Assuming, arguendo, that the raises are needed, just what will this do for the average consumer? In my opinion, very little. Poor people will still not be able to borrow small amounts of money from the banks, and marginal credit risks will still be ignored.

Attached to this statement is an excerpt from a study by the Federal Reserve Board, pointing out roughly what it costs to make a bank loan in this area. As you can see, for example, the banks still would not be able to break even on a 12-month loan unless they lent $985—an amount which clearly is still too high for many low-income consumers in the District.

(2) *Nonprofit corporate loans.*—Currently, District of Columbia law puts a maximum of 8 percent on such corporate loans, unless specifically exempted by statute (such as the Rural Electric Cooperatives). Additionally, although profit corporations cannot plead usury as a defense, the law is silent on nonprofit corporations. If S. 1938 were enacted, usury would not be a defense—except for the Catholic Church when endorsed by the bishop, because that is the law in the State of Virginia.

This highlights in my opinion, one of the pitfalls of S. 1938 because we are dependent not on what the Congress wants, not on what the city council wants, but on what legislators and others want in the surrounding jurisdictions over which we have no control.

I live, work, and operate in the District of Columbia. I have no contacts in Maryland and Virginia. As a result, if we are to rely on jurisdictions in which we really have no influence, I think we would be submitting ourselves to outside forces which is not in the legislative process.

(3) *Revolving credit accounts.*—S. 1938, if enacted, would permit the banks to charge up to 18 percent on sales financing (12 percent over $500). But this would only be in the event the bank owned, directly, a bank credit card. In my opinion, Central Charge—which is a separate corporation—would still not be permitted to charge 18 percent per year, and would continue to be charging usurious rates.

I cannot see how S. 1938, which talks about banking institutions, can include Central Charge.

I would ask that this committee ask the Comptroller of the Currency or ask the Federal Reserve Board to give you a ruling as to whether Central Charge is in fact a "banking institution" for, if it is, it is unregulated as consumer finance hearings have held recently.

I don't know the answer. I don't see Central Charge as being a banking institution for purposes of S. 1938.

(4) *Direct loans on motor vehicles.*—S. 1938 would permit the banks in the District to make direct loans at rates up to approximately 12 percent, which, in effect, is lower than the authorized ceilings they are permitted now under the District of Columbia Motor Vehicle Code.

Mr. Chairman, there are those who still believe that the District is governed by an 8-percent usury law; in my opinion—as you can see from the brief description above—those who so believe are engaging solely in wishful thinking. It is true, however, that the 8-percent ceiling governs such items as revolving credit and consumer loans, and—like the banks—I submit that it is high time for Congress to recognize the consequences of these arbitrary ceilings.

According to the Study Commission report, perhaps the most severe consequence is that "there just is not enough consumer (including housing) money coming into the District of Columbia."

The Commission then went on to recommend:

One thing is clear: we must do something to permit our financial institutions in the District to be competitive with those in the surrounding jurisdictions of Maryland or Virginia.

S. 1938 is not the answer, for it is special legislation which would affect only the banking institutions in the District of Columbia. It would not affect the retailers' operations, nor would it stimulate new financial markets for such institutions as small loan companies, nor would it solve the problems that the savings and loans might be getting into if the conventional market went over 8 percent.

Accordingly, it is my opinion that to enact legislation to raise bank rates, without stimulating competition for Washington, D.C., is not only anticonsumer, but is not in the best interests of the economic growth of our city.

I recognize that raising rates is not politically appealing in this day and age of consumerism. But I would like to quote from a former Member of this body, Senator Paul Douglas, an outstanding Senator, consumer, and economist:

In establishing an appropriate limit, a high ceiling is not necessarily procreditor and a low ceiling, proconsumer. Finance companies and other lenders have a way of earning about the same level of profit regardless of rate ceilings. There is no evidence that high rate ceilings lead to high profits * * *. Higher or lower rate ceilings do not raise or lower finance company profits but rather, determine credit availability. The higher the ceiling, the more marginal risk borrowers can be accommodated. This is confirmed by data showing a high positive correlation between the rate ceiling and bad debt chargeoffs. The higher the ceiling, the riskier the loans and the higher the incidence of bad debts.

I wrote Senator Eagleton on May 28, 1971, and I would like to ask that that letter be included in the record.

The CHAIRMAN. It will be.

Mr. KASS. My opposition to S. 1938 does not go to the rates themselves. On the contrary, I am completely in accord with the rate structure proposed by S. 1938—as far as it goes. In fact, I personally believe that the Congress should eliminate all usury laws, with the objective of stimulating real competition in the District of Columbia.

As the Study Commission reported, "We are generally in agreement that the current (interest) rates are, in effect, anticompetitive." If the Congress does repeal all existing usury laws, however, I urge that a test of unconscionability be imposed to the rates that are offered to the consuming public.

The CHAIRMAN. Mr. Kass, can I break in on you there?

Mr. KASS. Certainly.

The CHAIRMAN. This vote is on final passage, and it may come a little quicker.

Mr. Kass. I understand. I used to work on Capitol Hill, and I am sympathetic.

(A brief recess was taken.)

The Chairman. All right, Mr. Kass, we will try to go at it again.

Mr. Kass. Thank you, sir.

Parenthetically, the Study Commission considered the concept that there be no rate ceilings at all, leaving the free money market to keep rates competitive. This was rejected, however—perhaps only out of political reality. But your committee could do a valuable service to the consumer, and to probably the real problem of the consumer, and that is the availability of credit in the District of Columbia—by considering total repeal of all usury laws.

This proposal has been suggested by many economists and by a prominent sociologist, Dr. David Caplovitz, author of the book, "The Poor Pay More." During testimony before the National Commission on Consumer Finance, Dr. Caplovitz urged what he termed a "radically different system of consumer credit," but one which is "nothing more than a free enterprise model based on the market mechanism, the bulwark of all conservative economic theory."

According to Dr. Caplovitz:

> This model would do away with all restrictions now imposed on those who want to sell money. In short, it would accept the principle of free entry now embodied in the Uniform Consumer Credit Code. Second, it would go further than the UCCC by abolishing all ceilings on interest rates and letting the rates be determined by the market mechanism. Third, in this system the same creditor would be free to charge interest commensurate with the amount of risk that he believes that the would-be debtor represents. (Testimony on June 22, 1970.)

Which is a commission that grew out of the truth-in-lending law.

I might add that the consumer credit code is based on the principle of free entry. Anyone can come into the market and attempt to make their loans, and presumably this free entry, coupled with disclosure that Congress passed in truth in lending, so that people can shop and compare around, will ultimately keep the rates at a reasonable level.

I have a study, which I was unable to find last night—but I will submit it for the record—of the bank rates on auto loans, which in my opinion documents the competitive nature. The rate ceilings in my opinion are higher. I share the Riggs' view of rates, that they can charge the rates according to the bank.

(The study referred to follows:)

Memorandum August, 1970

Re Bank interest rates on auto loans in D.C.

To: Benny Kass.
From: Edward Gross.

All the work was done by telephone. Only one bank would not give information over the phone—First National Bank of Washington; two others being unavailable when called—Industrial Bank of Washington and Public National Bank.

The banks make no distinction between the class of automobiles as in section 307. Generally only new and used autos are distinguished for the purpose of the interest to be charged. All banks that were asked made no loans for cars over 3 years old and required a shorter repayment period according to the age of the auto and the circumstances of the borrower.

Your belief that a free market on interest rates with no statutory maximum may result in fair, perhaps lower, interest rates actually being charged seems to be borne out by the figures below. Though, of course, we all hesitate to make such statements without investigating all the variables.

American Securities & Trust Co:

New car loans—10.20% for 36 months on walk-in loans.
Used car loans—None.

District of Columbia National Bank:

New—4½% add-on.
Used—4½% add-on.

Madison National Bank:

New—8% simple on unpaid balance.

Mr. Jack said that very few loans are given due to a class action suit brought against three other banks.

McLachlen National Bank:

New—4–4½% on 12 months to 3 year loans.
Used—4–4½% for cars under 3 years old.
Used—5% for cars 3 years old.

National Bank of Washington:

New—4% per year on actual amount borrowed.
Used—4% per year on actual amount borrowed.
Finance charge—9.25 dollars.

National Capital Bank:

New—4¼% add-on for 12, 24, or 36 month loan. 7.9 % simple.
Used—4⅓% add-on. 8% simple.
Finance charge—5.50 dollars—notary, credit report, etc.

National Savings & Trust:

New car loans—8% simple with 3 year maximum loan length;
Used car loans—8% 36 month repayment for 1970 auto;
30 month repayment for 1969 auto;
24 month repayment for 1968 auto;
18 month repayment for 1967 auto.

Riggs National Bank:

New—10% simple—5.38% add-on.
Used—1% per month on declining balance.

Security Bank:

New—4⅓% for 24 to 36 month loans.
Used—4⅓% for 18 month loans on maximum of 3 year old autos.

Union Trust Co of DC:

New—4½% add-on—7.9% simple.
Used—8% simple for maximum of 2 year loan.

United Community National Bank:

New—5% add-on for 36 month maximum.
Used—up to 8% on 1967 cars for 18 month loan.

Sec. 307. *Finance Charges*

Section 2 of Public Law 86–431, 74 Stat. 69, (which became effective May 22, 1960) regulates and controls the maximum finance charges allowable in connection with the sale of motor vehicles. Sections 2(a), (b), and (c) of Public Law 86–431 are quoted below for the information of all concerned:

"Sec. 2. (a) Notwithstanding the provisions of any instrument of security, refinancing contract, or other instrument to the contrary, made or entered into or after the effective date of this Act, no person shall charge, contract for, receive, or collect a finance charge if such charge exceeds the larger of $25 or an amount determined under the following schedule:

"Class 1. Any new domestic motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made and any new foreign motor vehicle—$8 per $100 per year. 14.45%

"Class 2. Any new domestic motor vehicle not in class 1 and any used domestic motor vehicle designated by the manufacturer by a year model of the same or not more than two years prior to the year in which the sale is made and any used foreign motor vehicle not more than two years old—$11 per $100 per year. 19.72%

"Class 3. Any used motor vehicle not in class 2, and, if a domestic motor vehicle, designated by the manufacturer by a year model not more than four years prior

to the year in which the sale is made, and, if a foreign motor vehicle, not more than four years old—$14 per $100 per year. 24.91%

"Class 4. Any used motor vehicle not in class 2 or class 3—$16 per $100 per year. 28.33%

"(b) The finance charge authorized by the preceding subsection shall be computed on the principal balance payable for a motor vehicle from the date of the instrument or contract until the maturity of the final installment, notwithstanding that the balance thereof is required to be paid in installments.

"(c) For a period less or greater than twelve months or for amounts less or greater than $100, the amount of the maximum charge set forth in the foregoing schedule shall be decreased or increased proportionately."

The CHAIRMAN. I did not follow that.

Mr. KASS. There is an exemption from the usury law for auto loans. As Mr. Jennings pointed out, there are some lawyers who feel that banks are not covered by that exemption. There are others, like myself, who feel that the banks can make the higher loans in the auto loan field.

The CHAIRMAN. You agree with Mr. Jennings?

Mr. KASS. I agree with Mr. Jennings. Also, my study points out that rates in the District of Columbia are highly competitive because the rate ceilings are much higher than the 8 percent.

The CHAIRMAN. Right, and also competitive with the neighboring jurisdictions?

Mr. KASS. That is correct.

To conclude my discussion of rates, I would thus summarize as follows:

1. S. 1938 is special interest legislation for only one segment of the financial community in Washington, D.C.; namely, the banks,
2. S. 1938, if enacted, would not stimulate the availability of credit in Washington—where there presently is no competition.
3. S. 1938, as presently drafted, is totally anticonsumer.

Consumer protections.—One consumer protection that is most definitely needed in Washington, D.C., is competition. In my opinion, as already discussed, repeal of the existing usury laws will stimulate new markets and will create a climate for greater availability of consumer credit. This has already been discussed in the material on rates.

But availability of credit alone is not sufficient. There are consumer abuses which must be acknowledged and eliminated. I can spend hours talking about each one of them, but just to list some of them; included in these abuses are such practices as:

1. Holder in due course;
2. Balloon payments;
3. Repossession tactics;
4. Referral sales;
5. Door to door sales:
6. Garnishment;
7. Debt collection practices, to name but a few.

Furthermore, Washington needs some form of Office of Consumer Affairs, so that consumers and businessmen alike will have some direction and focus. Indeed, the Study Commission recommended that such an office be created, "with full powers to investigate and curtail unconscionable or otherwise unsavory practices."

Mr. Chairman, bankers, retailers, and consumers sat down in the District of Columbia and worked many long hours drafting appropriate consumer protection legislation, including not the specific rates,

but a recommendation of what the concept of rates should be, namely, that they should be competitive.

The final recommendation and report has been submitted to the City Council, where it has not yet been acted upon. Our Chairman, now Judge Ted Newman, wrote Chairman Hahn that:

> The Commission's final recommendations are patterned after the Uniform Consumer Credit Code * * * But our proposed code is not the Uniform Consumer Credit Code; we have both modified and changed it. Many of our amendments are local in origin, based on peculiar problems within our jusridiction. Many of the changes, however, are taken from the proposed National Consumer Act, sponsored by the National Consumer Law Center at Boston College Law School * * *.

Thus, as a Commissioner on Uniform State Laws, as former executive director to the City Council's Study Commission, and as a citizen concerned with enacting meaningful consumer protection legislation, I urge this committee to reject S. 1938. In lieu of that bill, I respectfully submit the draft "District of Columbia Consumer Credit Code," which accompanied our Commission's final report.

I might also say that Mr. Jennings has supported consumer protection legislation but has said let us act today for the bank rates. I am very concerned, having sat through a year and a half of discussions with the bankers, with the retailers and others, that the quid pro quo for consumer protection is rates.

Once the financial institutions get the rates they want and need, there will be no incentive, no impetus, and no desire to pass consumer legislation.

The Uniform Consumer Credit Code, with the amendments we have adopted and are supporting, is a compromise based on the need for consumer protection legislation on the one hand and for consumer credit, which means the money market.

I submit this committee must go forward together with both, even if it takes a year or two, because I submit that once S. 1938 is enacted there is absolutely no incentive, and no reason for the banks or others to support consumer protection for the District of Columbia.

I appreciate the opportunity to appear before this committee and I offer my services, as I have in the past, to you and to your staff.

(The documents previously referred to follow:)

BOASBERG, GRANAT & KASS,
Washington, D.C., May 28, 1971.

Hon. THOMAS EAGLETON,
Chairman, Senate District Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I want to register my strong opposition to S. 1938, the bill you introduced on May 25, 1971. As I understand the thrust of the bill, it would permit "banking institutions" in the District of Columbia to loan money at any rate not exceeding the lesser of the rate which is in effect and would be applicable under the laws of the State of Maryland or of the Commonwealth of Virginia at the time of making such loan.

As a practical matter, the bill—if enacted—would legalize the rates which banks in the District of Columbia are now charging for installment loans and revolving credit accounts. As you know, there are two suits pending in the District Courts challenging the 8% "discount" rate which banks charge on consumer loans (which amounts to a true annual percentage rate of approximately 16%), and the 1½ percent per/month which is imposed on revolving credit accounts (amounting to a true annual rate of 18 percent).

As a plaintiff in the revolving credit account suits, and as former Executive Director of the D.C. Study Commission on Interest Rates and Consumer Credit, I feel compelled to speak out in opposition to S. 1938.

My opposition, however, does not go to the rates themselves. On the contrary, I am completely in accord with the rate structure proposed by S. 1938—as far as it goes. In fact, I personally believe that the Congress should eliminate *all* usury laws, with the objective of stimulating competition in the District of Columbia. For as the Study Commission reported, "We are generally in agreement that the current (interest) rates are, in effect, anti-competitive." The only caveat I would urge to total repeal of the existing usury laws, would be to impose a test of unconscionability to the rates that are offered to the consuming public.

My opposition stems from the fact that S. 1938 is special legislation which would affect only the banking institutions in the District of Columbia. It would not affect the retailers' operations (who incidentally are also involved in my lawsuit); nor would it stimulate new financial markets for such institutions as small loan companies. As you may know, there is not one single small loan company in the District of Columbia, yet, as the Study Commission reported, "the City of Washington is literally surrounded with small loan companies, many of which are directly on the borders of Maryland and Virginia."

To enact legislation legalizing the banking rates, without stimulating competition for Washington, D.C. is not only anti-consumer, but is not in the best interests of the economic growth of Washington, D.C.

Accordingly, I urge you not to act on S. 1938. Instead, I would hope you could introduce the Study Commission's version of the Uniform Consumer Credit Code, a copy of which I have already given Mr. Robert Harris. This Code would provide the rate structure needed to stimulate total economic competition into Washington, D.C. Clearly, the bankers would get what they wanted. But it would also provide the other financial and commercial institutions with those rates which, in my personal opinion, are needed to maintain a healthy economic growth.

And, of equal importance, the Code would provide the residents of Washington, D.C. with strong consumer protection measures which are so vitally needed here.

As you know, the Code which the Study Commission recommended was silent on the exact rates which should be included with the Consumer Package. But we did recommend:

> "That the existing District of Columbia interest rates and usury laws be changed to permit financial institutions and others extending credit in the District to be competitive with those in the surrounding jurisdictions of Maryland and Virginia. We strongly urge, in order to permit small loan companies to do business here, that interest rates be raised from existing levels."

Accordingly, for discussion and hearing purposes, the Code which I urge you to introduce could include a complete repeal of all usury and interest laws, subject to a strong section on unconscionability.

I would be happy to work with you and your staff to complete the drafting of this legislation.

Your interest in the total well-being of the District is appreciated.

Sincerely,

BENNY L. KASS.

DISTRICT OF COLUMBIA UNIFORM CONSUMER CREDIT CODE

Official Text of the National Conference of Commissioners on Uniform State Laws

An Act

Relating to certain consumer and other credit transactions and constituting the uniform consumer credit code; consolidating and revising certain aspects of the law relating to consumer and other loans, consumer and other sales of goods, services and interests in land, and consumer leases; revising the law relating to usury; regulating certain practices relating to insurance in consumer credit transactions; providing for administrative regulation of certain consumer credit transactions; making uniform the law with respect thereto; and repealing inconsistent legislation

Article 1—General Provisions and Definitions

PART 1—SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

Short Title

Sec. 1.101. This Act shall be known and may be cited as the District of Columbia Uniform Consumer Credit Code.

Purposes; Rules of Construction

Sec. 1.102. (1) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

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

(a) to simplify, clarify and modernize the laws governing retail installment sales, consumer credit, small loans and usury;

(b) to provide rate ceilings to assure an adequate supply of credit to consumers;

(c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;

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

(e) to permit and encourage the development of fair and economically sound consumer credit practices;

(f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and

(g) to make uniform the law, including administrative rules, among the various jurisdictions.

(3) A reference to a requirement imposed by this Act includes reference to a related rule of the Administrator adopted pursuant to this Act.

Supplementary General Principles of Law Applicable

Sec. 1.103. (1) Unless displaced by the particular provisions of this Act, the Uniform Commercial Code and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

(2) Unless terms used in this Act are defined by particular provisions of this Act, they shall have the meaning given them in the Uniform Commercial Code, if they are there defined.

(3) Unless displaced by the particular provisions of this Act, parties to a consumer transaction have all of the obligations, duties, rights and remedies provided in the Uniform Commercial Code which apply to the transaction.

Construction Against Implicit Repeal

Sec. 1.104. This Act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Severability

Sec. 1.105. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Adjustment of Dollar Amounts

Sec. 1.106. (1) From time to time the dollar amounts in this Act designated as subject to change shall change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1957–59 = 100, compiled by the Bureau of Labor Statistics, United States Department of Labor, and hereafter referred to as the Index. The Index for December, 1967, is the Reference Base Index.

(2) The designated dollar amounts shall change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index is 10 per cent or more, except that

(a) the portion of the percentage change in the Index in excess of a multiple of 10 per cent shall be disregarded and the dollar amounts shall change only in multiples of 10 per cent of the amounts appearing in this Act on the date of enactment;

(b) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to this Act as a result of earlier application of this section; and

(c) in no event shall the dollar amounts be reduced below the amounts appearing in this Act on the date of enactment.

(3) If the Index is revised after December 1967, the percentage of change pursuant to this section shall be calculated on the basis of the revised Index. If the revision of the Index changes the Reference Base Index, a revised Reference Base Index shall be determined by multiplying the Reference Base Index then applicable by the ratio of the revised Index to the current Index, as each was for the first month in which the revised Index is available. If the Index is superseded, the Index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(4) The Administrator shall issue a rule announcing

(a) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by subsection (2); and

(b) promptly after the changes occur, changes in the Index required by subsection (3) including, when applicable, the numerical equivalent of the Reference Base Index under a revised Reference Base Index and the designation or title of any index superseding the Index.

(5) No person violates this Act if with respect to a transaction otherwise complying with this Act he relies on dollar amounts either determined according to subsection (2) or appearing in the last rule of the Administrator announcing the then current dollar amounts.

(6) If the percentage of change between the Index at the end of the odd-numbered year preceding the effective date of this Act and the Reference Base Index would require change in the designated dollar amounts pursuant to subsection (2), the designated dollar amounts shall change upon the effective date of this Act and, on or before that date, the Administrator shall issue a rule announcing the changes required by this subsection. Subsection (5) also applies if the transaction is based on dollar amounts appearing in the Act and the Administrator has issued no rule as required by this subsection.

Waiver; Agreement to Forego Rights; Settlement of Claims

Sec. 1.107. (1) Except as otherwise provided in this Act, a buyer, lessee, or debtor may not waive or agree to forego rights or benefits under this Act.

(2) A claim by a buyer, lessee, or debtor against a creditor for an excess charge, other violation of this Act, or civil penalty, or a claim against a buyer, lessee, or debtor for default or breach of a duty imposed by this Act, if disputed in good faith, may be settled by agreement.

(3) A claim, whether or not disputed, against a buyer, lessee, or debtor may be settled for less value than the amount claimed.

(4) A settlement in which the buyer, lessee, or debtor waives or agrees to forego rights or benefits under this Act is invalid if the court as a matter of law finds the settlement to have been unconscionable at the time it was made. The competence of the buyer, lessee, or debtor, any deception or coercion practiced upon him, the nature and extent of the legal advice received by him, and the value of the consideration are relevant to the issue of unconscionability.

Effect of Act on Powers of Organizations

Sec. 1.108. (1) This Act prescribes maximum charges for all creditors, except lessors and those excluded (Section 1.202), extending consumer credit including consumer credit sales (Section 2.104), consumer loans (Section 3.104), and consumer related sales and loans (Section 2.602 and Section 3.602), and displaces existing limitations on the powers of those creditors based on maximum charges.

(2) With respect to sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, industrial banks and loan com-

panies, and commercial banks and trust companies, this Act displaces existing limitations on their powers based solely on amount or duration of credit.

(3) Except as provided in subsection (1) and in the Article on Effective Date and Repealer (Article 9), this Act does not displace limitations on powers of credit unions, savings banks, savings and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

(4) Except as provided in subsections (1) and (2) and in the Article on Effective Date and Repealer (Article 9), this Act does not displace

(a) limitations on powers of supervised financial organizations (subsection (17) of Section 1.301) with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits, or

(b) limitations on powers an organization is authorized to exercise under the laws of the District of Columbia.

PART 2—SCOPE AND JURISDICTION

Territorial Application

Sec. 1.201. (1) Except as otherwise provided in this section, this Act applies to *sales*, *leases*, and *loans* made *in this State* and *to modifications*, including refinancings, consolidations, and deferrals, made in this State, of sales, leases, and loans, wherever made. For purposes of this Act

(a) a sale or modification of a sale agreement is made in this State if the buyer's agreement or offer to purchase or to modify is received by the seller in this State;

(b) a lease or modification of a lease agreement is made in this State if the lessee's agreement or offer to lease or to modify is received by the lessor in this State; and

(c) a loan or modification of a loan agreement is made in this State if a writing signed by the debtor and evidencing the debt is received by the lender in this State.

(2) With respect to sales made pursuant to a revolving charge account (Section 2.108), this Act applies if the buyer's communication or indication of his intention to establish the account is received by the seller in this State. If no communication or indication of intention is given by the buyer before the first sale, this Act applies if the seller's communication notifying the buyer of the privilege of using the account is mailed or personally delivered in this State.

(3) With respect to loans made pursuant to a lender credit card or similar arrangement (subsection (9) of Section 1.301), this Act applies if the debtor's communication or indication of his intention to establish the arrangement with the lender is received by the lender in this State. If no communication or indication of intention is given by the debtor before the first loan, this Act applies if the lender's communication notifying the debtor of the privilege of using the arrangement is mailed or personally delivered in this State.

(4) The Part on Limitations on Creditors' Remedies (Part 1) of the Article on Remedies and Penalties (Article 5) applies to actions or other proceedings brought in this State to enforce rights arising from consumer credit sales, consumer leases, or consumer loans, or extortionate extensions of credit, wherever made.

(5) If a consumer credit sale, consumer lease, or consumer loan, or modification thereof, is made in another state to a person who is a resident of this State when the sale, lease, loan, or modification is made, the following provisions apply as though the transaction occurred in this State:

(a) a seller, lessor, lender, or assignee of his rights, may not collect charges through actions or other proceedings in excess of those permitted by the Article on Credit Sales (Article 2) or by the Article on Loans (Article 3); and

(b) a seller, lessor, lender, or assignee of his rights, may not enforce rights against the buyer, lessee, or debtor, with respect to the provisions of agreements which violate the provisions on Limitations on Agreements and Practices (Part 4) of the Article on Credit Sales (Article 2) or of the Article on Loans (Article 3).

(6) Except as provided in subsection (4), a sale, lease, loan, or modification thereof, made in another state to a person who was not a resident of this State when the sale, lease, loan, or modification was made is valid and enforceable

in this State according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(7) For the purposes of this Act, the residence of a buyer, lessee, or debtor is the address given by him as his residence in any writing signed by him in connection with a credit transaction. Until he notifies the creditor of a new or different address, the given address is presumed to be unchanged.

(8) Notwithstanding other provisions of this section

(a) except as provided in subsection (4), this Act does not apply if the buyer, lessee, or debtor is not a resident of this State at the time of a credit transaction and the parties then agree that the law of his residence applies; and

(b) this Act applies if the buyer, lessee, or debtor is a resident of this State at the time of a credit transaction and the parties then agree that the law of this State applies.

(9) Except as provided in subsection (8), the following agreements by a buyer, lessee, or debtor are invalid with respect to consumer credit sales, consumer leases, consumer loans, or modifications thereof, to which this Act applies:

(a) that the law of another state shall apply;

(b) that the buyer, lessee, or debtor consents to the jurisdiction of another state; and

(c) that fixes venue.

(10) The following provisions of this Act specify the applicable law governing certain cases:

(a) applicability (Section 6.102) of the Part on Powers and Functions of Administrator (Part 1) of the Article on Administration (Article 6); and

(b) applicability (Section 6.201) of the Part on Notification and Fees (Part 2) of the Article on Administration (Article 6).

Exclusions

Sec. 1.202. This Act does not apply to

(1) extensions of credit to government or governmental agencies or instrumentalities;

(2) the sale of insurance by an insurer, except as otherwise provided in the Article on Insurance (Article 4); or

(3) transactions under public utility or common carrier tariffs if a subdivision or agency of this State or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment; or

[Jurisdiction and Service of Process]

[Sec. 1.203. (1) The [ ] [1] court of this State may exercise jurisdiction over any creditor with respect to any conduct in this State governed by this Act or with respect to any claim arising from a transaction subject to this Act. In addition to any other method provided by [rule or by] statute, personal jurisdiction over a creditor may be acquired in a civil action or proceeding instituted in the [ ] [1] court by the service of process in the manner provided by this section.

(2) If a creditor is not a resident of this State or is a corporation not authorized to do business in this State and engages in any conduct in this State governed by this Act, or engages in a transaction subject to this Act, he may designate an agent upon whom service of process may be made in this State. The agent shall be a resident of this State or a corporation authorized to do business in this State. The designation shall be in a writing and filed with the [ ].[1] If no designation is made and filed or if process cannot be served in this State upon the designated agent, process may be served upon the Secretary of State, but service upon him is not effective unless the plaintiff or petitioner forthwith mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.]

[1] **Note.—The blanks must be filled in when we know the structure of the new court system.**

PART 3—DEFINITIONS

General Definitions

Sec. 1.301. In addition to definitions appearing in subsequent Articles, in this Act

(1) "Actuarial method" means the method, defined by rules adopted by the Administrator, of allocating payments made on a debt between principal or amount financed and loan finance charge or credit service charge pursuant to which a payment is applied first to the accumulated loan finance charge or credit service charge and the balance is applied to the unpaid principal or unpaid amount financed.

(2) "Administrator" means the Administrator designated in the Article (Article 6) on Administration (Section 6.103).

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

(4) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(5) "Closing costs" with respect to a debt secured by an interest in land includes:

(a) fees or premiums for title examination, title insurance, or similar purposes including surveys,

(b) fees for preparation of a deed, settlement statement, or other documents,

(c) escrows for future payments of taxes and insurance,

(d) fees for notarizing deeds and other documents,

(e) appraisal fees, and

(f) credit reports.

(6) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

(7) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(8) "Earnings" means compensation paid or payable to an individual or for his account for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program.

(9) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation of identification in transactions out of which debt arises

(a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;

(b) by the lender's payment or agreement to pay the debtor's obligations; or

(c) by the lender's purchase from the obligee of the debtor's obligations.

(10) "Official fees" means

(a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

(b) premium payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

(11) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(12) "Payable in installments" means that payment is required or permitted by agreement to be made in (a) two or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to

which a credit service charge is made, (b) four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no credit service charge is made, or (c) two or more periodic payments with respect to a debt arising from a consumer loan. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit sale, consumer lease, or consumer loan is "payable in installments."

(13) "Person" includes a natural person or an individual, and an organization.

(14) "Person related to" with respect to an individual means (a) the spouse of the individual, (b) a brother, brother-in-law, sister, sister-in-law of the individual, (c) an ancestor or lineal descendant of the individual or his spouse, and (d) any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual. "Person related to" with respect to an organization means (a) a person directly or indirectly controlling, controlled by or under common control with the organization, (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization, (c) the spouse of a person related to the organization, and (d) a relative by blood or marriage of a person related to the organization who shares the same home with him.

(15) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its non-existence.

(16) "Seller credit card" means an arrangement pursuant to which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or others licensed or franchised to do business under his business or trade name or designation.

(17) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business,

(a) organized, chartered, or holding an authorization certificate under the laws of this State or of the United States which authorize the person to make loans and to receive deposits, including a savings, share, certificate or deposit account, and

(b) subject to supervision by an official or agency of this State or of the United States.

Definition: "Federal Consumer Credit Protection Act"

Sec. 1.302. In this Act "Federal Consumer Credit Protection Act" means the Consumer Credit Protection Act (Public Law 90–321; 82 Stat. 146), as amended, and includes regulations issued pursuant to that Act.

Index of Definitions in Act

Sec. 1.303. Definitions in this Act and the sections in which they appear are:

"Actuarial method"—Section 1.301(1)
"Administrator"—Section 1.301(2)
"Administrator"—Section 6.103
"Agreement"—Section 1.301(3)
"Agricultural purpose"—Section 1.301(4)
"Amount financed"—Section 2.111
"Cash price"—Section 2.110
"Closing costs"—Section 1.301(5)
"Conspicuous"—Section 1.301(6)
"Consumer credit insurance"—Section 4.103(1)
"Consumer credit sale"—Section 2.104
"Consumer lease"—Section 2.106
"Consumer loan"—Section 3.104
"Consumer related loan"—Section 3.602
"Consumer related sale"—Section 2.602
"Credit"—Section 1.301(7)
"Credit Insurance Act"—Section 4.103(2)
"Credit service charge"—Section 2.109
"Earnings"—Section 1.301(8)
"Federal Consumer Credit Protection Act"—Section 1.302
"Goods"—Section 2.105(1)

"Home solicitation sale"—Section 2.501
"Lender"—Section 3.107(1)
"Lender credit card or similar arrangement"—Section 1.301(9)
"Loan"—Section 3.106
"Loan finance charge"—Section 3.109
"Loan primarily secured by an interest in land"—Section 3.105
"Loan finance charge"—Section 3.109
"Loan primarily secured by an interest in land"—Section 3.105
"Merchandise certificate"—Section 2.105(2)
"Official fees"—Section 1.301(10)
"Organization"—Section 1.301(11)
"Payable in installments"—Section 1.301(12)
"Person"—Section 1.301(13)
"Person related to"—Section 1.301(14)
"Precomputed" (loan)—Section 3.107(2)
"Precomputed" (sale)—Section 2.105(7)
"Presumed" or "presumption"—Section 1.301(15)
"Principal"—Section 3.107(3)
"Regulated lender"—Section 3.501(2)
"Regulated loan"—Section 3.501(1)
"Revolving charge account"—Section 2.108
"Revolving loan account"—Section 3.108
"Sale of goods"—Section 2.105(4)
"Sale of an interest in land"—Section 2.105(6)
"Sale of services"—Section 2.105(5)
"Seller"—Section 2.107
"Seller credit card"—Section 1.301(16)
"Services"—Section 2.105(3)
"Supervised financial organization"—Section 1.301(17)
"Supervised lender"—Section 3.501(4)
"Supervised loan"—Section 3.501(3)

Article 2—Credit Sales

PART 1—GENERAL PROVISIONS

Short Title

2.101 This Article shall be known and may be cited as the District of Columbia Uniform Consumer Credit Code—Credit Sales.

Scope

2.102 This Article applies to consumer credit sales, including home solicitation sales, and consumer leases; in addition Part 6 applies to consumer related sales.

Definitions in Article

2.103 The following definitions apply to this Act and appear in this Article as follows:

"Amount financed"—Section 2.111
"Cash price"—Section 2.110
"Consumer credit sale"—Section 2.104
"Consumer lease"—Section 2.106
"Consumer related sale"—Section 2.602
"Credit service charge"—Section 2.109
"Goods"—Section 2.105(1)
"Home solicitation sale"—Section 2.501
"Merchandise certificate"—Section 2.105(2)
"Precomputed"—Section 2.105(7)
"Revolving charge account"—Section 2.108
"Sale of goods"—Section 2.105(4)
"Sale of an interest in land"—Section 2.105(6)
"Sale of services"—Section 2.105(5)
"Seller"—Section 2.107
"Services"—Section 2.105(3)

Definition: "Consumer Credit Sale"

2.104 (1) Except as provided in subsection (2), "consumer credit sale" is a sale of goods, services, or an interest in land in which

(a) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind,

(b) the buyer is a person other than an organization,

(c) the goods, services, or interest in land are purchased primarily for a personal, family, household, or agricultural purpose,

(d) either the debt is payable in installments or a credit service charge is made, and

(e) with respect to a sale of goods or services, the amount financed does not exceed $25,000.

(2) Unless the sale is made subject to this Act by agreement (Section 2.601), "consumer credit sale" does not include

(a) a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement, or

(b) except as provided with respect to disclosure (Section 2.301) and debtors' remedies (Section 5.201), a sale of an interest in land if at the time the transaction is made such transaction is secured by a First Mortgage or Deed of Trust or a Deferred Purchase Money Second Mortgage or Deed of Trust which is being taken by a homeowner in lieu of cash and as part of the total sales price of the property and where the homeowner has occupied the property as his own dwelling.

(3) The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106)

Definitions: "Goods"; "Merchandise Certificate"; "Services"; "Sale of Goods"; "Sale of Services"; "Sale of an Interest in Land"; "Precomputed"

Sec. 2.105. (1) "Goods" includes goods not in existence at the time the transaction is entered into and merchandise certificates, but excludes money, chattle paper, documents of title, and instruments.

(2) "Merchandise certificate" means a writing issued by a seller not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(3) "Services" includes (a) work, labor, and other personal services, (b) privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and (c) insurance provided by a person other than the insurer.

(4) "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement.

(5) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(6) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

(7) A sale, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the amount financed and the amount of the credit service charge computed in advance.

Definition: "Consumer Lease"

Sec. 2.106. (1) "Consumer lease" means a lease of goods

(a) which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, household, or agricultural purpose,

(b) in which the amount payable under the lease does not exceed $25,000, and

(c) which is for a term exceeding four months.

(2) "Consumer lease" does not include a lease made pursuant to a lender credit card or similar arrangement.

(3) The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

Definition: "Seller"

Sec. 2.107. Except as otherwise provided, "seller" includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment.

Definition: "Revolving Charge Account"

Sec. 2.108. "Revolving charge account" means an arrangement between a seller and a buyer pursuant to which (1) the seller may permit the buyer to purchase goods or services on credit either from the seller or pursuant to a seller credit card, (2) the unpaid balances of amounts financed arising from purchases and the credit service and other appropriate charges are debited to an account, (3) a credit service charge if made is not precomputed but is computed on the outstanding unpaid balances of the buyer's account from time to time, and (4) the buyer has the privilege of paying the balances in installments.

Definition: "Credit Service Charge"

Sec. 2.109. "Credit service charge" means the sum of (1) all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller as an incident to the extension of credit, including any of the following types of charges which are applicable: time price differential, service, carrying or other charge, however denominated, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss; and (2) charges incurred for investigating the collateral or credit-worthiness of the buyer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the seller had no notice of the charges when the credit was granted. The term does not include charges as a result of default, additional charges (Section 2.202), delinquency charges (Section 2.203), or deferral charges (Section 2.204).

Definition: "Cash Price"

Sec. 2.110. Except as the Administrator may otherwise prescribe by rule, the "cash price" of goods, services, or an interest in land means the price at which the goods, services, or interest in land are offered for sale by the seller to cash buyers in the ordinary course of business, and may include (1) applicable sales, use, and excise and documentary stamp taxes, (2) the cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations, and improvements, and (3) amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees. The cash price stated by the seller to the buyer pursuant to the provisions on disclosure (Part 3) of this Article is presumed to be the cash price.

Definition: "Amount Financed"

Sec. 2.111. "Amount financed" means the total of the following items to the extent that payment is deferred:

(1) the cash price of the goods, services, or interest in land, less the amount of any down payment whether made in cash or in property traded in,

(2) the amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in, and

(3) if not included in the cash price

(a) any applicable sales, use, excise, or documentary stamp taxes,

(b) amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees, and

(c) additional charges permitted by this Article (Section 2.202).

MAXIMUM CHARGES

Sec. 2.201 is reserved for *City Council determination.*

Additional Charges

Sec. 2.202. (1) In addition to the credit service charge permitted by this Part, a seller may contract for and receive the following additional charges in connection with a consumer credit sale:

(a) official fees and taxes;

(b) charges for insurance as described in subsection (2); and

(c) charges for other benefits, including insurance, conferred on the buyer, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the credit service charge by rule adopted by the Administrator.

(2) An additional charge may be made for insurance written in connection with the sale, other than insurance protecting the seller against the buyer's default or other credit loss,

(a) with respect to insurance against loss of or damage to property, or against liability, if the seller furnishes a clear and specific statement in writing to the buyer, setting forth the cost of the insurance if obtained from or through the seller, and stating that the buyer may choose the person through whom the insurance is to be obtained; and

(b) with respect to consumer credit insurance providing life, accident, or health coverage, if the insurance coverage is not a factor in the approval by the seller of the extension of credit and this fact is clearly disclosed in writing to the buyer, and if, in order to obtain the insurance in connection with the extension of credit, the buyer gives specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(3) For the purposes of the Part on Disclosure and Advertising (Part 3), if the credit service charge with respect of a sale of an interest in land does not exceed 10 per cent per year (paragraph (b) of subsection (2) of Section 2.104), reasonable closing costs even though not within subsection (1) may be treated as additional charges.

Delinquency Charges

Sec. 2.203. (1) With respect to a precomputed consumer credit sale, refinancing or consolidation, the parties may contract for a delinquency charge on any installment not paid in full within 10 days after its schedule due date in an amount not exceeding the greater of

(a) an amount, not exceeding $5, which is 5 percent of the unpaid amount of the installment, or

(b) the deferral charge (subsection (1) of Section 2.204) that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

(2) A delinquency charge under paragraph (a) of subsection (1) may be collected only once on an installment however long it remains in default. No delinquency charge may be collected if the installment has been deferred and a deferral charge (Section 2.204) has been paid or incurred. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an installment which is paid in full within 10 days after its scheduled installment due date even though an earlier maturing installment or a delinquency charge on an earlier installment may not have been paid in full. For purposes of this subsection payments are applied first to current installments and then to delinquent installments.

(4) The amount of $5 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

Deferral Charges

Sec. 2.204. (1) With respect to a precomputed consumer credit sale, refinancing or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid installments, and the seller may make and collect a charge not exceeding the rate previously stated to the buyer pursuant to the provisions on disclosure (Part 3) applied to the amount or amounts deferred for the period of deferral calculated without regard to differences in lengths of months, but proportionally for a part of a month, counting each day as 1/30th of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

(2) The seller, in addition to the deferral charge, may make appropriate additional charges (Section 2.202), and the amount of these charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

(3) The parties may agree in writing at the time of a precomputed consumer credit sale, refinancing, or consolidation that if an installment is not paid within 10 days after its due date, the seller may unilaterally grant a deferral and make

charges as provided in this section. No deferral charge may be made for a period after the date that the seller elects to accelerate the maturity of the agreement.

(4) A delinquency charge made by the seller on an installment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency.

NOTE.—Regulation Z. § 2.26.8(6) requires full disclosure of all important details in the event this is a deferral.

Credit Service Charge on Refinancing

Sec. 2.205. With respect to a consumer credit sale, refinancing, or consolidation, the seller may by agreement with the buyer refinance the unpaid balance and may contract for and receive a credit service charge based on the amount financed resultlng from the refinancing at a rate not exceeding that permitted by the provisions on credit service charge for consumer credit sales (Section 2.201). For the purpose of determining the credit service charge permitted, the amount financed resulting from the refinancing comprises the following:

(1) if the transaction was not precomputed, the total of the unpaid balance and accrued charges on the date of refinancing, or, if the transaction was precomputed, the amount which the buyer would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (Section 2.210) on the date of refinanclng, except that for the purpose of computing this amount no minimum credit service charge (subsection (6) of Section 2.201) shall be allowed; and

(2) appropriate additional charges (Section 2.202), payment of which is deferred.

Credit Service Charge on Consolidation

Sec. 2.205. If a buyer owes an unpaid balance to a seller with respect to a consumer credit sale, refinancing, or consolidation, and becomes obligated on another consumer credit sale, refinancing, or consolidation with the same seller, the parties may agree in writing to a consolidation resulting in a single schedule of payments pursuant to either of the following subsections:

(1) The parties may agree to refinance the unpaid balance with respect to the previous sale pursuant to the provisions on refinancing (Section 2.205) and to consolidate the amount financed resulting from the refinancing by adding it to the amount financed with respect to the subsequent sale. The seller may contract for and receive a credit service charge based on the aggregate amount financed resulting from the consolidation at a rate not exceeding that permitted by the provisions on credit service charge for consumer credit sales (Section 2.201).

(2) The parties may agree to consolidate by adding together the unpaid balances with respect to the two sales.

Sec. 2.207. Credit Service Charge for revolving charge accounts is reserved for further discussion.

Advances to Perform Covenants of Buyer

Sec. 2.208. (1) If the agreement with respect to a consumer credit sale, refinancing, or consolidation contains covenants by the buyer to perform certain duties pertaining to insuring or preserving collateral and the seller pursuant to the agreement in good faith pays for performance of the duties on behalf of the buyer, the seller may add the amounts paid to the debt. Within a reasonable time after advancing any sums, he shall state to the buyer in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the buyer performed by the seller pertain to insurance, a brief description of the insurance paid for by the seller including the type and amount of coverages. No further information need be given.

(2) A credit service charge may be made for sums advanced pursuant to subsection (1) at a rate not exceeding the rate stated to the buyer pursuant to the provisions on disclosure (Part 3) with respect to the sale, refinancing, or consolidation, except that with respect to a revolving charge account the amount of the advance may be added to the unpaid balance of the account and the seller may make a credit service charge not exceeding that permitted by the provisions on credit service charge for revolving charge accounts (Section 2.207).

Right to Prepay

Sec. 2.209. Subject to the provisions on rebate upon prepayment (Section 2.210), the buyer may prepay in full the unpaid balance of a consumer credit sale, refinancing, or consolidation at any time without penalty.

Rebate Upon Prepayment

Sec. 2.210. (1) Except as provided in subsection (2), upon prepayment in full of the unpaid balance of a precomputed consumer credit sale, refinancing, or consolidation, an amount not less than the unearned portion of rhe credit service charge calculated according to this section shall be rebated to the buyer. If the rebate otherwise required is less than $1, no rebate need be made.

(2) Upon prepayment in full of a consumer credit sale, refinancing, or consolidation, other than one pursuant to a revolving charge account, if the credit service charge then earned is less than any permitted minimum credit service charge (subsection (6) of Section 2.201) contracted for, whether or not the sale, refinancing, or consolidation, is precomputed, the seller may collect or retain the minimum charge, as if earned, not exceeding the credit service charge contracted for.

(3) Except as otherwise provided in this subsection with respect to a sale of an interest in land or a consumer credit sale secured by an interest in land, the unearned portion of the credit service charge is a fraction of the credit service charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which prepayment occurs, and the denominator is the sum of all periodic balances under either the sale agreement or, if the balance owing resulted from a refinancing (Section 2.205) or a consolidation (Section 2.206), under the refinancing agreement or consolidation agreement. In the case of a sale of an interest in land or a consumer credit sale secured by an interest in land, reasonable sums actually paid or payable to persons not related to the seller for customary closing costs included in the credit service charge are deducted from the credit service charge before the calculation prescribed by this subsection is made.

(4) In this section

(a) "periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before deducting the payment, if any, scheduled to be made on that day;

(b) "computational period" means one month if one-half or more of the intervals between scheduled payments under the agreement is one month or more, and otherwise means one week;

(c) the "interval" to the due date of the first scheduled instalment or the final scheduled payment date is measured from the date of a sale, refinancing, or consolidation, or any later date prescribed for calculating maximum credit service charges (subsection (4) of Section 2.201), and includes either the first or last day of the interval;

(d) if the interval to the due date of the first scheduled instalment does not exceed one month by more than 15 days when the computational period is one month, or 11 days when the computational period is one week, the interval shall be considered as one computational period.

(5) This subsection applies only if the schedule of payments is not regular.

(a) If the computational period is one month and

(i) if the number of days in the interval to the due date of the first scheduled instalment is less than one month by more than 5 days, or more than one month by more than 5 but not more than 15 days, the unearned credit service charge shall be increased by an adjustment for each day by which the interval is less than one month and, at the option of the seller, may be reduced by an adjustment for each day by which the interval is more than one month; the adjustment for each day shall be 1/30th of that part of the credit service charge earned in the computational period prior to the due date of the first scheduled instalment assuming that period to be one month; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full month, the additional number of days shall be considered a computational period only if 16 days or more. This subparagraph applies whether or not subparagraph (i) applies.

(b) Notwithstanding paragraph (a), if the computational period is one month, the number of days in the interval to the due date of the first instalment exceeds one month by not more than 15 days, and the schedule of payments is otherwise regular, the seller at his option may exclude the extra days and the charge for the extra days in computing the unearned credit service charge; but if he does so and a rebate is required before the due date of the first scheduled instalment, he shall compute the earned charge for each elapsed day as 1/30th of the amount the earned charge would have been if the first interval had been one month.

(c) If the computational period is one week and

(i) if the number of days in the interval to the due date of the first scheduled instalment is less than 5 days, or more than 9 days but not more than 11 days, the unearned credit service charge shall be increased by an adjustment for each day by which the interval is less than 7 days and, at the option of the seller, may be reduced by an adjustment for each day by which the interval is more than 7 days; the adjustment for each day shall be 1/7th of that part of the credit service charge earned in the computational period prior to the due date of the first scheduled instalment assuming that period to be one week; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full week, the additional number of days shall be considered a computational period only if 4 days or more. This subparagraph applies whether or not subparagraph (i) applies.

(6) If a deferral (Section 2.204) has been agreed to, the unearned portion of the credit service charge shall be computed without regard to the deferral. The amount of deferral charge earned at the date of prepayment shall also be calculated. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the credit service charge. If any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the credit service charge or shall be added to the unpaid balance.

(7) This section does not preclude the collection or retention by the seller of delinquency charges (Section 2.203).

(8) If the maturity is accelerated for any reason and judgment is obtained, the buyer is entitled to the same rebate as if payment had been made on the date judgment is entered.

(9) Upon prepayment in full of a consumer credit sale by the proceeds of consumer credit insurance (Section 4.103), the buyer or his estate is entitled to the same rebate as though the buyer had prepaid the agreement on the date the proceeds of the insurance are paid to the seller, but no later than 10 business days after satisfactory proof of loss is furnished to the seller.

PART 3—DISCLOSURE AND ADVERTISING

Applicability; Information Required

Sec. 2.301: (1) For purposes of this Part, consumer credit sale includes the sale of an interest in land without regard to the exception of 2.104 (2)(b) if the sale is otherwise a consumer credit sale.

(2) The seller shall disclose to the buyer to whom credit is extended with respect to consumer credit sale the information required by the Federal Consumer Credit Protection Act, and the regulations and interpretations promulgated pursuant thereto by the Board of Governors of the Federal Reserve System, all of which are hereby incorporated into and made a part of this Act.

(3) The lessor shall disclose to the lessee to whom credit is extended with respect to a consumer lease the information required by this Part.

General Disclosure and other Requirements

Sec. 2.302: (1) In addition to the disclosures required by this Part, every writing evidencing a consumer credit sale or lease shall include the date when signed, the name and address of the buyer and the seller, a description of the subject matter of the transaction, and a description of the collateral, if any, securing the debtor's obligations.

(2) Every writing evidencing a consumer credit sale or lease shall include immediatley above the place for signatures of the parties, the following notice printed in at least 12 point bold type:

Notice to Consumer

(a) do not sign this if it contains any blank spaces.

(b) you are entitled to an exact copy of all papers you sign.

(c) you have the right at any time to pay in advance the unpaid balance due under this agreement and to receive a partial refund of the credit service charge.

The Administrator is authorized to make whatever changes are necessary in the above notice so as to conform to any similar notice requirement in surrounding jurisdictions.

(3) Every writing evidencing a consumer credit sale or lease shall be completed as to all essential provisions prior to the signing thereof by the parties. No seller shall induce, encourage or otherwise permit the consumer to sign a writing containing blank spaces. Blanks inapplicable to a transaction must be filled in a manner which reveals their inapplicability.

(4) The seller shall give or forward to the buyer, without request, a written receipt for each payment made in cash.

(5) At any time after consummation of the transaction the seller shall, upon request by the buyer, give or forward to the buyer a written statement specifying the dates and amounts of payments received and the principal unpaid balance remaining at that time. The buyer shall be entitled to only one such statement in any six-month period free of charge. The sum of $1 may be charged for each additional written statement requested by the buyer before supplying such additional written statement.

(6) Within 30 days after payment by the buyer of all sums for which he is obligated under the agreement in accordance with this Act, the seller or the assignee, upon request by the buyer, shall give or forward to the buyer an acknowledgement of payment in full.

(7) Except as provided with respect to rescission by a buyer (Sec. 125, CCPA) and civil liability for violations of disclosure provisions (subsection (4) of Section 5.203), written acknowledgment of receipt by a buyer or lessee to whom a statement is required to be given pursuant to this Part:

(a) in an action or proceeding by or against the original seller or lessor, creates a rebuttable presumption that the statement was given, and

(b) in an action or proceeding by or against an assignee without knowledge to the contrary when he acquires the obligation, is conclusive proof of the delivery of the statement and, unless the violation is apparent on the face of the statement, of compliance with this Part.

Sec. 2.303–2.310: (Reserved.)

Consumer Leases

Sec. 2.311: With respect to a consumer lease the lessor shall give to the lessee the following information:

(1) brief description or identification of the goods;

(2) amount of any payment required at the inception of the lease;

(3) amount paid or payable for official fees, registration, certificate of title, or license fees or taxes;

(4) amount of other charges not included in the periodic payments and a brief description of the charges;

(5) brief description of insurance to be provided or paid for by the lessor, including the types and amounts of the coverages;

(6) number of periodic payments, the amount of each payment, the due date of the first payment, the due dates of subsequent payments or interval between payments, and the total amount payable by the lessee;

(7) statement of the conditions under which the lessee may terminate the lease prior to the end of the term; and

(8) statement of the liabilities the lease imposes upon the lessee at the end of the term.

Sec. 2.312: (Reserved.)

Advertising

Sec. 2.313. (1) No seller or lessor shall engage in this State in false or misleading advertising concerning the terms or conditions of credit with respect to a consumer credit sale or consumer lease.

(2) Without limiting the generality of subsection (1) and without requiring a statement of rate of credit service charge if the credit service charge is not more than $5 when the amount financed does not exceed $75, or $7.50 when the amount

financed exceeds $75, an advertisement with respect to a consumer credit sale made by the posting of a public sign, or by catalog, magazine, newspaper, radio, television, or similar mass media, is misleading if

(a) it states the rate of credit service charge and the rate is not stated in the form required by the provisions on calculation of rate to be disclosed, or

(b) it states the dollar amounts of the credit service charge or instalment payments, and does not also state the rate of any credit service charge and the number and amount of the instalment payments.

(3) In this section a catalog or other multiple-page advertisment is considered a single advertisment if it clearly and conspicuously displays a credit terms table setting forth the information required by this section.

(4) This section imposes no liability on the owner or personnel, as such, of any medium in which an advertisment appears or through which it is disseminated.

(5) Advertising which complies with the Federal Consumer Credit Protection Act does not violate subsection (2).

PART FOUR—LIMITATIONS ON AGREEMENTS AND PRACTICES

Scope

Sec. 2.401. This Part applies to consumer credit sales and consumer leases.

Use of Multiple Agreements

Sec. 2.402. A seller may not use multiple agreements with intent to obtain a higher credit service charge than would otherwise be permitted by this Article or to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure and advertising (Part 3). The excess amount of credit service charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on the effect of violations on rights of parties (Section 5.202) and the provisions on civil actions by Administrator (Section 6.113).

Certain Negotiable Instruments Prohibited

Sec. 2.403. In a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, the seller or lessor may not take a negotiable instrument other than a check as evidence of the obligation of the buyer or lessee. A holder is not in good faith if he takes a negotiable instrument with notice that it is issued in violation of this section.

Assignee Subject to Defenses

Sec. 2.404: With respect to a consumer credit sale or consumer lease, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease notwithstanding an agreement to the contrary, but the assignee's liability under this section may not exceed the amount financed. Rights of the buyer can only be asserted affirmatively in an action to cancel and void the sale from its inception, or as a matter of defense to or set-off against a claim by the assignee.

Balloon Payments

Sec. 2.405. With respect to a consumer credit sale, other than one pursuant to a revolving charge account, if any scheduled payment is more than one-fourth as large as the average of earlier scheduled payments, the buyer has the right to refinance the amount of that payment at the time it is due without penalty. The seller or the assignee shall notify the buyer, in writing, of such right to refinance at the time the balloon payment is due. The terms of the refinancing shall be no less favorable to the buyer than the terms of the original sale. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the buyer.

Restriction on Liability in Consumer Lease

Sec. 2.406. The obligation of a lessee upon expiration of a consumer lease, other than one primarily for an agricultural purpose, may not exceed twice the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property or for other default.

Security in Sales or Leases

Sec. 2.407. (1) With respect to a consumer credit sale, a seller may take a security interest in the property sold. In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if in the case of a security interest in land the debt secured is $1,000 or more, or, in the case of a security interest in goods the debt secured is $300 or more. The seller may also take a security interest in any property of the buyer to secure the debt arising from a consumer credit sale primarily for an agricultural purpose. Except as provided with respect to cross-collateral (Section 2408), a seller may not otherwise take a security interest in property of the buyer to secure the debt arising from a consumer credit sale.

(2) With respect to a consumer lease other than a lease primarily for an agricultural purpose, a lessor may not take a security interest in property of the lessee to secure the debt arising from the lease.

(3) A security interest taken in violation of this section is void.

(4) The amounts of $1,000 and $300 in subsection (1) are subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106)

Cross-Collateral

Sec. 2.408. (1) In addition to contracting for a security interest pursuant to the provisions on security in sales or leases (Section 2.407), a seller in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt.

(2) If the seller contracts for a security interest in other property pursuant to this section, the rate of credit service charge thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on consolidation involving a refinancing (subsection (1) of Section 2.206). The seller has a reasonable time after so contracting to make any adjustments required by this section. "Seller" in this section does not include an assignee not related to the original seller.

Debt Secured by Cross-Collateral

Sec. 2.409. (1) If debts arising from two or more consumer credit sales, other than sales pursuant to a revolving charge account, are secured by cross-collateral (Section 2.408) or consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debts originally incurred with respect to each item is paid.

(2) Payments received by the seller upon a revolving charge account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of credit service charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

(3) If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt.

No Assignment of Earnings

Sec. 2.410. A seller or lessor may not take an assignment of earnings of the buyer or lessee for payment or as security for payment of a debt arising out of a consumer credit sale or a consumer lease. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the buyer or lessee. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable.

Referral Sales

Sec. 2.411. With respect to a consumer credit sale or consumer lease the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease. If a buyer or lessee is induced by a violation of this section to enter into a consumer credit sale or consumer lease, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them.

Notice of Assignment

Sec. 2.412. The buyer or lessee is authorized to pay the original seller or lessor until the buyer or lessee receives notification of assignment of the rights to payment pursuant to a consumer credit sale or consumer lease and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the buyer or lessee, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the buyer or lessee may pay the seller or lessor.

Attorney's Fees

Sec. 2.413. With respect to a consumer sale or consumer lease the agreement may not provide for the payment by the buyer or lessee of attorney's fees. A provision in violation of this section is unenforceable.

Limitation on Default Charges

Sec. 2.414. Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer credit sale may not provide for any charges as a result of default by the buyer other than those authorized by this Act. A provision in violation of this section is unenforceable.

Authorization to Confess Judgment Prohibited

Sec. 2.415. A buyer or lessee may not authorize any person to confess judgment on a claim arising out of a consumer credit sale or consumer lease. An authorization in violation of this section is void.

Change in Terms of Revolving Charge Accounts

Sec. 2.416. (1) If a seller makes a change in the terms of a revolving charge account without complying with this section any additional cost or charge to the buyer resulting from the change is an excess charge and subject to the remedies available to debtors (Section 5.202) and to the Administrator (Section 6.113).

(2) A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. Except as provided in subsection (3), the seller shall give to the buyer written notice of any change at least three times, with the first notice at least six months before the effective date of the change.

(3) The notice specified in subsection (2) is not required if

(a) the buyer after receiving notice of the change agrees in writing to the change;

(b) the buyer elects to pay an amount designated on a billing statement (subsection (2) of Section 2.310) as including a new charge for a benefit offered to the buyer when the benefit and charge constitute the change in terms and when the billing statement also states the amount payable if the new charge is excluded;

(c) the change involves no significant cost to the buyer;

(d) the buyer has previously consented in writing to the kind of change made and notice of the change is given to the buyer in two billing cycles prior to the effective date of the change; or

(e) the change applies only to purchases made or obligations incurred after a date specified in a notice of the change given in two billing cycles prior to the effective date of the change.

(4) The notice provided for in this section is given to the buyer when mailed to him at the address used by the seller for sending periodic billing statements.

PART 5—HOME SOLICITATION SALES

Definition: "Home Solicitation Sale"

Sec. 2.501. "Home solicitation sale" means a consumer credit sale of goods, other than farm equipment, or services in which the seller or a person acting for him engages in a personal solicitation of the sale at or near a residence of the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him It does not include a sale made pursuant to a preexisting revolving charge account, or a sale made pursuant to prior negotiations between the parties at a businss establishment at a fixed location where goods or services are offered or exhibited for sale.

Buyer's Right to Cancel

Sec. 2.502. (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with this Part.

(2) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

(3) Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(5) The buyer may not cancel a home solicitation sale if the buyer requests the seller to provide goods or services without delay because of an emergency, and

(a) the seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation, and

(b) in the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

(6) If a home solicitation sale is also subject to the provisions on debtor's right to rescind certain transactions (Section 5.204), the buyer may proceed either under those provisions or under this Part.

Form of Agreement or Offer; Statement of Buyer's Rights

Sec. 2.503. (1) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller must present to the buyer and obtain his signature to a written agreement or offer to purchase which designates as the date of the transaction the date on which the buyer actually signs and contains a statement of the buyer's rights which complies with subsection (2).

(2) The statement must

(a) appear under the conspicuous caption: "BUYER'S RIGHT TO CANCEL", and

(b) read as follows: "If this agreement was solicited at your residence and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight of the third business day after you sign this agreement. The notice must be mailed to:---------- ---------------------------------. If you cancel, the seller may keep all
(insert name and mailing address of seller)
or part of your cash down payment."

(3) Until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

Restoration of Down Payment: Retention of Cancellation Fee

Sec. 2.504. (1) Within 10 days after a home solicitation sale has been cancelled or an offer to purchase revoked the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller

66-583—71——7

fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) The seller may not retain any cancellation fee.

(4) Until the seller has complied with the obligations imposed by this section the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled.

Duty of Buyer; No Compensation for Services Prior to Cancellation

Sec. 2.505. (1) Except as provided by the provisions on retention of goods by the buyer (subsection (4) of Section 2.504), within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, 40 days is presumed to be a reasonable time.

(2) The buyer has a duty to take reasonable care of the goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

(3) If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation.

PART 6—SALES OTHER THAN CONSUMER CREDIT SALES

Sales Subject to Act by Agreement of Parties

Sec. 2.601. The parties to a sale other than a consumer credit sale may agree in a writing signed by the parties that the sale is subject to the provisions of this Act applying to consumer credit sales. If the parties so agree the sale is a consumer credit sale for the purposes of this Act.

Definition: "Consumer Related Sale"; Rate of Credit Service Charge

Sec. 2.602. (1) A "consumer related sale" is a sale of goods, services, or an interest in land which is not subject to the provisions of this Act applying to consumer credit sales and in which the amount financed does not exceed $25,000 if

(a) the buyer is a person other than an organization, or

(b) the debt is secured primarily by a security interest in a one or two family dwelling occupied by a person related to the debtor.

(2) With respect to a consumer related sale not made pursuant to a revolving charge account, the parties may contract for the payment by the buyer of an amount comprising the amount financed and a credit service charge not in excess of 18 percent per year calculated according to the acturial method on the unpaid balances of the amount financed.

(3) With respect to a consumer related sale made pursuant to a revolving charge account, the parties may contract for the payment of a credit service charge not in excess of that permitted by the provisions on credit service charge for revolving charge accounts (Section 2.207).

(4) The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

Applicability of Other Provisions to Consumer Related Sales

Sec. 2.603. Except for the rate of the credit service charge and the rights to prepay and to rebate upon prepayment, the provisions of Part 2 of this Article apply to a consumer related sale.

Limitation on Default Charges in Consumer Related Sales

Sec. 2.604. (1) The agreement with respect to a consumer related sale may provide for only the following charges as a result of the buyer's default:

(a) reasonable attorney's fees and reasonable expenses incurred in realizing on a security interest;

(b) deferral charges not in excess of 18 per cent per year of the amount deferred for the period of deferral; and

(c) other charges that could have been made had the sale been a consumer credit sale.

(2) A provision in violation of this section is unenforceable.

Credit Service Charge for Other Sales

Sec. 2.605. With respect to a sale other than a consumer credit sale or a consumer related sale, the parties may contract for the payment by the buyer of any credit service charge.

Article 3—Loans

PART 1—GENERAL PROVISIONS

Short Title

Sec. 3.101. This Article shall be known and may be cited as the District of Columbia Uniform Consumer Credit Code—Loans.

Scope

Sec. 3.102. This Article applies to consumer loans, including regulated and supervised loans; in addition Part 6 applies to consumer related loans.

Definition in Article

Sec. 3.103. The following definitions apply to this Act and appear in this Article as follows:

"Consumer loan"—Section 3.104
"Consumer related loan"—Section 3.602(1)
"Lender"—Section 3.107(1)
"Loan"—Section 3.106
"Loan finance charge"—Section 3.109
"Loan primarily secured by an interest in land"—Section 3.105
"Precomputed"—Section 3.107(2)
"Principal"—Section 3.107(3)
"Regulated lender"—Section 3.501(2)
"Regulated loan"—Section 3.501(1)
"Revolving loan account"—Section 3.108
"Supervised lender"—Section 3.501(4)
"Supervised loan"—Section 3.501(3)

Definition: "Consumer Loan"

Sec. 3.104. (1) Except with respect to a loan primarily secured by an interest in land (Section 3.105), "consumer loan" is a loan made by a person regularly engaged in the business of making loans in which

(a) the debtor is a person other than an organization;

(b) the debt is incurred primarily for a personal, family, household, or agricultural purpose;

(c) either the debt is payable in installments or a loan finance charge is made; and

(d) either the principal does not exceed $25,000 or the debt is secured by an interest in land.

(2) The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amount (Section 1.106)

Definition: "Loan Primarily Secured by an Interest in Land"

Sec. 3.105. Unless the loan is made subject to this Act by agreement (Section 3.601), and except as provided with respect to disclosure (Section 3.301) and debtors' remedies (Section 5.201), "consumer loan" does not include a "loan primarily secured by an interest in land," if at the time the loan is made the value of this collateral is substantial in relation to the amount of the loan, and the loan is secured by a First Mortgage or Deed of Trust or a Deferred Purchase Money Second Mortgage or Deed of Trust which is being taken by a homeowner in lieu of cash and as part of the total sales price of the property and where the homeowner has occupied the property as his own dwelling.

Definition: "Loan"

Sec. 3.106. "Loan" includes

(1) the creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;

(2) the creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately;

(3) the creation of debt pursuant to a lender credit card or similar arrangement; and

(4) the forbearance of debt arising from a loan.

Definitions: "Lender"; "Precomputed"; "Principal"

Sec. 3.107. (1) Except as otherwise provided, "lender" includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(2) A loan, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

(3) "Principal" of a loan means the total of

(a) the net amount paid to, receivable by, or paid or payable for the account of the debtor,

(b) the amount of any discount excluded from the loan finance charge (subsection (2) of Section 3.109), and,

(c) to the extent that payment is deferred,

(i) amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a), and

(ii) additional charges permitted by this Article (Section 3.202).

Definition: "Revolving Loan Account"

Sec. 3.108. "Revolving loan account" means an arrangement between a lender and a debtor pursuant to which (1) the lender may permit the debtor to obtain loans from time to time, (2) the unpaid balances of principal and the loan finance and other appropriate charges are debited to an account, (3) a loan finance charge if made is not precomputed but is computed on the outstanding unpaid balances of the debtor's account from time to time, and (4) the debtor has the privilege of paying the balances in instalments.

Definition: "Loan Finance Charge"

Sec. 3.109. (1) "Loan finance charge" means the sum of (a) all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: interest or any amount payable under a point, discount, or other system of charges, however denominated, premium or other charge for any guarantee or insurance protecting the lender against the debtor's default or other credit loss; and (b) charges incurred for investigating the collateral or credit-worthiness of the debtor or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the lender had no notice of the charges when the loan was made. The term does not include charges as a result of default, additional charges (Section 3.202), delinquency charges (Section 3.203), or deferral charges (Section 3.204).

(2) If a lender makes a loan to a debtor by purchasing or satisfying obligations of the debtor pursuant to a lender credit card or similar arrangement, and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the loan finance charge.

PART 2—MAXIMUM CHARGES

Sec. 3.201. Reserved for further discussion.

Additional Charges

Sec. 3.202. (1) In addition to the loan finance charge permitted by this Part, a lender may contract for and receive the following additional charges in connection with a consumer loan:

(a) official fees and taxes;

(b) charges for insurance as described in subsection (2);

(c) annual charges, payable in advance, for the privilege of using a lender credit card or similar arrangement which entitles the user to purchase goods or services from at least 100 persons not related to the issuer of the lender credit card or similar arrangement, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer; and

(d) charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the loan finance charge by rule adopted by the Administrator.

(2) An additional charge may be made for insurance written in connection with the loan, other than insurance protecting the lender against the debtor's default or other credit loss,

(a) with respect to insurance against loss of or damage to property, or against liability, if the lender furnishes a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the lender, and stating that the debtor may choose the person through whom the insurance is to be obtained; and,

(b) with respect to consumer credit insurance providing life, accident, or health coverage, if the insurance coverage is not a factor in the approval by the lender of the extension of credit, and this fact is clearly disclosed in writing to the debtor, and if, in order to obtain the insurance in connection with the extension of credit, the debtor gives specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(3) For the purposes of the Part on Disclosure and Advertising (Part 3), if the loan finance charge with respect to a loan primarily secured by an interest in land does not exceed 10 per cent per year (Section 3.105), reasonable closing costs, even though not within subsection (1) may be treated as additional charges.

Delinquency Charges

Sec. 3.203. (1) With respect to a precomputed consumer loan, refinancing, or consolidation, the parties may contract for a delinquency charge on any instalment not paid in full within 10 days after its scheduled due date in an amount not exceeding the greater of

(a) an amount, not exceeding $5, which is 5 percent of the unpaid amount of the instalment, or

(b) the deferral charge (subsection (1) of Section 3.204) that would be permitted to defer the unpaid amount of the instalment for the period that it is delinquent.

(2) A delinquency charge under paragraph (a) of subsection (1) may be collected only once on an instalment however long it remains in default. No delinquency charge may be collected if the instalment has been deferred and a deferral charge (Section 3.204) has been paid or incurred. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an instalment which is paid in full within 10 days after its scheduled instalment due date even though an earlier maturing instalment or a delinquency charge on an earlier instalment may not have been paid in full. For purposes of this subsection payments are applied first to current instalments and then to delinquent instalments.

(4) If two instalments or parts thereof of a precomputed loan are in default for 10 days or more, the lender may elect to convert the loan from a precomputed loan to one in which the loan finance charge is based on unpaid balances. In this event he shall make a rebate pursuant to the provisions on rebate upon repayment (Section 3.210) as of the maturity date of the first delinquent instalment, and thereafter may make a loan finance charge as authorized by the provisions on loan finance charge for consumer loans (Section 3.201) or the provisions on loan finance charge for supervised loans (Section 3.508), whichever is appropriate. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge (Section 3.210). If the lender proceeds under this subsection, any delinquency or deferral charges made with respect to instalments due at or after the maturity date of the first delinquent instalment shall be rebated, and no further delinquency or deferral charges shall be made.

(5) The amount of $5 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

Deferral Charges

Sec. 3.204. (1) With respect to a precomputed consumer loan, refinancing, or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid instalments, and the lender may make and collect a charge not exceeding the rate previously stated to the debtor pursuant to the provisions on disclosure (Part 3) applied to the amount or amounts deferred for the period of deferral calculated without regard to differences in the lengths of months, but proportionally for a part of a month, counting each day as 1/30th of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

(2) The lender, in addition to the deferral charge, may make appropriate additional charges (Section 3.202), and the amount of these charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

(3) The parties may agree in writing at the time of a precomputed consumer loan, refinancing, or consolidation that if an instalment is not paid within 10 days after its due date, the lender may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date that the lender elects to accelerate the maturity of the agreement.

(4) A delinquency charge made by the lender on an instalment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency.

Loan Finance Charge on Refinancing

Sec. 3.205. With respect to a consumer loan, refinancing, or consolidation, the lender may by agreement with the debtor refinance the unpaid balance and may contract for and receive a loan finance charge based on the principal resulting from the refinancing at a rate not exceeding that permitted by the provisions on loan finance charge for consumer loans (Section 3.201) or the provisions on loan finance charge for supervised loans (Section 3.508), whichever is appropriate. For the purpose of determining the loan finance charge permitted, the principal resulting from the refinancing comprises the following:

(1) if the transaction was not precomputed, the total of the unpaid balance and the accrued charges on the date of the refinancing, or, if the transaction was precomputed, the amount which the debtor would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (Section 3.210) on the date of refinancing, except that for the purpose of computing this amount no minimum charge (Section 3.210) shall be allowed; and

(2) appropriate additional charges (Section 3.202), payment of which is deferred.

Loan Finance Charge on Consolidation

Sec. 3.206. (1) If a debtor owes an unpaid balance to a lender with respect to a consumer loan, refinancing, or consolidation, and becomes obligated on another consumer loan, refinancing, or consolidation with the same lender, the parties may agree in writing to a consolidation resulting in a single schedule of payments. If the previous consumer loan, refinancing, or consolidation was not precomputed, the parties may agree to add the unpaid amount of principal and accrued charges on the date of consolidation to the principal with respect to the subsequent loan. If the previous consumer loan, refinancing, or consolidation was precomputed,

the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing (Section 3.205) and to consolidate the principal resulting from the refinancing by adding it to the principal with respect to the subsequent loan. In either case the lender may contract for and receive a loan finance charge based on the aggregate principal resulting from the consolidation at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (Section 3.201) or the provisions on loan finance charge for supervised loans (Section 3.508), whichever is appropriate.

(2) The parties may agree to consolidate the unpaid balance of a consumer loan with the unpaid balance of a consumer credit sale. The parties may agree to refinance the previous unpaid balance pursuant to the provisions on refinancing sales (Section 2.205) or the provisions on refinancing loans (Section 3.205), whichever is appropriate, and to consolidate the amount financed resulting from the refinancing or the principal resulting from the refinancing by adding it to the amount financed or principal with respect to the subsequent sale or loan. The aggregate amount resulting from the consolidation shall be deemed principal, and the creditor may contract for and receive a loan finance charge based on the principal at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (Section 3.201) or the provisions on loan finance charge for supervised loans (Section 3.508), whichever is appropriate.

Conversion to Revolving Loan Account

Sec. 3.207. The parties may agree to add to a revolving loan account the unpaid balance of a consumer loan, not made pursuant to a revolving loan account, or a refinancing, or consolidation thereof, or the unpaid balance of a consumer credit sale, refinancing or consolidation. For the purpose of this section

(1) the unpaid balaace of a consumer loan, refinancing, or consolidation is an amount equal to the principal determined according to the provisions on refinancing (Section 3.205); and

(2) the unpaid balance of a consumer credit sale, refinancing, or consolidation is an amount equal to the amount financed determined according to the provisions on refinancing (Section 2.205).

Advances to Perform Covenants of Debtor

Sec. 3.208. (1) If the agreement with respect to a consumer loan, refinancing or consolidation contains covenants by the debtor to perform certain duties pertaining to insuring or preserving collateral and if the lender pursuant to the agreement in good form pays for performance of the duties on behalf of the debtor, the lender may add the amounts paid to the debt. Within a reasonable time after advancing any sums, he shall state to the debtor in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the debtor performed by the lender pertain to insurance, a brief description of the insurance paid for by the lender including the type and amount of coverages. No further information need be given.

(2) A loan finance charge may be made for sums advanced pursuant to subsection (1) at a rate not exceeding the rate stated to the debtor pursuant to the provisions on disclosure (Part 3) with respect to the loan, refinancing, or consolidation, except that with respect to a revolving loan account the amount of the advance may be added to the unpaid balance of the debt and the lender may make a loan finance charge not exceeding that permitted by the provisions on loan finance charge for consumer loans (Section 3.201) or for supervised loans (Section 3.508), whichever is appropriate.

Right to Prepay

Sec. 3.209. Subject to the provisions on rebate upon prepayment (Section 3.210), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty.

Rebate Upon Prepayment

Sec. 3.210. (1) Except as provided in subsection (2), upon prepayment in full of the unpaid balance of a precomputed consumer loan, refinancing, or consolidation, an amount not less than the unearned portion of the loan finance charge calculated according to this section shall be rebated to the debtor. If the rebate otherwise required is less than $1, no rebate need be made.

(2) Upon prepayment in full of a consumer loan, other than one pursuant to a revolving loan account, a refinancing or consolidation, whether or not precomputed, the lender may collect or retain a minimum charge within the limits stated in this subsection if the loan finance charge earned at the time of prepayment is less than any minimum charge contracted for. The minimum charge may not exceed the amount of loan finance charge contracted for, or $5 in a transaction which had a principal of $75 or less, or $7.50 in a transaction which had a principal of more than $75.

(3) Except as otherwise provided in this subsection with respect to a loan primarily secured by an interest in land, the unearned portion of the loan finance charge is a fraction of the loan finance charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which prepayment occurs, and the denominator is the sum of all periodic balances under either the loan agreement or, if the balance owing resulted from a refinancing (Section 3.205) or a consolidation (Section 3.206), under the refinancing agreement or consolidation agreement. In the case of a loan primarily secured by an interest in land, reasonable sums actually paid or payable to persons not related to the lender for customary closing costs included in the loan finance charge are deducted from the loan finance charge before the calculation prescribed by this subsection is made.

(4) In this section

(a) "periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before deducting the payment, if any, scheduled to be made on that day;

(b) "computational period" means one month if one-half or more of the intervals between scheduled payments under the agreement is one month or more, and otherwise means one week;

(c) the "interval" to the date of the first scheduled instalment or the final scheduled payment date is measured from the date of a loan, refinancing, or consolidation, and includes either the first or last day of the interval;

(d) if the interval to the due date of the first scheduled instalment does not exceed one month by more than 15 days when the computational period is one month, or 11 days when the computational period is one week, the interval shall be considered as one computational period.

(5) This subsection applies only if the schedule of payments is not regular.

(a) If the computational period is one month and

(i) if the number of days in the interval to the due date of the first scheduled instalment is less than one month by more than 5 days, or more than one month by more than 5 but not more than 15 days, the unearned loan finance charge shall be increased by an adjustment for each day by which the interval is less than one month and, at the option of the lender, may be reduced by an adjustment for each day by which the interval is more than one month; the adjustment for each day shall be 1/30th of that part of the loan finance charge earned in the computational period prior to the due date of the first scheduled instalment assuming that period to be one month; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full month, the additional number of days shall be considered a computational period only if 16 days or more. This subparagraph applies whether or not subparagraph (i) applies.

(b) Notwithstanding paragraph (a), if the computational period is one month, the number of days in the interval to the due date of the first instalment exceeds one month by not more than 15 days, and the schedule of payments is otherwise regular, the lender at his option may exclude the extra days and the charge for the extra days in computing the unearned loan finance charge; but if he does so and a rebate is required before the due date of the first scheduled instalment, he shall compute the earned charge for each elapsed day as 1/30th of the amount the earned charge would have been if the first interval had been one month.

(c) If the computational period is one week and

(i) if the number of days in the interval to the due date of the first scheduled instalment is less than 5 days, or more than 9 days but not more than 11 days, the unearned loan finance charge shall be increased by an adjustment for each day by which the interval is less than 7 days and, at the option of the lender, may be reduced by an adjustment for each day by which the interval is more than 7 days; the adjustment for

each day shall be 1/7th of that part of the loan finance charge earned in the computational period prior to the due date of the first scheduled instalment assuming that period to be one week; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full week, the additional number of days shall be considered a conputational period only if 4 days or more. This subparagraph applies whether or not subparagraph (i) applies.

(6) If a deferral (Section 3.204) has been agreed to, the unearned portion of the loan finance charge shall be computed without regard to the deferral. The amount of deferral charge earned at the date of prepayment shall also be calculated. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the loan finance charge. If any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the loan finance charge or shall be added to the unpaid balance.

(7) This section does not preclude the collection or retention by the lender of delinquency charges (Section 3.203).

(8) If the maturity is accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as if the payment had been made on the date judgment is entered.

(9) Upon prepayment in full of a consumer loan by the proceeds of consumer credit insurance (Section 4.103), the debtor or his estate is entitled to the same rebate as though the debtor had prepaid the agreement on the date the proceeds of the insurance are paid to the lender, but no later than 10 business days after satisfactory proof of loss is furnished to the lender.

PART 3—DISCLOSURE AND ADVERTISING

Applicability; Information Required

SEC. 3.301. (1) For purposes of this Part, consumer loan includes a loan secured primarily by an interest in and without regard to the exception of § 3.105 if the loan is otherwise a consumer loan.

(2) The lender shall disclose to the debtor to whom credit is extended with respect to a consumer loan the information required by the Federal Consumer Credit Protection Act, and the regulations and interpretations promulgated pursuant thereto by the Board of Governors of the Federal Reserve System, all of which are hereby incorporated into and made a part of this Act.

General Disclosure and Other Requirements

SEC. 3.302. (1) In addition to the disclosures required by this Part, every writing evidencing a consumer loan shall include the date when signed, the name and address of the debtor and the lender, a description of the subject matter of the transaction, and a description of the collateral, if any, securing the debtor's obligations.

(2) Every writing evidencing a consumer loan shall include immediately above the place for the signatures of the parties, the following notice printed in at least 12 point bold type:

Notice to consumer

(a) do not sign this if it contains any blank spaces.

(b) you are entitled to an exact copy of all papers you sign.

(c) you have the right at any time to pay in advance the unpaid balance due under this agreement and to receive a partial refund of the loan finance charge.

The administrator is authorized to make whatever changes are necessary in the above notice so as to conform to any similar notice requirement in surrounding jurisdictions.

(3) Every writing evidencing a consumer loan shall be completed as to all essential provisions prior to the signing thereof by the parties. No lender shall induce, encourage or otherwise permit the debtor to sign a writing containing blank spaces. Blanks inapplicable to a transaction must be filled in a manner which reveals their inapplicability.

(4) The lender shall give or forward to the debtor, without request, a written receipt for each payment made in cash.

(5) At any time after consummation of the transaction, the lender shall, upon request by the debtor, give or forward to the debt or a written statement specifiying the dates and amounts of payments received and the principal unpaid balance remaining at that time. The debtor shall be entitled to only one such statement in any six-month period free of charge. The sum of $1 may be charged for each additional written statement requested by the debtor before supplying such additional written statement.

(6) Within 30 days after payment by the debtor of all sums for which he is obligated under the agreement in accordance with this Act, the lender or the assignee, upon request by the debtor, shall give or forward to the debtor an acknowledgment of payment in full.

(7) Except as provided with respect to rescission by debtor (Sec. 125, CCPA) and civil liability for violations of disclosure provisions (subsection [4] of Section 5.203), written acknowledgment of receipt by a debtor to whom a statement is required pursuant to this Part

(a) in an action or proceeding by or against the original lender, creates a rebuttable presumption that the statement was given, and

(b) in an action or proceeding by or against an assignee without knowledge to the contrary when he acquires the obligation, is conclusive proof of the delivery of the statement and, unless the violation is apparent on the face of the statement, of compliance with this Part.

Sec. 3.303—Sec. 3.311. Reserved.

Advertising

Sec. 3.312. (1) No lender shall engage in this State in false or misleading advertising concerning the terms or conditions of credit with respect to a consumer loan.

(2) Without limiting the generality of subsection (1), and without requiring a statement of rate of loan finance charge if the loan finance charge is not more than $5 when the principal does not exceed $75, or $7.50 when the principal exceeds $75, an advertisement with respect to a consumer credit loan made by the posting of a public sign, or by catalog, magazine, newspaper, radio, television, or similiar mass media, is leading if

(a) it states the rate of the loan finance charge and the rate is not stated in the form required by the provisions on calculation of rate to be disclosed (Section 3.304), or

(b) it states the dollar amounts of the loan finance charge or instalment payments, and does not also state the rate of any loan finance charge and the number and amount of the instalment payments.

(3) In this section a catalog or other multiple-page advertisement is considered a single advertisement if it clearly and conspicuously displays a credit terms table setting forth the information required by this section.

(4) This section imposes no liability on the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

(5) Advertising which complies with the Federal Consumer Credit Protection Act does not violate subsection (2).

PART 4—LIMITATIONS ON AGREEMENTS AND PRACTICES

Scope

Sec. 3.401. This Part applies to consumer loans.

Balloon Payments

Sec. 3.402. With respect to a consumer loan, other than one pursuant to a revolving loan account, if any scheduled payment is more than one-fourth as large as the average of earlier scheduled payments, the debtor has the right to refinance the amount of that payment at the time it is due without penalty. The lender or the assignee shall notify the debtor, in writing, of such right to refinance at the time the balloon payment is due. The terms of the refinancing shall be no less favorable to the debtor than the terms of the original loan. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the debtor.

No Assignment of Earnings

Sec. 3.403. (1) A lender may not take an assignment of earnings of the debtor for payment or as security for payment of a debt arising out of a consumer loan. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the debtor. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable.

(2) A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to him secured by an assignment of earnings.

Attorney's Fees

Sec. 3.404. With respect to a consumer loan the agreement may not provide for the payment by the debtor of attorney's fees. A provision in violation of this section is unenforceable.

Limitation on Default Charges

Sec. 3.405. Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer loan may not provide for charges as a result of default by the debtor other than those authorized by this Act. A provision in violation of this section is unenforceable.

Notice of Assignment

Sec. 3.406. The debtor is authorized to pay the original lender until he receives notification of assignment of rights to payment pursuant to a consumer loan and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the debtor may pay the original lender.

Authorization to Confess Judgment Prohibited

Sec. 3.407. A debtor may not authorize any person to confess judgment on a claim arising out of a consumer loan. An authorization in violation of this section is void.

Change in Terms of Revolving Loan Accounts

Sec. 3.408. (1) If a lender makes a change in the terms of a revolving loan account without complying with this section any additional cost or charge to the debtor resulting from the change is an excess charge and subject to the remedies available to debtors (Section 5.202) and to the Administrator (Section 6.113).

(2) A lender may change the terms of a revolving loan account whether or not the change is authorized by prior agreement. Except as provided in subsection (3), the lender shall give to the debtor written notice of any change at least three times, with the first notice at least six months before the effective date of the change.

(3) The notice specified in subsection (2) is not required if

(a) the debtor after receiving notice of the change agrees in writing to the change;

(b) the debtor elects to pay an amount designated on a billing statement (subsection (2) of Section 3.309) as including a new charge for a benefit offered to the debtor when the benefit and charge constitute the change in terms and when the billing statement also states the amount payable if the new charge is excluded;

(c) the change involves no significant cost to the debtor;

(d) the debtor has previously consented in writing to the kind of change made and notice of the changes is given to the debtor in two billing cycles prior to the effective date of the change; or

(e) the change applies only to debts incurred after a date specified in a notice of the change given in two billing cycles prior to the effective date of the change.

(4) The notice provided for in this section is given to the debtor when mailed to him at the address used by the lender for sending periodic billing statements.

Use of Multiple Agreements

Sec. 3.409. A lender may not use multiple agreements with intent to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure

and advertising (Part 3). The excess amount of loan finance charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on the effect of violations on rights of parties (Section 5.202) and the provisions on civil actions by Administrator (Section 6.113).

Lender Subject to Defenses Arising from Sales

Sec. 3.410.

(1) A lender who makes a consumer loan for the purpose of enabling a debtor to purchase goods or services is subject to all claims and defenses of the debtor against the seller arising out of the purchase of the goods or services if:

(a) the seller participates in the preparation of the contract documents required in connection with the loan, or

(b) the lender is a person or organization related to the seller, or

(c) the seller receives or will receive a fee, compensation, or other consideration from the lender for arranging the loan, or

(d) except in the case of a transaction pursuant to Sec. 1.301 (9), the proceeds of the loan are made payable solely to the seller.

(2) The lender's liability under this section may not exceed the amount of the consumer loan. Rights of the debtor can only be asserted affirmatively in an action to cancel and void the sale from its inception, or as a matter of defense to or set-off against a claim by the assignee.

PART 5—REGULATED AND SUPERVISED LOANS

(Reserved for discussion).

PART 6—LOANS OTHER THAN CONSUMER LOANS

Loans Subject to Act by Agreement of Parties

Sec. 3.601. The parties to a loan other than a consumer loan may agree in a writing signed by the parties that the loan is subject to the provisions of this Act applying to consumer loans. If the parties so agree, the loan is a consumer loan for the purposes of this Act.

Definition: "Consumer Related Loan"; Rate of Loan Finance Charge

Sec. 3.602. (1) A "consumer related loan" is a loan which is not subject to the provisions of this Act applying to consumer loans and in which the principal does not exceed $25,000 if

(a) the debtor is a person other than an organization, or

(b) the debt is secured primarily by a security interest in a one or two family dwelling occupied by a person related to the debtor.

(2) With respect to a consumer related loan, including one made pursuant to a revolving loan account, the parties may contract for the payment by the debtor of a loan finance charge not in excess of that permitted by the provisions on loan finance charge for consumer loans other than supervised loans (Section 3.201).

(3) The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

Applicability of Other Provisions to Consumer Related Loans

Sec. 3.603. Except for the rate of the loan finance charge and the rights to prepay and to rebate upon prepayment, the provisions of Part 2 of this Article apply to a consumer related loan.

Limitation on Default Charges in Consumer Related Loans

Sec. 3.604. (1) The agreement with respect to a consumer related loan may provide for only the following charges as a result of the debtor's default:

(a) reasonable attorney's fees and reasonable expenses incurred in realizing on a security interest;

(b) deferral charges not in excess of 18 per cent per year of the amount deferred for the period of deferral; and

(c) other charges that could have been made had the loan been a consumer loan.

(2) A provision in violation of this section is unenforceable.

Loan Finance Charge for Other Loans

Sec. 3.605. With respect to a loan other than a consumer loan or a consumer related loan, the parties may contract for the payment by the debtor of any loan finance charge.

Article 4—Insurance

Reserved.

Article 5—Remedies and Penalties

Part 1—limitations on creditors' remedies

Short Title

Sec. 5.101. This Article shall be known and may be cited as Uniform Consumer Credit Code—Remedies and Penalties.

Scope

Sec. 5.102. This Part applies to actions or other proceedings to enforce rights arising from consumer credit sales, consumer leases, and consumer loans; and, in addition, to extortionate extensions of credit (Section 5.107).

Cure of Default; Right to Redeem; Restrictions on Deficiency Judgments

Sec. 5.103.

(A.) (1) During the 30-day period after a default consisting of a failure to pay money the creditor may not because of that default (a) accelerate the unpaid balance of the obligation, (b) bring action against the debtor, or (c) proceed against the collateral.

(2) Unless the creditor has first (a) notified the debtor that he has elected to accelerate the unpaid balance of the obligation because of default, (b) brought action against the debtor, or (c) proceeded against the collateral, the debtor may cure a default consisting of a failure to pay money by tendering the amount of all unpaid sums due at the time of tender, without acceleration, plus any unpaid delinquency or deferral charges. Cure restores the debtor to his rights under the agreement as though the defaults cured had not occurred.

(3) Posting of any notice required by law shall be deemed valid if mailed by certified mail to the debtor's last known address.

(B.) (1) The debtor may redeem the collateral from the creditor at any time

(a) within 15 days of the creditor's taking possession of the collateral, or

(b) thereafter until the creditor has either disposed of the collateral, entered into a contract for its disposition, or gained the right to retain the collateral in satisfaction of the debtor's obligation pursuant to the provisions on disposition of collateral (Section 9–505) of the Uniform Commercial Code.

(2) The debtor may redeem the collateral by tendering fulfillment of all obligations secured by the collateral including reasonable expenses incurred in realizing on the security interest.

(C.) Subject to the provisions in this part, the parties may agree that the creditor has the right to take possession of the collateral on default. In taking possession, a secured party may proceed without judicial process if this can be done without breach of the peace and without entry into the home of the debtor. Those who take the collateral through repossession shall be deemed the agent of the creditor, and the creditor shall be both civilly and criminally liable for any of the actions of its agents.

(D.) (1) This sub-section applies to consumer credit sales of goods or services and to consumer loans secured by interests in goods.

(2) A creditor may not maintain a proceeding for a deficiency unless he has disposed of the foods in good faith and in a commercially reasonable manner.

(3) If the creditor repossesses or voluntarily accepts surrender of goods which were the subject of the sale and in which he has a security interest, the consumer is not personally liable to the creditor for the unpaid balance of debt arising from the sale of a commercial unit of goods of which the cash price was $2,000 or less. In that case the creditor is not obligated to resell the collateral unless the consumer has paid 60 percent or more of the cash price and has not signed after default a statement renouncing his rights in the collateral.

(4) If the creditor takes possession or voluntarily accepts surrender of goods which were not the subject of the sale but in which he has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was $2,000 or less, the debtor is not personally liable to the creditor for the unpaid balance of the debt arising from the sale and the creditor's duty to dispose of the collateral is governed by the provisions on disposition of collateral (Section 9-505) of the Uniform Commercial Code.

(5) If the creditor takes possession or voluntarily accepts surrender of goods in which he has a security interest to secure a debt arising from a consumer loan and the net proceeds of the loan paid to or for the benefit of the debtor are $2,000 or less, the consumer is not personally liable to the lender for the unpaid balance of the debt arising from the loan and the lender's duty to dispose of the collateral is governed by the provisions on disposition of collateral (Section 9–505) of the Uniform Commercial Code.

(6) For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to open end credit, the allocation of payments to a debt shall be determined in the same manner as provided for determining the amount of debt secured by various security interests. (Section 2.409).

(7) The consumer may be liable in damages to the creditor if the buyer has wrongfully damaged the collateral or if, after default and demand, the buyer has wrongfully failed to make collateral available to the seller.

(8) If the creditor elects to bring an action against the buyer for a debt arising from a consumer credit sale of goods or services, when under this section he would not be entitled to a deficiency judgement if he repossessed the collateral, and obtains judgment

(a) he may not repossess the collateral, and

(b) the collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

(9) The amounts of $2,000 in paragraphs (3) and (4) are subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

5.104. *No Garnishment before Judgment.* Notwithstanding any other provision of law, prior to entry of judgment in an action against the debtor, the creditor may not attach unpaid earnings of the debtor by garnishment or like proceedings.

5.105. *Limitation on Garnishment*

(1) For purposes of this part:

(a) "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld;

(b) "garnishment" means any legal or equitable procedure through which earnings of any individual are required to be withheld for payment of any debt.

(2) Notwithstanding any other provision of law, where an attachment is levied upon wages due a judgment debtor from an employer-garnishee, the attachment shall become a lien and a continuing levy upon the earnings due or to become due to the judgment debtor for the amount specified in the attachment to the extent of:

(a) no attachment if disposable earnings of the judgment debtor are less than $325 for the pay period or periods ending in any calendar month;

(b) 10 per centum of so much of the disposable earnings as exceeds $325 but does not exceed $500 due or to become due to the judgment debtor from the employer-garnishee for the pay period or periods ending in any calendar month; plus

(c) 25 per centum of so much of the disposable earnings as exceeds $500 due or to become due to the judgment debtor from the employer-garnishee for the pay period or periods ending in any calendar month.

The levy shall be a continuing levy until the judgment, interest, and costs thereof are fully satisfied and paid, and in no event may moneys be withheld, by the employer-garnishee from the judgment debtor, in amounts greater than those prescribed by this section. Only one attachment upon the wages of a judgment debtor may be satisfied at one time. Where more than one attachment is issued upon the wages of the same judgment debtor and served upon the same employer-garnishee, the attachment first delivered to the marshal shall have priority, and all subsequent attachments shall be satisfied in the order of priority set forth in section 16–507 of the D.C. Code.

(3) No court may make, execute, or enforce an order or process in violation of this section.

5.106. *No Discharge from Employment for Garnishment.* No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment.

5.107. *Extortionate Extensions of Credit.* (1) It it is the understanding of the creditor and the debtor at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the debtor.

(2) If it is shown that an extension of credit was made at an annual rate exceeding 45 percent calculated according to the actuarial method and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish the nonrepayment thereof, there is prima facie evidence that the extension of credit was unenforceable under subsection (1).

Unconscionability

5.108 (1) With respect to a consumer credit sale, consumer lease, or consumer loan, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at the time it was made, or induced, or subsequently enforced by unconscionable conduct, the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) If it is claimed or appears to the court that the agreement or any clause thereof may be unconscionable or may have been induced or enforced by unconscionable conduct, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.

(3) For the purpose of this section, a charge or practice expressly permitted by this Act is not in itself unconscionable.

PART 2—DEBTORS' REMEDIES

Interests in Land

5.201 For purposes of the provisions of this Part on civil liability for violation of disclosure provisions (Section 5.203) and on debtor's right to rescind certain transactions (Section 5.204)

(1) consumer credit sale includes a sale of an interest in land without regard to the exception in Section 2.104(2)(b) if the sale is otherwise a consumer credit sale; and

(2) consumer loan includes a loan primarily secured by an interest in land without regard to the exception in Section 3.105 if the loan is otherwise a consumer loan.

Effect of Violations on Rights of Parties

5.202 (1) If a creditor has violated the provisions of this Act applying to certain negotiable instruments (Section 2.403), or limitations on the schedule of payments or loan term for regulated loans (Section 3.511), the debtor is not obligated to pay the credit service charge or loan finance charge, and has a right to recover from the person violating this Act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt a penalty in an amount determined by the court not in excess of three times

the amount of the credit service charge or loan finance charge. No action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement with respect to which the violation occurred.

(2) If a creditor has violated the provisions of this Act applying to authority to make supervised loans (Section 3.502) the loan is void and the debtor is not obligated to pay either the principal or loan finance charge. If he has paid any part of the principal or of the loan finance charge, he has a right to recover the payment from the person violating this Act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

(3) A debtor is not obligated to pay a charge in excess of that allowed by this Act, and if he has paid an excess charge he has a right to a refund. A refund may be made by reducing the debtor's obligation by the amount of the excess charge. If the debtor has paid an amount in excess of the lawful obligation under the agreement, the debtor may recover the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against debtors arising from the debt.

(4) If a debtor is entitled to a refund and a person liable to the debtor refuses to make a refund within a reasonable time after demand, the debtor may recover from that person a penalty in an amount determined by a court not exceeding the greater of either the amount of the credit service or loan finance charge or ten times the amount of the excess charge. If the creditor has made an excess charge in deliberate violation of or in reckless disregard for this Act, the penalty may be recovered even though the creditor has refunded the excess charge. No penalty pursuant to this subsection may be recovered if a court has ordered a similar penalty assessed against the same person in a civil action by the Administrator (Section 6.113). With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made.

(5) Except as otherwise provided, no violation of this Act impairs rights on a debt.

(6) If an employer discharges an employee in violation of the provisions prohibiting discharge (Section 5.106), the employee may within [ ] days bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks.

(7) If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability is imposed under subsections (1), (2), and (4) and the validity of the transaction is not affected.

(8) In any case in which it is found that a creditor has violated this Act, the court may award reasonable attorney's fees incurred by the debtor.

Civil Liability for Violation of Disclosure Provisions

Sec. 5.203. (1) Except as otherwise provided in this section, a creditor who, in violation of the provisions on disclosure (Part 3), other than the provisions on advertising (Sections 2.313 and 3.312), of the Article on Credit Sales (Article 2) and the Article on Loans (Article 3), fails to disclose information to a person entitled to the information under this Act is liable to that person in an amount equal to the sum of (*a*) twice the amount of the credit service or loan finance charge in connection with the transaction, but the liability pursuant to this paragraph shall be not less than $100 or more than $1000; and (*b*) in the case of a successful action to enforce the liability under paragraph (a), the costs of the action together with reasonable attorney's fees as determined by the court.

(2) A creditor has no liability under this section if within 15 days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned

of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required by pay a credit service charge or loan finance charge in excess of the amount or percentage rate actually disclosed.

(3) A creditor may not be held liable in any action brought under this section for a violation of this Act if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(4) Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in land may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this Act and that it maintained procedures reasonably adapted to apprise it of the existence of the violations.

(5) No action pursuant to this section may be brought more than one year after the date of the occurrence of the violation.

Sec. 5.204. Reserved.

Refunds and Penalities as Set-Off to Obligation

Sec. 5.205. Refunds or penalties to which the debtor is entitled pursuant to this Part may be set off against the debtor's obligation, and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this Part.

PART 3—CRIMINAL PENALTIES

Willful Violations

Sec. 5.301. (1) A supervised lender who willfully makes charges in excess of those permitted by the provisions of the Article on Loans (Article 3) applying to supervised loans (Part 5) is guilty of a misdemeanor and upon conviction may be [sentenced to pay a fine not exceeding $[ ], or to imprisonment not exceeding one year, or both].

(2) A person, other than a supervised financial organization, who willfully engages in the business of making supervised loans without a license in violation of the provisions of this Act applying to authority to make supervised loans (Section 3.502) is guilty of a misdemeanor and upon conviction may be [sentenced to pay a fine not exceeding $[ ], or to imprisonment not exceeding one year, or both].

(3) A person who willfully engages in the business of making consumer credit sales, consumer leases, or consumer loans, or of taking assignments of rights against debtors arising therefrom and undertakes direct collection of payments or enforcement of these rights, without complying with the provisions of this Act concerning notification (Section 6.202) or payment of fees (Section 6.203), is guilty of a misdemeanor and upon conviction may be [sentenced to pay a fine not exceeding $100].

Disclosure Violations

Sec. 5.302. A person is guilty of a [misdemeanor] and upon conviction may be sentenced to pay a fine not exceeding $5,000, or to imprisonment not exceeding one year, or both, if he willfully and knowingly

(1) gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this Act on disclosure and advertising (Part 3) of the Article on Credit Sales (Article 2) or of the Article on Loans (Article 3), or of any related rule of the Administrator adopted pursuant to this Act,

(2) uses any rate table or chart, the use of which is authorized by Board of Governors of the Federal Reserve Bank, in a manner which consistently understates the annual percentage rate determined according to those provisions; or

(3) otherwise fails to comply with any requirement of the provisions of this Act on disclosure and advertising (Part 3) of the Article on Credit Sales (Article 2) or of the Article on Loans (Article 3), or of any related rule of the Administrator adopted pursuant to this Act.

Article 6—Administration

PART 1—POWERS AND FUNCTIONS OF ADMINISTRATOR

Short Title

Sec. 6.101. This Article shall be known and may be cited as the District of Columbia Uniform Consumer Credit Code—Administration.

Applicability

Sec. 6.102. This Part applies to persons who in this State

(1) make or solicit consumer credit sales, consumer leases, consumer loans, consumer related sales (Section 2.602) and consumer related loans (section 3.602); or

(2) directly collect payments from or enforce rights against debtors arising from sales, leases, or loans specified in subsection (1), wherever they are made.

Administrator

Sec. 6.103. "Administrator" means [ ].

(NOTE: This must be decided, perhaps by the City Council).

Powers of Administrator; Harmony with Federal Regulations; Reliance on Rules; Duty to Report

Sec. 6.104. (1) In addition to other powers granted by this Act, the Administrator within the limitations provided by law may—

(a) receive and act on complaints, take action designed to obtain voluntary compliance with this Act, or commence proceedings on his own initiative;

(b) counsel persons and groups on their rights and duties under this Act;

(c) establish programs for the education of consumers with respect to credit practices and problems;

(d) make studies appropriate to effectuate the purposes and policies of this Act and make the results available to the public;

(e) adopt, amend, and repeal substantive rules when specifically authorized by this Act, and adopt, amend, and repeal procedural rules to carry out the provisions of this Act;

(f) maintain offices within this State;

(g) appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their compensation, and authorize attorneys appointed under this section to appear for and represent the Administration in court;

(h) hold such public or private hearings as he deems necessary or proper to effectuate the purposes and policies of this Act; and

(i) subpoena witnesses, compel their attendance, adduce evidence and require the production of such relevant matter as he deems necessary or proper to effectuate the purposes and policies of this Act;

(2) The Administrator shall adopt rules not inconsistent with the Federal Consumer Credit Protection Act to assure a meaningful disclosure of credit terms so that a prospective debtor will be able to compare more readily the various credit terms available to him and to avoid the uninformed use of credit. These rules may require disclosure by persons who arrange for the extension of credit, may contain classifications, differentiations or other provisions, and may provide for adjustments and exceptions for any class of transactions subject to this Act which in the judgment of the Administrator are necessary or proper to effectuate the purposes or to prevent circumvention or evasion of, or to facilitate compliance with, the provisions of this Act relating to disclosure of credit terms.

(3) The Administrator shall keep his rules in harmony with the Federal Consumer Credit Protection Act and the regulations prescribed from time to time pursuant to that Act by the Board of Governors of the Federal Reserve System.

(4) Except for refund of an excess charge, no liability is imposed under this Act for an act done or omitted in conformity with a rule of the Administrator notwithstanding that after the act or omission the rule may be amended or repealed or be determined by judicial or other authority to be invalid for any reason.

(5) The Administrator shall report annually on or before January 1 to the City Council and the Mayor on the operation of his office, on the use of consumer credit in the State, and 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. The report shall include a description of the examination and investigation procedures and policies of his office, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this Act, a statement of the number and percentages of offices which are periodically investigated or examined, a statement of the types of consumer credit problems of both creditors and debtors which have come to his attention through his examinations and investigations and the disposition of them under existing law, and a general statement of the activities of his office and of others to promote the purposes of this Act. The report shall not identify the creditors against whom action is taken by the Administrator.

(6) Within 10 days following its submission to the City Council and the Mayor, the Administrator shall publish and make available to the public sufficient copies of his report.

Administrative Powers With Respect to Supervised Financial Organizations

Sec. 6.105. (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 non-compliance 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 otherwise is empowered to take the action.

Investigatory Powers

Sec. 6.106. (1) If the Administrator has reasonable cause to believe that a person has engaged in an act which is subject to action by the Administrator, he may make an investigation to determine if the act has been committed, and, to the extent necessary for this purpose, may administer oaths or affirmations, and, upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and locatlon of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(2) If the person's records are located outside this State, the person at his option shall either make them available to the Administrator at a convenient location within this State or pay the reasonable and necessary expenses for the Administrator or his representative to examine them at the place where they are maintained. The Administrator may designate representatives, including comparable officials of the State in which the records are located, to inspect them on his behalf.

(3) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the Administrator may apply to [ ] court for an order compelling compliance.

(4) The Administrator shall not make public the name or identity of a person whose acts or conduct he investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant to this Act.

Application of Administrative Procedure Act

Sec. 6.107. Except as otherwise provided, the District of Columbia administrative procedure act, applies to and governs all administrative action taken by the Administrator pursuant to this Article or the Part on Regulated and Supervised Loans (Part 5) of the Article on Loans (Article 3).

Administrative Enforcement Orders

Sec. 6.108. (1) After notice and hearing the Administrator may order a creditor or a person acting in his behalf to cease and desist from engaging in violations of this Act. A respondent aggrieved by an order of the Administrator may obtain judicial review of the order and the Administrator may obtain an order of the court for enforcement of its order in the [ ] court. The proceeding for review or enforcement is initiated by filing a petition in the court. Copies of the petition shall be served upon all parties of record.

(2) Within 30 days after service of the petition for review upon the Administrator, or within any further time the court may allow, the Administrator shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After hearing, the court may (a) reverse or modify the order if the findings of fact of the Administrator are clearly erroneous in view of the reliable, probative, and substained evidence on the whole record, (b) grant any temporary relief or restraining order it deems just, and (c) enter an order enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the order of the Administrator, or remanding the case to the Administrator for further proceedings.

(3) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the Administrator in the interest of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon upon good cause shown for the failure to adduce this evidence before the Administrator.

(4) The jurisdiction of the court shall be exclusive and its final judgment or decree shall be subject to review by the [ ] court in the same manner and form and with the same effect as in appeals from a final judgment or decree in a [special proceeding]. The Administrator's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section must be initiated within 30 days after a copy of the order of the Administrator is received. If no proceeding is so initiated, the Administrator may obtain a decree of the [ ] court for enforcement of its order upon a showing that the order was issued in compliance with this section, that no proceeding for review was initiated within 30 days after copy of the order was received, and that the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the Administrator may not issue an order pursuant to this section but may bring a civil action for an injunction (Section 6.111).

Assurance of Discontinuance

Sec. 6.109. If it is claimed that a person has engaged in conduct subject to an order by the Administrator (Section 6.108) or by a court (Sections 6.110 through 6.112), the Administrator may accept an assurance in writing that the person will not engage in the same or similar conduct in the future. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance is evidence that prior to the assurance he engaged in the conduct described in the assurance.

Injunctions Against Violations of Act

Sec. 6.110. The Administrator may bring a civil action to restrain a person from violating this Act and for other appropriate relief.

Injunctions Against Unconscionable Agreements and Fraudulent or Unconscionable Conduct

Sec. 6.111. (1) The Administrator may bring a civil action to restrain a creditor or a person acting in his behalf from engaging in a course of

(a) making or enforcing unconscionable terms or provisions of consumer credit sales, consumer leases, or consumer loans;

(b) fraudulent or unconscionable conduct in inducing debtors to enter into consumer credit sales, consumer leases, or consumer loans; or

(c) fraudulent or unconscionable conduct in the collection of debts arising from consumer credit sales, consumer leases, or consumer loans.

(2) In an action brought pursuant to this section the court may grant relief only if it finds

(a) that the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

(b) that the agreements or conduct of the respondent has caused or is likely to cause injury to consumers; and

(c) that the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.

(3) In applying this section, consideration shall be given to each of the following factors, among others:

(a) belief by the creditor at the time consumer credit sales, consumer leases, or consumer loans are made that there was no reasonable probability of payment in full of the obligation by the debtor;

(b) in the case of consumer credit sales or consumer leases, knowledge by the seller or lessor at the time of the sale or lease of the inability of the buyer or lessee to receive substantial benefits from the property or services sold or leased;

(c) in the case of consumer credit sales or consumer leases, gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like buyers or lessees;

(d) the fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit sales or consumer loans with the effect of making the sales or loans, considered as a whole, unconscionable; and

(e) the fact that the respondent has knowingly taken advantage of the inability of the debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors.

(4) In an action brought pursuant to this section, a charge or practice expressly permitted by this Act is not in itself unconscionable.

Temporary Relief

Sec. 6.112. With respect to an action brought to enjoin violations of the Act (Section 6.110) or unconscionable agreements or fraudulent or unconscionable conduct (Section 6.111), the Administrator may apply to the court for appropriate temporary relief against a respondent, pending final determination of proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any temporary relief or restraining order it deems appropriate.

Civil Actions by Administrator

Sec. 6.113. (1) After demand, the Administrator may bring a civil action against a creditor for making or collecting charges in excess of those permitted by this Act. An action may relate to transactions with more than one debtor. If it is found that an excess charge has been made, the court shall order the respondent to refund to the debtor or debtors the amount of the excess charge. If a creditor has made an excess charge in deliberate violation of or in reckless disregard for this Act, or if a creditor has refused to refund an excess charge within a reasonable time after demand by the debtor or the Administrator, the court may also order the respondent to pay to the debtor or debtors a civil penalty in an amount determined by the court not in excess of the greater of either the amount of the credit service or loan finance charge or ten times the amount of the excess charge. Refunds and penalties to which the debtor is entitled pursuant to this subsection may be set off against the debtor's obligation. If a debtor brings an action against a creditor to recover an excess charge or civil penalty, an action by the Administrator to recover for the same excess charge or civil penalty shall be stayed while the debtor's action is pending and shall be dismissed if the debtor's action is dismissed with prejudice or results in a final judgment granting or denying the debtor's claim. With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to

this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. If the creidtor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection.

(2) The Administrator may bring a civil action against a creditor or a person acting in his behalf to recover a civil penalty for willfully violating this Act, and if the court finds that the defendant has engaged in a course of repeated and willful violations of this Act, it may assess a civil penalty of no more than $5,000. No civil penalty pursuant to this subsection may be imposed for violations of this Act occurring more than two years before the action is brought or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

Jury Trial

Sec. 6.114 In an action brought by the Administrator under this Act, he has no right to trial by jury.

Debtors' Remedies Not Affected

Sec. 6.115. The grant of powers to the Administrator in this Article does not affect remedies available to debtors under this Act or under other principles of law or equity.

PART 2—NOTIFICATION AND FEES

Applicability

Sec. 6.201. This Part applies to a person engaged in this State in making consumer credit sales, consumer leases, or consumer loans and to a person having an office or place of business in this State who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from these sales, leases, or loans.

Notification

Sec. 6.202. (1) Persons subject to this Part shall file notification with the Administrator within 30 days after commencing business in this State, and, thereafter, on or before January 31 of each year. The notification shall state:

(a) name of the person;

(b) name in which business is transacted if different from (a);

(c) if a partnership, the name and business address of each partner;

(d) If a corporation, the name and business address of each officer, director, and each stockholder holding ten percent or more of the voting stock;

(e) address of principal office, which may be outside this State;

(f) address of all offices or retail stores, if any, in this State at which consumer credit sales, consumer leases, or consumer loans are made, or in the case of a person taking assignments of obligations, the offices or places of business within this State at which business is transacted;

(g) if consumer credit sales, consumer leases, or consumer loans are made otherwise than at an office or retail store in this State, a brief description of the manner in which they are made;

(h) address of designated agent upon whom service of process may be made in this State (Section 1.203);

(i) whether regulated or supervised loans or both are made; and

(j) such other information as the Administrator may from time to time require to effectuate the purposes and policies of this Act.

(2) If information in a notification becomes inaccurate after filing, the Administrator must be notified with an amended notification within 60 calendar days from the date information becomes available.

Fees

Sec. 6.203. (1) A person required to file notification shall on or before January 31 of each year pay to the [Administrator] an annual fee of $10 for that year.

(2) Persons required to file notification who are sellers, lessors, or lenders shall pay an additional fee at the time and in the manner stated in subsection (1) of $10 for each $100,000, or part thereof, in excess of $100,000, of the original unpaid balances arising from consumer credit sales, consumer leases, and consumer loans made in this State within the preceding calendar year and held

either by the seller, lessor, or lender for more than 30 days after the inception of the sale, lease, or loan giving rise to the obligations, or by an assignee who has not filed notification. A refinancing of a sale, lease, or loan resulting in an increase in the amount of an obligation is considered a new sale, lease, or loan to the extent of the amount of the increase.

(3) Persons required to file notification who are assignees shall pay an additional fee at the time and in the manner stated in subsection (1) of $10 for each $100,000, or part thereof, of the unpaid balances at the time of the assignment of obligations arising from consumer credit sales, consumer leases, and consumer loans made in this State taken by assignment during the preceding calendar year, but an assignee need not pay a fee with respect to an obligation on which the assignor or other person has already paid a fee.

(4) A person required to file notification shall submit such financial and other data as the Administrator may require which will support the computation of the amount of the fee.

(5) The Administrator shall bring an action in the [ ] court to recover any fees that he determines are due and owing under this section.

PART 3—COUNCIL OF ADVISORS ON CONSUMER CREDIT

Council of Advisors on Consumer Credit

Sec. 6.301. (1) There is hereby created the Council of Advisors on Consumer Credit consisting of sixteen members, who shall be appointed by the Mayor. One of the Advisors shall be designated by the City Council as Chairman. In appointing members of the Council, the Mayor shall seek to achieve a fair representation from the various segments of the consumer credit industry and the public.

(2) The term of office of each member of the Council is [4] years. Of those members first appointed, [four] shall be appointed for a term of [1] year, [four] for a term of [2] years, [four] for a term of [3] years, and [four] for a term of [4] years. A member chosen to fill a vacancy arising otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he is to succeed. A member of the Council is eligible for reappointment.

Function of Council; Conflict of Interest

Sec. 6.302. The Council shall advise and consult with the Administrator concerning the exercise of his powers under this Act and may make recommendations to him. Members of the Council may assist the Administrator in obtaining compliance with this Act. Since it is an objective of this Part to obtain competent representatives of creditors and the public to serve on the Council and to assist and cooperate with the Administrator in achieving the objectives of this Act, service on the Council shall not in itself constitute a conflict of interest regardless of the occupations or associations of the members.

Meetings

Sec. 6.303. The Council and the Administrator shall meet together at a time and place designated by the Chairman at least twice each year. The Council may hold additional meetings when called by the Chairman, or when requested by the administrator.

The CHAIRMAN. Thank you, Mr. Kass.

I take it from listening to your testimony that you don't quarrel with the basic rationale of S. 1938 insofar as it goes in trying to inject more competition into the area marketplace insofar as banking is concerned.

Mr. KASS. As to the substance behind the rate increases, no, I don't.

The CHAIRMAN. I think you have said in your final extemporaneous remarks, rates the banks seek and need or something like that——

Mr. KASS. That is correct.

The CHAIRMAN (continuing). To be competitive in consumer loans, in automobile loans, if the other lawyers are right in their estimate, and in revolving credit which is the three, I take it, covered by the bill——

Mr. KASS. But, as I said, I don't think in my opinion that Central Charge——

The CHAIRMAN. Let me finish my question. According to Mr. Jennings, and correct me if your reading of the bill is any different, the three areas that would be affected by the bill as presently written, one would be consumer loans, higher rates to be charged than the 8 percent, one would be automobile loans because there is a split in legal authority as to whether they are covered or not; and the third would be revolving credit where the Riggs card would, by statute, be made competitive with Bank Americard and the others. In those three areas, depending on how the law goes, the District of Columbia banks at the present time are not competitive?

Mr. KASS. That is correct.

The CHAIRMAN. As a basic proposition, you believe, as does Mr. Janeway and others, that the more competition the better it will ultimately be in terms of interest rates?

Mr. KASS. That is right. Competition is broader than just giving the banks the rates they need. Why shouldn't the Washington shopping plate, Sears has its own credit card, Woody's, Garfinckel's and all the others, why should they not be allowed to compete? Just to talk about competition for the banks is not competition. I think it is anticompetitive. My concept of competition is total. Either eliminate all the ceilings or raise them up sufficiently, which is very politically unappealing, on the House side anyway—at least that is the answer—so that all can compete. If you just let the banks compete, I don't know that the banks will be making consumer loans.

As I submitted in my testimony, they are not going to be making $300 or $400 loans, anyway. My clients, many low-income people, one step above poverty, will still have to go to Maryland and Virginia to borrow from the Household Finance Co. or Beneficial Finance. This would not help the District of Columbia and would not help the consumer.

The CHAIRMAN. If they are not going to make these $300 or $400 loans, then who is hurt if the rate goes up, if the loans are not going to be made?

Mr. KASS. You are serving the middle class. By raising the rates, you serve a greater number of people than are now being served. But you are still not serving the total community.

The CHAIRMAN. I would agree with you on that if they are not going to make the $300 or $400 loans, which would be the optimum loan for a person of low or marginal income, but they still would be able to make loans to those above that level, which are those individuals now going to suburban banks.

Mr. KASS. That is correct.

The CHAIRMAN. Above the marginal level.

Mr. KASS. That is correct. I have no quarrel, as I say, with the rate structure as far as it goes. I don't think it is in the best interest of the consumer or in the best interest of the city or the best interest of the financial community because the other lending institution—as you may know, I am part of the problem in that I started all this by bringing lawsuits against some of these companies and I would rather not discuss the suit because that is going to be working through the court, but we sued Central Charge and we also sued Woodward and Lothrop.

Here the banks come in and say, give us protection. I don't think Central Charge is covered by S. 1938 but that is the committee's decision and you will have to make that clear, but it does not protect Woodward and Lothrop. So, Woodward and Lothrop, if you follow the theory they can't charge that 1½ percent charge per month, Woodward and Lothrop will go out of the city. Give them the same protection that Riggs is asking for the banking institutions.

The CHAIRMAN. Does Woodward and Lothrop have a separate card?

Mr. KASS. It is exactly a card like Central Charge.

The CHAIRMAN. Do they finance and operate it in-house?

Mr. KASS. Yes; this is the card which allows me to go to any of the stores. But for all practical purposes, if I have a revolving credit account with Woodward and Lothrop or with Sears, if I don't pay off at the end of the month then I have to pay 1½ percent per month, which is 18 percent per year on the unpaid balance.

The CHAIRMAN. They do not sell the paper to a financial institution?

Mr. KASS. No, sir.

The CHAIRMAN. They operate it all in-house?

Mr. KASS. That is correct.

This bill does absolutely nothing for the Woodward and Lothrop situation.

The CHAIRMAN. What other cards are operating in this area? Woodward & Lothrop, and Sears?

Mr. KASS. Well, Central Charge, which is Riggs Bank, Americard is operating in a limited degree in the District of Columbia, some of the drug stores, and others. But it is not widespread. Furthermore, talking about competition, I would like to see more banks pick up more Bank Americards or Master Charge to compete with Riggs in its Central Charge operation. This is the type of competition I am talking about, that can only be created if this committee and this Congress raises the rates sufficiently, if not remove all the ceilings, to permit others to move in and out of the District of Columbia.

The CHAIRMAN. Let us pursue that. You are making some interesting points.

Without going into the merits ofyour lawsuit, it would not be proper for us to do so, the ultimate conclusion would be that if you win your suit, the Riggs card and Central Charge will have to go out of business.

Mr. KASS. Yes; I think so. There are a couple of States where they are operating on that low rate. I am convinced that 1½ percent is high and they ought to curtail some of the abuses of it, but I think it is a reasonable rate.

The CHAIRMAN. It is the prevailing rate in 80 or 90 percent of the States.

Mr. KASS. In most States of the Union.

The CHAIRMAN. If that happens, there will be a lessening of competition in the District of Columbia area.

Mr. KASS. That is correct. I might say, Senator, I brought the suit primarily to stimulate this type of hearing.

The CHAIRMAN. You sure have.

Mr. KASS. So that we could get the consumer protections that are so desperately needed, also, because it is a quid pro quo.

The CHAIRMAN. You mentioned in your statement that your ultimate desire would be to take off all usury laws, let it be wide open and let competition go at it and the rates would be, in a sense, stabilized, under competitive pressures.

Mr. KASS. Subject to an unconscionability concept at the higher level. Some rates are grossly higher like with food freezers where the price is so high the courts have held that is unconscionable. I would like to attach an unconscionability doctrine to the rates.

The CHAIRMAN. Then you quoted from Mr. David Caplovitz, who described this concept as a "radically different system of consumer credit."

Assuming that the pragmatics of legislation through the Congress are such that at this time it is imposing pragmatically to pursue that broad route that you are envisioning—that may be an erroneous assumption or not, but let us make it for the purpose of discussion—what partial steps in terms of injecting more competition would you suggest in lieu of the broadly gaged take-off-the-ceiling-entirely concept?

Mr. KASS. In order of priority, I would recommend no ceilings, uniform consumer credit code with its rates ceiling structure——

The CHAIRMAN. Let us take one at a time. No ceiling. For the moment, we will assume that is unattainable.

Mr. KASS. That is right.

The CHAIRMAN. And passing the question whether it is desirable. Then the uniform credit code ceilings, which, as I heard Mr. Jennings describe them, at least the raw numbers are pretty high.

Mr. KASS. The raw numbers are the exact rates in Maryland, 36 percent.

The CHAIRMAN. On small loans.

Mr. KASS. Small loans. Then it drops to 21 percent for a thousand dollars. Under that is 15. An average of about 18 percent. I might say, though, in various jurisdictions around the country, the six States that have passed it, the rates are not uniform. I think in Oklahoma the rates have gone up to 30 percent. There the commissioner on consumer credit does indicate that it is his opinion that the rates are not the ceiling; they are close to it but they are not at the ceiling.

The CHAIRMAN. Let us make another assumption, again it may be erroneous. Assuming because of the climate of consumer opinion, which may be misguided in this regard, that it would be difficult to enact a Federal statute calling for a 36-percent small loan rate, I think that is a pretty fair pragmatic assumption. Then what is the next on the list of competitive priorities?

Mr. KASS. That is why I think it is more politically appealing to say no ceiling than a 36-percent ceiling.

The next order of priority would at least be to include all the financial institutions in this legislation and not just banking institutions.

The CHAIRMAN. By all the financial institutions, not just banking, is that getting into the revolving credit?

Mr. KASS. In my opinion, that gets into the revolving credit, retailers and small loan companies.

The CHAIRMAN. Small loans are pragmatically knocked out under the second assumption if you can't establish the 36-percent rate.

Mr. KASS. At that point, if I can't bring in—and I am not representing a small loan company—if I can't bring in small loan companies, then my concept of competition breaks down, and that is where I stop. I want to service the small loan trade.

The CHAIRMAN. Yes; but the consequences of that, if we can't go the full sweep that you and Professor Caplovitz and others have talked about, and if you couldn't convince Congress to establish a 36-percent small loan, the consequence of not taking a partial step is to dry up whatever competition remains.

Mr. KASS. Senator, I am not sure. Massachusetts was the first State to consider the holder-in-due-course doctrine, and the banks, retailers, and the entire business community said this would dry up credit and we would not survive.

Now, we know that the holder in due course has not been the death knell of business. In fact, business is flourishing very nicely in the five or six States where the holder in due course has dried up. I am not so sure in my mind that credit will in fact dry up. We have a city, we have people here, and we have people that we have to serve. Somehow this city will survive whether Congress has to create an institution such as the Development Bank and others, or somebody like the big retailers or others will set up lending institutions or lending operations and attempt to do it or take a loss.

I am not convinced that the credit will dry up if we keep the existing rates.

The CHAIRMAN. I guess I am not getting across. If you win your lawsuit and if those other lawyers who take a different point of view from Mr. Jennings and yourself win their lawsuit, certain lines of credit are going to dry up.

Mr. KASS. That is correct.

The CHAIRMAN. That is not your basic philosophy, to dry up competitive credit.

Mr. KASS. I am well aware of it. My basic philosophy is open competition plus availability of credit plus consumer protection. I think this committee can add a number of consumer protections such as holder in due course and others, if we can't go to the whole Uniform Consumer Credit Code, at least to curtail the abuses that do exist. I am confused in my own mind about what I want, but I do know that competition is just one aspect of the whole consumer credit market because, again, if there are no consumer protections in the District of Columbia, I submit that I as a District consumer go out to Maryland to buy because I know that I can call the attorney general of Maryland and say, "Look, help me with my problem," and Frank Burch does it if I have problems with my clients. If we don't have those consumer protections, many people—I advise my clients regrettably, "Go to Maryland where at least if you buy something, if you buy a car, a washing machine, you can get protection because in the District of Columbia there is no consumer protection." I submit that is an equally valid force to keep people out of the city.

The CHAIRMAN. What facets of the Uniform Consumer Credit Code are operable in Maryland?

Mr. KASS. Holder in due course is operable——

The CHAIRMAN. Go to page 10 of your prepared statement, and I can check these off where you listed seven practices.

Mr. KASS. I might say that the code goes beyond Maryland as to the existing thing. Holder in due course is operable. Repossession tactics. Balloon payments—I don't know what the status of balloon payments are.

The CHAIRMAN. Repossession?

Mr. KASS. Repossessions are identical in the District of Columbia.

Referral sales. I think it is identical. There is no protection.

Door-to-door sales are protected in Maryland. There is protection. There is a cooling off period of sorts.

Senator Tydings, your predecessor, introduced a bill, but no hearings were held on the door-to-door salesmen for the District of Columbia.

Garnishment other than attachment before judgment situation is horrible in the District of Columbia. Our courts are being used as a collection agency. If a man works for IBM or Xerox in Florida, if they can get jurisdiction on him in the District of Columbia, they can collect here.

Garnishment here is the same because it is Federal law—title III or title IV.

Truth in lending covers the garnishment situations.

I might say the code goes beyond that. Truth in lending said you can't be fired for one garnishment. Two garnishments, they can be fired.

We know that people are being fired in the District of Columbia other than Federal employees. I would like to see no firing for any garnishment, because that just puts the person out in the street, and he has no way to pay the bill.

Debt practices. At least in Maryland you can call the attorney general and say, "I am being bothered; my privacy is invaded," and I have somebody to turn to. I have nobody to turn to in the District of Columbia except the Federal Trade Commission, and they are just too big.

The CHAIRMAN. I didn't get it. Garnishment laws in Maryland are comparable to the District of Columbia?

Mr. KASS. Yes. They are comparable with one exception of the attachment before judgment, which is abused in the District of Columbia.

The CHAIRMAN. Of the seven items listed on page 10, the only two where Maryland has significantly better laws as you view it insofar as consumers are concerned, one is holder in due course and, No. 5, door-to-door sales.

Mr. KASS. Of course, we are comparing apples and oranges but, yes.

In Virginia, the Governor has now recently appointed a consumer office, attached to the attorney general's office. That at least gives some protection. Basically, I think their laws are about the same as ours.

The CHAIRMAN. As the District's?

Mr. KASS. Yes.

The CHAIRMAN. In the development of this report, and you were the executive director, and I guess spent more time on it than any other individual, can you tell us whether there was any consensus arrived at amongst the participants? Mr. Jennings said that at least one banker was on the committee.

What was the name of the banker?

Mr. KASS. Mr. Burke, who was the senior vice president of Riggs. Mr. Addison from Union Trust was originally on the commission, then for personal reasons he had to resign, and Mr. Burke was his replacement. It is my understanding that the Bankers Association and all the bankers supported the recommendations of our commission unanimously on the consumer protection. As to the rates, they wanted the Congress to pass the rates. The consumers wanted the City Council to pass the rates. We all, I think, agreed on the need for competition.

The CHAIRMAN. So, the hangup was on Riggs as to who imposed them, et cetera?

Mr. KASS. Yes, sir.

The CHAIRMAN. But there was a consensus both on the commission and you believe in the banking community on all seven of the items listed, for instance, on page 10?

Mr. KASS. On the package that I will submit to you, yes, sir, which is adoptions of the Uniform Consumer Credit Code.

The CHAIRMAN. My staff man tells me Mr. Burke is with us.

Are you Mr. Burke?

Mr. BURKE. Yes, sir, I am.

The CHAIRMAN. Could I direct that question to you so that we will have it in the record, Mr. Vincent C. Burke.

Would you come forward?

STATEMENT OF VINCENT C. BURKE, EXECUTIVE VICE PRESIDENT, RIGGS NATIONAL BANK, WASHINGTON, D.C.

The CHAIRMAN. Are you with the Riggs Bank?

Mr. BURKE. I am.

The CHAIRMAN. What is your title?

Mr. BURKE. Executive vice president.

The CHAIRMAN. You served on this commission that has been heretofore described?

Mr. BURKE. I did, sir.

The CHAIRMAN. I directed a question to Mr. Kass. Was there a consensus both of the commission and, as you checked around since the commission report, the members of the banking community on the findings and recommendations of the commission with respect to the seven items that Mr. Kass listed on page 10 of his testimony? I will read them: holder in due course, balloon payments, repossession tactics, referral sales, door to door sales, garnishment, and debt collection practices.

Mr. BURKE. The answer is very definitely there was complete agreement from the banking fraternity. As a matter of fact, Senator, before I went back to one of the final meetings we had a meeting of all 14 banks. They agreed with the seven enumerated items that you just mentioned. There was absolutely no controversy in that area at all.

The CHAIRMAN. The main controversy was in rates, whether open-ended such as Mr. Kass suggests, or fixed and, if so, by whom, Congress, council, et cetera?

Mr. BURKE. Senator, I would like to answer that by saying that the five businessmen on the commission filed a separate report pointing out that the commission that Mr. Kass was the executive director of never addressed itself to rates whatsoever. I urged Mr. Kass, and I urged Mr. Hahn that the commission remain open so that an eco-

nomic study could be made in order that the commission would have completed its work. We felt that the commission did not complete its work because of the lack of an economic study on the basis of which, in turn, we could then intelligently make a recommendation as a commission to the council with reference to rates, and then finally as Mr. Kass stated there was disagreement as to who should fix the rates.

The CHAIRMAN. I think that summarizes it, at least as I heard the testimony.

If Congress were able to devise a practical method of opening up the rates so as to make them more competitive, whether that practical method be what is envisioned in S. 1938 or Congress itself setting the rates precisely, would that act coupled in with some of these other recommendations made by the commission in your opinion, Mr, Burke, give us a more viable organic commercial banking law with protection both to the consumer and greater competition in the marketplace?

Mr. BURKE. In my opinion, it would, yes.

The CHAIRMAN. How would you answer that same question? Don't ask me to repeat it, Mr. Kass.

Mr. KASS. As far as it goes, I think yes. I might say that I think it is important, at the end of the study commission report there are two separate concurring opinions, so to speak, one by the retailers—the business community, who feel we should have tackled the problem of rates; and, (2) by the consumer representatives who felt that although they agreed basically with what we recommended it did not go far enough for protection of the consumer.

As to the package that we recommended, I think there was unanimous agreement.

On the rates, I have to make a personal comment. For the study commission we asked for voluntary contributions from the community at large. I was the paid executive director. We just really ran out of money, although we tried to get more money to do the economic rates. That is the only reason we didn't do the rates. We didn't have the money.

I concur with Mr. Burke's suggestion that this committee, the city council, or some independent committee, even ours, should be recreated and do the study on rates.

Mr. BURKE. Senator, if I may, I don't choose to get into a controversy with Mr. Kass, but I never knew the reason that Mr. Kass did not choose to go forward with an economic study. Was it because of a total lack of funds?

Mr. KASS. I will submit a comment for the record.

On May 4—Mr. Burke was not a member of the commission—I submitted Status Report No. 3 where I said:

> Contributions: We have received a total of $6,900 to date. I submit that this is not sufficient, and we have not been able to hire the economists and other researchers who could be of valuable assistance to us.

That, to me, is the reason.

Mr. BURKE. If I may respond, and I promise I will not respond any further, in September 1970, if that is May 1970, I personally went to Mr. Kass in my position as commission member and went to Mr. Hahn to urge the continuation of the commission to make the economic study and further stated I was confident if money was the

problem that the business community would participate in seeing to it that there would be sufficient funds.

Mr. Kass, I am sure, will agree with that statement.

Mr. KASS. Yes; and Mr. Hahn did not want to continue the commission.

Mr. BURKE. Mr. Hahn told me definitely he didn't want to continue it.

The CHAIRMAN. If the economic study were to be made, in essence, it would come out, I trust, in favor of greater competition in the marketplace. But we might have a more refined recommendation as to whether it be the open ended proposition of Mr. Kass or something short thereof but it would certainly have to opt in favor of greater competition in the Washington metropolitan area.

Mr. BURKE. In fixing higher ceilings, yes.

The CHAIRMAN. Either no ceilings or higher ceilings.

Mr. BURKE. That is right.

Mr. KASS. Something better than the 1902 law we are now working under.

The CHAIRMAN. Let me get back to Mr. Kass. We were going down to your sort of hit parade of optimum priorities. I have eliminated the open ended rates just from the pragmatics of the situation. I frankly somewhat despair of the practicality of passing the law to put on the statute books 36 percent for a small loan rate. So we are left to operating in the realm of the attainable within the structure of this bill, adding to it perhaps other semicompetitor type cards that are operated by Sears, Woody's, and maybe one or two others, and perhaps including some of the consumer items that are mentioned on page 10 of your testimony about which there was general consensus agreement both in your commission and in the banking community.

Would that be a fair description of the latitude this committee has, practically?

Mr. KASS. There is one other alternative of which this committee is well aware because of the FHA–VA fight. This committee 2 years ago attempted to pass rates to exempt FHA–VA transactions from the usury rates when the rates were at that time 8½ percent and the existing rate in the District of Columbia was 8 percent. This committee and the Senate of the United States passed that bill. The House of Representatives rejected it.

The committee then reconsidered the matter and decided instead of passing the rates themselves they would allow the city council, if it wanted to, to exempt those rates. That passed the House and the Congress without a problem.

Shortly thereafter, the city council exempted the rates so that money could come back into the District of Columbia on FHA–VA.

I submit another alternative, which is very viable, is to pass the consumer protections of the consumer credit code as recommended by our study commission, to pass a specific rate ceiling if you want to or the rates proposed by S. 1938, the Maryland-Virginia thing. Although I don't like it, I don't want to be subject to the increases or decreases by the State of Virginia or the State of Maryland, but be that as it may, include the retailers into the coverage and let the city council make the determination of small loans—whether they need them or not.

To me it is very important as a lawyer because I submit that in due time a form of uniform consumer credit code will be adopted.

Six States now work under it. It is very important to be able to cross-reference these things. The District was one of the last States to pass the commercial code in 1967 and yet it is operational. I submit that this way you have at least preserved the framework of the consumer credit code, leaving past bank rates, if you will, bring the retailers within the coverage of the rates, and then let the city council make the determination whether small loan companies are necessary or not.

The CHAIRMAN. The latter addendum, the small loan part, even though you were to delegate it to the city council, would still open up the vexing spector of 36 percent interest rates which just scares lots of people out of their skin. It would scare me, I must say.

Mr. KASS. I realize it. Mr. Patman did not vote against the bill to allow 8½ percent—to let the city council determine the FHA—he was just not on the floor. I am convinced that somewhere we need small loan companies rates in the District of Columbia. I think we can document the need for it. I think that need coupled with the consumer protection might outweigh the politics. Besides, if we keep the package together you have a smattering of banks, you have a smattering of retailers, and you have a smattering of consumers pushing for this legislation.

Once your bill, S. 1938, is enacted, I see no impetus. I see no reason for the bankers to support consumer protection. If I were a banker, I wouldn't. Why should I? I would have the rates I wanted. Keep the package together and then we have enough pressure working forward in the political process. If you carve out a section, I think we are lost. I don't think it has done anything for the city.

The CHAIRMAN. All right, Mr. Kass. Thank you very much.

Mr. KASS. Thank you, Mr. Chairman.

The CHAIRMAN. Our next witness is Miss Gladys Kessler, Greater Washington Chapter of Americans for Democratic Action, of the firm of Berlin, Roisman and Kessler.

I apologize for having kept you here so long. It has been an interesting session for me. It has been informative and educational.

STATEMENT OF MISS GLADYS KESSLER, GREATER WASHINGTON CHAPTER OF AMERICANS FOR DEMOCRATIC ACTION, OF THE FIRM OF BERLIN, ROISMAN & KESSLER, WASHINGTON, D.C.

Miss KESSLER. On behalf of the citizens of the District, we appreciate the committee spending this much time and attention on something that we consider as important as this is.

In terms of identifying myself and referring to some of the discussions here this morning, I guess I should indicate that my law firm also has to claim some responsibility for some of those suits which have been testing the practices of the banks on consumer loans and also the propriety of the finance charges used for Central Charge accounts.

This chapter of ADA has always been deeply concerned about the overall credit situation in the District, and in particular about consumer credit and the lack of sufficient decent and reasonably priced housing. Clearly, S. 1938, under consideration today, would have a drastic impact on those areas.

I might add one thing at this point. That is that we, too, have always supported very strongly the necessity for a comprehensive economic study to analyze what the conditions are in the District and what the credit need and the credit costs really are.

Mr. Chairman, every year for the last several years, we have witnessed the same scenario on interest rates in the District. The banks march up to Capitol Hill with their tales of woe about doing business in the District, lobby intensively for legislation to increase—usually to double—interest rates and fail to supply either any hard economic data proving that the cost of doing business justifies higher interest rates, or any commitment that in the future a greater portion of their resources will be committed to low and moderate housing in the District or to consumer loans in the District. In short, the demand is always made for higher interest rates without any concomitant assumption of responsibility to serve all segments of the Washington community. Fortunately, consumers have, in the past, convinced Congress to hold the line and there has been no increase in rates.

Just as an ironic aside, I must say I find it curious that having failed in their efforts to pass this legislation to increase rates at a time when interest rates were soaring throughout the country, the banks are still back trying even though rates are decreasing, albeit at a somewhat snail-like pace.

This year the legislation being touted by the banking interests is somewhat different, and I think it essential that we take a careful look at its provisions. In the past, we have been faced by simple request to double the interest rate from 8 to 16 percent. That request, by the way, was precipitated in large part because the banks were required by truth in lending to reveal that what was being advertised as 8-percent consumer loans translated into a 15-percent annual percentage rate.

The bill before us seeks to peg the interest rate in the District to the lowest rate prevailing in Maryland or Virginia. In short, Congress is being asked to totally abdicate its legislative responsibility for the setting of interest rates in the District and merely defer to the rates is being asked to totally abdicate its legislative responsibility for the setting of interest rates in the District and merely defer to the rates set in two neighboring jurisdictions. Apart from the uniqueness of this approach—not to say its whimsicality—it is totally unjustfiable.

What support is there for automatically applying to the District of Columbia the rates prevailing in either Maryland or Virginia—both of which are very different jurisdictions, with a totally different "mix" of urban, rural, and semirural areas, with totally different rates of new home and apartment building construction, and with totally different income levels and capital needs?

It is particularly anomalous that your committee should now be asked to consider such a bill—for in hammering out a workable home rule bill, you have evidenced your strong commitment to the principle that the District must be allotted to determine its own affairs. ADA applauds this committee's work on that bill.

As you probably know, ADA has been one of the strongest proponents of home rule for the District.

But nothing could be further from the spirit of that bill or more inconsistent with its provisions than S. 1938 which not only denies a

66-583—71——9

properly elected District City Council the power to set interest rates in accord with the city's needs, but hands over this power to the legislatures of two entirely different States who have absolutely no business—nor interest in—regulating the internal financial affairs of the District of Columbia.

ADA has taken the position from the beginning of its participation in interest rate discussions, that before we take so fundamental and far-reaching a step as increasing interest rates, the burden is on the banks to open their books and prove the necessity for such increase—not just in comparative terms that District banks are making less money than their suburban counterparts, which seems to be much of a burden of their argument here, but even assuming that this is true they have to prove in specific terms as to what the cost of lending is in the District and why they should be making more money and why they are entitled to it.

In this instance, not only do we not have any solid, detailed data as to why District rates should be raised—I must submit I am pleased at Mr. Burke's statement this morning calling for such a study—we certainly don't have any rational justification for adopting either Maryland or Virginia rates, whichever happens to be lower at any given point in time. Why, for example, if there is good economic reason for adopting Virginia's rate for the year 1972, does that rationale evaporate as soon as the Maryland legislature lowers its interest rate in 1973? The long and short of it is that the bankers are asking Congress to arbitrarily, without financial rhyme or reason related to conditions in the District of Columbia, defer to not one but two neighboring States whose interest rates have been set, and properly so, by their own legislatures with only the interest of their own citizens in mind.

But it is important to remember at this point that we are not merely talking about the interest rates regulating activities of banks in these two States. There is nothing in S. 1938 which says that banks in the District of Columbia may avail themselves only of the lowest interest in Maryland or Virginia which the banks of these States may charge. Rather, the bill is cleverly worded to say:

> Any banking institution may loan money at any rate * * * which is in effect and which would be applicable * * * at the time of making such loans.

This language is subject to the interpretation that District of Columbia banks are authorized to charge any rate authorized by Maryland or Virginia for any lending institution depending upon the rate applicable to the type of loan being made.

What we are talking about is authorizing District banks to charge District residents, on small loans of up to $300, the lesser of Virginia's 30 percent small loan rate or Maryland's 36 percent small loan rate. What we are really talking about, therefore, is raising the District's small loan rate on a loan of $200 from 12 percent to 30 percent, again a really important point here and certainly Mr. Kass alluded to it in discussing it at some length.

Moreover, in addition to allowing District banks to take advantage of these vastly increased rates, they would not be subject to any of the licensing or supervisory regulations which in Maryland is exercised by the Administrator of Loan Laws and in Virginia by the Commissioner of Banking.

The CHAIRMAN. Let me ask you right there, the paragraph you just read, you read S. 1938 as written to establish a small loan rate, the figures mentioned in that paragraph?

Miss KESSLER. Yes; I certainly do, if I read the Maryland rates correctly. It was my understanding of the Maryland rate——

The CHAIRMAN. I take it that is the Maryland rate for small loan companies—36 percent.

Miss KESSLER. That is correct.

The CHAIRMAN. The intent of S. 1938, I believe, is not to establish a small loan rate. If there is some confusion about it that should be clarified.

Miss KESSLER. I think that is an important piece of legislative history to be established. The bill reads "may be received or taken."

The CHAIRMAN. The bill is a short one, but it refers to "banking institutions".

Miss KESSLER. When you say any banking institution may loan money, you are talking, of course, about a banking institution in the District of Columbia. I don't see anything in here that says you are talking only to those rates which may be charged by banking institutions in Maryland and Virginia.

The CHAIRMAN. In any event, it would satisfy at least that one objection of yours if we tidied up the language to make it clear.

Miss KESSLER. The rates allowed the banking institutions in those two jurisdictions are the rates you are referring to in this language?

The CHAIRMAN. That is what I intended, however inarticulatcly it may have been drawn.

Miss KESSLER. There is still another provision tucked away in S. 1938 which we find particularly disturbing. The bill authorizes the taking of interest "in advance" to the same extent permitted under the applicable laws of Maryland and Virginia. This will be the first time, at least since 1906, and I think 1902, that the District usury statute permits the taking of interest in advance. As you are, of course, all aware, this practice has the result of raising the stated interest rate and has continually been used to mislead and defraud consumers. This practice is clearly inconsistent with the entire thrust of the truth-in-lending bill which was aimed against just this kind of deceptive practice.

In terms of consumer understanding about what they are doing and what they are paying, I can't think of a more regressive step to take regarding usury laws in the District.

The CHAIRMAN. Under the truth-in-lending statutes they still can discount in advance if they disclose the full effective rate of what tha discount means.

Miss KESSLER. That is correct, Senator, but there is a good deal of question. I am sure this issue will be involved in some of the lawsuits that are pending now, as to the relationship between the annual percentage rate as defined in the truth-in-lending law and whatever rate is spelled out in the statutory language of the State usury statute. There is a great deal of controversy and dispute over that relationship and the legal interpretation of your State usury law.

While I might make a strong policy argument that the annual percentage rate is the proper way to compute it, so far at least that has not yet been decided by the courts.

The CHAIRMAN. Let us break here, if we can. I hope this is the last vote. I will try to be right back.

(Brief recess.)

The CHAIRMAN. We will try to speed it up. There will be eight votes in a row and they will shorten the time in between. I can't control that.

Will you proceed?

Miss KESSLER. I would like to bring up something which has been referred to this morning and that is the UCCC, Uniform Consumer Credit Code. I was not here for all the testimony, but I understand what discussion there was of it was uniformly in support of it. I would like to mention to you that we represent the Consumer Federation of America also which is the largest consumer organization in the country.

I think you should be aware for your own considerations as you go on deliberating on the bill that among consumer groups there is a very sharp division of opinion on the merits of the UCCC. Certainly there are some provisions in there—provisions now—that are very worthwhile and would be very much of an improvement in existing legislation almost anywhere, but as an entire package which is supposed to have all facets of consumer protection there is a good deal of unhappiness with the protections in there. There is a substantial opinion among the consumer movement that that bill, if it is to be an entire answer to the consumers' problems in every jurisdiction, is simply not the bill that the consumer thinks should go in. We have done some work on it and if you would like I would be happy to submit some analysis we have done of the code. I am sure you don't want it at this point.

The CHAIRMAN. No; we can't get into the details of the code today, but we would appreciate such memoranda and other comments that you may have.

Insofar as the seven items listed in Mr. Kass' testimony—you were here when he testified?

Miss KESSLER. Yes, I was.

The CHAIRMAN. Are the provisions, speaking generally of the UCCC, satisfactory as you viewed them on those seven points?

Miss KESSLER. I will go over them very fast. Debt collection practices are not dealt with in the existing UCCC. He has obviously put some amendments into his report that deal with it but they are not in the existing one.

Garnishment provisions in the UCCC are generally okay as far as we are concerned.

The door to door salesmen, there is a mysterious omission.

Referral sales are all right.

The first three items we seriously disagree with, they could be improved very, very substantially. In the material I submit to you we will go into that in quite a bit of detail.

Neither holder in due course or balloon payments has been outlawed under the UCCC. They have been restricted a little bit, but they have not been outlawed.

The CHAIRMAN. There are some in the consumer movement, perhaps you are one of the advocates, that want to outlaw holder in due course entirely.

Miss KESSLER. That is correct. Certainly there are many who want to completely do away with balloon payments which are not completely outlawed in the UCCC.

Finally, there is not a word in this legislation about what responsibilities the banks shall assume in exchange for a considerable financial windfall. The District of Columbia Commission on Interest Rates and Consumer Credit reported that the average consumer in the District of Columbia cannot borrow less than $700 to $1,000 from any one of the 14 banks that do business here. A survey conducted by a special subcommittee of the House Banking and Currency Committee revealed that in 1968, when the prevailing cost of money for mortgages was below 8 percent, the same 14 banks invested only 17 percent of their total assets in real estate. Of this 17 percent, less than one-third was invested in real estate loans in the District; in short, only 5 percent of their assets were invested in District real estate. The savings and loan associations, who are obligated by law to invest 85 to 90 percent of their assets in housing, had only 40 percent of their real estate loans on District property and of these loans, few were made for the benefit of low and moderate income home ownership.

This legislation imposes no obligation on banking institutions to commit a substantial portion of their investments to low and moderate income housing and to consumer loans of less than $1,000. This is where the need lies in the District. Are the banks to be given still another round of interest rate increases—and another round of increased profits—without returning one red cent to the community?

There is some material in my statement indicating that the banks are not making those loans. They were not, at least as of a week or two weeks ago, other than one bank in the District. There is a survey which was taken by the House Banking and Currency Committee that also revealed the fact that most of the assets of the banks in the District of Columbia were not being invested in District of Columbia property.

Until the questions are answered on whether the banks are going to make firm commitments on allocations of their resources to District problems and District consumers, all we are faced with is another piece of special legislation.

Not only is this "special interest" of the most flagrant type for banks as opposed to all other credit institutions—and I personally question whether it could survive a court test—but it is "special interest" legislation of a fundamental and far more objectionable variety. It serves only the lender. It totally ignores the crying needs of the consumer in the District of Columbia and, indeed, would further reward the banks for their indifference to the needs of the public and their steadfast refusal to commit themselves to any rational allocation of their resources to consumer needs for consumer loans for low and moderate income housing.

The CHAIRMAN. Is there any way by Federal law that we could force a bank to make loans which they didn't think were financially meritorious?

Miss KESSLER. Senator, I don't think that is the way it has to be done at all. I don't think you have to put them under that kind of burden. I think you could lay down a percentage requirement that such and such a percentage of their investment should be allocated to low and middle income housing. Certainly not in the sense that you make loans to individuals now when you know that that individual loan stands virtually no chance of being paid off. But there is no question that there are great numbers of credit-worthy individuals in the District

who want to buy houses and simply can't get money to do it. That is the kind of thing we are talking about, not ever asking them to invest when you know their money is going to go down the drain.

The CHAIRMAN. Were you here for all of Mr. Kass' testimony?

Miss KESSLER. Yes; I was.

The CHAIRMAN. Do I take it that you disagree in part with his analysis of the situation inosfar as the need for more competition in this area? Where are your areas of disagreement with Mr. Kass?

Miss KESSLER. It has been ADA's position all along that we don't have any pat answer as to what has to be done here. The mandate for Mr. Kass' commission from the City Council was to conduct the kind of careful economic study by economists that will really give the data on which you can come out with some answers here.

Certainly in terms of the small loan situation in the District, and these are my own views on it, because ADA has not dealt with it in detail, but everyone recognizes there is a tremendous need for availability of small loan funds in the District. No one must deny the people running to Maryland and Virginia and getting taken in by all sorts of unsatisfactory firms out there. The question is how much regulation are we going to have here and who are going to be the ones supplying those funds.

In terms of what ADA's answer would be to the whole situation in the District, I don't think you can isolate out just one part of the problem which is what I think we are doing in this legislation. We are saying the banks claim they are having some problem. For the moment, give them what they want, let them choose among two competing jurisdictions as to which of the interest rates it is going to be. I think it leaves unanswered all the other problems in the District in getting the consumer loan.

The CHAIRMAN. Assuming there is a bill which answers all of the questions in any one area—there aren't very many around like that—isn't it factually accurate that insofar as consumer loans are concerned today if the 8 percent limit applies that will put an enormous constraint in terms of the availability of consumer loans if we keep the rate at 8 percent? Doesn't that stand the test of just known fact?

Miss KESSLER. Supposedly the banks stopped making those consumer loans.

The CHAIRMAN. I think the testimony was that they are making some.

Miss KESSLER. I did not hear their testimony. I thought only one bank in the District was, right now.

The CHAIRMAN. Aren't all banks making some consumer loans, Mr. Jennings?

Mr. JENNINGS. Very definitely.

The CHAIRMAN. Not an enormous amount because in your view it is unrewarding financially.

Mr. JENNINGS. That is right.

The CHAIRMAN. The testimony was, also, on revolving credit in 80 to 90 percent of the States it is 1½ percent a month and it varies a little up to $500 or over $500 from State to State occasionally. But it seemed that there was agreement that you could not operate a revolving credit type business on an 8-percent figure. Wouldn't you say that is a fair factual statement?

Miss KESSLER. I don't think I am prepared to answer that. I don't mean to sound like a dog in the manger, but so often it has been our experience that whenever economic data is called upon I am sure you are aware that the person who supplies the data to begin with can oftentimes present it in such a way as to support his basic argument.

There simply are not any studies in the District now, despite the fact that Mr. Kass' commission was to do that, and despite the fact that the city council has been petitioned by various groups to work on just these kinds of studies, which really pinpoint the answers, to the questions you are asking, which are the key answers really, and that is how much it would cost to make these kinds of loans, what it would cost to support a profitable credit card operation of this sort and where the needs are in the District for these kinds of funds.

I think until you go into those kinds of questions or get some kind of firm commitment as to the allocation of funds, by raising the rates you have accomplished very little. You have just given the banks what they are requesting at this time without getting any kind of commitment in return at all. I don't think that benefits the consumer in any way.

I might add one other thing. That is in terms of the Central Charge situation. A number of lawsuits, by the way, have been filed against Central Charge in the Federal court and in the superior court. No one has suggested that Central Charge should cease operations. It was my understanding that when the suit was filed on consumer loans that at that point, and I gather the bank has stopped now, the banks did stop making consumer loans because they were so concerned about the pendency of that suit.

The CHAIRMAN. I think Mr. Jennings testified to that, and it further dried up the number of consumer loans they were making down to a small number.

Mr. Kass testified, and he is one of the litigants in this credit card litigation, that if he wins his case he realizes that the Riggs card will have to go out of business.

Miss KESSLER. We have a similar case against Riggs. There are at least three or four now. I have suggested it will be several years until that litigation gets resolved. I think the banks are taking a contradictory position on the reaction to the pending legislation.

The CHAIRMAN. I can clarify one point for you. On page 3 of your prepared statement you talk about our home rule bill and how this bill is distinguished from the home rule bill. Indeed it is. While awaiting the enactment of the home rule bill, and it is by no means certain it will be enacted in this session of Congress—it has had pretty rough sledding in years past—life goes on and you try to make the best of the situation as it currently exists. So a surface impression of the comparison of this home rule bill and this bill would lead to the conclusion you make on page 3.

But one is geared to the immediate and the present. The other is, we hope the House will enact it at this session of Congress, but we are by no means certain on the home rule bill.

Miss KESSLER. I do appreciate that, Senator. I know you have plenty of hurdles on the home rule bill, itself, but this bill in a sense is the least of all possible words. It does not let Congress do it, it does not let the District do it. It says the two States can do it who have no legitimate interest in our business.

The CHAIRMAN. I might also clarify, if we were to pass this bill in some form or other amended to take care of additional things which have been brought to our attention and then, subsequently, Congress were to enact a home rule bill, that would give jurisdiction to the City Council.

Miss KESSLER. Yes. Again, I am sure you realize the difficulties of getting through any changes in interest rates at all. I am sure that the difficulties that the banks have had in getting interest rates in the District changed over the years. The consumers will probably have, too, although, hopefully to a much lesser degree.

The CHAIRMAN. Has the ADA taken a position on Mr. Kass' theory of no limits at all on interest rates?

Miss KESSLER. No. The ADA has not taken a position. If I may I would like to give you my personal view and that is that aside from the field of automobile loans, which I think are an exception to what we are talking about, traditionally interest rates have been set for a simple reason and that is that when they have not been set and they have not been limited they have just skyrocketed. I don't believe in the theory that if you let interest rates go totally unregulated that you are then going to come down to some lowest common denominator which will be within the reach of all consumers.

I think traditionally over a hundred years it has worked very much the other way.

When they are not regulated or when there is a flexible limit, traditionally interest rates go to the highest rate permissible except in the automobile loan field.

I think there are different factors that do operate there.

The CHAIRMAN. To that extent, you disagree with Mr. Kass?

Miss KESSLER. Yes; I certainly do.

The CHAIRMAN. My final question will be, without trying to pinpoint the precise mechanism but just talking about economic needs in the area, do you believe that there is a need for greater competition in the metropolitan area marketplace insofar as the availability of credit is concerned?

Miss KESSLER. I think that there is a need for the availability of credit in the District, yes. I am not prepared to say what mechanism best accomplishes that at this point. I certainly agree with Mr. Kass, for example, that if you are going to have interest rates increase on the small loans in the District it is essential that it be done with all the kinds of consumer protections that we are talking about here in terms of garnishment and holder in due course, and that sort of thing.

The CHAIRMAN. Thank you very much, Miss Kessler. We are about to have another vote, and this came just in time.

This concludes today's hearings on S. 1938. We will have to determine after the recess whether there will be additional hearings. But it concludes it as of today.

I now place in the record a prepared statement of Channing E. Phillips, District of Columbia Democratic national committeeman who was unable to be present today.

(The prepared statement follows:)

Prepared Statement of Channing E. Phillips, District of Columbia Democratic National Committeeman

I come before you today to oppose S. 1938. This is special interest legislation pure and simple. It is a welfare bill for banks not a bill which would solve the loan problem in the District of Columbia.

I recognize that the 8% usury law in the District of Columbia raises serious problems. It places District financial institutions at a serious competitive disadvantage relative to financial institutions in the suburbs. It has produced a mass of small loan companies on the Maryland and Virginia boundaries of the District. It has meant that loan money is sometimes not available in this city.

There can be little doubt that we need legislation to deal with these problems and particularly to increase loan money in the District. We have supported repeatedly in testimony both before Congress and the City Council a serious study of interest rates in order to produce sound legislation.

The City Council created a Commission last year to study this subject. After taking twice as long to make its study as it was supposed to, it came out with a report which discussed all kinds of issues relating to financing except for interest rates. So we are still in the position of knowing that we have a serious problem without having any good idea of the solution.

One possible solution is simply to abolish or raise the legal interest rate. That will certainly mean a significant increase in interest rates in this city. It will certainly mean more profits for banks. But it is not at all clear that it will mean that significantly more loan money will be available for people who now have trouble getting loans.

Instead of blindly allowing an increase in interest rates, we need to try to set rates to increase the flow of loan money, particularly for the poor and moderate income families, while at the same time to protect consumers from unnecessarily high rates. This will almost certainly mean that different levels of rates should be set for different kinds of loans—home mortgages, other secured loans, automobile loans, small loans, and the like. This complex subject simply cannot be handled by an across-the-board increase in rates.

I would now like to turn specifically to this bill. Even if we ultimately find that interest rates should be increased, this bill should still not be passed. The District of Columbia government and Congress should determine what the interest rate should be for this city. We should not have the interest rate set, as this bill would allow, by the Maryland and Virginia legislatures. It is bad enough that this city does not have home rule and is governed by Congress. But it is too much to have our interest rates set by Maryland and Virginia.

Even if this bill were perfect in all other respects, it should not be passed because it is restricted only to banks. There is simply no reason to raise interest rates for one category of financial institutions and not for others. If interest rates are to be increased, they should be increased regardless who the lender might be. And if any financial institutions are to be preferred, they should not be the banks who generally loan to the white and affluent portions of our population not to black, poor and moderate income families who need loan money most.

In short, this Committee should reject this bill. But I hope that the Committee will not ignore this subject. I urge that you work with the District government to study carefully and thoughtfully how more loan money can be obtained at the lowest possible interest rate.

(Subsequent to the hearing the following letters were received:)

Office of the Comptroller of the Currency,
The Administrator of National Banks,
Washington, D.C., August 10, 1971.

Hon. Thomas F. Eagleton,
Chairman, Committee on the District of Columbia,
Washington, D.C.

Dear Mr. Chairman: Thank you for your letter of July 19, 1971, inviting our views on S. 1938, a bill to amend the District of Columbia usury law.

Under the terms of S. 1938, banks located in the District of Columbia would be permitted to charge interest on loans at the lesser of the rates permitted in Virginia and Maryland.

The present provisions of the D.C. Code are inadequate to deal with the modern types of lending, especially consumer lending. The present ceiling of 8% simple interest has been in the Code since 1920, and there are no provisions directly applicable to installment lending by banks. As a result there are areas of legal uncertainty in connection with some very common practices such as the use of credit cards and the use of the discount method of computing interest. These question are presently in litigation. However, we think it would be much better for these questions to be resolved through legislation. The court processes will not only take a long time but also may leave unresolved answers with regard to fact situations different from the ones presented to the court.

As you know, the District and the Maryland and Virginia suburbs constitute a single metropolitan area. Major consumer expenditures, such as an automobile loan or home-improvement loan, will ordinarily be filled in whatever part of the area offers the best price or convenience factor. It thus seems both fair and practical to relate the District interest ceiling to those of Maryland and Virginia. The bill, by adopting the lower of the two, where differences exist, is favorable to the consumer.

This office supports the adoption of S. 1938.

Sincerely yours,

William B. Camp,
Comptroller of the Currency.

Hechinger,
Washington, D.C., August 24, 1971.

Hon. Thomas F. Eagleton,
Chairman, Senate District Committee,
United States Senate,
Washington, D.C.

Dear Tom: I urge you, when you reconsider S-1938, that you not allow this to pass your Committee without its including the specific authorization of the rates on revolving credit based upon the prevailing rates in the adjoining states of Maryland and Virginia, and also to include those items which were in the testimony of Benny Kass, D.C. Commissioner, National Conference of Commissioners on Uniform State Laws, and in his letter to you of August 9, 1971.

Cordially,

John W. Hechinger,
President.

Washington, D.C., *August 26, 1971.*

Re S. 1938.

To: Senator Thomas Eagleton.
From: John A. Spanogle.

Mr. Robert Harris of your staff invited me to submit comments on S. 1938. I was unable to write them before your hearings on August 5.

Three basic points should be made on S. 1938 as it was introduced.

1. The bill, as introduced, would be a great disservice to every District of Columbia consumer. It would allow D.C. banks to establish a consumer lending industry in the District for the first time, but it would provide no regulation of that industry whatsoever. Thus, it would allow consumer lending activities to begin—a field we all know is fraught with great potential for fraud—without protecting one single D.C. citizen from these frauds. There are no protections from balloon payments, wage assignments, credit insurance abuses, default judgments, deficiency judgments, pre-judgment attachments, harassment of debtors and misrepresentations. The substitute proposal of the lobbyist for Sears, Roebuck & Company is even worse, for it allows lending by both banks and retailers without regulation. The enactment of either bill would favor only creditors. What is needed is comprehensive legislation, which will deal with all potential abuses, before the D.C. consumer lending industry is created.

2. The bill, as introduced, is so ambiguous as to be unworkable. The interest ceiling is dependent upon Virginia or Maryland law. Are credit insurance and other "additional charges" similarly dependent? Are rebates on prepayment, refinancing or consolidation also dependent? Are delinquency, deferral, attorneys' and repossession charges limited? If not, lenders can easily avoid interest ceiling limitations. For example, credit insurance charges alone have been used to add 15% to the effective interest rate.

Further, the bill is not effectively enforceable against those who violate its interest rate ceilings. A violator who is caught and successfully sued need only pay back his ill-gotten gains. 28 D.C. Code § 3305. He does not lose any principal or allowed interest because he violated the ceiling, but only the usurious interest. Thus, there is no deterrent to violation. There also appears to be no agency charged with enforcing usury statutes, so enforcement may be left to private parties—a source of only random enforcement at best, especially with a very ambiguous statute.

Both S. 1938 and the Sears substitute suffer from this problem of ambiguity.

3. The bill gives to the adjoining states the ability to set the District's interest rates without regard to economic conditions in the District. Interest rate ceilings will determine the availability of money for consumer loans. If it is felt that funds are not sufficiently available, because of consumer complaints, rate ceilings should be raised. (If there are no such complaints, rate ceilings need not be raised.) If it is later felt that too much money is available for consumer loans, and that consumers are complaining of being overextended through improvident loans, the rate ceilings should be lowered. Thus, rate ceilings should be constantly monitored to determine current consumer reaction to the availability of loan money to them.

However, it is impossible for legislators in Virginia or Maryland to find out how available consumer loan money is in the District, and no reason for them to care if they did. It is also unlikely for the Federal Congress to obtain this information, and very difficult to enact legislation on the subject unless catastrophe faces the District's residents. Therefore, to obtain the type of flexibility necessary for consumer protection legislation, it may be necessary for the Federal Congress to abandon all attempts at enacting specific rate ceiliings and protective provisions, and instead to grant the authority to so do to the D.C. Government.

I understand that the hearings on August 5 examined in some detail the U3C and the Report of the D.C. Commission on Interest Rates and Consumer Credit. Some of my ideas on the U3C have already been furnished to Mr. Harris, consisting of a study of the U3C as compared to present Maine law, and a bill based on the U3C and submitted to the Maine legislature.

There are three basic problems with the U3C: (1) Its provisions against frauds and abuses are filled with too many loopholes to be effective. (2) It has no provisions for enforcement by private parties, and too many limitations on the public agency's enforcement powers to provide effective public enforcement. (3) Its rates, ranging up to 39%, may be too high and encourage improvident loans by high-risk lenders.

The report of the D.C. Committee does make some changes to approach each of these problems, but does not make sufficient changes to eliminate any of the three problems. A comparison of the bill submitted by them and the bill submitted to the Maine legislature will quickly illustrate the shortcomings of the former. However, with approximately ten amendments, the Maine bill has obtained the support of both the banking and retailing industries. I will send a copy of these amendments to Mr. Harris as soon as they are in final form.

In conclusion, I would urge the Committee to reject both S. 1938, and the substitute bill prepared by Sears, Roebuck & Company, in their present form. Instead, I would urge the Committee to report out a bill giving the D.C. Government full authority to set rates and also to establish by ordinance provisions protecting consumers against frauds and abuses. If the Committee reports out a bill based on the U3C, I urge it to go beyond the timid reforms of the D.C. Committee and to eliminate all the loopholes in the anti-fraud and anti-abuse sections, to provide effective enforcement through both private party and public agency action, and to reduce the possibility of mass overextension of consumers under the rate ceilings of the uniform version. If the Committee would like further explanation of any of the points in this memorandum, I will be happy to provide it.

THE METROPOLITAN WASHINGTON BOARD OF TRADE,
Washington, D.C., September 8, 1971.

Hon. THOMAS F. EAGLETON, *Chairman,*
Committee on the District of Columbia,
United States Senate,
Washington, D.C.

DEAR SENATOR EAGLETON: At the request of its 250-member Retail Bureau, the Metropolitan Washington Board of Trade wishes to augment its testimony of August 5, 1971, in favor of S. 1938.

Our prepared statement on that day was limited to the issues presented by S. 1938 which, as introduced, applied exclusively to "banking institutions" and would not have affected the retail industry. Your questions at the hearing suggested, however, that the Committee is disposed to deal more broadly with all forms of personal loan and consumer sales credit. *The retail industry supports that approach.*

We endorse the Uniform Consumer Credit Code with appropriate amendments to incorporate:

(a) The additional consumer protection provisions recommended by the District of Columbia Commission on Interest Rates and Consumer Credit and;

(b) Fixing maximum rates of interest on loans (Sec. 3.201) and maximum credit sales service charges (Sec. 2.201) conforming to the Commission recommendation that such transactions be "competitive with those in the surrounding jurisdictions of Maryland and Virginia."

As a fully acceptable alternative, we support the amendment of S. 1938 to extend the reach of the bill to all loans to natural persons and to all retail credit sales in the District of Columbia.

As the Committee knows, the regulation of retail credit sales in the District of Columbia has been a source of considerable confusion over the last three years.

The District of Columbia City Council adopted in January, 1969, a regulation dealing with consumer credit sales. Portions of the regulation, however, conflicted with the federal Truth-in-Lending Act creating a serious problem for retailers in the District. Conduct that complied with federal law would have violated the D.C. regulation and vice versa. In either case, credit sellers would have had an exposure to serious penalties.

When efforts to persuade the District government to revise the regulation were unsuccessful, an action was commenced in the United States District Court and retailer-plaintiffs obtained a temporary injunction restraining the District from enforcing the regulation.

While the case was waiting trial on the issue of a permanent injunction, the District of Columbia Council adopted Resolution 70–12 creating a Commission on Interest Rates and Consumer Credit. Consumer groups and credit grantors were fully represented. In September, 1970, the Commission filed its report recommending among other things:

(1) That District of Columbia law ought "to permit financial institutions and others extending credit in the District to be competitive with those in the surrounding jurisdictions of Maryland and Virginia."

(2) " . . . that the consumer protection amendments incorporated in the accompanying proposed District of Columbia Uniform Credit Code be enacted by Congress."

The City Council received the report, but took no action on it.

Early in 1971, however, the Council adopted a revised Consumer Credit Regulation meeting the principal substantive objections of the retailer-plaintiffs and incorporating—as to retail sales only—many of the consumer protection features found in the proposed D.C. Uniform Consumer Credit Code.

The lawsuit has now been dismissed as moot, but a substantial question remains as to whether or not the regulation is within the Council's authority and it is not unlikely that the issue will be litigated if and when the District government has cause to enforce the deregistration provision of the regulation.

In recent months several lawsuits have been commenced against retailers in the District attacking the traditional rule that a bona fide sale of goods on credit is not within the scope of a usury statute.

This controversy has apparently been resolved by a unanimous decision of the District of Columbia Court of Appeals in *Mary C. Morris v. Capitol Furniture and Appliance Co., Inc.*, D.C.C.A. 5621, A. 2nd (August 16, 1971), holding in accordance with a long line of cases in the District and throughout the country, ". . . (that an) agreement providing for monthly instalments and including charges for . . . financing and other related services for the privilege of buying on time rather than by cash is not violative of the usury statute."

The retail industry is not, therefore, seeking any increase in the present level of retail credit charges in the District. Rather, we join with those who have urged that the Congress act to insure that consumers in the District are assured of adequate protection from overreaching and of an adequate supply of all forms of credit.

Congress has taken such action as to motor vehicles, providing a schedule of rates ranging from 16% to 32% a year depending on the age of the car. Almost every state has taken similar action as to all retail sales.

The principle of tying District of Columbia finance charge rates directly to rates for similar transactions in the adjoining states is sound and constructive. It would provide a common standard within the marketing area and encourage the competitive pricing of goods and services. It would provide a method for assuring that consumers received adequate protection and that adequate capital would always be available. It would relieve Congress of the burden of continuously making minor adjustments to specific rates.

We, therefore, urge the Committee to extend S. 1938 to retail credit sales so as to establish ceiling rates on finance charges comparable to the rates on similar transactions in Maryland and Virginia.

For the reasons given in our testimony at the Hearing (Transcript, pp. 55–56), we adhere to the view that the better method is to tie D.C. rates directly to the lower of the comparable Maryland and Virginia rates. However, if the Committee concludes that it would prefer to establish specific maximums not below the lower prevailing rate in Maryland and Virginia, this alternative will also have our full support.

The establishment of consumer credit rates can be accomplished either within the framework of the Uniform Consumer Credit Code or in the form of more limited amendments to S. 1938.

The retail industry throughout the United States has endorsed the Uniform Consumer Credit Code as an orderly, comprehensive and up-to-date codification of the varied and conflicting statutes adopted by many different legislative bodies over the last half century.

However, we will also give our full support to a more limited approach dealing exclusively with rates and the closely related issues discussed during the hearings.

The Board of Trade appreciates this opportunity to augment its statement so to reflect the views of the Retail Bureau.

Very truly yours,

JOSEPH B. DANZANSKY,
President.

(Whereupon, at 1:40 p.m., the committee recessed, subject to call of the Chair.)

Congress has taken such action as to motor vehicles, providing a schedule of rates ranging from 18% to 36% a year depending on the age of the car. Maryland has taken similar action as to [illegible].

The [illegible] of [illegible] District of Columbia finance charge rates [illegible] these rates to similar regulations in the adjoining states, as sound and constructive. It would provide a common standard with the marketing area and encourage the competitive selling of goods and services. It would provide a method for assuring that the consumer received adequate protection and that adequate capital would be [illegible] available. It would relieve Congress of the burden of continuously [illegible] with more [illegible].

We, therefore, urge the Committee to amend S. [illegible] to adopt credit sales rate ceilings on finance charges comparable to the rates on similar transactions in Maryland and Virginia.

For the reasons given in our testimony, as the Hearing Transcript [illegible], we believe that the better method is to limit [illegible] rates directly to the level of the [illegible] Maryland and Virginia rates. However, if the Committee concludes that it would prefer to establish specific maximums not below the lower of the rates in Maryland and Virginia, this alternative will also have our [illegible].

The establishment of consumer credit rates can be accomplished either within the framework of the Uniform Consumer Credit Code or in the form of more limited legislation [illegible].

The retail industry throughout the United States has endorsed the Uniform Consumer Credit Code as an orderly, comprehensive and up-to-date codification of fragmented and conflicting statutes spread over many different legislative enactments over the last half century.

However, we will also give our full support to a more limited approach dealing primarily with rates and the closely related issues discussed during the hearings.

The Board of Trade appreciates this opportunity to submit this statement to reflect the views of the Retail Bureau.

Very truly yours,

JOSEPH P. [illegible],
President.

(Whereupon, at 1:40 p.m., the committee recessed, subject to call of the Chair.)

APPENDIX

ECONOMIC REPORT

on INSTALLMENT CREDIT and RETAIL SALES PRACTICES of District of Columbia Retailers

REPORT OF THE

FEDERAL TRADE COMMISSION

66-583 O - 71 - 10

ACKNOWLEDGMENTS

This study was conducted under the general direction of Dr. Willard F. Mueller, Director, Bureau of Economics, and Dr. Arthur T. Andersen, Chief, Division of Industry Analysis, Bureau of Economics. Dr. Frank G. Coolsen had primary responsibility for preparing the study. Mr. Philip W. Jaynes contributed substantially to the preparation of the final draft of the report.

Table of Contents

	Page
Summary and Conclusions	ix
Chapter I—INSTALLMENT CREDIT AND THE LOW-INCOME MARKET RETAILER	1
Introduction	1
Types of Retailers and Merchandise Included in This Study	2
Variations in Installment Credit Sales	5
A Perspective on the Importance of Low-Income Market Retailers	6
General Market Retailers	7
Limitations of the Survey	8
Chapter II—GROSS MARGINS, PRICES, AND PROFITS	10
Gross Margins	10
Gross Margins on Specific Merchandise	12
Direct Price Comparisons	14
Operating Expenses and Net Profits	17
Overall Net Profit Comparisons	20
Chapter III—CHARACTERISTICS OF INSTALLMENT CONTRACT ARRANGEMENTS	22
Installment Contract Assignment	22
Installment Contracts Unassigned	25
Finance Charges on Installment Contracts	25
Contractual Arrangements for Assignment of Installment Credit	28
Finance Charges on Unassigned Contracts	31
Judgments, Garnishments, and Repossessions by Retailers	33
Chapter IV—CUSTOMER PROFILE OF LOW-INCOME MARKET RETAILERS: A CASE STUDY	35
Customer Characteristics	35
Credit Availability	42
Characteristics of Purchases and Installment Contracts	44
Examples of Individual Purchases	46
Appendix	51

LIST OF TABLES

Table *Page*

I-1. Comparison of 1966 sales of survey retailers with sales reported by 1963 Census of Business for the District of Columbia 2
I-2. Value of installment contracts as a percent of sales, District of Columbia retailers, 1966 5
II-1. Net sales and gross margins of District of Columbia retailers, 1966 11
II-2. Average gross margins of District of Columbia retailers on best-selling items of appliances and furniture, 1966 13
II-3. Average "retail prices" of District of Columbia retailers on best-selling items of appliances and furniture in 1966, assuming wholesale cost of $100 for each item 14
II-4. Comparison of reported wholesale and retail prices for best-selling products, low-income market and general market retailers 16
II-5. Comparison of expenses and profits as percent of sales for 10 low-income market retailers and 10 general market retailers of furniture and appliances in the District of Columbia, 1966 18
II-6. Net profit after taxes as a percent of sales and rates of return after taxes for District of Columbia retailers surveyed, 1966 21
III-1. Average value of installment contracts of 65 District of Columbia retailers, 1966 23
III-2. Number and value of installment contracts assigned and unassigned by District of Columbia retailers, 1966 23
III-3. Distribution of total installment contracts assigned to finance companies and banks 24
III-4. Finance charges on installment contracts assigned and unassigned by District of Columbia retailers, 1966 26
III-5. Installment contracts distributed by effective annual rate of finance charge (assigned and unassigned) 27
III-6. Assigned installment contracts distributed by effective annual rate of finance charge 29
III-7. Special provisions included in contractual arrangements between retailers and finance companies or banks 31
III-8. Unassigned installment contracts distributed by effective annual rate of finance charge 32

Table *Page*

III–9. Judgments, garnishments, and repossessions on delinquent installment contracts reported by District of Columbia retailers, 1966 33
III–10. Debt suits filed in the District of Columbia by low-income market and general market retailers, 1966 34
IV–1. Marital status and sex of customers 36
IV–2. Comparison of age (over 20) distribution of customers with 1960 U.S. Census age (over 20) distribution for all District of Columbia residents 36
IV–3. Size and type of customers' families 37
IV–4. Types of residence of customers 38
IV–5. Income of customers 39
IV–6. Sources of income of customers 41
IV–7. Occupations of customers 42
IV–8. Civilian occupations of customers compared with 1960 U.S. Census percent distribution of civilian occupations in the District of Columbia 43
IV–9. Credit references of customers 43
IV–10. Size of purchases 44
IV–11. Length of installment contracts 45
IV–12. Principal items and lines of merchandise purchased 46
IV–13. Substantial purchases by low-income customers 48
IV–14. Welfare recipients—items purchased, monthly income and payments 49

LIST OF FIGURES

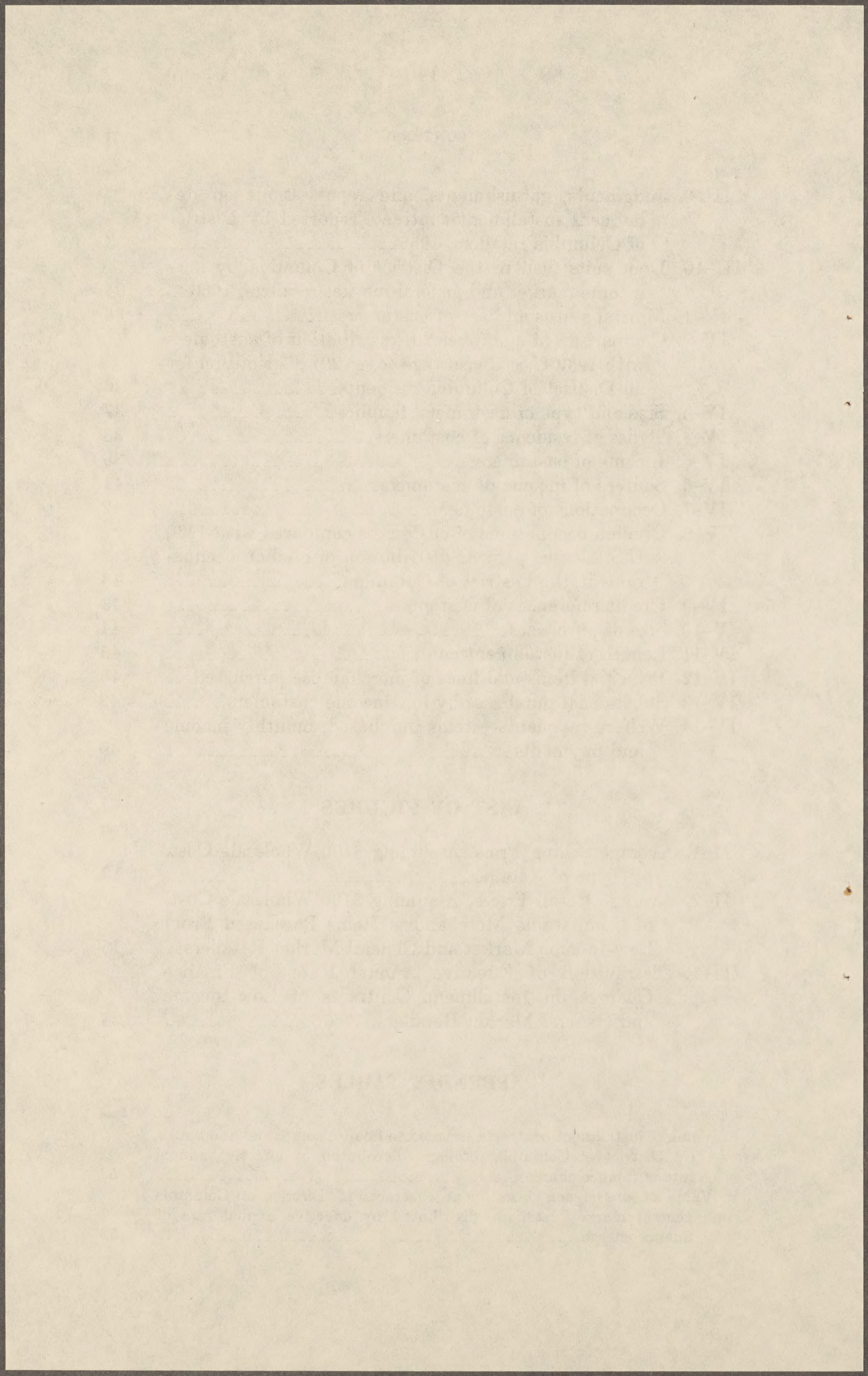
Figure *Page*

II–1. Average Selling Price, Assuming $100 Wholesale Cost, by Type of Retailer 12
II–2. Average Retail Prices, Assuming $100 Wholesale Cost, of Comparable Merchandise Items Purchased From Low-Income Market and General Market Retailers 15
III–1. Distribution of Effective Annual Rates of Finance Charges on Installment Contracts of Low-Income and General Market Retailers, 1966 28

APPENDIX TABLES

Appendix Table *Page*

A. Value of installment contracts assigned to finance companies and banks by District of Columbia retailers, distributed by effective annual rate of finance charge 52
B. Value of unassigned installment contracts of District of Columbia general market retailers, distributed by effective annual rate of finance charge 52



Summary and Conclusions

This report presents the results of a survey of installment credit and sales practices involving household furnishings and appliances in the District of Columbia. The purpose of the survey was to obtain a factual picture of the finance charges, prices, gross margins and profits, legal actions taken in collecting delinquent accounts, and the assignment relationships between retailers and finance companies. The survey covered those D.C. retailers of furniture and appliances having estimated sales of at least $100,000 for the year 1966. The 96 retailers providing data had combined sales of $226 million, which represented about 85 percent of the sales of furniture, appliance, and department store retailers in the District of Columbia.

USE OF INSTALLMENT CREDIT BY D.C. RETAILERS

Sixty-five retailers with combined sales of $151 million indicated regular use of consumer installment sales contracts. The remainder sold only for cash or on a regular or revolving charge account basis. This report focuses primarily on retailers using installment contracts. These retailers were classified into two groups: those appealing primarily to low-income customers and those appealing to a more general market.

D.C. stores varied widely in their use of installment credit. Some general market discount appliance stores made very few sales on credit. At the other extreme, a number of low-income market retailers sold entirely on installment credit.

Installment credit was used much more extensively by retailers selling to low-income consumers than by retailers selling to other consumers. Low-income market retailers used installment credit in 93 percent of their sales. The comparable figure for general market retailers was 27 percent.

CUSTOMER CHARACTERISTICS OF LOW-INCOME MARKET RETAILERS

A sample of installment sales contracts and credit applications was analyzed to identify the customer characteristics of low-income market retailers. The analysis revealed substantial differences between customers of the low-income market retailers and all residents of the District of Columbia. The average family size was larger—4.3 persons compared to an average of 3.5 persons for the District of Columbia. Almost half of the families of customers in the sample had five or more members. The median family income during 1966 of the sample customers was $348 per month. This is very low considering the larger than average size of the families. The Bureau of Labor Statistics recently estimated that the maintenance of a moderate standard of living for four in Washington, D.C., requires a monthly income of $730.

Most customers were engaged in low-paying jobs. The largest proportion, 28 percent, were Service Workers, such as waitresses and janitors. Second in importance were Operatives (including such occupations as taxi drivers and laundry workers). Laborers and Domestic Workers also represented a significant share of the sample. Together, these 4 major occupational groups accounted for 75 percent of the customer sample. In comparison, only 36 percent of the general population in the District was classified in these low-paying occupational groups. There were 31 welfare recipients in the sample, accounting for 6 percent of all customers in the sample. There were also a number of customers in the sample dependent on social security, alimony, support payments, and income received from relatives.

A review of credit references noted in the 486 contracts subjected to detailed analysis revealed that 70 percent indicated no credit references or references with low-income market retailers only. Only 30 percent of the customers of this retailer, therefore, had established credit with general market retailers.

GROSS MARGINS AND PRICES OF LOW-INCOME MARKET RETAILERS

The survey disclosed that without exception low-income market retailers had high average markups and prices. On the average, goods purchased for $100 at wholesale sold for $255 in the low-income market stores, compared with $159 in general market stores.

Contrasts between the markup policies of low-income and general

market retailers are most apparent when specific products are compared. Retailers surveyed were asked to give the wholesale and retail prices for their two best-selling models in each product line. These price data are typical of the large volume of products sold by each class of retailer.

For every product specified, low-income market retailers had the highest average gross margins reported. When similar makes and models are compared, the differences are striking. For example, the wholesale cost of a portable TV set was about $109 to both a low-income market and a general market retailer. The general market retailer sold the set for $129.95, whereas the low-income market retailer charged $219.95 for the same set. Another example is a dryer, wholesaling at about $115, which was sold for $150 by a general market retailer and for $300 by a low-income market retailer.

OPERATING EXPENSES AND NET PROFITS OF RETAILERS SURVEYED

Despite their substantially higher prices, net profit on sales for low-income market retailers was only slightly higher and net profit return on net worth was considerably lower when compared to general market retailers. It appears that salaries and commissions, bad-debt losses, and other expenses are substantially higher for low-income market retailers. Profit and expense comparisons are, of course, affected by differences in type of operation and accounting procedures. However, a detailed analysis was made for retailers of comparable size and merchandise mix to minimize such differences.

Low-income market retailers reported the highest return after taxes on net sales, 4.7 percent. Among the general market retailers, department stores had the highest return on net sales, 4.6 percent. Furniture and home furnishings stores earned a net profit after taxes of 3.9 percent; and appliance, radio, and television retailers were the least profitable with a net profit of only 2.1 percent on sales.

Low-income market retailers reported an average rate of return on *net worth* after taxes of 10.1 percent. Rates of return on net worth varied considerably among various kinds of general market retailers. Appliance, radio, and television retailers reported the highest rate of return after taxes, 20.3 percent of net worth. Next in order were furniture and home furnishings retailers with 17.6 percent and department stores with 13 percent on net worth.

ASSIGNMENT OF INSTALLMENT CONTRACTS

Low-income market retailers typically held their installment contracts and did not assign them to finance companies or banks. Only one-fifth of the total contracts were assigned by low-income market retailers. Among general market retailers, appliance stores assigned almost all (98 percent) of their contracts to finance companies and banks. General market furniture stores assigned somewhat more than half of their contracts (57 percent). Among the retailers surveyed, only the department store category involved no contract assignment.

FINANCE CHARGES ON INSTALLMENT CONTRACTS [1]

There is considerable variation in the finance charges of D.C. retailers of furniture and appliances, particularly among the low-income market retailers. Most of the retailers surveyed determined finance charges in terms of an "add-on" rate based on the unpaid cash balance. When calculated on an effective annual rate basis, finance charges of general market retailers varied between 11 percent and 29 percent, averaging 21 percent when contracts were assigned and 19 percent when retailers financed their own contracts. Finance charges by low-income market retailers imposing such charges ranged between 11 and 33 percent per annum, averaging 25 percent on contracts assigned to finance companies and 23 percent on contracts the retailers held themselves.

One low-income market retailer made no separate charge for installment credit. All of his finance charges were, in effect, included in the purchase price. Other low-income market retailers kept finance charges below the actual cost of granting credit. This practice of absorbing credit costs can give the illusion of "easy" credit, but the customer may be paying a great deal for such installment credit in the form of much higher prices.

JUDGMENTS, GARNISHMENTS AND REPOSSESSIONS BY RETAILERS

One of the most notable facts uncovered by the study relates to the frequency with which a small group of retailers utilized the courts to enforce their claims with respect to installment contracts. Eleven of the 18 low-income market retailers reported 2,690 judgments in 1966.

[1] These are finance charges as reported by D.C. retailers on their installment contracts. They do not necessarily reflect actual costs of granting installment credit.

Their legal actions resulted in 1,568 garnishments and 306 repossessions. For this group, one court judgment was obtained for every $2,200 of sales. In effect, low-income market retailers make extensive use of the courts in collecting debts. While general market retailers may take legal action as a last resort against delinquent customers, some low-income market retailers depend on legal actiton as a normal order of business.

CONCLUSIONS

Installment credit is widely used in marketing appliances and home furnishings to low-income families. Often these families purchase durable goods, such as furniture, television sets, and phonographs, through the mechanism of "easy" credit. Low-income market retailers specialize in granting credit to consumers who do not seek or are unable to obtain credit from regular department, furniture, or appliance stores. As a group, low-income market retailers made about 93 percent of their sales through installment credit.

The real cost of this "easy" credit is very dear, however. Primarily it takes the form of higher product prices. Credit charges, when separately stated, are not notably higher than those imposed by general market retailers. Though some low-income market retailers imposed effective annual finance charges as high as 33 percent, others charged much less or nothing at all. Markups on comparable products, however, are often two or three times higher than those charged by general market retailers.

The findings of this study suggest that the marketing system for distribution of durable goods to low-income consumers is costly. Although their markups are very much higher than those of general market retailers, low-income market retailers do not make particularly high net profits. They have markedly higher costs, partly because of high bad-debt expenses, but to a greater extent because of higher salaries and commissions as a percent of sales. These expenses reflect in part greater use of door-to-door selling and expenses associated with the collection and processing of installment contracts.

The high prices charged by low-income market retailers suggest the absence of effective price competition. What competition there is among low-income market retailers apparently takes the form of easier credit availability, rather than of lower prices. Greater credit risks are taken to entice customers. Insofar as the problem for low-income consumers is availability of credit, merchants who sell to them focus on this element.

The success of retailers who price their merchandise on such a high markup in selling to low-income families leads inevitably to the conclusion that such families engage in little comparative shopping. It would appear that many low-income customers lack information or knowledge of their credit charges and credit source alternatives, or of the prices and quality of products available in general market retailing establishments. To the extent that door-to-door sales techniques are utilized, such families frequently make crucial purchases without leaving the home and without seeing the products they commit themselves to buy. The fact that low-income market retailers emphasize the use of door-to-door salesmen both reflects and encourages such behavior. The Commission is well aware that door-to-door selling, as well as home-demonstration selling, provides an opportunity for deceptive and high pressure sales techniques. Moreover, such selling methods are also very high-cost methods of distribution. It would appear, therefore, that the low-income consumers who can least afford mistakes in their buying decisions face two serious problems when they are confronted with a door-to-door or home-demonstration sales approach—(1) the high cost of this sales technique will ultimately be borne by the purchaser, and (2) the opportunity for high pressure or deceptive selling is great, thus discouraging comparative shopping and enhancing the probability that the consumer will agree to purchases he would otherwise not want.

While public policy can help solve the problems of low-income consumers, legislation alone may not be sufficient. Legislation aimed at disclosure and regulation of finance charges will help low-income as well as other consumers make more rational buying decisions. Intensified programs on both state and federal levels to eliminate all deceptions and frauds in the advertising and oral representations of the terms of sale and credit charges will also help to ensure that their money is spent advantageously. The poor, to a considerable extent, however, are not sophisticated shoppers. Many cannot afford the luxury of "shopping around" because their potential sources of credit are limited. Others, because of inadequate consumer education or lack of mobility, simply do not engage in comparison shopping.

Thus, in attempting to deal with the phenomenon of the poor paying more for consumer goods, every effort should be made to improve consumer counseling. Many customers continue to buy from low-income market retailers even though they have sufficient income to qualify for credit at stores selling for less. Greater community effort in consumer education is needed.

Beyond the matter of education is the question of credit availability. Many low-income families are quite capable of making regular payments. They should have the option of making payments on rea-

sonably priced merchandise. Local community effort in the development of effective credit sources could contribute materially to freeing individuals from dependence on "easy" credit merchants.[2] Moreover, perhaps general market retailers can take steps to make it easier for low-income families to apply for and receive credit. Some retailers have already found that they can do so economically. Various community business organizations might consider ways of more actively encouraging low-income families to seek credit from retailers selling for less.

Increased competition for the patronage of low-income consumers would go a long way toward resolving many of the problems confronting them in the low-income market. Public policy should consider the various ways by which new entrants could be encouraged into these markets to increase the competitive viability of these markets.

While the availability of credit is perhaps the major reason why low-income families purchase from the low-income market retailers, it is only logical to conclude that the sales techniques of these retailers are also an important factor. Low-income market retailers have every incentive to continue these techniques since their risk of loss is substantially reduced by their virtually unopposed access to judgment and garnishment proceedings to enforce payment or secure repossession. The 2,690 actions taken by 11 low-income market retailers in 1966 suggest a marketing technique which includes actions against default as a normal matter of business rather than as a matter of last resort. At present, in the face of default, creditors can seek both repossession and payment of the deficiency, including various penalties. It may be appropriate to require creditors to choose one or the other of these legal remedies, and not to have the option of pursuing both courses simultaneously. Repossession would then fully discharge the merchant's claim. It is equally necessary to ensure that purchasers receive *actual* notice of any such proceedings and have legal counsel available to defend them in court. Perhaps, consideration should also be given to some form of negotiation before a court-appointed neighborhood referee as a compulsory prelude to a default judgment.

It is apparent that the solution to the problem of installment credit for the poor requires a variety of actions. A requirement that finance charges be clearly and conspicuously stated is a necessary but not a sufficient solution to the problem of installment credit for those consumers who are considered poor credit risks and are unsophisticated

---

[2] Credit unions organized to serve low-income people may be one answer to the problem. More than 400 Federal credit unions now serve substantially low-income groups. The Bureau of Federal Credit Unions, U.S. Department of Health, Education, and Welfare, is attempting to increase this number through its "Project Moneywise." With proper counseling and organization, credit unions can be successful even with very low-income groups.

buyers. Among the complementary steps which might be considered are the following: (1) make reasonable credit more accessible; (2) provide counseling services which will encourage customers to practice comparison shopping; (3) equalize the legal rights of buyers and creditors in installment credit transactions; (4) encourage additional businesses to enter the low-income market; and (5) intensify consumer protection activities on both federal and local levels to eliminate all fraud and deceptions in the advertising and offering of credit.

Chapter I

Installment Credit and the Low-Income Market Retailer

INTRODUCTION

As part of its continuing activities in the field of consumer protection, the Federal Trade Commission has undertaken a broad program to eliminate deception in the sale of goods and services through installment credit. Such deception can be a serious problem for consumers from all income groups. Abuses in the use of installment credit may fall most heavily, however, on the poor and disadvantaged. For this reason, the Commission felt it would be useful to obtain more detailed information about the use of installment credit by low-income consumers.[1] Such information will provide valuable assistance in planning future consumer protection activities.

This study is intended to provide objective information about installment credit practices, good and bad, as they affect consumers in the District of Columbia. A specific purpose is to compare the practices of retailers of furniture and appliances who sell primarily to a low-income market with those who sell to a more general market.

It should be made clear that the study is limited in scope. It does not attempt to provide information about all aspects of the operations of low-income market retailers. For instance, the quality and durability of products is not directly examined in this study. Nor is the matter of selling methods dealt with in detail. While these are interesting areas of investigation, it was not feasible to cover them in this report. The study focuses primarily on the following points:

(1) Percent of sales made through installment contracts.
(2) Gross margins of retailers.
(3) Comparative prices charged by low-income market and general market retailers.

[1] This report was prepared in response to a resolution adopted by the Federal Trade Commission, July 25, 1966. The text of the resolution is included in the appendix (p. 51).

(4) Amount of finance charges.
(5) Relationships between retailers and finance companies.
(6) Legal actions taken by retailers on delinquent installment contracts.
(7) Characteristics of a low-income market retailer's customers.

TYPES OF RETAILERS AND MERCHANDISE INCLUDED IN THIS STUDY

All retailers in the District of Columbia with estimated sales of over $100,000 per year who sold furniture and appliances were surveyed by the Federal Trade Commission. Several retailers were excluded because they had gone out of business since the survey period or were unable to provide usable information. Table I–1 shows the total 1966 sales of retailers included in the survey. As a basis for comparison, 1963 *Census of Business* total sales for the District of Columbia are also shown. The survey data are for a later period, 1966, but it is unlikely that there has been much change in sales during the intervening years. Furniture and appliance sales of retailers located in the District of Columbia have not been growing rapidly because of an increasing trend toward use of shopping centers outside the District.

TABLE I–1.—*Comparison of 1966 sales of survey retailers with sales reported in 1963 Census of Business for the District of Columbia*

Type of retail store	U.S. Census total sales, 1963 ($000)	Survey retailers, 1966:					
		Number of retailers	Total sales, all retailers ($000)	Number of retailers	Total sales, retailers offering installment credit ($000)	Number of retailers	Total sales, retailers not offering installment credit [1] ($000)
Department stores (SIC 531)	$186,439	6	$144,864	3	$91,361	3	$53,500
Furniture and other home-furnishings stores (SIC 571)	50,442	59	51,255	38	33,929	21	17,326
Appliance stores (SIC 572, 573)	29,912	31	29,693	24	25,677	7	4,016
Total	266,793	96	225,812	65	150,970	31	74,842

[1] Includes stores using revolving credit arrangements; 30-, 60-, 90-day credit arrangements; and stores operating on a cash basis.

Source: FTC Survey; 1963 *Census of Business*, vol. III, pt. 2, pp. 110–5.

The survey included 96 retailers with combined sales of $226 million. This approximates 85 percent of the 1963 Census total sales of appliance, furniture, and department store retailers in the District of Columbia. Sixty-five retailers with combined sales of $151 million reported that they regularly used installment sales contracts. The remaining stores used revolving credit plans, charge accounts, or sold their

merchandise only for cash. Of the $75 million in sales by this group, three large department stores accounted for $54 million. These department stores sold furniture and appliances through revolving credit arrangements.

Although revolving credit is a significant element in the retail credit market, to simplify data collection and analysis this study focuses primarily on installment credit contracts. It is difficult to collect data on revolving credit because such accounts are usually continuing arrangements. Balances may be carried for years, with regular payments offset by periodic purchases. Also, a variety of goods in addition to furniture and appliances are financed by department stores under revolving credit arrangements. The exclusion of revolving credit greatly simplifies the analysis in this report and there is little reason to believe that it creates any substantial bias in the results.

Further tabulations included in this report are based on returns of retailers who used installment contracts. Appropriate mention will be made whenever applicable of the practices of other retailers not using such contracts.

The survey revealed considerable variation among stores with respect to the percentage of sales made on installment credit. Some discount appliance stores made very few sales on installment credit or none at all. At the other extreme, a number of retailers sold almost entirely on installment credit. In addition, other factors such as gross margins or "markups" varied widely among stores. To analyze differences in credit practices, retailers surveyed were classified in various groups.

One means of classification was by type of establishment, i.e., department store, appliance store, or furniture store. Type of store did not, however, appear to be the most crucial element in determining credit practices. A second method of classification was by income of customer, i.e., low-income market retailers versus general market retailers. Since direct data were not available on income of customers served by various stores, two criteria were used to identify retailers serving low-income customers: (1) location of store and (2) advertising practices. As a first approximation, retailers located in or adjacent to low-income residential areas were considered to serve low-income customers primarily. Identification of low-income residential areas was done on the basis of 1960 Census data. In general, it was relatively easy to identify whether or not stores were located in low-income areas.

The District of Columbia is characterized by a wide variation in family income. Additionally, there is a close relationship between geographic sections within the city and income level. The most extensive source of demographic information on the District and the surrounding metropolitan area is the 1960 *Census of Population.* Data are

66-583 O - 71 - 11

provided for 124 individual Census tracts within the city. While incomes were substantially higher in 1966, the period covered by this survey, the relative positions of different areas probably has not changed greatly since 1960. The principal exception would be the Southwest Washington urban renewal area. The distribution of family incomes within the District of Columbia is indicated below: [2]

1959 income	*Percent distribution*	*1959 income*	*Percent distribution*
Under $2,000	9.4	$10,000 to $14,999	13.7
$2,000 to $3,999	18.5	$15,000 to $24,999	5.7
$4,000 to $5,999	22.2	$25,000 and over	2.3
$6,000 to $7,999	16.0		
$8,000 to $9,999	12.2	Total	100.0

There is also a definite geographic pattern in income distribution within the city. For the city as a whole the median income was $6,000. However, of the 124 Census tracts, 16 had median incomes of less than $4,000 in 1959. Ten of these tracts were located in the compact section of Northwest Washington which is often referred to as the Cardozo area. Four were in the southwest section of the city, one in the southeast, and one in the northeast. In contrast, 15 Census tracts had median incomes over $10,000 per year. All were located in a contiguous group west of Rock Creek in the upper northwest area of the city.

Low-income market retailers were, for the most part, located in what could be described as neighborhood shopping areas in or adjacent to low-income areas. A characteristic of low-income market stores is that they are unlikely to draw any substantial volume of business from the more affluent sections of the city or from the suburbs.

The classification of stores as low-income market retailers was established not only by location but also on the basis of advertising practices. It is possible that a store could be located in a low-income area yet sell to a more general market through citywide advertising. Leading Washington newspapers and radio stations which appeal to all income levels, rather than specifically to low-income groups, were checked and no retailers engaged in extensive advertising to the general market were included in the low-income market group.

Thus, stores finally classified as low-income market retailers had to meet two qualifications: location in a low-income area and absence of significant citywide advertising directed to a general market. Eighteen retailers met these criteria. While classification of stores into the two groups, low-income market retailers and general market retailers, involved some arbitrary decisions, the basic differences between practices of the two groups are quite clearcut.

---

[2] Source: 1960 *U.S. Census of Population,* vol. I, pt. 10, p. 54.

Of the 18 low-income market retailers, 14 could be described as furniture stores; 2 as appliance stores; and 2 as miscellaneous merchandise stores. These distinctions did not appear particularly important for purposes of analysis, however, and the low-income market retailers were treated as a combined group.

VARIATIONS IN INSTALLMENT CREDIT SALES

A striking characteristic of low-income market retailers is the high proportion of their total sales accounted for by installment contract transactions. Table I–2 indicates that installment credit transactions accounted for 92.7 percent of the total sales of the 18 low-income market retailers. In contrast, installment credit accounted for only 26.5 percent of total sales of general market retailers. Most of the low-income market retailers made more than 90 percent of their sales through credit; none of the general market retailers had such a high proportion of installment credit sales. Many of the general market retailers in fact had the bulk of their sales accounted for by cash transactions or by noninstallment credit.

TABLE I–2.—*Value of installment contracts as a percent of sales, District of Columbia retailers, 1966*

Type of retailer	Number of companies	Net sales ($000)	Installment contracts:		
			Value ($000)	Percent of total	As percent of net sales
Total	65	$150,970	$45,251	100.0	30.0
Low-income market retailers	18	7,874	7,296	16.1	92.7
General market retailers	47	143,096	37,955	83.9	26.5
Appliance, radio, and television	22	25,089	8,466	18.7	33.7
Furniture and home-furnishings	22	26,643	10,608	23.5	39.8
Department stores	3	91,364	18,881	41.7	20.6

Source: FTC Survey.

While extent of installment credit sales is the primary factor distinguishing low-income market retailers, there are also significant differences in the general business methods employed by this group. Prices and gross margins tend to be substantially higher for low-income market retailers. Bad-debt expenses are also considerably higher. Extensive use of credit together with higher prices and gross margins form a distinctive pattern for low-income market reailers. However, before discussing the findings concerning these differences, it is useful to place low-income market retailers in proper perspective with respect to the total market for appliances and home furnishings in the District of Columbia.

A PERSPECTIVE ON THE IMPORTANCE OF LOW-INCOME MARKET RETAILERS

The 18 low-income market retailers had net sales for 1966 of $7.9 million (table I–2). This amounts to only 5.2 percent of sales of all retailers surveyed. Nevertheless, it is a substantial amount when compared to total expenditures by low-income consumers on furniture and appliances. Low-income consumers within the District of Columbia accounted for only a fraction of total expenditures on furniture and appliances. The low-income market for such goods is considerably smaller than the total consumer market. No statistics are available on total expenditures for furniture and appliances by low-income consumers, but it is possible to make reasonable estimates. We estimate that District of Columbia households with an annual income under $5,000 in 1966 had total income of about $260 million.[3] Additionally, we estimate that in 1966 these households spent about $18 million on furniture and appliances.[4]

---

[3] *Sales Management* magazine, June 10, 1967, "Survey of Buying Power," page D 47, published estimates of the percent distribution of disposable household income in the District of Columbia for 1966. About one-third (32.2 percent) of District of Columbia households had after-tax incomes of less than $5,000 in 1966. For purposes of analysis, this bottom third of the income distribution will be considered the low-income group. In chapter IV of this report, the family incomes of a low-income market retailer's customers are tabulated. Three-fourths (76.1 percent) of the sample of customers had before-tax incomes of $6,000 per year or less. This would roughly correspond to after-tax incomes of $5,000 or less. It seems plausible that most of the customers of other low-income market retailers would also have family incomes of less than $5,000 after taxes. We can estimate the total income of such customers for 1966. The total number of households in the District of Columbia was estimated to be 270,500 in 1966. *Sales Management* data indicate 16.6 percent of these, or 44,900 households, had incomes of less than $3,000 per year. There were 15.6 percent, or 42,200 households, with incomes from $3,000 to $5,000 per year. If we assume that the *mean* income of households in the under $3,000 category was $2,000, and that the mean income of families in the next category was $4,000, then the total income of families with incomes below $5,000 would be $259 million.

After-tax income group	*Number of households*		*Mean income*		*Total income*
Under $3,000 income group	44,900	×	$2,000	=	$89.8 million
$3,000 to $5,000 income group	42,200	×	$4,000	=	$168.8 million
All households under $5,000					$258.6 million

[4] The Bureau of Labor Statistics conducted a study (*Consumer Expenditures and Income, Washington, D.C.*, 1960–61, Bureau of Labor Statistics, Report No. 237–53, February 1964) in 1960–61 of family expenditure patterns in the District of Columbia. We will assume that low-income families spent the same percentage of their income on furniture and appliances as did other families. (Actually the BLS study suggests that low-income families spent a lower percentage of their income on furniture and appliances, but the sample was too small to provide conclusive evidence on this point.)

Household furnishings and equipment accounted on the average for 4.9 percent of after-tax expenditures. Purchases of television sets, radios, etc., were included in the "recreation" category, which accounted for 4.2 percent of expenditures. We will assume that half the expenditures in this category may have gone for such appliances. This would give a total of 4.9+2.1 or 7 percent of income spent on furniture and appliances. Multiplying this percentage by estimated total income will give an estimate of the low-income market for furniture and appliances:

7 percent × $258.6 million = $18.1 million

Low-income market retailers surveyed had total sales in 1966 of $7.9 million, about 44 percent of our estimated total expenditures by low-income households for furniture and appliances.[5] This suggests that the low-income market retailers surveyed are definitely an important factor in the low-income marketplace, even though they did not account for a major portion of total retail sales of furniture and appliances in the District.

GENERAL MARKET RETAILERS

Forty-seven of the stores surveyed were classified as general market retailers, appealing either to a broad consumer market or primarily to middle and high-income groups. General market retailers were further classified into the following subcategories: furniture stores, appliance stores, and department stores. This was necessary for comparative and analytical purposes because, unlike the relatively homogeneous low-income market retailers, there were some differences in pricing and credit policies of the various types of general market retailers.

Appliance, Radio, and Television. There are two types of merchandise that are customarily sold and serviced by appliance, radio, and television retailers—brown goods and white goods. Television sets, radios, and stereo-phonographs are electronic home entertainment merchandise, collectively referred to among retailers as "brown goods." Washing machines, dryers, refrigerators, and freezers are collectively called "white goods." Sewing machines and vacuum cleaners are other household appliances customarily sold by brown and white goods retailers. The general market classification of appliance, radio, and television retailers included 22 companies operating stores primarily selling these types of merchandise. These retailers sometimes sell furniture and floor coverings, but only as secondary merchandise lines. Discount stores and full-service retailers are included in this retailer classification.

Furniture and Home Furnishings. Those retailers that specialize in the selling of furniture and home furnishings to a *broad* consumer market—a total of 22—have been grouped together for analysis. Retailers selling furniture primarily to low-income consumers are included in the low-income market retailer classification. Among furniture and home furnishings retailers are those that carry a wide line

---

[5] While most of the sales of low-income market retailers were accounted for by furniture and appliances, other lines of merchandise were sold. The actual proportion of furniture and appliance sales is not known, but examination of survey returns indicates it is about 80 percent of total sales for low-income market retailers. On this basis, such retailers would account for about 35 percent of sales of furniture and appliances to low-income customers.

of furniture, as well as a secondary line of appliances, and those that specialize in particular home furnishings items, such as rugs and carpeting.

Department Stores. The category of department stores, of which three included in this study sold goods on installment credit, includes large stores selling apparel in several merchandise departments, but also having departments engaged in selling furniture, home furnishings, appliances, radios, and television sets. Such stores are an important outlet for furniture and appliances. To qualify as a department store, a retail establishment must employ 25 people or more. Some smaller stores, classified in this study as low-income market retailers, also carry apparel and soft lines of home furnishings, as well as appliances and furniture.

LIMITATIONS OF THE SURVEY

This survey was limited to stores actually located within the District of Columbia. The District itself is part of a larger metropolitan area encompassing suburbs in Maryland and Virginia. In 1960 the population of the entire metropolitan area was 2 million, while the population of the District alone was 764,000. In terms of total retail sales, the 1963 *Census of Business* indicated that the District accounted for about 42 percent of metropolitan area retail sales. The proportion probably is somewhat lower for furniture and appliance sales alone.

At first glance, it might seem that the survey is limited because data on suburban area retailing are not included. This is not likely to be a serious problem, however, when comparing practices of retailers selling primarily to low-income consumers with those selling to a more general market. Census data indicate that most of the low-income consumers live within the District itself rather than in the suburbs. Median 1959 family incomes for components of the Washington Standard Metropolitan Statistical Area are shown below:[6]

Area	*Median income*	*Area*	*Median income*
Washington, D.C.	$5,993	Fairfax Co., Va	$8,607
Montgomery Co., Md	9,317	Alexandria, Va	7,207
Prince Georges Co., Md	7,471	Falls Church, Va	8,721
Arlington Co., Va	8,670	Entire SMSA	7,577

All of the suburban areas have a significantly higher median income than the District itself. While it would be useful to have data on suburban stores selling primarily to higher income consumers, it is doubtful that such data would alter the basic findings of the survey. One reason is that many of the large volume suburban stores are branches of retailers located in the District and probably follow similar policies. Also, inclusion of suburban discount retailers of furniture and appli-

[6] Source: 1960 *Census of Population,* Series PHC(1), pt. 11, p. 15.

ances would tend to sharpen the contrasts in prices and margins found in this survey rather than to weaken them.

This survey was restricted to retailers of furniture and appliances. A more extensive survey would probably indicate the existence of a low-income market for other goods and services also. There is ample reason, based on information received from consumers by the Federal Trade Commission, to believe that many of the practices found in this survey are also prevalent in the sale of clothing, variety goods, jewelry, and services such as reupholstering and auto repairs. It was not possible to cover all forms of retailing in a single survey, however, and the focus was placed on furniture and appliances because this is a large segment of retailing and is reasonably homogeneous in terms of product lines sold.

The survey did not include any retailer with estimated 1966 sales of less than $100,000. Very small retailers were excluded for two reasons. First, such retailers do not usually keep detailed records and many would have probably found it impossible to complete the survey questionnaire. For example, many small retailers of furniture sell both new and used merchandise. In most cases such retailers could not meaningfully separate sales of the two types of furniture. Second, while there are a large number of small furniture and appliance stores, their total sales volume is not great. The 1963 *Census of Business* indicated a total of 264 establishments in SIC 571 (furniture and home furnishings), SIC 572 (household appliances), and SIC 573 (radio, TV, and music stores). Of these 264 establishments, 124 had three employees or less. This would be roughly equivalent to less than $100,000 per year in sales. While almost half the establishments fell in this small size category, their combined sales were only 7 percent of the total. In SIC 531 (department stores) the Census indicates no establishments with sales of less than $100,000 per year.

Even restricting the survey to stores with over $100,000 in sales did not eliminate all sample problems. A substantial number of retailers had moved, gone out of business, or were unable to complete the survey questionnaire. Usually these were the smaller stores. The final group included 18 low-income market retailers and 47 general market retailers. We believe the 18 low-income market retailers surveyed provide an adequate sample to make meaningful generalizations about this type of retailer in the District of Columbia. Those retailers that conceivably could have been considered low-income market retailers but were *not* included in the final group represented a much smaller combined sales volume than the 18 that *were* included. Moreover, table I–1 clearly indicates that the bulk of total sales in the categories surveyed was included.

Chapter II

Gross Margins, Prices, and Profits

In addition to obtaining information on the use of installment credit, the Commission survey requested financial statement data as well as wholesale and retail prices on popular appliance and furniture items. This information was classified by type of retailer and indicated that operating results for low-income market retailers differed significantly from general market retailers in a number of important respects.

GROSS MARGINS

Gross margins represent the difference between the wholesale cost of goods and total revenue derived from their sale at retail as a percent of selling price. Gross margin is the amount remaining to the retailer to cover operating expenses, including salaries, commissions, rent, equipment, other overhead expenses, and net profit.

Though gross margins for different types of retailers in the survey sample varied, the most significant variation was found when margins of low-income market retailers were compared with those of general market retailers (table II–1). The 18 low-income market retailers had an average gross margin of 60.8 percent. The average for general market retailers was 37 percent, ranging from a low of 30 percent for appliance, radio, and TV stores to a high of 41 percent for furniture and home-furnishings stores.[1]

Obviously, the higher the gross margin on a particular product, the higher will be its retail price. On the average, goods purchased for $100 at wholesale sold for $255 in low-income market stores, whereas the retail price was $159 in general market stores (see fig. II–1).[2] Thus, low-income market retailers marked up their cost 2½ times to

[1] Subjecting these differences to statistical analysis indicated that there was only one chance in 100 that they reflected simple random variation. In other words, there is every reason to believe that differences in gross margins of low-income market retailers and general market retailers are systematic.

[2] These are cash prices and do not include separately imposed finance charges.

determine their selling price. This was the average for the 18 low-income market retailers in the sample. The retailer with the largest volume of sales in this group had a gross margin of 67.9 percent of selling price, which means that he marked up his merchandise on the average to more than three times its cost.

General market retailers that used no installment contracts were also contacted in the survey and their gross margins, as indicated in table II–1, did not differ significantly from the average for general market retailers as a whole. One appliance, radio, and TV dealer, who sold on a strictly cash basis, reported a gross margin of 7.2 percent. This meant that any appliance selling at wholesale for $100 was resold at retail for only $107. This case is very exceptional, of course.

TABLE II–1.—*Net sales and gross margins of District of Columbia retailers, 1966*

Type of retailer	Number of companies	Net sales		Gross margin [1]	
		Value ($000)	Percent of total	Value ($000)	As percent of sales
Low-income market retailers	18	$7,874	5.2	$4,790	60.8
General market retailers	47	143,096	94.8	52,988	37.0
Appliance, radio and television	22	25,089	16.6	7,586	30.2
Furniture and home-furnishings	22	26,643	17.7	10,979	41.2
Department stores	3	91,364	60.5	34,423	37.7
Total, retailers using installment contracts	65	150,970	100.0	57,778	38.3
Retailers not using installment contracts	31	74,842		26,902	35.9
Total, all retailers surveyed	96	225,812		84,680	37.5

[1] Gross margins reported by different types of retailers may not be strictly comparable. One low-income market retailer included finance charges and one general market appliance retailer included service charges in their net sales. Adjustments were made in these instances, but other retailers in the sample may have included such charges in their net sales and not reported their inclusion. To the extent that finance, service, and other charges might have been included in net sales and no corresponding adjustment made in cost of goods sold, gross margins for these retailers would be slightly overstated. However, every effort was made to calculate gross margins in this study net of finance and other charges.

A number of substantial general market furniture stores reported that they relied on revolving credit accounts and used no installment contracts. The gross margins of these retailers were somewhat higher than those that used installment contracts, averaging 46.6 percent of sales. Likewise, there were three department store companies that reported no installment contract sales, employing instead revolving charge account plans. Their average gross margin of 34.9 percent of sales was somewhat lower than the average gross margin of 37.7 percent shown in table II–1 for those department stores using installment contracts.[3]

[3] These margins for department stores in our survey conform very closely to the national averages compiled by the National Retail Merchants Association, which reported that in 1964 average gross profit margin for department stores with sales over $1 million per year was 35.3 percent of sales. *Operating Results of Department and Specialty Stores in 1964*, Controllers' Congress, National Retail Merchants Association, 1965, p. ii.

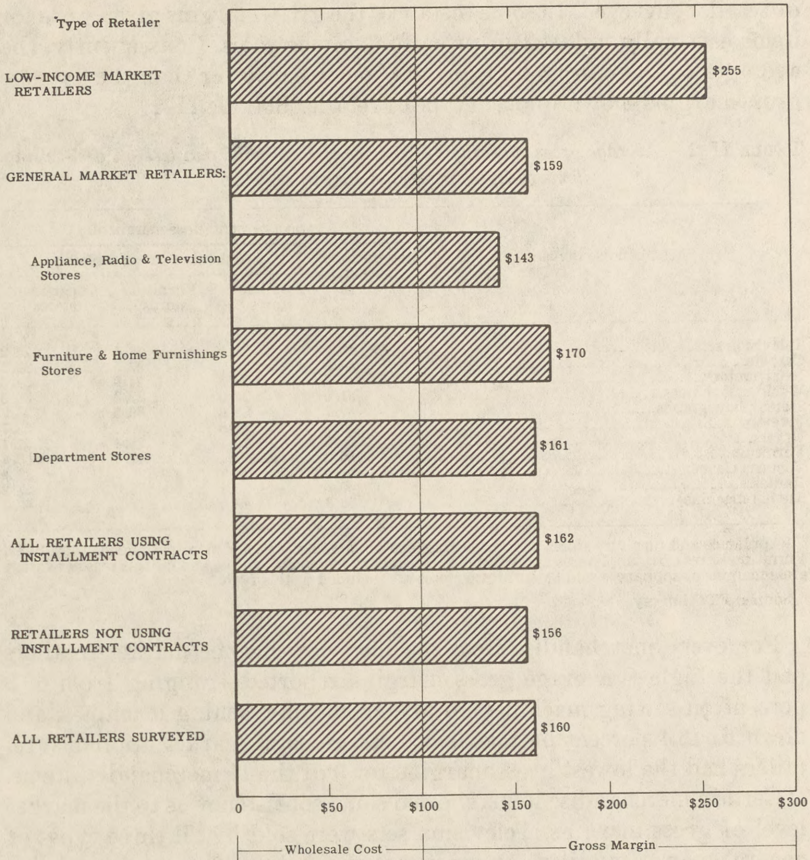


FIGURE II-1.—Average Selling Price, Assuming $100 Wholesale Cost, by Type of Retailer.

GROSS MARGINS ON SPECIFIC MERCHANDISE

Retailers surveyed were asked to select two "best-selling" items in each appliance and furniture line of merchandise and report their wholesale costs and selling prices. The difference between these figures (selling price minus cost of goods) represented the gross margin, which was expressed as a percent of selling price. Table II-2 gives the average gross margins on each merchandise item for each type

of retailer surveyed. In some instances the gross margins given were for items especially reduced in price for volume sales. Consequently, the averages of these gross margins are somewhat lower than the average gross margins shown for each type of retailer in table II–1.

TABLE II–2.—*Average gross margins of District of Columbia retailers on best-selling items of appliances and furniture, 1966*

Merchandise items	Average percent gross margin of:			
	Low-income market retailers	General market retailers		
		Appliance stores [1]	Furniture stores [1]	Department stores
Television sets	46.4	23.7	28.4	25.2
Carpets	50.0	----------	37.5	33.2
Refrigerators	50.6	24.5	24.9	34.6
Washing machines	51.0	25.0	32.3	35.3
Stereo-phonographs	52.7	33.0	36.5	34.7
Freezers	53.7	24.8	----------	33.7
Dryers	53.9	25.7	28.4	37.7
Furniture	56.2	----------	47.5	50.4
Vacuum cleaners	57.9	26.3	30.2	36.4
Radios	60.0	23.4	38.0	27.9
Sewing machines	66.3	49.0	----------	42.7

[1] Appliance and furniture stores have been classified on the basis of their principal merchandise lines. Furniture stores carry appliances as a substantial secondary merchandise line, and for this reason average gross margins of appliances sold by furniture stores are included in this table.

Source: FTC Survey.

For every merchandise item specified, low-income market retailers had the highest average gross margins reported—ranging from 66.3 percent on sewing machines, to 51 percent on washing machines, and down to 46.4 percent on television sets. General market appliance retailers had the lowest gross margins for 9 of the 11 merchandise items.

Certain merchandise items showed some consistency as to the market level of gross margins. Television sets were sold by all three types of general market retailers at gross margins below 29 percent, and this item sold at the lowest (46.4 percent) average gross margin reported by low-income market retailers. Furniture had relatively high gross margins for all types of retailers. There were some items, however, on which there was no consistency between types of retailers. For instance, radios were the second highest gross margin item (60 percent) for low-income market retailers and the lowest gross margin item (23.4 percent) for general market appliance retailers. Thus, a consumer who would have paid $250 for a radio from a low-income market retailer could have purchased a radio of comparable wholesale value at a general market appliance store for $130.

Table II–3 converts these gross margins to a comparative price basis. Since the cost of the merchandise has been arbitrarily held constant, the "retail prices" shown in table II–3 directly reflect absolute differences in average gross margins by the type of store and make

it possible to compare relative prices on each best-selling item when purchased from low-income market retailers or general market appliance, furniture or department store retailers. As shown in table II–3 and figure II–2, a television set that cost retailers $100 could have been bought for $131 in a general market appliance store, but would have been priced at retail to the low-income consumer at $187 by the average low-income market retailer. A washing machine with the same wholesale cost sold on the average in general market appliance stores for $133, in furniture stores for $148, in department stores for $155, and in low-income market stores for $204. The other merchandise items in table II–3 and figure II–2 provide similar comparisons. In each instance the "retail price" projected for the low-income market retailers is the highest because reported average gross margins were highest, but the amount of the differential varies by merchandise items.

TABLE II–3.—*Average "retail prices" of District of Columbia retailers on best-selling items of appliances and furniture in 1966, assuming wholesale cost of $100 for each item* [1]

Merchandise item	Average "retail price" assuming $100 wholesale cost of:			
	Low-income market retailers	General market retailers:		
		Appliance stores [2]	Furniture stores [2]	Department stores
Television set	$187	$131	$140	$134
Carpet	200		160	150
Refrigerator	202	132	133	153
Washing machine	204	133	148	155
Stereo-phonograph	211	149	157	153
Freezer	216	133		151
Dryer	217	135	138	160
Furniture	228		190	202
Vacuum cleaner	237	136	143	157
Radio	250	130	161	139
Sewing machine	297	196		174

[1] These are cash prices and do not reflect separately imposed finance charges.
[2] Appliance and furniture stores have been classified on the basis of their principal merchandise lines. Furniture stores carry appliances as a substantial secondary merchandise line, and for this reason average "retail prices" of appliances sold by furniture stores are included in this table.

Source: Calculated from average gross margins in table II–2, FTC Survey.

DIRECT PRICE COMPARISONS [4]

Hypothetical price comparisons are useful for purposes of generalization, but we need not depend on just such comparisons. The striking differences between the low-income market and the general market perhaps may best be illustrated by a comparison of prices for similar (in some cases identical) products. Table II–4 matches similar makes and models of appliances sold by low-income market retailers as well as general market retailers. Not all of the products shown are identical

[4] See also discussion ch. IV, pp. 46–49.

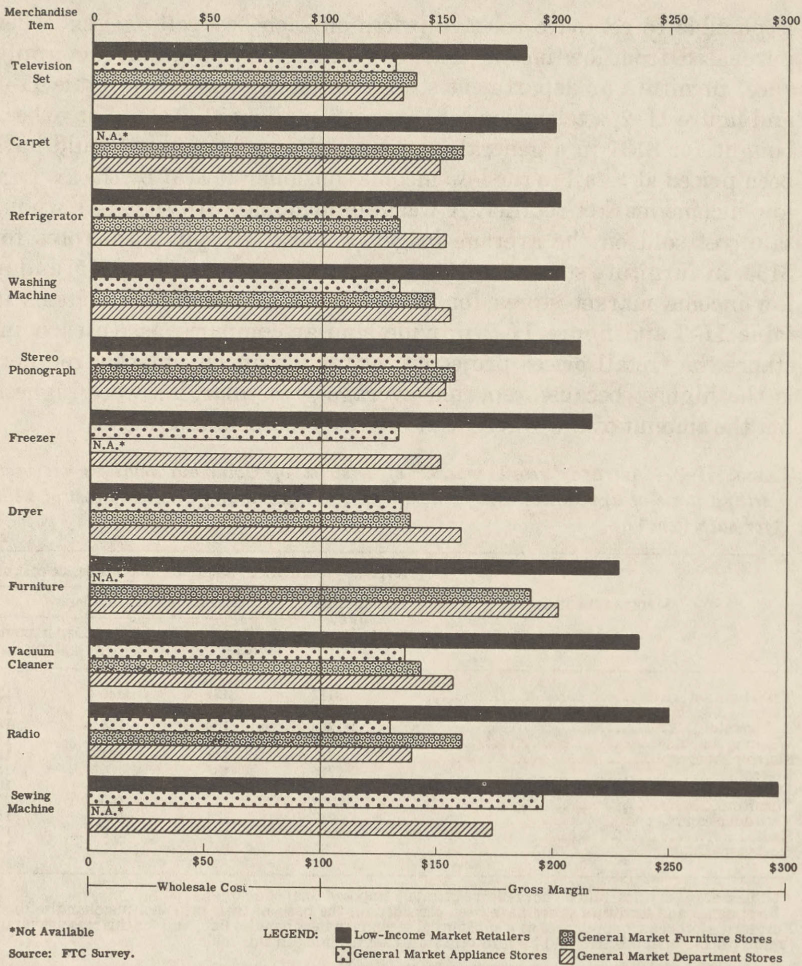


FIGURE II–2.—Average Retail Prices, Assuming $100 Wholesale Cost, of Comparable Merchandise Items Purchased From Low-Income Market and General Market Retailers.

models, but the similarity in wholesale costs suggests that the comparisons are valid. It should be pointed out that in a great many cases low-income market retailers simply did not carry the same lines of products as general market retailers. As a result, in most instances price comparisons could not be made. While table II–4 illustrates extreme differences, it should be remembered that the retailers themselves reported prices for their two *best-selling* models in each product category. These comparisons were not made by researchers poking

around in dusty corners of stores looking for grossly overpriced or mismarked items rarely sold. They are based on the retailers' own reported prices.

TABLE II–4.—*Comparison of reported wholesale and retail prices for best-selling products, low-income market and general market retailers*

Products	Wholesale cost		Retail price [1]	
	Low-income market retailer	General market retailer	Low-income market retailer	General market retailer
Television sets:				
Motorola portable	$109.00	$109.50	$219.95	$129.95
Philco portable	108.75	106.32	199.95	129.95
Olympic portable	[2] 90.00	85.00	249.95	129.95
Admiral portable	94.00	91.77	249.95	129.99
Radio: Emerson	16.50	16.74	39.95	25.00
Stereo: Zenith	32.99	32.99	99.95	36.99
Automatic washers:				
Norge	144.95	140.00	299.95	155.00
General Electric	183.50	160.40	339.95	219.95
Dryers:				
Norge	80.00	87.00	249.95	102.45
General Electric	206.90	205.00	369.95	237.76
Admiral	112.00	115.97	299.95	149.95
Vacuum cleaners:				
Hoover upright	39.95	39.95	79.95	59.95
Hoover canister	26.25	24.55	49.95	28.79

[1] Retail prices are cash and do not include separately imposed finance charges.
[2] Reported as approximate wholesale cost.

Source: FTC Survey.

The general conclusion that emerges from data contained in table II–4 is that the low-income market is a very expensive place to buy durable goods. On television sets (most of which are the popular 19-inch black and white portables) the general market retailer price is about $130. In the low-income market a customer can pay up to $250 for similar sets. Other comparisons include a dryer selling for $149.95 from a general market retailer and for $299.95 from a low-income market retailer; and a vacuum cleaner selling for $59.95 in the general market and $79.95 in the low-income market.

These comparisons indicate that the poor often do pay more when they buy durable goods from retailers catering to the low-income market. Why would anyone pay such high prices? The most probable reason is that the poor often cannot pay cash for such items and are attracted by the more liberal credit policies. General market retailers offering low prices have tighter credit policies. Low-income market retailers, on the other hand, feature "easy credit," but the customer pays a great deal for this privilege in the form of grossly higher prices. Table II–4 does not take into consideration the finance charges.[5] As

[5] Finance charges refer to any extra charges imposed by the retailer when merchandise is sold under installment contract. These charges do not necessarily reflect the true cost to the retailer of granting credit.

shown in chapter III, finance charges of low-income market retailers are generally somewhat higher than those of general market retailers.

Low-income market retailers often can recover the wholesale costs of merchandise when less than half the payments have been made. For example, suppose a customer buys the Motorola television listed in table II–4 from a low-income market retailer. He pays $219.95 plus finance charges. Assume the customer pays one-tenth or $22 down. This leaves a balance of $197.95. At a 13.5 percent add-on rate,[6] his finance charges would be $26.72 for 1 year. The total amount owed would be $197.95 + $26.72 or $224.67. If the customer makes 12 monthly payments, the amount of each payment would be $18.72.

In this circumstance, were the customer to default after making only 6 of his scheduled 12 payments, the low-income market retailer would already have recovered more than his wholesale cost. The six payments plus the original amount down equals $134.32—compared to the wholesale cost of $109 for the TV. Even if the low-income market retailer were to make no additional charges for financing, 6 months of payments would be more than sufficient to cover the original wholesale cost.[7]

A general market retailer would be in a much different position if a customer defaulted after making only half his payments. Assume that he sold the same TV set for $129.95, also with one-tenth, or $13 down. Using the 12 percent add-on rate,[8] the balance including finance charges would be $130.98. Monthly payments would be $10.92 for 12 months. If the customer defaulted after six payments, the general market retailer would have received only $78.52—compared to the wholesale cost of $109.50. Thus, he (or the finance company that held the contract) would suffer a substantial loss.

OPERATING EXPENSES AND NET PROFITS

Not all of the low-income market retailers covered in this survey maintained and submitted financial statements adequate for detailed analysis of expenses and net profit. Likewise, most of the small-volume general market retailers did not submit detailed financial statements. Of the 18 low-income market retailers, however, 10 submitted statements permitting some analysis of specific expense items. These 10 low-income market retailers were matched with 10 general market

[6] This add-on rate of 13.5 percent per year is equivalent to an effective annual rate of finance charges of 25 percent, calculated by the actuarial method (United States Rule).

[7] If no additional charges were made for financing, payments would be $16.50 per month. The six payments plus the original amount down equals $111—compared to the wholesale cost of $109.

[8] This add-on rate is equivalent to an effective annual finance charge of 22 percent.

retailers of comparable size and mix of merchandise who submitted statements permitting a comparative analysis of expenses and profits.

A comparison of expenses and profits as a percent of sales for the matched samples of 10 low-income market retailers and 10 general market retailers of furniture and appliances is shown in table II–5. The 10 low-income market retailers paid only 37.8 percent of their sales revenue for the merchandise they sold, while the cost of goods sold by the general market retailers was 64.5 percent of their sales revenue. As previously noted, low-income market retailers sell comparable merchandise at much higher retail prices, which accounts for this wide difference in cost of merchandise as a percentage of sales. The remaining gross margin for the 10 low-income market retailers was 62.2 percent and for the 10 general market retailers, 35.5 percent of sales. The gross margin to cover expenses and net profit was 26.7 percentage points higher for the low-income market retailers.

TABLE II–5.—*Comparison of expenses and profits as percent of sales for 10 low-income market retailers and 10 general market retailers of furniture and appliances in the District of Columbia, 1966*

Revenue component	10 low-income market retailers	10 general market retailers	Difference in margins and ratios	
			Percentage points	Percent of total
1966 net sales	$5,146,395	$5,405,221		
	Percent	*Percent*		
Operating ratios as percent of sales	100.0	100.0		
Cost of goods sold	37.8	64.5		
Gross profit margin	62.2	35.5	+26.7	100.0
Salary and commission expense [1]	28.2	17.8	+10.4	38.9
Advertising expense	2.1	3.9	−1.8	−6.7
Bad-debt losses [2]	6.7	.3	+6.4	24.0
Other expenses [3]	21.3	11.2	+10.1	37.8
Total expenses	58.3	33.2	+25.1	94.0
Net profit return on sales	3.9	2.3	+1.6	6.0

[1] Includes officer's salaries.
[2] Includes amounts held back by finance companies to cover bad-debt losses.
[3] Other expenses, including taxes, after deduction of other income.

Source: FTC Survey.

Practically all of the substantially higher gross margin of the 10 low-income market retailers was offset by higher expenses and did not result in markedly higher net profit as a percentage of sales. As shown in the right-hand columns of table II–5, of the total difference in gross margin of 26.7 percentage points, 94 percent of the difference (25.1 percentage points) was accounted for by higher expenses and 6 percent of the difference (1.6 percentage points) was accounted for by higher net profits on sales of low-income market retailers.

66-583 O - 71 - 12

More than one-third (38.9 percent) of the higher gross margin of the 10 low-income market retailers was spent on salary and commission expense. This expense item included all employees' compensation and officers' salaries and was 28.2 percent of sales for low-income market retailers, compared to 17.8 percent of sales for general market retailers. A major reason for low-income market retailers' higher personnel expense is believed to be their use of outside salesmen who canvass house-to-house or followup requests for home demonstrations and often make collections of installment payments at the home of the customer. Several of the 10 low-income market retailers pay their outside salesmen-collectors commissions on both sales and collections. Other reasons for higher personnel costs of low-income market retailers could be that they have more sales personnel and pay higher rates of compensation compared to small-volume general market retailers; and since they finance all or a larger proportion of their own installment contracts, they require more employees to keep records of small payments on installment credit accounts.

The proportion of sales revenue spent on advertising was higher for the 10 general market retailers than for the 10 low-income market retailers. This is consistent with the lack of extensive citywide advertising among the low-income market retailers in the total sample. The difference in advertising ratios was 1.8 percentage points. The 10 general market retailers spent 3.9 percent of their sales revenue on advertising, while the advertising by the 10 low-income market retailers amounted to 2.1 percent of their sales revenue.

Higher bad-debt losses of low-income market retailers accounted for about one-fourth (24 percent) of the total difference in gross margins. It was evident from analysis of financial statements, finance charges, and retail prices of low-income market retailers that they often charge higher prices anticipating that part of the increased revenue will cover higher collection expenses of their method of doing business. For the group of 10 low-income market retailers, bad-debt loss was 6.7 percent of sales, while comparable size general market retailers had bad-debt losses of less than 1 percent of sales.

Other expenses accounted for more than one-third (37.8 percent) of the higher gross margin of low-income market retailers. The remaining items of expense amounted to 21.3 percent of sales for the 10 low-income market retailers and to 11.2 percent of sales for the 10 general market retailers. Items of occupancy, delivery, and administrative expense were included among the other expenses, but a comparative analysis of these items could not be made because of inconsistency in expense account classifications and accounting methods. Nevertheless, there were certain items of expense that appeared more often and in larger proportionate amounts on the low-income market retailers'

statements, which account for part of their higher ratio of other expenses to sales. Since most of the low-income market retailers financed their own installment sales, the expense of processing this credit and interest on borrowed funds appeared as substantial items on their statements. Legal and professional fees were larger items of expense among low-income market retailers, reflecting cost of suits filed for the collection of delinquent accounts. Insurance costs were generally higher as a percentage of sales for these retailers.

Net profit as a percentage of sales for the 10 low-income market retailers was 3.9 percent, as compared to 2.3 percent for the 10 general market retailers. This difference of 1.6 percentage points in higher net profit for the low-income market retailers amounted to less than one-tenth (6 percent) of the total difference in gross margins. The business methods employed by low-income market retailers involved substantially higher costs which offset the higher prices charged, leaving no markedly higher net profit as a percentage of sales.[9]

Net profit after taxes as a percent of owner equity was also determined for these two groups of retailers. This average net profit was 12.7 percent for the 10 low-income market retailers and 8.1 percent for 9 out of the 10 general market retailers.[10] The variation in rates of return on owner's equity within each group of retailers was so great as not to warrant a conclusion that rates for one group were different from those of the other.

OVERALL NET PROFIT COMPARISONS

The previous section compared profits for a selected sample of 10 low-income market and 10 general market retailers. Less extensive data on income and profits were obtained from other retailers. Almost half the retailers surveyed submitted profit and loss statements and balance sheets. The companies included corporations, partnerships, and proprietorships. There was a considerable amount of variation in the accounting methods used and in individual firm returns. Nevertheless, it is possible to make some overall comparisons of net profits for each group of retailers. Low-income market retailers reported the highest net profit after taxes on net sales, 4.7 percent (table II–6). Among the

[9] Statistical tests were applied to analyze differences in profit and cost elements for the 10 low-income and 10 general market retailers compared in this section. These tests have limited validity because of the small number of observations and the nonrandom method by which the retailers were selected. They suggest, however, that the differences in profit rates indicated do not justify rejecting the hypothesis that profits are actually similar for both groups of retailers. Similar tests applied to gross margins and other elements of expense, notably salaries, bad debts, and other expenses, appear to justify accepting the hypothesis that expense experience for the two groups of retailers is different.

[10] One of the 10 small-volume general market retailers had to be omitted from the net return on owners' equity analysis because of incomplete financial statement information.

general market retailers, department stores were highest with 4.6 percent. Furniture and home-furnishings stores earned a net profit after taxes of 3.9 percent; and appliance, radio, and television retailers were last in order of profitability with 2.1 percent profit after taxes on sales.

TABLE II-6.—*Net profit after taxes as a percent of sales and rates of return after taxes for District of Columbia retailers surveyed, 1966*

Type of retailers	Net profit after taxes as a percent of sales	Percent rate of return after taxes on stockholders' equity
Low-income market retailers	4.7	10.1
Gemeral market retailers:		
Appliance, radio, and television stores	2.1	20.3
Furniture and home-furnishings stores	3.9	17.6
Department stores	4.6	13.0

Source: FTC Survey.

Low-income market retailers reported an average rate of return after taxes on net worth of 10.1 percent. Rates of return on net worth varied considerably among general market retailers. Appliance, radio, and television retailers reported the highest rate of return after taxes, 20.3 percent of net worth. Next in order were furniture and home-furnishings retailers with 17.6 percent, and department stores with 13 percent return on net worth.

Data on profits reported above are limited and to some extent inconclusive. It does not appear, however, that low-income market retailers made profits which were substantially higher on the average than general market retailers. The high prices charged by low-income market retailers must have been accompanied in many instances by substantially higher costs arising from their method of doing business. Some of these costs probably arose from greater losses on credit sales. To some extent, costs may have been higher because of smaller volume and generally more costly and less efficient store operation.

Chapter III

Characteristics of Installment Contract Arrangements

Sixty-five furniture, appliance, and department store retailers surveyed indicated significant use of installment contracts in financing customer purchases. In 1966, a total value of $45.3 million in contracts were entered into by this group, equivalent to 30 percent of their total sales. The average value per contract was $146. The average value for general market department stores was only $100, while for general market appliance and furniture stores it was $210 and $359, respectively. The average value of contracts for low-income market retailers was $140 (table III–1).

To understand better the current business practices with respect to the use of installment credit instruments, information was sought regarding contract assignment practices, rates of finance charges, and problems of default. Our findings on these subjects are summarized in this chapter.

INSTALLMENT CONTRACT ASSIGNMENT

As a matter of practice, much installment credit is supplied indirectly by finance companies or banks rather than by the retailers directly involved in making purchase-loan transactions. Retailers have arrangements with one or more finance companies or banks to which, after credit approval, the conditional sales contracts or notes are assigned or discounted. The assignment may be coordinated with the purchase and delivery of the merchandise, or it may be made after the sale but before the first payment is due. In rare cases assignment may be made later.

When a contract is assigned by the retailer, the customer's financial obligation is shifted to the "holder in due course" and, under the law, the customer's legal obligation for payment is not to the retailer but to

66-583 O - 71 - 13

a financial intermediary.[1] This is true regardless of any subsequent dispute that may arise between customer and retailer involving the quality of the product.

Of the $45.2 million in installment contracts reported for 1966 in the Commission's survey, $15.8 million or 35 percent was assigned to finance companies and banks (table III–2). Among all retailers reporting installment credit sales, department stores alone assigned no contracts. General market appliance and furniture stores were most dependent on assignment and together accounted for 91 percent of all reported assignments. For appliance stores almost all (98 percent) installment credit contracts were assigned; for furniture stores, 57 percent. Finance companies held virtually all of the appliance retailer assigned paper, but only one-third (36 percent) of the furniture retailer paper. Banks held the balance (64 percent) of assigned contracts involving purchases from furniture stores.

TABLE III–1.—*Average value of installment contracts of 65 District of Columbia retailers, 1966*

Type of retailers	All contracts	Assigned contracts	Unassigned contracts
All retailers	$146	$264	$117
Low-income market retailers	140	298	124
General market retailers	147	261	116
Appliance, radio, and TV	210	212	141
Furniture and home-furnishings	359	383	332
Department stores	100	------------	100

Source: FTC Survey.

TABLE III–2.—*Number and value of installment contracts assigned and unassigned by District of Columbia retailers, 1966*

Type of retailers	Number of companies	Net sales ($000)	Total installment contracts: Value ($000)	Total installment contracts: Value as percent of net sales	Contracts assigned: Value ($000)	Contracts assigned: Percent of total value of contracts	Contracts unassigned—held by retailers: Value ($000)	Contracts unassigned—held by retailers: Percent of total value of contracts
Total	65	$150,970	$45,251	30.0	$15,818	35.0	$29,433	65.0
Low-income market retailers	18	7,874	7,296	92.7	1,441	19.8	5,855	80.2
General market retailers	47	143,096	37,955	26.5	14,377	37.9	23,578	62.1
Appliance, radio, and television	22	25,089	8,466	33.7	8,323	98.3	143	1.7
Furniture and home-furnishings	22	26,643	10,608	39.8	6,054	57.1	4,554	42.9
Department stores	3	91,364	18,881	20.6	none	none	18,881	100.0

Source: FTC Survey.

[1] This is true when contracts are assigned *without* recourse. If contracts are assigned *with* recourse, they are returned to the retailer in case of default and he, rather than the assignee, bears the risk.

Despite the fact that more than 90 percent of sales by low-income market retailers was on an installment basis, this group assigned only 20 percent of their contracts. These typically were the largest contracts. Whereas the average value of unassigned contracts was $124 in 1966, the average for contracts assigned was $298 (table III–1).

In all, of the 65 retailers reporting sales on an installment contract basis, 49 assigned all or part of these contracts to finance companies or banks (table III–7). Twenty-one of 22 appliance retailers and 18 of 22 furniture retailers assigned contracts. Four low-income market retailers assigned all and six others assigned some of their installment contracts to finance companies. Only department stores assigned no contracts arising from installment sales.

Finance companies are most actively engaged in the purchase of installment contracts arising from retail sales transactions (table III–3). Seventy-five percent of the total value of contracts assigned was assigned to finance companies, principally by general market appliance stores and low-income market retailers. Banks supplied 25 percent of all installment contract assignment financing, principally for general market furniture retailers. Nearly all of this business was done by four banks. For other retailers, most contracts were assigned to finance companies, four of which supplied 77 percent of the funding. General market appliance stores assigned virtually all of their contracts. Four finance companies took 90 percent of this paper. The pattern of assignments by low-income market retailers (who assigned only one-fifth of their paper) was less concentrated, with the top four finance companies accounting for only 65 percent of reported assignments.

TABLE III–3.—*Distribution of total installment contracts assigned to finance companies and banks*

Contract assignment	Value ($000)	Percent of total	Number	Percent of total
Total of all assigned installment contracts	$15,818	100.0	59,934	100.0
Contracts assigned to finance companies	11,917	75.3	50,845	84.8
Contracts assigned to banks	3,901	24.7	9,089	15.2
Total contracts assigned to finance companies [1]	11,917	100.0	50,845	100.0
Leading 4 finance companies [1]	9,215	77.3	40,786	80.2
Total contracts assigned to banks [2]	3,901	100.0	9,089	100.0
Leading 4 banks [2]	3,782	96.9	8.860	97.5

[1] The total number of finance companies to which contracts were assigned by retailers surveyed was 21.
[2] The total number of banks to which contracts were assigned by retailers surveyed was 10.

Source: FTC Survey.

INSTALLMENT CONTRACTS UNASSIGNED

Of the $45.3 million in installment contracts reported for 1966 in the Commission's survey, $29.4 million or 65 percent was unassigned—held by the retailers themselves. The extent to which contracts were unassigned varied considerably by type of retailer. Department stores surveyed held all of their contracts; low-income market retailers held four-fifths (80 percent); and general market furniture stores held over two-fifths (43 percent) of the total value of their installment contracts. General market appliance retailers, however, held practically none (2 percent) of their installment paper (table III–2). In total, of 65 retailers reporting installment sales, 16 held all of their own contracts. They included 3 department stores, 8 of the 18 low-income market retailers, and only 5 of the 44 appliance and furniture stores.

FINANCE CHARGES ON INSTALLMENT CONTRACTS

With one exception, the stated finance charges were calculated on an "add-on" basis by both low-income and general market retailers. This exception was a low-income market retailer who made no separate finance charges in calculating payments due on installment contracts. All of its sales were on a time basis and the price for these goods on the average was three times the cost of goods sold. This markup was somewhat higher than the average for low-income market retailers as a group, who, as a matter of course, added to their selling price additional charges for installment credit.

Other retailers used "add-on" rate charts to determine customers' monthly payments. No account is taken of diminishing balances over the period and, consequently, the "add-on" is not a true or effective annual rate. Table III–4 indicates that the average add-on rate for contracts assigned to finance companies and banks was 11.7 percent of the initial balance, and the average add-on rate for unassigned contracts was 10.7 percent of the initial unpaid balance.[2]

The true or effective annual rate that consumers were paying on these installment contracts was approximately twice the add-on rate. This is because with each payment the amount borrowed was reduced, making the average balance borrowed about half the original unpaid balance. If it is assumed that equal payments are made at equal times (usually monthly) throughout the total period of the contract, the

[2] The new Maryland "Retail Credit Accounts Law," which went into effect June 1, 1967, establishes a maximum of $12 per $100 per annum that may be added to the principal balance on installment contracts that do not exceed $1,000. This is equivalent to a 22 percent effective annual rate of finance charge.

TABLE III-4.—*Finance charges on installment contracts assigned and unassigned by District of Columbia retailers, 1966*

Type of retailers	Assigned contracts		Finance charges on contracts assigned to finance companies and banks		Unassigned contracts		Finance charges on unassigned contracts	
	Value ($000)	Percent of total	Percent add-on	Effective annual rate (percent)	Value ($000)	Percent of total	Percent add-on	Effective annual rate (percent)
Total [1]	$15,818	100.0	[2] 11.7	[2] 21	[1] $27,174	100.0	[2] 10.7	[2] 20
Low-income market retailers [1]	1,441	9.1	13.4	25	[1] 3,596	13.2	[1] 12.5	[1] 23
General market retailers	14,377	90.9	[2] 11.5	[2] 21	23,578	86.8	[2] 10.4	[2] 19
Appliance, radio, and television retailers	8,323	52.6	12.9	24	143	.5	10.1	18
Furniture and home-furnishings retailers	6,054	38.3	9.8	18	4,554	16.8	9.2	16
Department stores	none	none			18,881	69.5	10.7	20

[1] One low-income market retailer has been omitted, because it made no separate charges for installment financing.
[2] Weighted averages.

Source: FTC Survey.

true or effective annual rate can be calculated by a relatively simple formula called the constant ratio method.[3] This formula was applied and checked with actuarial rate tables to obtain the equivalent effective annual rates shown in table III-4 and subsequent figure and tables.[4] For installment contracts entered into by the retailers surveyed, in 1966 the average effective annual rate of finance charges was 21 percent on those assigned to finance companies and banks and 20 percent on those held by the retailers themselves.

---

[3] The constant ratio method assumes that the allocation of the charge is proportional to the number of periodic payments. The formula is as follows:

$$i=\frac{2mD}{P\ (n-1)}$$

In this formula i is the effective rate of finance charge per annum; m is the number of payments per year; P is the amount borrowed on principal; D is the financing charge in dollars; and n is the number of payments to discharge the debt. Neifeld, M. R., *Neifeld's Guide to Installment Computations,* Mack Publishing Co., Easton, Pa., 1951, ch. XI, pp. 193–195; and Board of Governors of the Federal Reserve System, *Consumer Installment Credit,* vol. I, pt. I (1957), p. 54.

[4] The United States Rule prescribes the actuarial method of computation for finance charges. The use of the actuarial method is proposed in the pending "Truth in Lending" bill and the pending installment sales bill for the District of Columbia. The principle of the United States Rule is that "interest is to be computed on the amount due to the time of the first payment, then the payment applied, if it exceeds the interest up to that time, and a computation made of the interest on the balance to the time of the second payment, and so on." Neifeld, *op. cit.,* p. 317. The effective annual rates shown in Table III-4 and subsequent figure and tables were calculated from "add-on" rates by the constant ratio method and then checked against actuarial tables. Installment contracts for appliances and furniture seldom exceed 24 months. For this time period (under 36 months), the constant ratio method formula provides substantially the same results in effective annual rates as the actuarial method (United States Rule). Effective annual rates in table III-4 and subsequent figure and tables have been rounded to the nearest whole number.

Table III–5 shows the distribution of all installment contracts by effective annual rate of finance charge for those retailers reporting charges on installment credit sales. The bulk of installment credit sales by low-income market retailers were at effective annual financing rates of 22 percent or more. Nearly half (47.9 percent) was at rates ranging from 26 to 33 percent.

Contracts arising from sales by general market retailers rarely entailed such high charges. Three-fourths were at finance rates of 20 percent or less. This figure is heavily weighted by department store installment credit sales. Less than one percent of general market retailer contracts had finance charges exceeding 24 percent.

Among general market retailers, only appliance stores had rates consistently exceeding 20 percent. These retailers assigned most of their contracts at effective annual rates of 23 to 24 percent. Thus, virtually all of the contracts involving rates exceeding 24 percent were written by low-income market retailers.

Figure III–1 summarizes the distribution of effective annual rates of finance charges on installment contracts of low-income market and general market retailers for all installment contracts, as well as for assigned and unassigned contracts.

TABLE III–5.—*Installment contracts distributed by effective annual rate of finance charge (assigned and unassigned)* [1]

Effective annual rate of finance charge	Value of contracts at each effective annual rate for:					
	Low-income market retailers		General market retailers		All retailers combined	
	Value of contracts ($000)	Percent of total	Value of contracts ($000)	Percent of total	Value of contracts ($000)	Percent of total
33 percent	$360	7.1			$360	0.8
29 percent	283	5.6	$99	0.3	382	.9
27 percent	1,087	21.6			1,087	2.5
26 percent	685	13.6			685	1.6
24 percent			3,541	9.3	3,541	8.2
23 percent			4,576	12.1	4,576	10.6
22 percent	871	17.3	1,173	3.1	2,044	4.8
20 percent			16,872	44.4	16,872	39.2
18 percent	1,550	30.8	173	.5	1,723	4.0
17 percent			6,311	16.6	6,311	14.7
16 percent			77	.2	77	.2
15 percent	187	3.7	3,210	8.5	3,397	7.9
14 percent			460	1.2	460	1.1
13 percent			115	.3	115	.3
11 percent	14	.3	635	1.7	649	1.5
Rate not available			713	1.8	713	1.7
Total	5,037	100.0	37,955	100.0	42,992	100.0

[1] Includes all installment contracts for which seaprate finance charges were specified.

Source: FTC Survey.

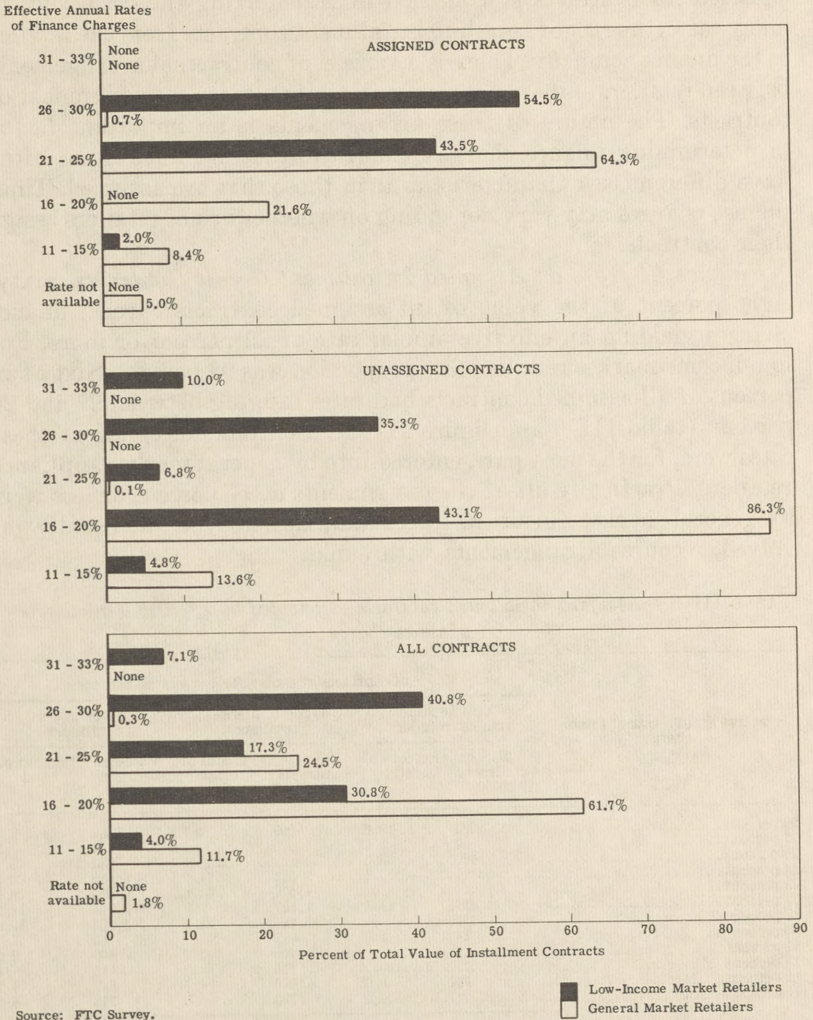


FIGURE III-1.—Distribution of Effective Annual Rates of Finance Charges on Installment Contracts of Low-Income and General Market Retailers, 1966.

CONTRACTUAL ARRANGEMENTS FOR ASSIGNMENT OF INSTALLMENT CREDIT

To better understand the factors determining finance charges, contracts were analyzed on the basis of whether they were assigned to finance companies and banks or held by the retailers themselves. As-

signment of contracts is a method of transferring the costs and, in many cases, the risk of handling installment contracts from the retailer to the finance company. There is a variety of contractual arrangements between retailers and finance companies or banks for the assignment of contracts. The nature of these arrangements is an important factor in determining finance charges. Contracts that are unassigned often have different risk characteristics than those that are assigned. Thus, finance charges may vary depending on whether or not retailers assign their contracts.

Finance Charges on Assigned Installment Credit Contracts. Sixty-eight percent of the value of all assigned contracts carried finance charges yielding an effective annual rate of 22 percent or more. For low-income market retailers this proportion was 98 percent. Sixty-two percent of all assigned contracts had rates ranging between 22 and 24 percent (table III–6 and figure III–1). Contracts assigned at these rates were, for the most part, entered into by general market appliance retailers. Practically all of the assignments at 17 percent or less were by general market furniture stores and, as noted below, usually involved, recourse arrangements with banks.

TABLE III–6.—*Assigned installment contracts distributed by effective annual rate of finance charge*

Effective annual rate of finance charge	Value of contracts at each effective annual rate for:					
	Low-income market retailers		General market retailers		All retailers combined	
	Value of contracts ($000)	Percent of total	Value of contracts ($000)	Percent of total	Value of contracts ($000)	Percent of total
29 percent	$283	19.6	$99	0.7	$382	2.4
27 percent	23	1.6			23	.2
26 percent	480	33.3			480	3.0
24 percent			3,535	24.6	3,535	22.3
23 percent			4,576	31.8	4,576	28.9
22 percent	627	43.5	1,137	7.9	1,764	11.2
17 percent			3,105	21.6	3,105	19.6
15 percent	14	1.0	2	(1)	16	.1
14 percent			460	3.2	460	2.9
13 percent			115	.8	115	.8
11 percent	14	1.0	635	4.4	649	4.1
Rate not available			713	5.0	713	4.5
Total	1,441	100.0	14,377	100.0	15,818	100.0

[1] Less than 0.1 percent.

Source: FTC Survey.

Recourse Arrangements on Assigned Contracts. Most commonly, finance companies, in accepting assignment of installment credit contracts from retailers, reimburse the retailer for an amount equivalent to the unpaid cash balance indicated on the contract. In the simplest type of transaction, the finance company's income from providing credit is equivalent to the stated financing charge and is designed to cover all costs of credit, collection, and risks of default.

In fact, however, there are many possible variations on this type of transaction. A number of these variations were uncovered in the course of our survey. The first and simplest relates to the question of recourse. Typically, contracts assigned to finance companies are on a nonrecourse basis. In such circumstances the finance company assumes all risks associated with default and is solely responsible for any proceedings to enforce satisfaction of the debt.

Assignment, however, may be on a recourse basis, in which case the retailer assigning the contract in effect guarantees it in the event of customer default. In terms of total value, almost all contracts on a recourse basis involved banks serving general market furniture retailers.[5]

More than 50 percent of total assignments [and 73 percent of assignments to finance companies] were at rates yielding effective annual finance charges of 23 to 24 percent (table III–6 and appendix table A). The highest yielding nonrecourse assignments to finance companies were by low-income market retailers. Fifty-five percent of such assignments yielded 26 to 29 percent. Assignments with the lowest finance charges (17 percent or less) involved, for the most part, banks who took paper on a recourse basis (appendix table A). The latter's activity, however, was limited almost entirely to contracts involving sales by general market furniture retailers.

Participation and Holdback Arrangements. In addition to recourse considerations, agreements between finance companies and retailers may specify participation or holdback fees. A participation arrangement, frequently referred to as a kickback, is a bonus given by a finance company to a retailer assigning a contract. This bonus involves some percentage return over and above the initial unpaid balance of the contract. It is the equivalent of the retailer and finance company splitting finance charges. Twenty-nine of the forty-nine retailers in our sample reporting installment contract assignments had a participation arrangement with one or more finance companies (table III–7). These returns to the retailer ranged between 0.5 and 5 percent of the amount of the unpaid cash balance.

Holdback arrangements may be viewed as the reverse of kickbacks. There were nine retailers who reported a holdback requirement by finance companies. This is a restrictive provision assessed upon retailers who are in a poor bargaining position and have generally poor-risk paper that they want to assign. Finance companies and banks in these cases are reluctant to take the contracts unless the retailer is willing to take less than the full amount of the initial unpaid cash

[5] There were instances, however, when finance companies took assigned installment contracts only on a recourse basis. These were usually on contracts assigned by low-income market retailers.

balance. In other words, the retailer must literally "pay" the finance company or bank to take the assignment. This is a payment over and above the finance charges paid by the customer originally signing the contract. Holdbacks, which ranged from 3 to 30 percent, were reported primarily by low-income market retailers. These payments are held in reserve by the financer until all contracts are liquidated. Losses are charged against this reserve and holdback payments are returned to the retailer only if the losses do not exceed the amount held back. Low-income market retailers were unable to assign a significant volume of installment contracts at less than 26 percent (effective annual rate) without some form of holdback arrangement. Other retailers assigning large quantities of paper, usually at 23 to 24 percent, for the most part, had no holdbacks charged against them.

TABLE III–7.—*Special provisions included in contractual arrangements between retailers and finance companies or banks*

Type of retailers	Number of retailers assigning contracts	Number of retailers reporting: Participation arrangements: Participation (kickback)	Participation arrangements: Range of participation	Participation arrangements: No participation	Holdback requirements: Holdback by financer	Holdback requirements: Range of holdbacks
			(percent)			(percent)
Low-income market retailers	10	4	1.2–2.0	6	5	5–30
General market retailers:						
Appliance, radio, and television retailers	21	17	1.0–4.0	4	1	3–5
Furniture and home-furnishing retailers	18	8	.5–5.0	10	3	3–5
Department stores	None					
Total	49	29	.5–5.0	20	9	3–30

Source: FTC Survey.

FINANCE CHARGES ON UNASSIGNED CONTRACTS

Sixty-five percent of reported installment credit was unassigned (table III–2). The volume of unassigned contracts on which finance charges were made ($27.2 million) was heavily weighted by department stores who accounted for $18.9 million or over two-thirds of the total (table III–4). Department stores were alone among retailers assigning no contracts. Installment sales amounted to 20 percent of their total sales.

Other unassigned installment credit was supplied by general market furniture stores and low-income market retailers. General market furniture retailers held $4.6 million in contracts, equal to 43 percent of their credit sales and about 17 percent of total sales. Low-income market retailers held unassigned contracts of $5.9 million, equivalent to 80 percent of all their credit sales and nearly the same percent of their total sales. For those low-income market retailers imposing separate finance charges on installment credit, the value of unassigned

contracts was $3.6 million, equal to 64 percent of this group's total sales, virtually all of which were on an installment credit basis.

Ninety-three percent of the total value of *unassigned* installment contracts carried finance charges yielding an effective annual rate of 20 percent or less (table III–8 and figure III–1). This was heavily affected by the relatively low rates on unassigned contracts financed by general market department stores and furniture stores.

Finance charges on unassigned contracts of department stores ranged from 17 to 20 percent. Our survey indicated that most contracts (89 percent) were at the 20 percent rate (appendix table B). Finance charges by general market furniture stores for the most part (98 percent) ranged between 15 and 17 percent.

Finance charges by low-income market retailers were more variable. Among this group of retailers one large company, which sold entirely on installment credit, made no finance charges on its unassigned installment contracts, preferring instead to price its merchandise to cover installment costs. Other low-income market retailers charged an average effective annual rate of 23 percent on unassigned installment contracts. The highest effective annual rates of finance charges made were 33 percent and 27 percent. Total contracts at these rates accounted for about 40 percent of the total value of contracts held by those low-income market retailers making finance charges. The other predominant effective annual rate was 18 percent and accounted for 43 percent of the total value of contracts (table III–8 and figure III–1).

TABLE III–8.—*Unassigned installment contracts distributed by effective annual rate of finance charge* [1]

Effective annual rate of finance charge	Value of contracts at each effective annual rate for:					
	Low-income market retailers		General market retailers		All retailers combined	
	Value of contracts ($000)	Percent of total	Value of contracts ($000)	Percent of total	Value of contracts ($000)	Percent of total
33 percent	$360	10.0			$360	1.3
27 percent	1,064	29.6			1,064	3.9
26 percent	205	5.7			205	.8
24 percent			$6	(2)	6	(2)
22 percent	244	6.8	36	0.1	280	1.0
20 percent			16,872	71.6	16,872	62.1
18 percent	1,550	43.1	173	.7	1,723	6.3
17 percent			3,206	13.6	3,206	11.8
16 percent			77	.4	77	.3
15 percent	173	4.8	3,208	13.6	3,381	12.5
Total	3,596	100.0	23,578	100.0	27,174	100.0

[1] Includes all installment contracts for which separate finance charges were specified.
[2] Less than 0.1 percent.

Source: FTC Survey.

JUDGMENTS, GARNISHMENTS, AND REPOSSESSIONS BY RETAILERS

When an account under an installment sales contract becomes delinquent, the holder of that contract can proceed to collect by several legal means. A judgment can be obtained that will permit repossession of the merchandise or garnishment of the wages of the purchaser.[6] If the retailer has assigned the contract *without* recourse, the finance company or bank takes the risk of loss and proceeds to exercise its legal rights. Consequently, retailers are not involved in the collection process if they assign without recourse. If a delinquent account comes back to the retailer who has assigned *with* recourse or if an account originally financed by the retailer himself becomes delinquent, the retailer does not become involved in legal processes if he turns the account over to a collection agency. For these reasons, many retailers in this survey had no records on this volume of judgments, garnishments, or repossessions.

Eleven low-income market retailers obtained 2,690 judgments in 1966. Their legal actions resulted in 1,568 garnishments and 306 repossessions (table III–9). In contrast, general market retailers reported very few judgments. The 8 furniture and home-furnishings stores providing such data reported only 70 judgments for the year 1966. Low-income market retailers obtained almost that number of judgments in an average *week*. One large department store, whose 1966 sales far exceeded the total for the entire low-income market group, reported only 29 judgments.

TABLE III–9.—*Judgments, garnishments, and repossessions on delinquent installment contracts reported by District of Columbia retailers, 1966*

Type of retailers	Number of retailers reporting	Total judgments	Judgments resulting in:	
			Garnishments	Repossessions
Low-income market retailers	11	2,690	1,568	306
General market retailers:				
Appliance, radio, and television retailers	3			3
Furniture and home-furnishings retailers	8	70	26	13
Department stores	1	29	9	
Total	23	2,789	1,603	322

Source: FTC Survey.

To gain additional perspective on the extent to which the courts are being used as a collection agency, the number of suits filed in 1966

[6] Repossession can be accomplished without court action by the holder of the installment conditional sales contract. In such instances, if the proceeds of a public sale of the item does not cover the unpaid balance plus fees, the holder can still sue on the contract *and* get a judgment for the deficiency.

by the surveyed retailers in their own names was determined from the records of the District of Columbia Court of General Sessions. These suits included actions for collection of 30-day, revolving credit, and installment contract accounts. They did *not* include suits filed by collection agencies as assignees of retailers' accounts. During 1966, the 18 low-income market retailers in this study filed 3,030 suits, the equivalent of one suit for every $2,599 of their net sales. Among the general market retailers in the sample, 22 appliance stores filed 53 suits; 22 furniture stores, 207; and 3 department stores, 356 (table III–10). All together, there were only 616 suits filed by the 47 general market retailers, which averaged one suit for every $232,299 of their net sales.

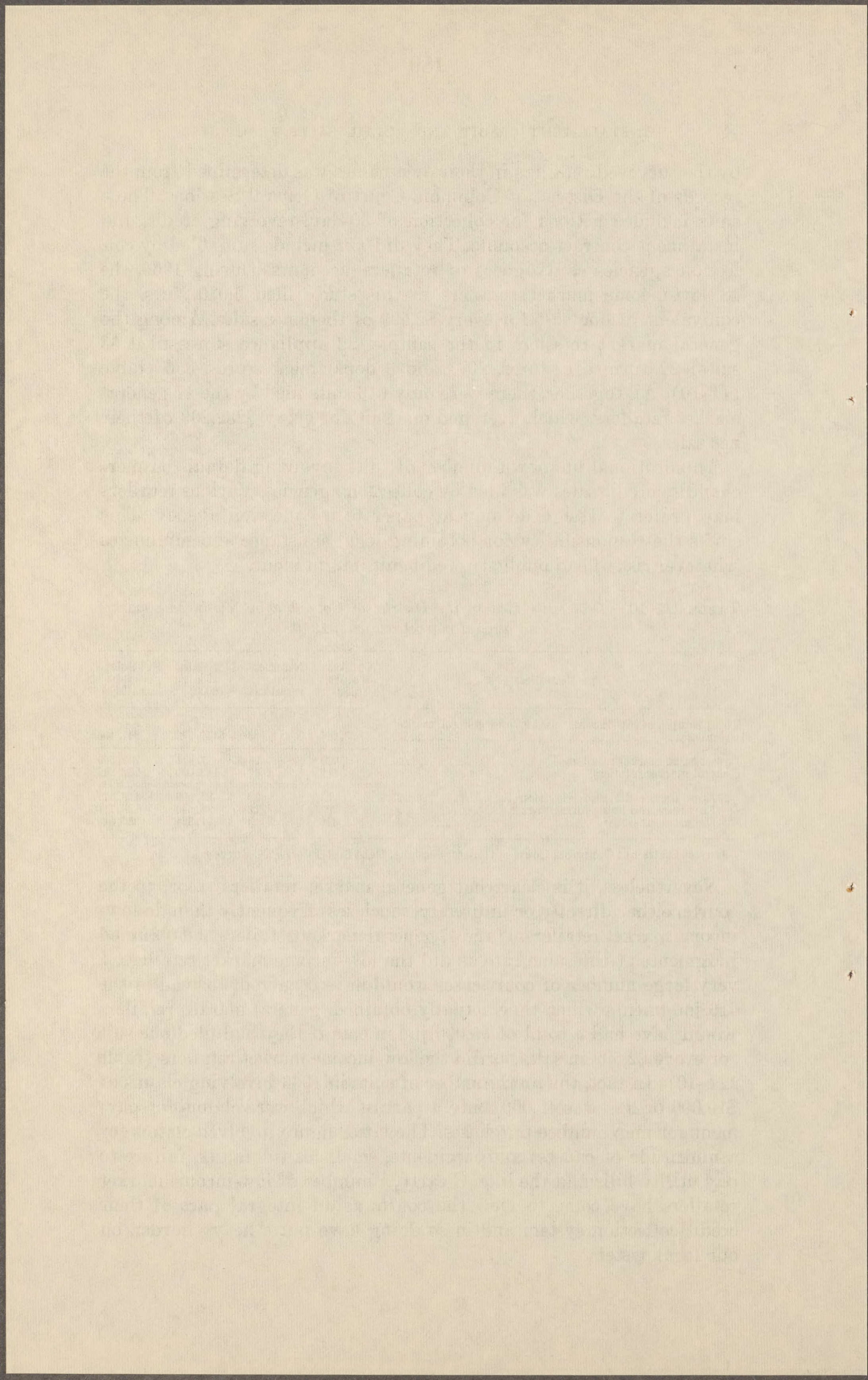
An additional unknown number of suits involving default on merchandise credit sales was filed by collection agencies. Various retailers may prefer to assign delinquent paper to a collection agency. This shifts the responsibility for obtaining legal assistance and minimizes whatever risk of bad publicity credit suits might incur.

TABLE III–10.—*Debt suits filed in the District of Columbia by low-income market and general market retailers, 1966*

Type of retailers	Number of suits filed	Number of retailers	Net Sales 1966 ($000)	Net Sales per debt suit
Total sample of low-income market and general market retailers	3,646	65	$150,970	$41,406
Low-income market retailers	3,030	18	7,874	2,599
General market retailers:	616	47	143,096	232,299
Appliance, radio, and television	53	22	25,089	473,377
Furniture and home-furnishings	207	22	26,643	128,710
Department stores	356	3	91,364	256,640

Source: District of Columbia Court of General Sessions, Debt Suit Files; FTC Survey.

Nevertheless, it is clear that general market retailers resort to the courts, either directly or indirectly, much less frequently than do low-income market retailers. If the 47 general market retailers had obtained judgments at the same rate as did the low-income market retailers, a very large number of court cases would have occurred. Instead of the 616 judgments which they actually obtained, general market retailers would have had a total of 55,000 judgments if they had filed one suit for every $2,599 in sales, as did the low-income market retailers (table III–10). In fact, the total number of suits in 1966 involving claims of $10,000 or less was 49,000, only a part of which were claims for payment for merchandise purchases. The latter figure involved claims for a multitude of causes: auto accidents, small loan defaults, failure to pay utility bills and the like. Clearly, a number of low-income market retailers have come to view the courts as an integral part of their credit-collection system and in so doing have put a heavy burden on our legal system.



Chapter IV

Customer Profile of Low-Income Market Retailers: A Case Study

This chapter provides a profile of the familial, age, income, occupational and certain other characteristics of the customers of a low-income market retailer of furniture and appliances. It also explores the credit alternatives available to these customers, the products they most frequently purchase, and the length of their installment contracts. The analysis is based on a sample of 486 installment contracts and credit applications on sales made by one low-income market retailer and provides an insight into the unique nature of the low-income consumer market.

CUSTOMER CHARACTERISTICS

Marital Status and Sex. Almost two-thirds (63 percent) of the customers in the sample were married couples (table IV–1). Whenever possible the salesman endeavored to have both the wife and husband sign the contracts. In many cases, however, only the signature of the wife was obtained.

Most of the remaining customers were women (29 percent). Half of these women were divorced or separated.

Age Distribution of Customers. Since in most instances data were given for both husband and wife, the age distribution was made for the combined sample of men and women. Most of the sample of customers were between 20 and 40 years old (table IV–2), the largest group being between 20 and 29. Few sales were made to customers under 20 or over 50 years of age.

TABLE IV–1.—*Marital status and sex of customers*

Status and sex	Number of customers	Percent of total
Married	306	63.0
Single	68	14.0
Men	27	
Women	41	
Divorced	8	1.6
Men	1	
Women	7	
Separated	74	15.2
Men	11	
Women	63	
Widowed	30	6.2
Men	1	
Women	29	
Total	486	100.0
Married couples	306	63.0
Individual men	40	8.2
Individual women	140	28.8
Total	486	100.0

Source: Bureau of Economics, Federal Trade Commission.

TABLE IV–2.—*Comparison of age (over 20) distribution of customers with 1960 U.S. Census age (over 20) distribution for all District of Columbia residents*

Age distribution	Percent of number reporting in [1]—	
	Sample [2] of customers	U.S. Census [3]
20 to 29 years	40.1	22.1
30 to 39 years	31.6	21.0
40 to 49 years	17.4	19.7
50 to 59 years	7.7	17.3
60 years and over	3.2	19.9
Total	100.0	100.0

[1] Does not include 13 customers (1.7 percent) under 20 years of age.
[2] The sample included a total number of 748 individuals over 20 years of age.
[3] Percentages derived from *U.S. Census of Population, 1960*, vol. I, Characteristics of the Population, pt. 10, District of Columbia, p. 19.

Source: Bureau of Economics, Federal Trade Commission.

The sample included almost twice the proportion of individuals in the 20 to 29 years age group as was reported in the 1960 Census. The proportion in the 30 to 39 years age group was also considerably larger than that group shown in the Census age distribution. This is not surprising since installment purchases of furniture and household items are most likely to be made by individuals during their active years of family formation.

Size and Type of Families. The number and type of families or households with two or more persons represented by the customers in

the sample are shown in table IV–3. Leaving out unrelated individuals, there was a total of 420 families. Two characteristics of family organization can be noted. First, there was a comparatively large number of families with female heads-of-household (24 percent). Almost one-fourth of the customers were single, separated, or widowed women who were primarily responsible for family support.

Second, customers' families were larger than average when compared to all District of Columbia families. The average size of these families was 4.3 persons, as compared with a Census average of 3.5 persons per family. Only 19 percent of the sample was in the two-person family category, as compared with 41 percent of the Census family population in this size group. The larger families were much more prevalent in the sample of customers. Almost half (43.6 percent) of customers' families were of five persons or more, while less than one-fourth (22.9 percent) of the Census family population was in this size group.

TABLE IV–3.—*Size and type of customers' families*

Distribution of customers by type of family

Type of family	Number	Percent of total families
Husband-wife	306	72.9
Other male head	15	3.5
Female head	99	23.6
Total families	420	100.0
Unrelated individuals	66	
Total customers	486	

Size distribution of customers' families compared with 1960 U.S. Census size distribution of D.C. families

Size of family	Number of customer families	Percent of total families	
		Customers	U.S. Census [1]
2 persons	78	18.6	40.6
3 persons	74	17.6	21.3
4 persons	85	20.2	15.2
5 persons	78	18.6	9.5
6 persons	40	9.5	5.7
7 or more	65	15.5	7.7
Total	420	100.0	100.0
Average per family	[2] 4.3		

[1] Percentages derived from *U.S. Census of Population, 1960*. Vol. I, Characteristics of the Population, pt. 10, District of Columbia, p. 92.
[2] Census average per family is 3.5 persons.

Source: Bureau of Economics, Federal Trade Commission.

66-583 O - 71 - 14

Types of Residence. The types of residence of customers are shown in table IV–4. Most of the sample of customers (93 percent of the total) rented an apartment, house, or room. Only 6.4 percent of the customers in this sample either owned or were buying their own residences. For 1960 the Bureau of the Census indicates that 61 percent of all housing units were owner-occupied. Among nonwhites in the population the figure was 38 percent.[1]

Income of Customers. The distribution of customers by monthly income and annual income categories is shown in table IV–5. The data used to prepare these tabulations included total family income earnings of husband and wife when both were employed and income from sources other than employment.

The median monthly family income of the sample of customers—with about one-half below and about one-half above this level—was $348 in 1966. This is very low when it is recognized that the average size of family for this sample was 4.3 persons. More than one-third (38.4 percent) of the total customers received income of less than $300 per month; about one-quarter (24 percent) received from $300 to $399 per month; and one-quarter (27 percent) received from $400 to $599 per month. Only about one-tenth of the customers received a monthly income of $600 and over during the year 1966. The Bureau of Labor Statistics recently estimated that the maintenance of a moderate standard of living for four in Washington, D.C., requires a monthly income of $730.[2]

TABLE IV–4.—*Types of residence of customers*

Type of residence	Number	Percent of total
Rental:		
Rent apartment [1]	318	65.4
Rent house	131	27.0
Rent room	3	.6
Total rentals	452	93.0
Ownership:		
Buying house	27	5.6
Owns house	3	.6
Buying apartment	1	.2
Total ownerships	31	6.4
Live with relatives	3	.6
Total sample	486	100.0

[1] Includes 1 customer who was a custodian and received the use of an apartment as part of his income.

Source: Bureau of Economics, Federal Trade Commission.

[1] *Statistical Abstract of the United States,* 1965, p. 763, table 1107.

[2] This estimate is for a family of four living in a rented residence during 1966 in the Washington, D.C., metropolitan area. Phillis Groom, "A New City Worker's Family Budget," *Monthly Labor Review,* Bureau of Labor Statistics, November 1967, p. 3.

TABLE IV-5.—*Income of customers*

Monthly family income of customers, 1966	Number	Percent of total
Less than $100	5	1.0
$100 to $199	52	10.7
$200 to $299	130	26.7
$300 to $399	117	24.1
$400 to $499	66	13.6
$500 to $599	65	13.4
$600 to $699	22	4.5
$700 to $799	17	3.5
$800 and over	12	2.5
Total	486	100.0
Median monthly income—$348		

Annual family income of customers compared with estimates of 1966 income of District of Columbia households

Annual income	Annual family income of customers [1]		Estimated percent distribution of 1966 income of all households in the District of Columbia [2]
	Number reporting	Percent of total	
Less than $3,000	129	26.5	16.6
$3,000 to $4,999	193	39.7	15.6
$5,000 to $7,999	129	26.5	27.8
$8,000 to $9,999	26	5.4	12.2
$10,000 and over	9	1.9	27.8
Total	486	100.0	100.0

Median annual income: Customers—$4,176. Estimate for D.C.—$6,920.

[1] Income for customers, reported in the spring of 1966, was projected to annual by multiplying monthly family income by 12. Income was reported *before* taxes or deductions.
[2] Estimates published by *Sales Management Magazine*, June 10, 1967, "Survey of Buying Power," p. D 47. These estimates are of spendable or disposable income. They are not strictly comparable with before tax income reported by customers.

Source: Bureau of Economics, Federal Trade Commission.

A comparison of annual family income categories of the sample of customers with estimates of the distribution of 1966 annual income of all households in the District of Columbia is given at the bottom of table IV-5. The estimates for 1966 are actually based on disposable income, which should be less than the gross income reported by the sample of customers. The median annual income of sample customers was $4,176, as compared with the median estimate of $6,920 for all families in the District of Columbia. Almost two-thirds of the customer sample (66 percent) had an annual income of less than $5,000, while for the District of Columbia as a whole only about one-third (32 percent) of the households had incomes below $5,000. The moderate income bracket of $5,000 to $7,999 accounted for about one-fourth of the income of customers in the sample and estimated income of all families in the District of Columbia. There is a very sharp contrast for the income bracket over $8,000; the sample of customers included only 7 percent in this relatively affluent group, while it was estimated

that 40 percent of all families in the District of Columbia had incomes of over $8,000 in 1966. These comparisons clearly indicate that the customers in the sample were individuals with below average income.

Sources of Income. The principal source of income of customers was wages from occupations. The data in table IV–6 show a breakdown of wages and other sources of income for married couples, individual men, and individual women in the sample of customers.

Out of a total of 306 married couples, in 119 cases (or 38.9 percent) both husband and wife were employed. Practically all of the individual men customers were employed. For the individual women in the sample, however, out of a total of 140, there were 37 (or 26 percent) who were not employed.

Social Security and pensions were a source of income for very few married couples and individual men customers. However, there was a considerable number (30) of individual women, primarily widows, who received income from these sources.

There were 31 welfare recipients in the sample, accounting for 6.3 percent of the total sample of 486 separate customers. Most of these (68 percent) were individual women, usually separated, who were receiving welfare payments for themselves and for support of children.

Other sources of income were alimony payments and income received from relatives. There were a number of women (15) who were wholly or partially dependent on these income sources.

Frequently low-income married couples, as well as individual men and women, received income from more than one source. Part-time employment often supplemented Social Security and pension income, support payments, and alimony.

Occupations of Customers. A detailed tabulation of occupations of customers (including working wives) is shown in table IV–7. As is suggested by the preceding data on incomes, the predominant number of customers were in low-paid occupations. The largest occupational group was Service Workers (including food service, janitors, and hospital workers), accounting for more than one-quarter (28 percent) of total employment. The next largest category was Operatives (including truck and other drivers and laundry and dry cleaning workers), accounting for 18 percent of total employment. Laborers represented 15 percent and Household or Domestic Workers 15 percent of the employment of customers. These four occupational groups together accounted for three-quarters (75 percent) of all employment reported.

Clerical Workers (both men and women) accounted for 12 percent of the sample; and Craftsmen (mostly construction) accounted for an additional 10 percent. The other occupational groups—Sales Workers, Professional Workers, Managers, and Members of the Armed Forces—

taken together accounted for only 4 percent of the total employment of customers.

TABLE IV-6.—*Sources of income of customers*

Source of income	Number
Married couples:	
Both husband and wife employed	119
Husband only working	169
Wife only working	8
Neither employed	10
Total married couples	306
Social Security and pensions	14
Welfare recipients	9
Individual men:	
Employed	37
Not employed	3
Total individual men	40
Social Security and pensions	2
Welfare recipients	1
Individual women:	
Employed	103
Not employed	37
Total individual women	140
Social Security and pensions	30
Welfare recipients	21
Alimony recipients	10
Income from relatives	5
Income received from occupations:	
Both husband and wife (119 times 2)	238
Others employed	317
Total gainfully employed	555
Income from other sources:	
Social Security and pensions	46
Welfare recipients	31
Alimony recipients	10
Income from relatives	5
Total other sources	92

Source: Bureau of Economics, Federal Trade Commission.

A comparison of civilian occupations of customers with the 1960 U.S. Census percent distribution of occupations among District of Columbia residents is given in table IV-8. Manual occupations of customers in five categories (Service Workers, Operatives, Laborers, Domestic Workers, and Craftsmen) accounted for 86 percent of total employment in the sample, while these same categories accounted for only 44 percent of the civilian employment in 1960 of all residents of the District of Columbia. Clerical Workers made up only 12 percent of the civilian employment of customers, while more than twice that proportion (29 percent) were employed in clerical work among the total population. Only 2 percent of customers in the sample were employed as Professional and Technical Workers or Managers and Proprietors, while 23 percent of total civilian employment in the District of Columbia were in these two occupational categories.

TABLE IV-7.—*Occupations of customers*

[Based on total of 555 individual men and women (including wives) reporting employment]

Type of occupation	Number	Percent of total
Service workers, except household	153	27.6
Food service workers	61	11.0
Janitors, porters, and charwomen	40	7.2
Hospital service workers	30	5.4
Other service workers	22	4.0
Operatives and kindred workers	99	17.8
Truck, taxi, and other drivers	54	9.7
Laundry and dry cleaning workers	19	3.4
Other operatives	26	4.7
Laborers, except farm and mine	84	15.1
Household or domestic workers	82	14.8
Clerical and kindred workers	64	11.5
Mail carriers and clerks	12	2.2
Other men clerical workers	23	4.1
Other women clerical workers	29	5.2
Craftsmen, foremen, and kindred workers	53	9.6
Construction craftsmen	37	6.7
Foremen	5	.9
Other skilled workers	11	2.0
Sales workers	6	1.1
Professional and technical workers	5	.9
Managers and proprietors	3	.5
Members of the Armed Forces	6	1.1
Total	555	100.0

Source: Bureau of Economics, Federal Trade Commission.

TABLE IV-8.—*Civilian occupations of customers compared with 1960 U.S. Census percent distribution of civilian occupations in the District of Columbia*

Occupation groups	Civilian occupations of customers [1]		1960 U.S. Census of District of Columbia [2]
	Number	Percent of total	Percent distribution of civilian occupations
Service workers, except household	153	27.9	15.1
Operatives and kindred workers	99	18.0	9.7
Laborers, except farm and mine	84	15.3	5.5
Household or domestic workers	82	14.9	5.8
Clerical and kindred workers	64	11.7	28.5
Craftsmen, foremen, and kindred workers	53	9.7	7.9
Sales workers	6	1.1	4.7
Professional and technical workers	5	.9	16.1
Managers and proprietors	3	.5	6.6
Farmers and farm laborers			.1
Total	549	100.0	100.0

[1] Members of Armed Forces omitted. Consequently, total and percentages are different from preceding table.

[2] Percentages derived from *U.S. Census of Population, 1960*, vol. I, Characteristics of the Population pt. 10, District of Columbia, p. 38. The civilian occupational distribution is for combined male and female employed persons.

Source: Bureau of Economics, Federal Trade Commission.

CREDIT AVAILABILITY

The family, occupation, and income characteristics outlined in the preceding pages are central considerations in the granting of credit

to any prospective customer. As a group, the customers included in the sample would be judged marginal risks by most prospective credit grantors. In fact, a review of credit references noted in the 486 contracts subjected to detailed analysis revealed that 70 percent indicated either no credit references or credit references from low-income market retailers only (table IV–9). For those with monthly incomes of less than $300, the figure was 78 percent. Except for limited purchases, customers in this group for the most part would be considered unqualified to receive credit from general market retailers.

Access to alternative credit sources increases with higher income, even for the group included in the study sample. Only 22 percent of individuals with income below $300 per month had established credit at retail and financial establishments other than low-income market retailers; on the other hand, 43 percent of those with income exceeding $500 per month had such credit. For those with incomes in the $300 to $500 bracket, the figure was 31 percent (table IV–9).

TABLE IV–9.—*Credit references of customers*[1] *(classified by income groups of customers)*

Type of credit reference	Monthly income groups of customers						Total number of customers	Percent of total
	Less than $300	Percent of group total	$300 to $499	Percent of group total	$500 and over	Percent of group total		
No credit references submitted	99	53.0	91	49.7	44	37.9	234	48.1
Credit obtained only from other low-income market retailers	46	24.6	36	19.7	22	19.0	104	21.4
Subtotal	145	77.6	127	69.4	66	56.9	338	69.5
Credit obtained from other types of retailers and financial institutions	42	22.4	56	30.6	50	43.1	148	30.5
Total	187	100.0	183	100.0	116	100.0	486	100.0

[1] Credit reference data obtained from credit applications submitted by customers to one low-income market retailer.

Source: Bureau of Economics, Federal Trade Commission.

Somewhat surprising, however, is the high proportion of customers with income above average for the sample who had established credit only with low-income market retailers. Though some may still have failed to qualify for credit elsewhere due to heavy indebtedness, numerous dependents, or uncertain job status, others surely could have qualified as acceptable credit risks of general market retailers. Apparently, certain customers continued to buy at high-price, high-margin stores because of inadequate knowledge concerning alternative buying opportunities. Still others bought from such stores because of

personal relationships maintained by the retailer. Personal selling is an important part of the marketing effort of these high-price retailers. Continuing contact with customers is maintained through the use of outside salesmen or as a result of frequent visits by customers to make installment payments. Upon each visit the customer may be subjected to additional sales persuasion.[3]

CHARACTERISTICS OF PURCHASES AND INSTALLMENT CONTRACTS

From the sample of 486 contracts, it was possible to determine the size of purchases, kind of merchandise purchased, and length of contracts. Additional tabulations were made to indicate the purchases and payment schedules of welfare recipients and customers with the lowest monthly incomes.

Size of Purchase. The total amount of purchases represented by the sample of 486 contracts was $100,613, or an average purchase of $207. The contracts were for varied amounts, from less than $50 to $800 and over (table IV–10).

More than half of the purchases (53.7 percent) amounted to less than $100. Purchases of $100 to $299 accounted for 15 percent of the total contracts. One-fifth (20.8 percent) of the contracts were for $300 to $499. Only 10.5 percent of the total number of purchases made were for $500 or more.

TABLE IV–10.—*Size of purchases*

Value of purchase	Number of purchases	Percent of total
Less than $50	43	8.8
$50 to $99	218	44.9
$100 to $199	34	7.0
$200 to $299	39	8.0
$300 to $399	60	12.4
$400 to $499	41	8.4
$500 to $599	20	4.1
$600 to $699	14	2.9
$700 to $799	9	1.9
$800 and over	8	1.6
Total	486	100.0
Average size of purchase [1]		$207.02

[1] Computation of average size of purchase based on total of 486 purchases and $100,613 total sales.

Source: Bureau of Economics, Federal Trade Commission.

[3] These and other factors are discusssed in: David Caplovitz, *The Poor Pay More,* Free Press of Glencoe, 1963, a case study of low-income market retailers in New York City.

Length of Installment Contracts. Credit payment schedules were designed to fit the customers' income schedules. Typically, contracts for less than $100 were arranged with weekly payments over a period of a year. Other contracts required biweekly payments. The data in table IV–11 are expressed in months, although frequently payment periods were weekly or biweekly.

Installment contracts for 6 months or less made up only 18 percent of the total contracts (table IV–11). Payments for 7 through 11 months accounted for 21 percent of the total. The largest number of contracts (28 percent) were for 12 months. Large purchases of furniture or household appliances were generally made under contracts extending beyond a year. About one-fifth of the contracts (21 percent) were for 13 through 17 months; and the remainder (12 percent) were contracts extending from 18 through 22 months. There were no contracts in the sample for a single merchandise purchase that exceeded 22 months.

With regard to the maximum length of contract, it should be pointed out that this case study sample may not be representative of low-income market retailers generally. Commission records indicate that other low-income market retailers frequently extend their installment contracts on purchases of appliances and furniture to 24, 30, and 36 months.

TABLE IV–11.—*Length of installment contracts*

Length of contract	Number of contracts	Percent of total
6 months or less	87	17.9
7 to 11 months	102	21.0
12 months	138	28.4
13 to 17 months	103	21.2
18 to 22 months	56	11.5
Total	486	100.0

Source: Bureau of Economics, Federal Trade Commission.

Merchandise Purchased.—Principal items and lines of merchandise purchased by the sample of 486 customers are shown in table IV–12. Purchases of furniture items accounted for 27.8 percent of the total number of 486 merchandise purchases by customers in the sample. This was exceeded slightly by the combination of household utensil merchandise lines (cookware, chinaware, and silverware), which together accounted for 29 percent of total purchases. Home entertainment lines of merchandise (including television sets, stereo-phonographs, and radios) made up 21 percent of total items purchased. These three categories of merchandise together accounted for more than three-quar-

ters (78 percent) of the total number of purchases by customers in the sample.

TABLE IV–12.—*Principal items and lines of merchandise purchased*

Merchandise items	Number of purchases	Percent of total
Furniture	135	27.8
Cookware	116	23.9
Television sets	60	12.3
Stereo-phonographs	27	5.6
Linens	23	4.7
Chinaware	21	4.3
Fans	21	4.3
Radios	17	3.5
Watches and clocks	14	2.9
Washing machines	11	2.3
Refrigerators	7	1.4
Other merchandise items	34	7.0
Total	486	100.0
Merchandise lines		
Household utensils	139	28.6
Furniture	135	27.8
Home entertainment	104	21.4
Home furnishings	29	6.0
Small appliances	29	6.0
Major appliances	23	4.7
Jewelry	19	3.9
Other merchandise	9	1.6
Total	486	100.0

Source: Bureau of Economics, Federal Trade Commission.

Other merchandise purchased included a variety of items in the homefurnishings, appliance, and jewelry merchandise lines. Linens, curtains, and slipcovers accounted for 6 percent of total purchases; and fans, irons, and other small appliances, for another 6 percent. Major appliances, including washing machines and refrigerators, represented only 5 percent of total number of purchases. Jewelry merchandise, including watches and rings, made up 4 percent of the total; and other types of merchandise accounted for the remainder of 2 percent.

On the basis of value of merchandise, rather than number of purchases, furniture was by far the most important merchandise line. Second in importance was the home entertainment line, including television and stereo-phonograph sets. Although the most typical purchase was of merchandise valued at less than $100, the mean average of all purchases was raised to $207 by large-value purchases of furniture and home entertainment merchandise lines.

EXAMPLES OF INDIVIDUAL PURCHASES

There were 38 examples of relatively large purchases, of over $300 in value, by customers reporting monthly income of less than $300. These substantial purchases of the lowest income group are summarized in table IV–13. Almost half of these customers (18 out of 38)

had a prior balance which was unpaid at the time the substantial additional purchase was made. Payments and length of contract in these instances were based upon the new combined balance.

Customers, in making such purchases, assumed very burdensome financial obligations. For instance, the second example in table IV–13 shows that a family of four purchased a stereo-phonograph for $463, agreeing to pay $32 for 15 months, when their monthly income was only $184. Another example, eleventh in table IV–13, shows that a woman with three persons to support bought furniture for $1,339, agreeing to pay $66 for 21 months, when her monthly income was only $288.

Home entertainment items most frequently appeared among large purchases by low-income members of the sample. Of the 38 examples listed in table IV–13, 21 involved the purchase of television or stereo sets. The prices paid for these items were, without exception, extraordinarily high. The price range of televisions was between $309 and $566. Among the television sets purchased, only one was a color model and it sold at $566. The black and white model price range was between $309 and $412. For stereos the price range was $340 to $505.

A review of television prices reported by general market retailers revealed that in no instance was any high-volume black and white television sold for more than $180. Most popular models were priced between $100 and $150. Although color models were available at $600 and more, several of the most popular models sold for between $250 and $300.

The price range on stereo sets was highly variable. Portables typically were priced under $100. Cabinet models ranged up to $600. Among the most popular models sold by general market retailers, three-quarters were priced to sell at less than $200. In only two instances (out of 50) was the most popular model priced at more than $400. For the seven purchases of stereos by customers with incomes below $300, the median price was $412 (table IV–13). *Consumer Reports* in a recent study recommended as a best buy for home stereo entertainment a model priced at less than $200.[4]

In table IV–13, one refrigerator and one washer purchase is indicated. The refrigerator sold for $360.[5] No popular model refrigerator sold by general market retailers was priced so high. Most sold for between $200 and $250. A number were available at less than $200.

The one washing machine purchase indicated in table IV–13 involved a $412 transaction. In no instance did general market retailers report sales of popular model washers at prices exceeding $250; 21 of 36 examples of popular models sold for less than $200 and five for less than $150.

[4] *Consumer Reports*, Buying Guide Issue, December 1967, p. 293.
[5] This was a standard single-door model electric refrigerator.

TABLE IV–13.—*Substantial purchases by low-income customers* [1]

Customer	Number of persons in household	Item purchased	Cost	Prior balance	New balance	Monthly income	Payment per month [2]	Length of contract (months) [2]
Female	1	Stereo-phonograph	$505		$505	$240	$26	20
Man and wife	4	do	463		463	184	32	15
Do	2	Furniture	506		506	262	30	17
Female	1	do	689		689	220	38	19
Do	3	TV	371	$47	418	248	24	18
Do	8	Furniture	309		309	180	18	18
Man and wife	5	do	410		410	218	24	18
Female	2	TV	309		309	220	18	18
Do	4	Stereo-phonograph	381	165	546	136	30	19
Do	9	TV	309	428	737	194	40	19
Do	3	Furniture	1,339		1,339	288	66	21
Man and wife	4	TV	309		309	218	16	20
Female	4	Stereo-phonograph	391		391	206	24	17
Male	4	do	412		412	260	23	18
Do	1	TV	566		566	280	32	18
Female	2	Furniture	319	714	1,033	200	60	18
Man and wife	2	do	792		792	270	40	20
Do	2	do	372		372	240	22	17
Male	3	TV	309		309	210	21	15
Female	1	Furniture	412		412	280	24	18
Do	4	TV	309	15	324	216	18	18
Man and wife	4	Furniture	370		370	296	22	17
Do	6	TV	360	218	578	240	32	19
Female	1	Furniture	463		463	268	25	19
Man and wife	4	TV	309	208	517	286	32	17
Do	2	Furniture	463	100	563	200	32	18
Female	5	do	515		515	238	28	19
Do	3	Stereo-phonograph	340	28	368	252	20	19
Do	3	Refrigerator	360	15	375	240	18	21
Man and wife	6	TV	402	20	422	188	24	18
Do	3	TV	360	180	540	200	30	18
Do	5	Stereo-phonograph	412	188	600	200	35	18
Female	5	Washer	412	318	730	245	40	19
Man and wife	2	TV	412	40	452	225	24	19
Female	2	Furniture	721	25	746	200	40	19
Man and wife	4	TV	309	80	389	290	20	20
Female	1	TV	309		309	280	24	13
Man and wife	8	Furniture	412	249	661	237	36	19

[1] All purchases of over $300 by customers having monthly income of less than $300 in the total sample of 486 customers.

[2] Payments and length of contract were all converted to a monthly basis. Many of the actual contracts specified weekly or biweekly payments. Consequently, when converted the number of payments times the monthly amount of payment, in most instances, did not exactly equal the amount of the original unpaid balance. After conversion and for some that were already on a monthly basis, the last monthly payment to fully satisfy the balance was usually less than preceding monthly payments.

Source: Bureau of Economics, Federal Trade Commission.

There was a total of 31 welfare recipients in the sample of customers; details concerning their purchases are given in table IV–14. Most of the purchases made by customers on welfare were in modest amounts of less than $100. The payments on these small purchases were arranged on a weekly or monthly basis, so that with some effort on the part of these customers it would seem possible for them to have made payments out of their low monthly welfare income. There are a number of examples of relatively large purchases, however, by the welfare recipients listed in table IV–14.

Six purchases by individuals on welfare involved television or stereo sets. The five televisions sold ranged between $206 and $402 (table IV–14). The $402 set was purchased by a family of six with a reported monthly income of $188. This family agreed to installment payments

of $24 a month. After such a payment the monthly income per person for this family was $27.

TABLE IV-14.—*Welfare recipients—items purchased, monthly income, and payments*

Customer [1]	Number of persons in household	Item purchased	Price	Monthly income	Payments
Female [1]	5	Cookware	$51.45	$228	$4 a month.
Do	4	do	51.45	300	$1 a week.
Do	4	Linen	51.45	228	Do.
Do	6	Fan	51.45	141	$4 a month.
Do	9	TV	308.95	194	$40 a month.
Man and wife	2	Cookware	51.45	208	$4 a month.
Do	4	Radio	51.45	150	$1 a week.
Do	6	Fan and iron	97.90	187	$10 a month.
Female	3	Cookware	51.45	103	$4 a month.
Do	4	China	51.45	160	Do.
Do	7	Cookware	51.45	276	$1 a week.
Do	4	Furniture	94.56	299	$10 a month.
Do	5	Cookware	51.45	260	$4 a month.
Do	7	do	51.45	279	Do.
Man and wife	6	TV	360.45	240	$32 a month.
Female	3	Stereo-phonograph	339.85	252	$20 a month.
Do	3	Cookware	51.45	164	$4 a month.
Do	3	Furniture	154.45	185	$12 a month.
Man and wife	10	TV	205.95	183	$11 a month.
Female	6	Appliance	25.70	275	$4 a month.
Do	6	Furniture	41.15	312	Do.
Male	1	do	41.15	100	Do.
Female	3	Slipcovers	53.46	252	$5 a week.
Do	1	Furniture	79.95	120	$2 a week.
Do	6	China	51.45	175	$4 a week.
Man and wife	8	Furniture	411.90	237	$36 a month.
Female	1	Cookware	51.45	130	$5 a week.
Do	3	do	51.45	168	$1 a week.
Man and wife	6	TV	257.45	256	$15 a month.
Do	6	TV	401.65	188	$24 a month.
Do	5	Cookware	51.45	300	$1 a week.

[1] Of the 21 female heads of household that were customers and welfare recipients, 14 indicated they were separated, 4 reported they were single, 2 were widowed, and 1 was divorced.

Source: Bureau of Economics, Federal Trade Commission.

The preceding analysis of the customers and of their purchases from one low-income market retailer has revealed some unique characteristics of consumers in the low-income market. The average customer of this retailer had a family of 5 which he was endeavoring to support on an income of $348 per month. This average income is far below the estimate of $730 per month which the Bureau of Labor Statistics recently estimated as the minimum needed to maintain a moderate standard of living for a family of only 4 in Washington, D.C. Yet, these customers made furniture and appliance purchases averaging over $200 on installment credit contracts. They paid substantially higher prices than they would have paid general market retailers for comparable merchandise, placing an additional strain on their meager incomes. The examples of relatively large purchases (over $300) made by customers in the lowest income group (under $300 a month) indicate that consumers in the low-income market are influenced by very strong motivations to buy furniture and appliances and that they are willing and able, in most instances, to make small payments over a period of time to satisfy their needs and desires.

Appendix

Page

Resolution Directing the Investigation of Retail Sales and Credit Practices in the District of Columbia Area 51
Appendix Table A 52
Appendix Table B 52

Resolution Directing the Investigation of Retail Sales and Credit Practices in the District of Columbia Area

Whereas, the Federal Trade Commission, by virtue of subsections (a) and (b) of section 6 of the Federal Trade Commission Act, has the authority to investigate the business and practices of any corporation engaged in interstate commerce and its relation to other corporations, individuals and partnerships, and to require corporations engaged in such commerce to file written special reports with the Commission in such form as the Commission may prescribe, as to its business practices and relation to other corporations, partnerships and individuals; and

Whereas the sale of merchandise through installment credit constitutes an important means of distributing goods in the national economy and the District of Columbia, the purchase of such goods is of major importance to lower income groups, as well as other consumers; and abuses of retail credit and deceptive practices in the advertising and sale of such goods under credit arrangements may be of serious consequence; and

Whereas it appears to the Federal Trade Commission that it is in the public interest for it to conduct an investigation of retail credit practices connected with the sale of goods in the District of Columbia for the purpose of aiding it in the enforcement and administration of the statutes committed to it for enforcement;

Now, therefore, it is hereby resolved that the Federal Trade Commission, in the exercise of the powers vested in it by law, and pursuant to its published procedures and rules of practice (16 CFR, sec. 1.1, et seq.), and with the aid of any and all compulsory processes available to it, including the use of subsection (b) of section 6 orders to file special reports, forthwith proceed, through its Bureau of Economics, to investigate and collect information for the reasons and purposes stated herein from such businesses as may be designated by the Commission regarding their organization, business, conduct, practices, management, and their relation to other corporations, partnerships and individuals.

By direction of the Commission.

Joseph W. Shea,
Secretary.

Dated July 25, 1966.

Appendix Table A.—*Value of installment contracts assigned to finance companies and banks by District of Columbia retailers, distributed by effective annual rate of finance charge*

Effective annual rate of finance charge	Value of contracts at each effective annual rate assigned to:			
	Finance companies		Banks [1]	
	Value of contracts ($000)	Percent of total	Value of contracts ($000)	Percent of total
29 percent	$381	3.2		
27 percent	23	.2		
26 percent	480	4.1		
24 percent	4,162	34.9		
23 percent	4,575	38.4		
22 percent	1,111	9.3	$27	0.7
17 percent	206	1.7	2,900	74.3
15 percent			17	.4
14 percent	266	2.2	194	5.0
13 percent			115	2.9
11 percent			650	16.7
Rates not available	711	6.0		
Total	11,915	100.0	[1] 3,903	100.0

[1] Practically all (99.2 percent) of the total value of contract assignments to banks was by general market furniture retailers.

Source: FTC Survey.

Appendix Table B.—*Value of unassigned installment contracts of District of Columbia general market retailers, distributed by effective annual rate of finance charge*

Effective annual rate of finance charge	Value of unassigned contracts at each effective annual rate for:							
	Appliance retailers		Furniture retailers		Department stores		Combination of all general market retailers	
	Value of contracts ($000)	Percent of total	Value of contracts ($000)	Percent of total	Value of contracts ($000)	Percent of total	Value of contracts ($000)	Percent of total
24 percent	$6	4.2					$6	(1)
22 percent			$36	0.8			36	0.1
20 percent					$16,872	89.4	16,872	71.6
18 percent	137	95.8	36	.8			173	.7
17 percent			3,206	70.4			3,206	13.6
16 percent			77	1.7			77	.4
15 percent			1,199	26.3	2,009	10.6	3,208	13.6
Total	143	100.0	4,554	100.0	18,881	100.0	23,578	100.0

[1] Less than 0.1 percent.

Source: FTC Survey.

○