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TRUTH IN LENDING SIMPLIFICATION AND REFORM ACT

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HEARING

BEFORE THE

COMMITTEE ON

BANKING, HOUSING, AND URBAN AFFAIRS

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

S. 108

TO AMEND THE TRUTH IN LENDING ACT TO FACILITATE
COMPLIANCE BY SIMPLIFYING THE REQUIREMENTS IMPOSED
UNDER THAT ACT, TO FACILITATE ADMINISTRATIVE EN-
FORCEMENT OF THAT ACT, AND FOR OTHER PURPOSES

S. 37

TO REPEAL A SECTION OF PUBLIC LAW 95-630

FEBRUARY 2, 1979

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



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MEMORANDUM

TO : Mr. Tolson
FROM : Mr. [illegible]
SUBJECT: [illegible]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

TRUTH IN LENDING SIMPLIFICATION AND REFORM ACT

FRIDAY, FEBRUARY 2, 1979

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

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

Present: Senators Proxmire, Stewart, Tsongas, and Garn.

OPENING STATEMENT OF CHAIRMAN PROXMIRE

The CHAIRMAN. The committee will come to order.

This morning we are holding hearings on S. 108, the Truth in Lending Simplification and Reform Act, which is identical to the bill which this committee reported last year and which the Senate passed by voice vote.

After nearly a decade of industry opposition, the Congress passed the fundamental Truth in Lending Act in 1968 and it was passed by—I think there was only one dissenting vote and that was Tom McIntyre who was for the bill but was disturbed by the way it was handled. Its purpose was simple—to provide the consumer with a uniform standard enabling him to compare the cost of credit offered by a variety of creditors. This was essential, as creditors stated interest rates in countless inconsistent and confusing ways.

Now, 10 years after the act's enactment, there is abundant evidence that the act has been extremely successful. According to a recent Federal Reserve Board study, consumer awareness of closed end interest rates has soared from 14.5 percent in 1969—that was the year the Truth in Lending Act became law—to 54.6 percent in 1977. More than half are now aware of the interest rate and its meaning. There is an equally dramatic increase in consumer awareness for other types of credit as well. The annual percentage rate disclosure required by the act is now the national standard for assessing the true cost of credit.

Despite this success, I continue to believe that Truth in Lending simplification is necessary for several reasons. First, the consumer is not getting the clear, simple information he needs to shop for credit. The average disclosure statement is too long and too technical. Second, the Federal Reserve Board's regulations have become so complex and voluminous that many creditors, particularly small lenders, just can't keep pace with the steady flow of new interpretations and rulings. Finally, the regulatory agencies have not ade-

quately enforced the act over the past decade. For instance, millions of consumers who suffered interest overcharges were not given restitution even though the agencies had knowledge of these overcharges.

These deficiencies need to be corrected, and I believe the bill this committee worked so long and hard on last year is a great improvement. The consumer would receive a shorter, more usable disclosure statement. Creditors would have model forms issued by the Fed which would insure compliance. And the regulatory agencies would be required to order restitution where they discover overcharges.

This bill is not perfect, but given the complexity of the subject and the intense lobbying which surrounded it, I think it is a good compromise. I want to emphasize that the balanced nature of the bill must be maintained if the act is to remain effective and if this simplification effort is to succeed. I want to stress that because we were able to get the bill through the Senate last year and if we start to amend it substantially and modify it it's going to be extremely hard to make progress on it in 1979.

Aside from the Truth in Lending bill, I have asked all the witnesses to comment briefly on S. 37, legislation which I introduced to repeal section 1104(D) of the Right to Financial Privacy Act of 1978. This amendment would eliminate the requirement that banks and other institutions mail "a notice of rights" to all past and current customers. I believe this is an unnecessary and wasteful provision, and this amendment would save more than \$1 billion, as well as a great deal of harassment on the part of institutions.

Senator Garn.

OPENING STATEMENT OF SENATOR GARN

Senator GARN. Thank you, Mr. Chairman.

I certainly agree with what you have had to say about the need to simplify. I suppose where I would disagree would be the definition of simplification.

In October of 1976, at the end of the 94th Congress I introduced the first simplification bill knowing that it would die and not even be considered late in that session. I introduced that bill for a specific purpose—so that during the 3 months we were out of session we would have time for comment from consumer groups, from the industry people, from the Federal Reserve Board and others. There was significant comment during that period of time. In January of 1977, therefore, I introduced another bill that had a lot of changes incorporated into it and we spent the better part of 2 years—all of 1977 and most of 1978—and came up with a bill that did pass the Senate. However, despite the fact that it was a voice vote, I had my opposition to it recorded because I think we held a charade—we called it simplification. There were some improvements—obviously it was better than what we had—but not much.

I want to make it very clear that I agree there should be Truth in Lending legislation but I look back at those hearings and really think the Truth in Lending simplification has been self-defeating. We could go back through all the testimony about the caseload in many of the Federal courts being as high as 40 percent with Truth in Lending violations, hypertechnical, supercritical violations, and

ambulance chasing attorneys who have quit chasing ambulances and now follow Truth in Lending violations to pick up a quick buck. Does it serve consumers to give them some of the ridiculous disclosure forms that I have seen? The one I used to use in speeches was a Louisiana form about 36 inches long.

And I looked back to the sessions that we had and particularly the very difficult markups. Those of you who were here saw we Senators trying to figure out what we had passed or what this phrase or this clause meant and we saw our brilliant young staff members both from the majority and minority side who were spending full time on nothing but Truth in Lending trying to determine what we meant by this phrase or that blank or whatever. I observed in one of those markup sessions that if we, who were supposed to be experts including Senators and staff members and people from the Federal Reserve and consumer groups, could not agree on what we were passing or what we meant by what we were passing, then how in the world could the average unsophisticated buyer really understand the disclosure and know what he was getting in his loans and be able to shop for the best deal?

I still feel that's the case. I think we, as so-called experts—and I put that in quotes—will continue to argue and not really look at what the average consumer sees when he goes in to borrow money and we will fail to recognize that we are defeating the purpose of simplification.

So I would like to see much greater simplification than we are probably going to get. I would like to see the experts quit arguing. Maybe what we should do, Mr. Chairman, is bring just some ordinary consumers in here and get some testimony from them, because the experts, in my opinion, all of us—I'm not singling anybody out—have failed to do that. We are so expert and deal with words and phrases and legalese, but I think we are forgetting the consumer. I don't think they are very well served by all of this. So we will start again. I'm willing to spend another year if necessary, but I would hope that when we finish this process we can come up with something that really can have a label of simplification on it. The ultimate test is to bring some borrowers in here and have them look at what we intend to do and see if they understand it rather than passing judgment ourselves. I think that the ultimate goal of Truth in Lending is to have the average borrower be able to understand what he is doing when he goes to a financial institution. Certainly the forms we have today don't do that and I'm not convinced the ones we passed last year would accomplish that either, but I am hopeful that we can come up with a bill this year that I can support and, most importantly, that consumers will understand.

The CHAIRMAN. Thank you, Senator Garn.

We are very fortunate to have as our first witness this morning the Honorable Nancy Teeters, member of the Board of Governors of the Federal Reserve System, and Chairman of the Consumer Subcommittee of the Board, as I understand it.

The Federal Reserve, as we know, is the agency responsible for administering this act and we are happy that the Board has seen fit to assign it to one of the most capable members of the Board of Governors, Mrs. Teeters.

Mrs. Teeters, go right ahead.

STATEMENT OF NANCY H. TEETERS, MEMBER, BOARD OF GOVERNORS, FEDERAL RESERVE SYSTEM

Mrs. TEETERS. Thank you very much, Mr. Chairman.

It's a pleasure for me to appear before this committee on the important subject of truth-in-lending simplification. Since I have been appointed to chair the Board committee that has responsibility for consumer affairs, I look forward to working with you on this and other matters, and I anticipate a cooperative and constructive relationship.

I have brought with me a pamphlet recently published by the Board of Governors called a "Consumer Handbook to Credit Protection Laws." We initially printed a million copies of this book. We currently have more orders than we have remaining books, and we hope to reprint it in order to satisfy the demand for it. I did not write this book but I am quite proud of it as a way of explaining consumers' rights under the various laws.

I would also like to point out to the committee that I have been a Governor for exactly 4 months and 15 days, and I have been chairman of the Consumer Affairs Committee for an even shorter period of time. I assume as time passes my expertise will increase; however, I am learning very rapidly and I hope to be able to answer all your questions. If not, I have staff with me to help me if necessary.

[Complete statement follows:]

STATEMENT BY NANCY H. TEETERS, GOVERNOR, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

It is a pleasure for me to appear before this Committee on the important subject of Truth in Lending simplification. Since I have been appointed to chair the Board committee that has responsibility for Consumer Affairs, I look forward to working with you on this and other matters, and I anticipate a cooperative and constructive relationship.

Before addressing the principal topic of this hearing, I would like to draw attention to a problem that has arisen regarding the recently enacted Right to Financial Privacy Act, which is Title XI of the Financial Institutions Regulatory and Interest Rate Control Act of 1978. Section 1104(d) of that law requires all institutions subject to the Act to notify promptly all customers of their rights under the law, and directs the Board to prepare a model statement of customer rights. Although the Board does not have rule-writing authority under this law, we have been asked to provide guidance as to the meaning of this notification requirement.

The Act makes no distinction between active accounts and inactive and closed accounts. Thus, it appears that all accounts must receive the statement of customer rights. Not only would this notification requirement be extremely costly and burdensome but a typical family would receive several identical statements. A Senate bill, S. 37, introduced by Chairman Proxmire, would repeal § 1104(d). The Board's Consumer Advisory Council did not urge repeal of this section but adopted a resolution recommending that the statute be amended to require the statement to be delivered only at the time access is sought to a customer's records. The Board has endorsed that recommendation. In so doing, the Board was influenced by the fact that this amendment would get the information into the hands of customers at the time they need it.

Turning now to Truth in Lending simplification, the Board continues to believe in the soundness of the basic concepts of S. 2802, which was passed by the Senate last session. The Board supports enactment of S. 108 introduced by Chairman Proxmire. Common sense indicates that the Act and, I should add, the regulation can and should be improved and simplified so that they will be more effective and less burdensome.

The basic cost information most needed by consumers in shopping for credit should be emphasized, that is, the annual percentage rate, the total finance charge, and the payments schedule. Significant information that is less important for shop-

ping purposes should be summarized, but with the details left to the contract. Information which detracts from basic information should appear elsewhere with a reference to its availability.

The 1977 Consumer Credit Survey, which was funded by the FDIC, the Comptroller of the Currency, and the Board and conducted by the University of Michigan's Survey Research Center, reinforces the approach taken by S. 2802. The Survey asked consumers what credit terms they would want to know when financing a car. The overwhelming majority responded that the annual percentage rate was the most important. At another point in the interview, respondents were given a list of S. 2802's seven disclosures and were asked to rank their importance. The results show annual percentage rate, size of monthly payment, and finance charge to be far more important to consumers than other terms. In summary, the Board believes that last session's simplification bill provides an excellent basis for the continued consideration of Truth in Lending simplification.

In addition to considering Truth in Lending simplification during the last session, this Committee favorably reported a bill to regulate the consumer aspects of electronic fund transfers. Many of the Committee's recommendations were ultimately enacted as Title XX of the Financial Institutions Regulatory and Interest Rate Control Act of 1978. The portions of the act dealing with limitations on a consumer's liability for unauthorized transfers and for limitations on unsolicited distribution of EFT cards go into effect this month. The rest of the act goes into effect in May, 1980.

The Board has begun the process of writing regulations to implement the act. In the course of this process, we have become concerned that consumers will encounter unnecessary difficulty in understanding the rules provided by the new Act and confuse them with the provisions of the Truth in Lending and Fair Credit Billing Acts. The latter acts govern credit card and overdraft type credit.

Consumers will be particularly confused in cases where a single card will perform functions subject to the Fair Credit Billing Act (such as a credit purchase) and others subject to the Electronic Fund Transfer Act (for example, a cash withdrawal from an electronic terminal). In some cases, a single transaction may be subject to both acts; for example, a cash withdrawal from a terminal may debit the customer's checking account and access a line of credit at the same time. Even without these complex plans, consumers should not have to learn different rules for the pieces of plastic lying side-by-side in their wallets. In order to minimize consumer confusion, the Board recommends that the acts be amended to provide one set of rules governing both credit and electronic fund transfer transactions except where compelling policy considerations dictate different treatment. These recommendations are based upon the assumption that consumers will be best served by one set of rules which in time they will learn and use.

The Board's specific recommendations are:

1. The Truth in Lending Act imposes a \$50 limit on the liability of a credit card holder when a card is lost or stolen. The Electronic Fund Transfer Act has a \$50, \$500, and unlimited liability structure. The Board recommends that there be a single set of rules governing liability for unauthorized use. The \$50 limit of Truth in Lending is not sacred, and the concept of Electronic Fund Transfer that culpable consumers should carry a heavier responsibility has appeal. Nonetheless, the Truth in Lending approach is more protective of consumers and, we believe, will make electronic payment systems more acceptable to the public. Based upon the experience of credit card issuers which often do not impose even the \$50 liability for credit card loss, electronic fund transfer suppliers should not be materially harmed by this amendment.

2. Under the Fair Credit Billing Act, a consumer must *write* to the creditor in order to take advantage of the dispute resolution rules of the Act. The Electronic Fund Transfer Act permits *oral* notice to the institution, although written confirmation can be required of the consumer. An informal Board study indicates that less than 1% of consumers with questions about their bills follow the formal procedures of the Fair Credit Billing Act. Consumers usually telephone, and the lack of formality should not remove them from the protections of the Act. The Board recommends that the Fair Credit Billing Act be amended to incorporate the oral notice provision of the Electronic Fund Transfer Act.

3. When an error is alleged under the Electronic Fund Transfer Act, the institution must within 10 days either complete its investigation or provisionally recredit the consumer's account. When an error allegation is received under the Fair Credit Billing Act, the creditor must either resolve the dispute or send an acknowledgment within 30 days. The Board recommends that both acts be amended to provide parallel timing requirements as follows.

(a) Under the Electronic Fund Transfer Act, require notice within 10 days informing the consumer of the correction, or, if the institution believes no error occurred, a written explanation of the basis for that belief. In the alternative, require a written notice of the provisional recredit; and

(b) Under the Fair Credit Billing Act, require notice to the consumer of the correction of the error within 10 days, or a written explanation of why the creditor believes no error occurred. In the alternative, require a written notice that amounts in dispute need not be paid.

The current time limits for resolving disputes are 45 days under the Electronic Fund Transfer Act and two billing cycles but not more than 90 days under the Fair Credit Billing Act. The Board recommends that the Electronic Fund Transfer Act be amended to conform to the Fair Credit Billing Act so that both laws would require resolution within 90 calendar days. Lengthening the Electronic Fund Transfer Act limit will not hurt consumers because their funds will have already been provisionally recredited.

4. The Board recommends that the annual notice of rights under the Electronic Fund Transfer Act and the semiannual notice of rights under the Fair Credit Billing Act be eliminated. In their stead, we recommend that periodic statements contain a summary notice disclosing the existence of the rights and informing persons how to obtain a complete explanation. Since it is normally information on periodic statements which triggers dispute, we believe that consumers are better served by a short notice at the time a dispute arises than they are by a lengthy explanation one or twice a year.

5. The Truth in Lending Act prohibits the unsolicited issuance of credit cards, while the Electronic Fund Transfer Act permits the unsolicited issuance of cards provided they are not validated. Because many institutions are offering cards with both credit and electronic fund transfer features, the Electronic Fund Transfer Act's more competitive approach may be frustrated by the Truth in Lending Act's absolute prohibition on unsolicited issuance. One solution is to conform the Truth in Lending Act to the Electronic Fund Transfer Act to permit the unsolicited issuance of unvalidated credit cards.

6. Both the Electronic Fund Transfer Act and the Fair Credit Billing Act provide for "error" resolution procedures. The acts define mere requests for clarification or documentation as "errors." The Board recommends that the error definitions be amended to limit the concept to cases in which the consumer suspects a mistake or discrepancy. Institutions should not be put to the expense of complying with the error resolution procedures each time a consumer calls for information for business, tax or other purposes. The Board already has the authority to define additional errors by regulation and, therefore, can prevent any loopholes from developing.

7. Finally, the staff has received a number of inquiries from consumers and creditors asking whether the Fair Credit Billing Act permits creditors to impose charges for providing documentation or investigating errors. In some cases, these charges appear to be quite substantial, and in others, they are open ended, for example, \$5 per hour for an investigation. The Board recommends that both the Fair Credit billing Act and the Electronic Fund Transfer Act be amended to prohibit the imposition of such charges. While Regulation Z prohibits these charges where a customer's allegation of error proves correct, we believe that permitting these charges at all serves to discourage customers from exercising their right to assert errors.

These seven recommendations and a few technical problems the Board's staff has discovered dealing with matters such as rule writing authority could be included in the present bill or in a separate bill. In either case, the Board believes it is important that the legal relationship between electronic fund transfers and the credit transactions be clarified and that the consumer be offered a rational, common-sense framework.

I appreciate the opportunity to appear. The Board commends this Committee for its tenacity in dealing with this difficult subject.

The CHAIRMAN. Thank you very much, Mrs. Teeters, for a very fine presentation. We very much appreciate it, particularly the way you have so clearly highlighted this with your charts. They are most helpful. We appreciate having once again the charts showing the difference in the forms and how much shorter and simpler and clearer the form would be if we can get this legislation enacted.

Here you have the proposal that in general you reconcile the differences so that we have the EFT Act and the Truth in Lending Act the same, as far as provisions are concerned?

Mrs. TEETERS. That's right.

The CHAIRMAN. How important is that? Of course, the EFT Act is relatively new, but I'm not aware of a great deal of controversy over the differences here. Is this simply a matter of making it a little easier for the Fed or would it be a real difference, in your judgment, for the lenders and borrowers?

Mrs. TEETERS. I think it would make a real difference for the lenders and borrowers. I think the reason we haven't heard a lot of complaints is that the EFT Act is so new—as a matter of fact, consumers don't even have rights under the statute yet. They don't have limits on their liability. Those limits don't go into effect for another week. As a result, the limits on liability for electronic transfers are essentially up to the bank at this point.

I think, once it is in effect and people begin to figure out that these differences exist, you're going to have a state of total confusion out there.

The CHAIRMAN. How long will that be?

Mrs. TEETERS. It depends on how fast EFT spreads. It took quite some time for credit cards really to spread. I would guess EFT won't become fully grown for another 5 or 6 years.

The CHAIRMAN. Let's quickly run through these one by one. You argue for the \$50 limit to be applied to both the EFT and Truth in Lending; is that correct?

Mrs. TEETERS. As I pointed out in the testimony, I don't think \$50 is sacred. There has to be some number, and it would be wise to have one common to both of them.

The CHAIRMAN. So you're proposing \$50 here?

Mrs. TEETERS. Here I'm proposing \$50 because as a consumer I carry 11 credit cards, and if I lost them all at once, I would have a rather sizable liability.

I think the provision that bothers me the most is the unlimited liability under EFT after 60 days.

The CHAIRMAN. Let's come to that in just a minute. Regarding the \$50 limit, are you aware of any concern or complaint on the part of lenders that that's too low a figure and that makes them liable on the part of credit?

Mrs. TEETERS. I haven't received any complaints. In many cases creditors don't even enforce the \$50 limit, you know. If you're very prompt in closing your account after you have lost your card they don't even take the \$50 liability that they are entitled to.

The CHAIRMAN. I see. All right. Then as far as the ultimate liability, you feel it's particularly important?

Mrs. TEETERS. Particularly for older people or retired people. If you haven't reported a loss of an EFT card within 60 days, then you have unlimited liability. Well, our older people are doing a lot of traveling. They may be on a 3-month trip, and they may not know that a card has been lost or stolen. Plus, I think that some unscrupulous person could just take advantage of elderly people in particular and wipe out their bank account.

The CHAIRMAN. Do you anticipate that would be very controversial?

Mrs. TEETERS. I'm very new at this. I don't know what the financial institutions are going to say. I think there is some advantage in making the cardholder more responsible for taking care of his or her cards.

The CHAIRMAN. At any rate, the second point, you would make oral notice rather than written notice of error which would, from the consumer's standpoint, make it more effective?

Mrs. TEETERS. Well, it's easier to do.

The CHAIRMAN. All you have to do is pick up a phone and make a call. You wouldn't have to write a letter.

Mrs. TEETERS. That's right.

The CHAIRMAN. And you wouldn't have to have the letter acknowledged; just the oral transmission?

Mrs. TEETERS. Just the oral transmission. Under the EFT law, financial institutions can require a written notice after the oral contact, but they don't have to. And, apparently, even under the existing law, almost all the notices are oral anyway.

The CHAIRMAN. Well, that would be a change in the law that we have had on the books now for 10 years and I anticipate there might be some concern about that change on the part of the lenders.

Mrs. TEETERS. Well, as I say, they would still have the right —

The CHAIRMAN. They are going to testify a little later.

Mrs. TEETERS. They would still have the right after the oral notification to ask that a letter be sent. That's the way it is in the EFT Act.

The CHAIRMAN. They can do that?

Mrs. TEETERS. Yes.

The CHAIRMAN. All right. Then, the third point is resolve error or acknowledge within 30 days. You would have the EFT which says within 10 days; is that right?

Mrs. TEETERS. Yes. At least acknowledge within 10 days that there's a dispute and recredit the disputed amount in the case of EFT.

The CHAIRMAN. Then you would also have the consumer not have to pay the disputed figure during that time?

Mrs. TEETERS. That's correct.

The CHAIRMAN. Then the final resolution you would go with the Truth in Lending Act; is that right; the longer period?

Mrs. TEETERS. I would go with the longer period. It takes quite a bit of time to settle some disputes. In many cases sales slips are microfilmed, and there's a certain amount of retrieval time to get those back and to reproduce them.

The CHAIRMAN. And the last point, you would permit the unsolicited issuance and go with the EFT?

Mrs. TEETERS. The Board's position is to permit unsolicited issuance. I must admit, personally, I have some problems with this. I think I'm going to buy a pair of scissors and hang them next to the mailbox.

The CHAIRMAN. All right. Then you have two others that you don't show on the chart. One is with respect to the error resolution and there you would reconcile that with the Fair Credit Billing Act—that's one of the reasons it doesn't show up in this chart—rather than the Truth in Lending, by simply limiting it to the

cases in which the consumer suspects a mistake or discrepancy, not so it's just convenient to make out his taxes or whatever other purpose.

Then you have a final point with respect to the Fair Credit Billing Act also.

Mrs. TEETERS. They shouldn't be charged for correcting errors.

The CHAIRMAN. OK. Now many of the creditors testifying today will call for total preemption of State laws in the truth-in-lending area, which also includes credit card practices.

What is the Board's position on that issue?

Mrs. TEETERS. As the proposed simplification bill was submitted by the Board last year, it had more preemption than is currently in the Senate proposal. We really have not addressed that particular problem. I would say probably that, as a personal position—and you realize I'm only one of five at this point—

The CHAIRMAN. Yes.

Mrs. TEETERS. It seems to me that if the States want to write more strict laws, in that case, the more strict provision of the State law would prevail. If the State laws are less strict than the Federal law, then the Federal law should prevail.

The CHAIRMAN. Now in its proposal to this committee, the Board recommended that civil liability be attached to nearly all the requirements of the act after those requirements are simplified. Many of the statements filed by creditors argued however, that civil liability should be reduced much further. One or two creditors argue that civil liabilities should attach only to the annual percentage rate and the finance charge, eliminating liability for the payment schedule, rescission, the amount financed, and the security interest.

What's the Board's view on that?

Mrs. TEETERS. The Board has also not addressed that particular issue. Again, personally, if you have these requirements, it seems to me you need to be able to enforce them, and there must be some penalty in order to get enforcement.

The CHAIRMAN. Well, I wonder if it is essential. I feel that the annual percentage rate and finance charge are the most critical parts of the bill. I'm concerned with the ocean of litigation here and if there's any way we can reduce it by reducing the areas where litigation is in order it seems to me it would be a good thing for the courts and perhaps on the basis of equity as well.

Mrs. TEETERS. Well, I would be very interested in reducing the amount of litigation, but what if you get into a dispute about what the security is for the loan? How are you going to resolve that? Some things may be more important than others and maybe the solution is to have stiffer penalties on the annual percentage rate and on the finance charge, and I would include the monthly payments.

The CHAIRMAN. I'd feel a lot better in this if we had a law that said if you lose a case you would have to pay the other side's attorney fees. Of course, we don't have that and you could bring a case against somebody for harassment or just because there's a wild chance you might win and the lawyer is willing to take it on a contingency basis and they lose and, of course, the innocent party has to pay the attorney fees. It would make it very difficult.

Mrs. TEETERS. There might be some lighter penalties for the less important disclosures, but you should have some penalties. I sometimes find it very difficult to understand why particular provisions get written into law when there's nothing to encourage enforcement.

The CHAIRMAN. Well, maybe we shouldn't have those provisions in the law. We'll have to take a look at that. Much of today's testimony from creditors calls for changes which are much more drastic and controversial than this bill calls for. Accordingly, I'd like to ask the Board to study and comment on suggestions made in these statements. You obviously don't have them before you. We haven't had them presented before us yet. But if you would do that for the record we would appreciate that.

Mrs. TEETERS. Yes.

The CHAIRMAN. Senator Garn.

Senator GARN. I have no questions.

The CHAIRMAN. Senator Tsongas.

Senator TSONGAS. Two questions if I might. Regarding the issue of lost credit cards, it seems to me if you put a limit on it like \$50, what is the incentive for someone for whom \$50 may not mean all that much or someone who tends to be irresponsible—what is the incentive to go ahead and report it?

Mrs. TEETERS. I have lost mine a couple times and I have been very prompt about reporting it; \$50 as far as I'm concerned is a relatively substantial amount.

I think one of the problems is that most of us carry our credit cards all in one place and face the problem of losing all of them at the same time. Very rarely do you lose them one at a time and, consequently, the total number of cards that are likely to be lost could add up to a substantial liability; and I would assume that people would move fairly rapidly and report them as lost.

The only time I ever lost just one, I accidentally dropped my Sears card in the display stand for children's socks. It took forever to find it. But ordinarily you carry them together, and it could be a big loss.

Senator TSONGAS. Maybe the people from the industry could tell us what the experience has been.

The second point, you talk about preemption of the State and Federal law and whichever is the stricter would apply. How would you determine which is more strict, if there are a number of provisions in the laws? How would you decide which paragraph applies in a situation?

Mrs. TEETERS. I'm not a lawyer, Senator. I assume that there may be a way of determining on the basis of the length of time permitted, say, for error resolution or the amount of liability incurred. I would have to look at those, and I would certainly seek legal aid to decide which one of the laws is more strict.

Senator TSONGAS. So it would be the law which is more strict, given the particular circumstances in dispute, rather than the overall law versus the overall law?

Mrs. TEETERS. No; I don't think so. I think you should be able to read the two laws, the Federal law and a State law, and determine which provisions are more strict. I think that could be done in

advance. I don't think it needs to be resolved on a case-by-case basis.

Senator TSONGAS. So potentially you could have a situation where a particular provision in the State law would be weaker, yet the overall State law would be stronger and you would be less protected?

Mrs. TEETERS. No; I would do it on a provision by provision basis.

Senator TSONGAS. OK. That's what I wanted to know.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Stewart.

Senator STEWART. No questions.

[It was requested that the following letter appear in the record:]

BOARD OF GOVERNORS
OF THE FEDERAL RESERVE SYSTEM,
Washington, D.C., February 26, 1979.

Hon. WILLIAM PROXMIRE,

Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN PROXMIRE: At the Senate Banking Committee's hearings on Truth in Lending Act simplification, you asked me to review credit industry testimony recommending that the civil penalty and attorney's fee provisions apply only to the finance charge and annual percentage rate disclosures. The existing law provides for a civil penalty to twice the finance charge, but not less than \$100 nor more than \$1,000, plus an attorney's fee, for any disclosure violation. In addition, an injured consumer can recover actual damages.

The Board endorsed the general concept of limiting the penalty when it supported your original bill reducing the number of disclosures to which the civil penalty applies. Instead of taking the approach espoused by the Consumer Bankers Association, the Board's recommendation, much of which S. 108 contains, addresses the specific problems identified in litigation. For example, the testimony submitted by the National Consumer Finance Association discusses the "acceleration" cases, the "creditor/assignee" cases, the "prepaid finance charge" cases, and the "itemization of proceeds" cases. S. 108 addresses the specific problems raised by these lines of cases.

With respect to the issue of civil liability, strikes me that the recommendations of the credit industry and the provisions of S. 108 do not differ dramatically. S. 108 would require the following disclosures on closed end transactions not involving a residential mortgage.

1. Creditor's identity.
2. Amount financed.
3. Finance charge.
4. Annual percentage rate.
5. Total of payments.
6. Number, amount, and due dates of each payment.
7. Total sales price (sales only).
8. Existence of a security interest.
9. Late payment charge.
10. Existence of a credit or penalty for prepayment.
11. Statement that the consumer should refer to the contract for other information.

Under S. 108 the civil penalty will apply only to items 2-6 and 8. Everyone seems to agree that it should cover items 3 and 4 (the finance charge and annual percentage rate). Items 2, 5, and 6 are functions of and related to the items 3 and 4. Therefore, an error in items 2, 5, or 6 will probably cause an error in the finance charge or annual percentage rate. Thus, dropping the civil penalty for these items would not materially decrease a creditors exposure to litigation.

The Consumer Bankers Association's request differs from S. 108 in another way. It would eliminate the civil penalty for the security interest disclosure (item 8). S. 108 responds to the troublesome cases on the security interest disclosure by requiring only "a statement that a security interest has been taken in (A) the property . . . purchased . . . , or (B) property not purchased . . . identified by item or type." Making this disclosure in summary form should minimize future litigation

about after-acquired property, cross-collateral clauses, setoff rights, sufficiency of identification, insurance proceeds, mechanics liens, etc.

In conclusion, the Board has endorsed S. 108. The Board has not specifically considered reducing the civil penalty provisions to cover only the annual percentage rate and finance charge. In view of the above analysis, I question whether the amendment would make a significant enough change to justify offering it at this time.

Sincerely,

NANCY H. TEETERS.

The CHAIRMAN. Well, thank you very much, Mrs. Teeters, for an excellent presentation and most responsive replies to our questions.

Our next group will come forward as a panel: Ms. Ellen Broadman, Consumers Union; Mr. Robert Hobbs, National Consumer Law Center; Mr. Gerald Hogan, Consumer Federation of America; and Mr. James Boyle, Texas Consumer Association.

You're going to be followed, ladies and gentlemen, by a panel consisting of six people, all of whom have statements, so I hope we can confine statements, if possible to 5 minutes or as close to that as you can, and we will run a light here. The green light will be on for 4 minutes, the yellow light for 1 minute, and then the red light means, as most red lights do, the final break. Your full statement will be printed in its entirety in the record.

We are delighted to have you come before us, Ms. Broadman.

STATEMENT OF ELLEN BROADMAN, CONSUMERS UNION

Ms. BROADMAN. Mr. Chairman and members of the committee, Consumers Union appreciates this opportunity to testify on S. 108 and Truth in Lending. Today I will very briefly summarize our written testimony.

[Complete statement follows:]

STATEMENT OF ELLEN BROADMAN, ATTORNEY, WASHINGTON OFFICE, CONSUMERS UNION *

Mr. Chairman and members of the subcommittee, Consumers Union appreciates this opportunity to express our views on simplification of the Truth in Lending Act. Consumers Union, an early supporter of TILA, continues to view this statute as one of the most important credit related consumer protection acts. Prior to TILA's enactment, consumers were unable to shop wisely for credit because information on credit costs and terms was not calculated or disclosed in a comparable fashion. For example, a loan offered at an interest rate of 11 percent might in fact be more expensive than a nine percent loan because of discrepancies in the way interest rates were calculated. As explained by Senator Paul H. Douglas when he opened his hearings on TILA:

"The purpose of the bill is to require that the American consumer be given the truth, the whole truth, and nothing but the truth, about the interest rates and finance charges he is asked to pay when he borrows money or buys an article on the installment plan."

The enactment of TILA transformed the credit marketplace. For the first time, consumers were provided with the information they need to select the best credit arrangement. Interest rates were computed in a standard manner and disclosed as the Annual Percentage Rate (APR). Consumers were given information on the comparative cost of purchasing with cash and credit. Although Consumers Union strongly supports TILA, we do believe that the Act could be strengthened to accom-

* Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide information, education, and counsel about consumer goods and services and the management of the family income. Consumers Union's income is derived solely from the sale of Consumer Reports, its other publications and films. Expenses of occasional public service efforts may be met, in part, by nonrestrictive, noncommercial grants and fees. In addition to reports on Consumers Union's own product testing, Consumer Reports, with over 2 million circulation, regularly carries articles on health, product safety, marketplace economics, and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

plish better its objective of informing the purchaser. However, we are strongly opposed to S. 108 which would not assure that disclosures are made in an easily understandable form and which deletes key information from the disclosure statement.

READABILITY OF DISCLOSURES

TILA should be amended to require that disclosures be presented in a form that consumers can easily understand. Considerable knowledge has been accumulated, primarily by linguists advertisers and a growing coterie of "plain language" experts, on how to communicate information in a simple, easily understood form. For example, of course, commonly used language is generally more easily understood by the public than less frequently used (e.g. technical) language.¹ TILA and Regulation Z unfortunately violate this principle by using terminology such as "amount financed" rather than "amount borrowed."² Short words and short sentences are generally easier to understand than longer ones.³ Comprehension also is enhanced when information is presented in a logical sequence (logical from the consumers perspective), and subdivided under descriptive headings.⁴ Layout and type size and other visual characteristics also affect readability.⁵ For example, people generally can more easily read lines that are around four inches long, than those which are eight inches long.⁶ Thus, disclosures which present information in two columns are more easily read. Attached as Appendix A is a model TILA disclosure form that incorporates some of these simplification principles. Appendix B, the loan form used by the National Bank of Washington, demonstrates that credit agreements that incorporate TILA disclosures can be and have been simplified.

The relative effectiveness of making disclosures more readable versus deleting information from disclosures was studied by a Professor of Law at Rutgers University. Professor Jeffery Davis took a standard credit contract and deleted information he considered extraneous. (Redraft 1) He then took the original contract and redrafted the contract for readability, but retained the information he considered extraneous. (Redraft 2) Although this second redraft was for more readable than the original contract, the redraft did not incorporate many commonly known techniques for enhancing readability. Even so, when Professor Davis tested consumers to determine if they understood the contracts, he found that comprehension increased substantially when the contract was redrafted for readability, in fact, more so than when the information he considered extraneous was deleted. The survey found that individuals who were young, black, inexperienced in credit use or low-income benefited most from the redrafting for readability.

To further consumer understanding of disclosure statements, and credit shopping, TILA should require that disclosures be presented in an easily understandable form. The Federal Reserve Board should be directed to draft readable model forms and clauses, with the assistance of plain language experts, linguists or advertisers with appropriate expertise in communication. These forms should be tested for readability before they are promulgated.

Disclosures should be segregated and presented at the beginning of the credit contract. Disclosures should be included on the contract to assure they are received by consumers, yet segregated and presented at the beginning to assure that they are visible and presented in readable form.

SHOULD CERTAIN DISCLOSURES BE DELETED?

Some disclosures should be deleted from the disclosure statement to enhance readability. For sales made on credit, if the cash price, cash down payment and trade-in are itemized, the unpaid balance of the cash price, the unpaid balance and the total downpayment should not be disclosed. These last three figures do not convey useful shopping information and are merely duplicate information offered by the former three terms.

Also, the complex credit life insurance disclosure should be deleted from the disclosure statement and credit life insurance charges should be included in the

¹ R. Flesch, "How to Write, Speak & Think More Effectively" (1964); Federal Register, "Document Drafting Handbook" (January, 1975); G. R. Klare & R.S. Lauback, "What Readability Can Do For You" (New Readers Press); C. Felsenfeld & A. Siegel, "Simplified Consumer" Credit Forms (1978); A. Siegel, "To Lift the Curse of Legalese—Simplify, Simplify, Across the Board," June, 1977.

² Regulation Z, § 226.8(c)(7).

³ See footnote 1.

⁴ Ibid.

⁵ L. F. Bahr, "Advertising Typographers Association Advertising Production Handbook" (3rd Edition); International Typographical Union "ITU Lesson in Printing" (1973).

⁶ Ibid.

finance charge. TILA now permits lenders to exclude credit life premiums from the finance charge if the consumer signs a separate written affirmation that the consumer (1) has been informed that the purchase of credit life insurance is not required by the lender, (2) knows the cost of that insurance and (3) voluntarily elects to buy credit life.

Credit life always should be included in the finance charge, whether or not its purchase is voluntary, since it is a cost of buying with credit, that would not be incurred in a cash purchase. Then the finance charge would accurately inform consumers of the total added cost of buying with credit rather than cash.

Credit life insurance sales are extremely lucrative and often are not a voluntary purchase, despite disclosures to the contrary.⁷ Inclusion of these premiums in the finance charge would provide lenders with some incentive to reduce insurance premiums and provide the basis for competition in the credit life insurance industry.⁸

S. 108 ELIMINATES IMPORTANT DISCLOSURES

S. 108 would eliminate key disclosure requirements. Lenders would no longer be required to itemize the components of the amount financed (state the charges added to the cash price, trade-ins and cash downpayments). These disclosures provide consumers with a definitive statement of the cost of items they purchase and the credit they receive for their trade-ins. With this statement, consumers can identify unintentional and intentional errors. When the cash price is negotiated (e.g. with auto purchases) and then other charges are added for certain "options" this disclosure is an especially important one. Similarly, when the credit given for trade-ins are negotiated, disclosure of the amount of credit given for the trade-in allows consumers to verify that they were credited for the agreed to value. S. 108 would not require lenders to itemize the components of the finance charge. Thus, charges, such as a loan broker fee (a charge paid to the person who finds a lender for a borrower), that could be avoided by shopping elsewhere, would not be disclosed to the consumer.

Without knowing the components of a finance charge, law enforcement agencies and consumers will be unable to check the accuracy of the disclosed finance charge and to identify deception or overcharging.

S. 108, Section 14(a) would eliminate the present requirement that lenders disclose how they will calculate prepayment penalties. S. 108 would, instead, require lenders to disclose if a penalty will be assessed and then refer the consumer to the contract for additional information. Prepayment penalties arise primarily in connection with the prepayment of real estate mortgages. Because most consumers prepay their mortgages, information on the penalties they will pay is important shopping information. With various alternative mortgage instruments being introduced in the marketplace with no or low prepayment penalties, this item of information is becoming especially important in credit shopping. Yet, S. 108 permits the lender to bury the severity of the prepayment penalty in the contract. This information should be disclosed at the beginning of the contract, with the other disclosures, in simple language.

S. 108 retains the requirement that late charges and the total sale price be disclosed, but immunizes creditors from civil liability if they disregard this requirement. It makes no sense whatsoever to enact laws yet fail to provide the means to enforce them (and the incentives for lenders to comply). The civil liability section of TILA, Section 130, was added because of the hostility of lenders towards TILA requirements, the inadequacy of administrative enforcement and the potency of private civil actions. By eliminating civil liability for failure to disclose the total sale price and late payment charges, S. 108 could effectively eliminate these important disclosures. Information on late charges assists consumers in financial difficulty to decide which bills to pay first. Total sale price alerts consumers to the costs of buying with credit. With this information consumers can, on an informed basis, decide whether to buy with credit or cash, possibly later.

⁷ Hubbard, C., *Consumer Credit Life and Disability Insurance*, College of Business Administration, Ohio University, 1973; Federal Trade Commission, letter dated November 29, 1974 from FTC Secretary Charles A. Tobin to Governor Jeffrey M. Bucher, Board of Governors of the Federal Reserve System, reproduced in Consumer Information Hearings, U.S. House of Representatives, Committee on Banking and Currency, Subcommittee on Consumer Affairs, 94th Cong., 1st Sess., Feb. 27, March 13, and April 15, 1975, pp. 47-50.

⁸ Ibid.

ACCELERATION

Acceleration clauses should be, but are not always required to be disclosed and explained in the TILA statement. We suggest that acceleration clauses be disclosed as follows:

If you do not make a monthly payment on time, I can demand immediate payment of the entire amount of money you still owe me under our agreement.

Acceleration may come as a shock to many consumers. By explaining acceleration, TILA disclosures will assist consumers in selecting from available credit agreements by informing consumers of the serious implications of failing to make a payment.

FRB 1977 CONSUMER CREDIT SURVEY

The FRB 1977 Consumers Credit Survey suggests that some of the information that is deleted from disclosure statements by S. 2802 should be retained. A full twenty percent (20 percent) of the consumers surveyed found all the information on TILA disclosure statements to be useful.⁹ Although 55.4 percent of the respondents found "some" information on TILA statements not to be very useful, no consensus was reported on which information should be deleted. Consumers were not asked what information they wanted and what information they did not want on disclosure statements. Instead, consumers were asked to rank TILA disclosures in order of importance. Thus, the resulting answers do not identify which, if any, of the disclosures are considered useless by these consumers. However, the rankings do indicate that significant differences of opinion exist over the relative importance of information. The rankings also reveal that many respondents consider disclosures on charges for late payment, security interests and prepayment rebates to be highly important.¹⁰ Thus, the survey documents consumer demand for retaining this information in TILA statements.

The survey does suggest that some consumers are discontent with the present TILA disclosure statements. However, the survey does not determine if that discontent arises from the highly technical jargon or legalese that is used in many disclosure statements or the amount of information conveyed. For example, the survey asked consumers "if most people read their Truth in Lending statements carefully." Almost eight percent (7.8 percent) agreed strongly, 19.5 percent agreed somewhat, 32.7 percent disagreed somewhat and 31.1 percent disagreed strongly. The survey did not ask consumers why they thought that most people do not read these statements. Is the statements written in legalese or technical jargon that most people do not understand? Does the type size and layout discourage consumers from reading statements? Or, do people feel rushed or uncomfortable reading the statement in the presence of the creditor? Unfortunately, the survey failed to ask these and many other questions that would better determine the direction that TILA reform should take.

OPEN END RESCISSION RIGHTS

We strongly oppose S. 108, section 12(a)(6) which provides:

"[T]his section [125 of TILA] does not apply to . . . (4) advances under a preexisting open end credit plan if a security interest has already been retained or acquired and such advances are in accordance with a previously established credit limit for that plan."

This provision would destroy important consumer rights that have greatly benefited consumers for over nine years since Truth in Lending was enacted. Under TILA, homeowners who use their homes as security to obtain credit are entitled to disclosures explaining the costs and terms of the credit arrangement and the security interest taken in their home. These homeowners are also entitled to three days, away from the creditor, to read their disclosures and consider the costs and terms of the contract, and to rescind the credit agreement if they choose. As observed by Senators Proxmire and Riegle, these TILA provisions are "one of the most important consumer protections ever enacted by Congress."¹¹

The legislative history of these provisions documents well the unscrupulous practices that victimized consumers prior to enactment of TILA. Because of the serious injuries that are incurred by all consumers who default on home-secured transactions, Congress determined that all consumers should be informed of these security

⁹ FRB 1977 Consumer Credit Survey at 19.

¹⁰ Ibid at 21.

¹¹ Letters to Honorable G. William Miller, Chairman, Board of Governors of the Federal Reserve System from Senators William Proxmire and Donald W. Riegle, Jr., dated October 27, 1978.

interests and provided with three days to reconsider whether to enter into this agreement. As explained by Representative Cahill:

"* * * most fraudulent mortgage schemes are consummated in an atmosphere of hurry, rush, and fast talking. Under the bill, the disclosures required need only be made 'before the credit is extended.' This obviously is not sufficient to protect the anxious and debt-ridden homeowner. Thus another amendment would require that disclosure of credit terms be made 3 days prior to the consummation of the mortgage transaction. Thus, homeowners will be able to study and investigate the contemplated seriousness of the obligations which they are able to undertake in the privacy and unhurried atmosphere of their own home."¹²

Despite the clear statutory rights of consumers to a three-day cooling off period and the strong congressional concerns reflected in the legislative history of TILA, the Federal Reserve Board is determined to abolish these consumer rights. On December 4, 1977, in response to a request from creditors, the Board proposed for public comment an amendment to Regulation Z that would have eliminated the disclosure and rescission requirements of TILA for individual credit transactions on open end credit accounts. This proposal was intended to facilitate extension of large lines of credit, e.g., \$30,000, on an open end basis with the consumer's home as security.

The Federal Trade Commission challenged the authority of the Board to destroy these significant rights provided to consumers by Congress. To establish a legal basis for this proposed regulation, the Board included the rather cryptic section 12(a)(6) in the proposed Truth in Lending simplification bill it submitted to Congress. That provision passed the Senate last session apparently due to misunderstanding and oversight. The only comments on this provision made on the Senate floor illustrate that the provision was misunderstood.

"Finally S. 2802 has been criticized for eliminating the 3-day right of rescission consumers presently enjoy with respect to second mortgages of their homes. Mr. President, I am at a loss as to how I should respond to this charge. I do not understand it. Nothing in our bill would achieve this result; indeed, we have expanded existing protection to include mortgages on mobile homes. I can only conclude that there has been a misunderstanding as to the impact of S. 2802 on this very important consumer rights."¹³

Unfortunately, the misunderstanding was his, for this provision does abolish such consumer rescission rights. After S. 2802 passed the Senate, Senators Proxmire and Riegle also voiced opposition to the abolition of consumer rescission and disclosure rights in open end transactions and noted that these rights were "one of the most important consumer protections ever enacted by Congress."¹⁴

When S. 2802 appeared unlikely to pass Congress, the Board adopted a regulation that abolished these consumer rights in three-party open end credit transactions.¹⁵ That regulation elicited a public outcry. The FRB's own Consumer Advisory Council objected to the regulation and to the FRB's complete failure to notify the Council that the Board was contemplating the abolition of these consumer rights and to seek the Council's advice. The Federal Trade Commission petitioned the Board to withdraw this controversial regulation.¹⁶ By letter, Senator Proxmire and Riegle also asked the Board to withdraw this regulation.¹⁷ When the Board refused to do so, Consumers Union brought suit challenging the authority of the Board to issue this regulation and the wisdom of its provisions.

The Board's regulation directly conflicts with other activities and concerns of the Board. Chairman Miller has voiced concern over the extraordinarily high level of consumers borrowing in recent congressional testimony:

¹² Cong. Rec. 1611 (January 31, 1968). Note this version of the three-day cooling off period was changed in conference committee to allow consumers three days to rescind these transactions.

¹³ 124 Cong. Rec. S.18473 (October 12, 1978).

¹⁴ See footnote 1.

¹⁵ 43 Fed. Reg. 34113 (August 3, 1978).

¹⁶ Its petition explained:

"This request is based on our strong belief that the amendment to Regulation Z will: (1) hasten the already accelerating pace of consumer credit delinquency by precipitously increasing the consumer's eligibility for higher credit limits without a corresponding increase in the consumer's ability to repay, (2) reverse a fundamental and longstanding federal and state statutory policy of protecting consumers' equity in their homes; (3) accelerate the movement away from other than open end (closed end) credit and thereby render the right of rescission a nullity; (4) raise issues of unfairness not present in the original proposed amendment. We also believe that the record established by the Board does not support such a major change in public policy and that the Board's action may have exceeded its rulemaking authority under the Truth in Lending Act."

¹⁷ See footnote 1.

"* * * the level of household indebtedness is of concern, since it may constrain future spending, and could give rise to more widespread financial difficulties—especially if the rate of income growth were to slow."¹⁸

Moreover, the Board apparently has attempted to curb use of credit by increasing interest rates as part of its fight against inflation. Yet, the proposed regulation would encourage creditors to extend larger lines of credit, not because of increased consumer income or ability to pay, but because of available equity in the consumer's home. Thus, the proposed regulation permits a form of credit that entails serious dangers for the homeowner who is later unable to repay.

The Board's proposed regulation also completely undermined regulations proposed by both the FTC and FRB to ban as an unfair trade practice the taking of a security interest in the home for small purchases. Already, the FTC has compiled a substantial record in support of this proposal. Yet the Board's proposed TILA rescission regulation allowed creditors to take a security interest in homes for small purchases, such as a pair of shoes or toothbrush, to deny consumers a three-day cooling off period, and to foreclose (or threaten to foreclose) on consumers' homes if the bill was not paid promptly.

Despite the questionable validity of this amendment, and the strong criticism it evoked, the Board's staff recently issued an interpretation of the amendment that further diminishes consumer disclosure and rescission rights in two-party loan transactions that are secured by the consumers' home. Even the Board did not intend this reduction in consumer rights. The minutes of the Board meeting of June 21, 1978, at which the regulation was adopted, state:

"Under this alternative [which was adopted], the notice of right of rescission as currency required would remain in effect for two-party credit transactions. However, for three party transactions * * *"

S. 108, section 12(a)(6) would legitimate the Board's and its staff's abolition of the consumer disclosure and rescission rights provided by Congress.¹⁹ Moreover, S. 108 would further erode consumer rescission rights by extending the FRB's regulation to sale transactions involving a single creditor-seller or related creditors and sellers. Thus, section 12(a)(6) would allow precisely those horrors that the TILA rescission provisions were intended to terminate. Consumers who "in an atmosphere of hurry, rush and fast talking" accept credit beyond their means would not have time in the privacy of their home to read disclosures, evaluate the costs and rescind if necessary. And, creditors and sellers could engage in the same unscrupulous schemes reported in the legislative history of the TILA rescission provisions, and consumers would have no recourse.

PUBLIC DISCLOSURE OF VIOLATIONS

Bank examinations of 27 national banks completed by the Comptroller of Currency in 1976 revealed that these banks have overcharged consumers over \$1,583,000 by failing to accurately disclose credit terms and costs under TILA. Consumers Union attempted to obtain information on the nature of these overcharges and the names of the banks involved under the Freedom of Information Act. When the Comptroller of Currency refused to reveal this information, Consumers Union brought suit. The U.S. Court of Appeals for D.C. recently decided that the language of Exemption 8 of FOIA exempts these bank examination records from the disclosure requirements of FOIA. However, Chief Judge Skelly Wright, in a concurring opinion, severely criticized this result as directly contrary to the purposes of both TILA and FOIA, and urged Congress to address this serious problem. The Chief Justice opined:

"Yet, I do not think that our Congress' result sits entirely comfortably with the broad thrust of the FOIA, or that congressional alterations could not improve enforcement of the Truth in Lending Act. *Indeed, the matter is, I believe in serious need of legislative attention.* First, a central proposition underlying Exemption 8—that certain information must be kept from the public for fear that it will be misunderstood and lead to overreaction—is somewhat inconsistent with the philosophy behind the FOIA. Second, the mere fact that there is a long-standing tradition of confidentiality for bank records—a tradition occasionally referred to with some reverence in testimony before the Senate subcommittee—strikes me as irrelevant. It may be time for a re-examination. Third, the Comptroller's argument that confidentiality is necessary to maintain the smooth functioning of the examination process and the cooperation of bank officials seems to be of very limited force. Not only does the Comptroller have a considerable arsenal of weapons at his disposal to compel

¹⁸ "Fears Grow that Surge in Consumer Debt Soon will Crimp Borrowing and Spending," Wall Street Journal, August 29, 1978.

¹⁹ S. 108, section 12(a)(6) would also moot our lawsuit challenging the Board's rescission regulation.

disclosure, but the costs of employing that arsenal are assessed upon the institutions he supervises. Recalcitrance on the part of the banks would therefore lead simply to higher assessments. Further, it should go without saying that preserving good relations between regulators and those they regulate is a goal which, however desirable in moderation, can if overemphasized be flatly inconsistent with the very purposes of regulation itself. Fourth, the present practice of not disclosing the identities of banks which violate the Truth in Lending Act (and of not notifying injured borrowers of violations) may be retarding achievement of substantial compliance with that Act.

I join, therefore, with appellant in feeling that further study and some change is necessary. But I join with the majority of this panel and the District in suggesting that it seek relief from Congress rather than the courts. [Emphasis added.] [Footnotes omitted.]²⁰

Consumers Union strongly urges this Committee to amend S. 108 to require that information on violations of consumer TILA rights be made available to all interested members of the public. Then, consumer shoppers can avoid dealing with lenders who repeatedly violate consumer rights. Also, public disclosure will allow citizens and citizen representatives to evaluate the effectiveness of the Act and its enforcement and suggest reforms. And, as observed by Chief Judge Wright, disclosure should establish forceful inducements for lenders to comply with this law.

EARLIER DISCLOSURES

We strongly support S. 108, Section 23 which would require lenders to quote the APR when asked orally about the cost of credit. The bill does not, but should, also require lenders to disclose the APR whenever they give consumers written information about credit costs. Creditors should be prohibited from quoting any other measures of interest unless specifically asked, because of the misleading nature of these other figures. We have received complaints from consumers who were quoted the add on or discount rate in loan commitment letters and other written materials. When they returned to sign the credit contract, they were shocked to learn that the cost of credit, quoted as an APR, had increased substantially. Whenever consumers ask about credit costs they should be quoted the APR.

We support S. 108, Section 14 insofar as it would amend Section 128(b)(2) of TILA to require that disclosures for real estate loans be made at an earlier time. S. 108 would require disclosures to be made the earlier of (1) three business days after the creditor receives the consumer's written application or (2) the date before the credit is extended. If the APR disclosed is later rendered inaccurate, S. 108 would rightly require the lender to furnish a corrected disclosure.

In addition, creditors should be required to provide consumers with the option of taking up to three business days after they receive TILA disclosures for closed end credit transactions to shop for alternative credit arrangements. Consumers who do not wish to shop elsewhere could elect to waive this option and purchase credit immediately. However, this option would enable consumers who wish to shop to do so. Creditors should also be required to inform consumers of this option in large print at the heading of a disclosure statement.

RESTITUTION

A. TILA should be amended to clarify that agencies, as a part of their enforcement responsibilities, must require lenders to reimburse consumers for overcharges that occur when the APR or finance charge is understated. Such reimbursement should be required regardless of the reason for the overcharge and regardless of the intent of the lender. S. 108 would require reimbursement only if the underdisclosure resulted from (1) a clear and consistent pattern of practice of violations, (2) gross negligence or (3) a willful violation. An overcharge is an overcharge and should be returned to the injured consumer. We oppose the qualifications contained in the Senate bill.

In addition, the Senate bill would require repayment of overcharges only if this does not have a significant adverse impact on the safety or soundness of the creditor. The condition of the creditor should not be used as justification for denying injured consumers full compensation. Instead, if enforcement sanctions will render a lender insolvent or near insolvent, the agency should make two determinations. First, it should determine if the impact of reimbursement on a lender will be detrimental to the community it serves. In making this determination, the agency should consider whether another institution might better serve the needs of a community. For reimbursement to affect a lender's solvency, non-compliance must be rather extensive. One must question the desirability of permitting that lender to

²⁰ *Consumers Union v. Heimann*, Civil No. 77-2115 (D.C. Cir., decided 8/31/78).

stay in the lending business at the expense of the victims of its unlawful conduct, especially if another institution would be likely to provide lending services without violating the law.

Second, if an agency decided that the financial impact of reimbursement will be harmful to the community served by a lender, the agency should arrange for full reimbursement to be made over time (with interest) to accommodate the lender's solvency problems.

All overcharges resulting from underdisclosure of the APR or finance charge should be repaid to consumers. The Senate bill is seriously flawed in that it would prohibit agencies from requiring reimbursement for overcharges assessed for credit extended between July 1, 1969 (the effective date of TILA) and October 27, 1974. This restriction is entirely unjustifiable and unfair to consumers. The failure of the administrative agencies to properly enforce the law during those years is no excuse for non-compliance and certainly no excuse for permitting lenders to retain overcharges at the expense of consumers.

This arbitrary restriction on reimbursement unfairly discriminates against the class of consumers who purchased credit between 1969 and 1974. Take for example, the individual who purchased a 30 year mortgage on October 27, 1974, and was overcharged \$100 per month since that time. If the restriction proposed by the Senate were enacted, agencies could do nothing about that overcharge. And, the individual would have to continue paying \$100 more per month than they should over the remaining life of the mortgage since the one-year statute of limitations for civil actions has run for the entire class of people who purchased credit before October 28, 1974. Yet, those persons who suffered identical overcharges on loans initiated after October 27, 1974, will receive full reimbursement. There is no justification for this discrepancy.

DISCLOSURE OF VIOLATIONS TO CONSUMERS

Consumers should be given meaningful disclosures with their reimbursement check explaining that they are being reimbursed for an overcharge that occurred in violation of TILA. If the statute of limitations has not run for a credit transaction, the consumer should also be informed that by accepting the check, he or she may be waiving rights under TILA.²¹ Also, whenever other significant violations are discovered by agencies, consumers should be informed of these violations.

It has been argued that disclosure should not be made because likely to result in excessive litigation harmful to lenders. This assertion is simply incorrect. TILA provides lenders with 15 days to correct violations they discover (e.g. through enforcement examinations).²² If violations are corrected in that time period, before a lawsuit is initiated, lenders are immune from liability under the Act. See 15 U.S.C. § 1640. It is highly unlikely that consumers will receive notification and file suit before the 15 day period expires. If the lender fails to correct violations, resulting lawsuits are not excessive; they are legitimate actions taken by consumers to protect their rights.

FEDERAL TRADE COMMISSION

We strongly support S. 108, Section 8(a) which amends Section 108 of TILA to allow the Federal Trade Commission to prosecute violations of TILA as unfair or deceptive acts or practices in violation of section 5(a)(1) of the Federal Trade Commission Act. This amendment would allow the FTC to move more quickly to bring judicial action against violators.

CONSUMER EDUCATION

We support S. 108, Section 18(a) which directs the Federal Reserve Board to disseminate, on a demonstration basis, the APR's charged for representative types of non-sale credit in metropolitan areas. However, all enforcement agencies, including the Fed, should be required to undertake educational efforts to inform consumers about (1) the meaning of various credit terms, (2) consumer rights under TILA and (3) how to shop for the best credit terms.

ADVERTISING

Lenders who violate the advertising provisions of TILA are not, but should be, subject to civil liability. The real estate section of the *Washington Post* provides sufficient documentation of the need for such civil liability. See Appendix C. Some of the advertisers who have placed ads in the *Post* have been informed by private citizens that ads violate TILA yet continue to run those ads nonetheless. Enforce-

²¹ See *Bostwick v. Cohen*, 319 F.Supp. 875 (N.D. Ohio, 1970).

²² In fact, S. 108 would extend that time period to 30 days.

ment agencies, the only entities that can enforce the advertising provisions, are unable to and do not monitor all advertisement for compliance with TILA. Thus, one of the major sources of information used by consumers to comparison shop can be highly misleading or inaccurate, yet consumers have no recourse. To remedy this problem, the first individual to bring a successful suit should be awarded \$2,500 as well as attorneys fees and court costs. The date of filing of the suit should determine which plaintiff receives the award if there is more than one suit filed. By making such litigation worthwhile financially, this reimbursement will encourage enforcement actions that provide incentives for lenders to comply with the law.

Those few consumers who are able to demonstrate actual injury due to reliance on an advertisement also should be able to bring suit under the civil action provisions of TILA.

ASSUMABILITY OF MORTGAGES

We support S. 108, Section 14(a) insofar as it would require mortgagees to disclose whether a subsequent purchaser or assignee may assume a mortgage. In our mobile society, many consumers sell their homes before their mortgages terminate. Thus, assumability is an important term for consumers who expect not to keep the home which is being purchased for the full mortgage term.

DIFFERENCES BETWEEN TILA AND EFTA: UNAUTHORIZED LIABILITY

The Federal Reserve Board has recommended that identical standards be adopted to determine consumer liability for unauthorized use of a credit card and EFT access device. Consumer liability is limited to \$50 for unauthorized use of a credit card, but may be greater for unauthorized use of an EFT card. For example, if consumers discover that their EFT access device is lost or stolen but do not report this event to their financial institution within two business days, they may be liable for up to \$500 (unless extenuating circumstances exist). Also, consumers are fully liable for all unauthorized withdrawals that they would have prevented by notifying an institution of unauthorized withdrawals that appear on a periodic statement within 60 days after the statement was mailed (unless extenuating circumstances exist).

Consumers Union supports the adoption of the Truth in Lending liability limits for both credit and EFT cards. In the credit card area, these limits have proven to be fair and to sensibly allocate responsibility for unauthorized withdrawals. As observed by the National Commission on EFT, in the Final Report on EFT in the United States:

"The \$50 liability limit of the credit card systems has great surface appeal. It has worked well for credit cards—encouraging protection of the card and relieving anxiety over major losses with far less litigation than a simple negligence standard could have allowed."

In contrast, the EFTA provisions are inherently unfair to consumers. In numerous situations, they impose substantial liability on consumers who engaged in no wrongdoing whatsoever, but were innocent victims of computer fraud or theft. For example, when withdrawals are completed by computer fraud, consumers may sustain unlimited liability under EFTA if they do not report these withdrawals within 60 days after the statement was mailed.

Moreover, the EFTA provisions adopt standards that invite lengthy and costly litigation. For example, the meaning of "extenuating circumstances" is so unclear that in many situations litigation may ensue over whether such circumstances existed. Disputes over the time at which a consumer "discovers" the loss or theft of a card is also likely to generate litigation that is burdensome to consumers. For example, if an individual's wallet is stolen and the individual forgets that a particular credit card was in the wallet until two days later, did the consumer "discover" the theft of the card upon discovery of the theft of the wallet or upon discovery that a particular card was in the wallet? The answer to this question may increase consumer liability by \$500, a substantial amount for most individuals.

In most situations, the institution is far better able to locate the thief or wrongdoer and recover withdrawn funds than is the consumer. If consumers sustain liability for a large portion of the losses, financial institutions will have less incentive to investigate and recover funds from the wrongdoer.

Consumers Union strongly urges this Committee to adopt again the EFT liability standards contained in S. 3156 (which were identical to TILA standards). As observed by the Committee then:

"Because of the unique risks which card-actuated EFT systems present in this respect, protecting the consumer from serious loss is of central importance."²³ It was

²³ Senate Report No. 852, 95th Cong., 2d Sess. 6 (May 17, 1978).

unfortunate that these standards were weakened as the result of last minute compromise during the past legislative session. In any case, these questionable standards should not be substituted for the proven and equitable standards of TILA.

"EFTA" v. "TILA" DEFINITION OF ERROR

The Federal Reserve Board has recommended that the definition of "error" in EFTA be amended to not include requests that do not claim an error has occurred, but merely ask for additional information or for clarifications. Consumers Union strongly opposes this suggestion.

Consumers must report an error within 60 days after a document with the error was transmitted or they are not entitled to the error corrections required by EFTA, section 908. Consumers who suspect an error has occurred may seek additional information before notifying their institution of the error. Or, consumers may be unaware of the error until they receive the requested additional information. By including these inquiries within the definition of error, EFTA assures that consumers will receive a response to their inquiry sufficiently promptly to allow them to use the EFTA error correction procedures if the institution's response reveals an error.

SHOULD CREDITORS BE ALLOWED TO CHARGE CONSUMERS FOR EXPENSES THEY INCUR TO INVESTIGATE ALLEGATIONS OF ERROR?

Several creditors have asked the Federal Reserve Board whether they may charge consumers for expenses they incur to investigate errors reported by consumers. Both TILA and EFTA do not explicitly permit or forbid the imposition of these charges. We support the FRB's recommendation that such charges be prohibited.

These charges would undermine entirely the error correction rights provided consumers by TILA and EFTA. In many cases, consumers would be unable to determine the full cost of an investigation and might fear that the cost will exceed the amount of the error. In some situations the known cost of the investigation will exceed the loss to consumers because of an error. Thus, consumers may refrain from exercising their rights under these statutes.

Even when consumers mistakenly report an error, they should not bear the cost of an investigation of their allegations. Creditors are using less costly, but less informative systems for documenting transactions and for billing consumers (e.g. descriptive instead of country club billing systems). Creditors, not consumers, have promoted this trend. When consumers find these systems to be confusing and therefore erroneously report a mistake, creditors should bear the cost of resolving the confusion they cause.

CONCLUSION

Mr. Chairman and members of the Subcommittee, I want to again thank you for your invitation to testify on TILA and to urge that you give serious consideration to our testimony.

APPENDIX A

YOU HAVE THREE BUSINESS DAYS TO SHOP
FOR A BETTER CREDIT DEAL BEFORE
YOU SIGN THIS

ANNUAL PERCENTAGE RATE

$\frac{\%}{\text{_____}}$

Shop for the Lowest Rate

"You" refers to the borrower
"I" refers to the lender

Amount Borrowed

1. The price of your purchase \$ _____
2. Minus your cash down-
payment \$ _____
3. Minus your trade-in \$ _____

FINANCE CHARGE

To borrow that amount, it costs
you an additional \$ _____. THIS
CHARGE IS ADDED BECAUSE YOU
PAID WITH CREDIT INSTEAD OF
CASH. This charge includes
charges for:

1. Finder's Fee \$ _____
2. Credit Life Insurance \$ _____
3. Interest \$ _____

Total Sale Price

You pay a total of \$ _____ to buy
on credit. This total equals the
price of your purchase plus the
finance charge.

Payment

You will pay \$ _____ on the _____
day of each month to _____.
Your first payment is due _____
and your last payment is due _____.

What Happens if You Break This Agreement

If you break this agreement (e.g., do not
pay on time), I can:

Demand immediate payment of the entire
amount of money you still owe me under
this contract.

Take back your car if I follow legal
procedures. If I sell your car, I can
sue you for an amount equal to the
amount you owe me minus the amount
paid for the car.

Charge you attorney fees equal to 15%
of the amount you still owe me.

Charge you interest of 8% per year
on the unpaid amount you owe me.

Penalty for Paying Early

If you pay your entire loan early, or
refinance your loan, you are entitled
to get back part of the finance charge.
But, you will also be charged a substantial
penalty.

The contract explains more about our
agreement.

CONTRACT TERMS

Note: This form does not comply with TILA.

The National
**BANK OF
WASHINGTON**
CONSUMER LOAN NOTE

APPENDIX B

Date _____, 19____

The words I and me mean all borrowers who signed this note. The word bank means The National Bank of Washington.

Promise to Pay

_____ months from today, I promise to pay to
The National Bank of Washington _____
dollars(\$ _____).

Responsibility

Although this note may be signed below by more than one person, I understand that we are each as individuals responsible for paying back the full amount.

Breakdown of Loan

This is what I will pay:

Amount of loan	1. \$ _____
Credit Life Insurance (optional)	2. \$ _____
Other (describe) _____	3. \$ _____
Amount Financed (Add 1 and 2 and 3)	4. \$ _____
FINANCE CHARGE	5. \$ _____
ANNUAL PERCENTAGE RATE _____%	
Total of Payments (Add 4 and 5)	\$ _____

Repayment

This is how I will repay:
I will repay the amount of this note in _____ equal
uninterrupted monthly installments of \$ _____
each on the _____ day of each month starting on the
_____ day of _____, 19____, and ending
on _____, 19____.

Prepayment

If I pay this loan off in full, ahead of schedule, I will not have to pay the full finance charge. I will pay a finance charge on the amount I have borrowed (amount financed) only for the number of days I have had the loan—from the day I received the loan until the day I pay off the loan.

Late Charge

Any installment not paid within ten days of its due date shall be subject to a late charge of 5% of the payment, not to exceed \$5.00 for any such late installment.

Security

To protect The National Bank of Washington, I give what is known as a security interest in my auto and/or other: (Describe) _____
See the security agreement.

Credit Life Insurance

Credit life insurance is not required to obtain this loan. The bank need not provide it and I do not need to buy it unless I sign immediately below. The cost of credit life insurance is \$ _____ for the term of the loan.

Signed: _____ Date: _____

Default

If for any reason I fail to make any payment on time, I shall be in default. The bank can then demand immediate payment of the entire remaining unpaid balance of this loan, without giving anyone further notice. If I have not paid the full amount of the loan when the final payment is due, the bank will charge me interest on the unpaid balance at six percent (6%) per year.

Right of Offset

If this loan becomes past due, the bank will have the right to pay this loan from any deposit or security I have at this bank without telling me ahead of time. Even if the bank gives me an extension of time to pay this loan, I still must repay the entire loan.

Collection Fees

If this note is placed with an attorney for collection, then I agree to pay an attorney's fee of fifteen percent (15%) of the unpaid balance. This fee will be added to the unpaid balance of the loan.

Co-borrowers

If I am signing this note as a co-borrower, I agree to be equally responsible with the borrower for this loan. The bank does not have to notify me that this note has not been paid. The bank can change the terms of payment and release any security without notifying or releasing me from responsibility for this loan.

Copy Received

I received a completely filled in copy of this note. If I have signed for Credit Life Insurance, I received a copy of the Credit Life Insurance certificate.

Borrower: _____

Address _____

Co-borrower: _____

Address _____

Co-borrower: _____

Address _____

CONSUMER CREDIT HOTLINE: If you have any questions, please call us immediately at (202) 624-3619.

1-Bank's copy 2-Customer's copy 3-File copy



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

December 8, 1977

Mr. C. Lee Peeler
Federal Trade Commission
633 Indiana Ave., N.W.
Washington, D.C. 20580

Dear Lee:

As we pointed out at the Truth in Lending Simplification Hearings last July, shopping for credit is quite likely to occur before the customer receives a formal disclosure statement. Advertisements in newspapers, radio, and television frequently provide the information used in comparison shopping. Inaccurate disclosures in these media thus have a very substantial potential for seriously misleading consumers.

When I first became involved in TIL I was surprised that many newspaper advertisements for real property understated APRs. Frequently mortgage guarantee insurance is not included in disclosed rates, or the effects of prepaid finance charges are disregarded; simple interest rates are featured conspicuously. These violations are usually apparent from a quick review of the real estate section; 5 minutes work yields 10 or 15 flagrant violations in many newspapers.

Being a trusting soul, I assumed that these violations were unwitting errors. To test this theory I wrote to one such creditor, as a citizen, informing them of the problem. The ad is still running. I have enclosed copies of the original ad and my letter to the creditor, Grady Management, along with an ad by the same people from last Sunday's Washington Post. Also enclosed is the ad we entered into the record last July at the TIL Hearings, with an ad by the same developer from last Sunday's paper. The ads also contain a number of technical violations, but I'm not nearly as concerned about them as I am about the APR problems.

The problem is widespread and undoubtedly does harm to consumers. Identifying these violations requires very little effort. If they continue they can only serve to impede progress towards the informed use of credit.

Please let me know if I can assist you in any way in dealing with this problem. The alternative is to give up on administrative enforcement of the advertising provisions and provide a civil remedy or penalty for violations.

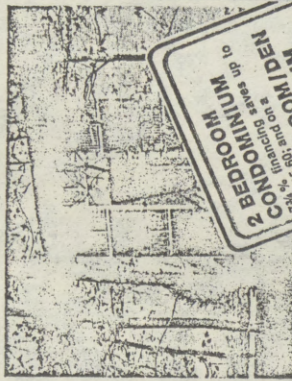
Very truly yours,

Bill Resnik

William Resnik
Manager, Bank Compliance

Enclosures

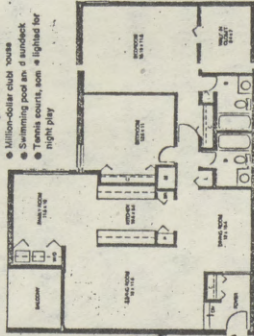
SAVE ^{UP TO} \$9,000! 7 3/4% BREAKTHROUGH!



2 BEDROOM CONDOMINIUM
Minimum \$51,400 and closing fees up to \$5,000
Maximum \$55,000 and closing fees up to \$5,000
Includes parking space
Includes storage unit
Includes laundry room
Includes kitchenette
Includes bathroom
Includes living room
Includes dining room
Includes bedroom
Includes master bedroom
Includes master bathroom
Includes master closet
Includes master dressing room
Includes master walk-in closet
Includes master linen closet
Includes master storage closet
Includes master wardrobe closet
Includes master vanity
Includes master mirror
Includes master jewelry box
Includes master jewelry display
Includes master jewelry cabinet
Includes master jewelry chest
Includes master jewelry trunk
Includes master jewelry box set
Includes master jewelry display set
Includes master jewelry cabinet set
Includes master jewelry chest set
Includes master jewelry trunk set
Includes master jewelry box set
Includes master jewelry display set
Includes master jewelry cabinet set
Includes master jewelry chest set
Includes master jewelry trunk set

- Every home includes a family room
- Every home includes a large open living room
- Every home includes a separate dining room
- Every home includes a washer/dryer
- Every home includes a balcony or terrace

- Every home includes air conditioning
- Every home includes a walk-in closet
- Every home includes a private carport
- Every home includes a private garage
- Every home includes a private driveway
- Every home includes a private patio
- Every home includes a private pool
- Every home includes a private tennis court
- Every home includes a private basketball court
- Every home includes a private playground
- Every home includes a private picnic area
- Every home includes a private gazebo
- Every home includes a private pergola
- Every home includes a private trellis
- Every home includes a private arbor
- Every home includes a private fountain
- Every home includes a private water feature
- Every home includes a private fire pit
- Every home includes a private firewood storage
- Every home includes a private firewood rack
- Every home includes a private firewood pile
- Every home includes a private firewood shed
- Every home includes a private firewood storage
- Every home includes a private firewood rack
- Every home includes a private firewood pile
- Every home includes a private firewood shed



- Game rooms and special purpose rooms
- Party facilities including a bar
- Social director and community bus
- Playgrounds, playing fields and picnic areas

TWO BEDROOMS PR. \$22,900
TWO BEDROOMS/DEN PR. \$27,900
VA FINANCING AVAILABLE ON SECTION III HOMES SUBJECT TO VA APPROVAL

Typical 1500 sq. ft. home - Price \$28,900
\$1,000 down, mortgage \$22,900 payable over 30 years at 7 3/4% interest. Monthly payment \$177.77. Taxes for 1977 \$1,000. Insurance \$100.00. Homeowner's association fee \$100.00. Total cash needed at closing \$1,000.00. Seller's closing costs \$1,000.00. Buyer's closing costs \$1,000.00. Total cash needed at closing \$3,000.00. Seller's closing costs \$1,000.00. Buyer's closing costs \$1,000.00. Total cash needed at closing \$3,000.00.

AT THE BELTWAY AND THE WASHINGTON-BALTIMORE PARKWAY ON GREENBELT ROAD
Take the Beltway to the Washington-Baltimore Parkway (Exit 29) toward Baltimore. Follow signs to I-664-Coddard Road. Turn right onto Coddard Road. Turn left onto Greenbriar. Sales office phone: 345-1400.

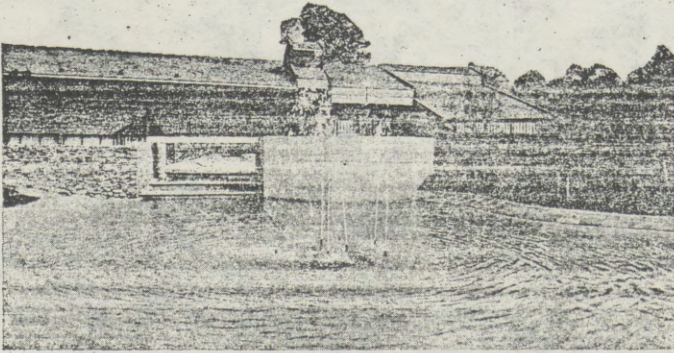


Greenbriar
next to NASA, Greenbelt, Md.

Sept., 1977
Washington Post

APR: '8.13.10

August 26, 1978
Washington Post



FINAL

**NEVER AGAIN VALUE
LIKE THIS...OR
RECREATION
LIKE THIS!**

**5% DOWN
9% INTEREST
FOR EVERYONE!**

SECTION!

**IF YOU DON'T BUY NOW YOU'LL MISS
OUT ON A MILLION DOLLARS WORTH OF
FUN, RELAXATION AND RECREATION,
PLUS A FABULOUS CONDOMINIUM
HOME!**

- One bedrooms begin at \$31,990
- Two bedrooms begin at \$34,990
- Three bedrooms begin at \$40,990
- Family room, sleep-down living room
- Separate dining room and balcony or terrace
- Washer/dryer, air conditioning and carpeting
- Choose between family or adult buildings and bring your pets
- Recreation facilities includes: clubhouse, swimming pool, tennis

courts (some lighted), day care center, game rooms and party facilities.

■ Social director and community bus
Typical 5% down conventional terms.
Price \$31,990, \$1,690 down. Mortgage
\$30,300 payable in 360 equal monthly installments of \$243.81 each for 30 years at 9% interest, 9.66% annual percentage rate. Plus taxes and condominium fee. NO CLOSING COSTS except prepaid items.
Directions: From the Beltway (Rte. 495) take Wash.-Balt. Pkwy. (Exit 29) toward Baltimore. Follow signs to NASA-Goddard Space Flight Center on Greenbelt Rd. Left to Greenbriar. Evelyn Coopersmith and Ernest Rosenthal, Project Sales Managers. Phone 345-1400.



you've got to see
Greenbriar

AT THE BELTWAY AND THE WASHINGTON BALTIMORE PARKWAY
ON GREENBELT ROAD, GREENBELT, MARYLAND.



September 13, 1977

William Resnik
1728 Corcoran Street, N.W.
Washington, D.C. 20009

Grady Realtors
8630 Fenton Street
Silver Springs, Maryland

Gentlepeople:

As a citizen who is concerned about Truth in Lending I was surprised to see your advertisement for Place One in the Washington Post on September 10, 1977. In bold print "6.9% Financing" was advertised. In smaller, less conspicuous type the Annual Percentage Rate was disclosed as 8 3/4%. This has the potential of misleading or confusing consumers shopping for credit, who may compare the 6.9% rate with an APR advertised by other lenders or realtors. Regulation Z, 12 CFR 226.10(d)(1) is quite explicit: a simple rate may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

I am confident that this problem was unintentional, and look forward to seeing advertisements of yours in the future which take special care to avoid the possibility of misleading or confusing consumers.

Very truly yours,

William Resnik

William Resnik

TON POST

How's the living in a PLACE ONE condominium?

Ask the people who live there.

If you really want the complete story on the outstanding value and great living at PLACE ONE, talk to the people who know it best — the people who live there.

Here's what they think:

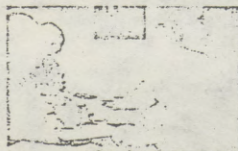


“There's quality in the construction throughout the building. And good thinking and taste in every unit. The kitchens are well planned and have just about everything you could ask for.”
Interior Decorator

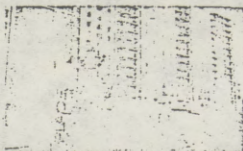
“We go for the active life — and Place One has it all. Huge pool complex. Saunas. Exercise rooms. Lighted tennis courts. You enjoy keeping in shape.”
Insurance Executive



“The Place One Owners Council is another important asset. The Council is responsive to the needs of the individual owner. And it knows how to protect property value.”
Realtor



“I've lived in my own home and in apartments, but Place One beats everything for good living. I think it's the best condominium value in the area.”
U.S. Army General



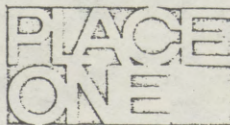
See PLACE ONE soon
(now more than 70% sold).
Executive Suites from \$31,400.
One Bedrooms from \$34,700.
Two Bedrooms from \$53,000.
Two & Den from \$64,500.

6.9% Financing.

5% down and 6.9% financing on first five years. 9% remaining 25 years. No prepayment penalty. (APR 8 3/4% over 30-year term.) Or 7 1/4% 30-year financing with 20% down. (APR 7.9%.)

\$1,000 Decorator Allowance.

Available with every unit for a limited time. Use the \$1,000 as you wish to add extra touches of elegance to your new PLACE ONE home. Ask us for details on this unusual offer.



5500 Holmes Run Parkway
Alexandria, Virginia 22304
(703) 373-1400



FURNISHED MODELS open daily from 10 am to 6 pm.
Developer: G.H.S. Corporation, 1515 Duke Street, Suite 100
Kingsport, TN 37629. Sales by John D. Smith, Jr., President
John D. Smith and Family, 5500 Holmes Run Parkway.



The CHAIRMAN. Thank you, Ms. Broadman.
Mr. HOBBS.

STATEMENT OF ROBERT HOBBS, NATIONAL CONSUMER LAW CENTER

Mr. HOBBS. Mr. Chairman, Members of the Committee, I will just mention a few highlights of my testimony and point out that I have two attachments to my testimony which include our section-by-section analysis of S. 108 and a criticism of the Federal Reserve Board's consumer survey which the Federal Reserve Board asserts supports Truth in Lending simplification, whereas my opinion of what happened to that survey is that they asked the wrong questions.

[Complete statement follows:]

TESTIMONY OF ROBERT J. HOBBS, STAFF ATTORNEY NATIONAL CONSUMER LAW CENTER, INC.*

I am Robert J. Hobbs, a staff attorney with the National Consumer Law Center, Inc. I am particularly pleased to be here since this committee has been responsible for so many important pieces of consumer protection legislation.

While there are numerous ways in which the Truth in Lending Act could be improved and simplified to help consumers, the Center is extremely distressed that S. 108 will make TIL less useful for consumers. The Center firmly believes that the result of S. 108, if enacted, will be to take the "Truth" out of the Truth in Lending Act (TILA). For the many reasons cited in this statement and in the section-by-section analysis of S. 108 attached to my statement, the enactment of S. 108 will undermine the accuracy and further reduce the comprehensibility of TIL disclosures making TIL yet another unreliable item of government red tape largely ignored by consumers, providing work for a handful of bureaucrats and fussed about by business. S. 108 will make credit overcharging easier and deemphasize important differences between credit transactions.

The present TIL law has accomplished much for a bill so controversial that it originally required eight years before it was finally passed by Congress. The awareness of consumers of the rates and terms of their credit transactions has consistently risen since 1969. More significantly, there has been a steady increase in the share of the consumer installment loan market captured by low rate credit institutions (e.g. credit unions, banks) at the expense of high rate lenders such as finance companies.

Much more important for many consumers, many illegal overreaching credit practices have been abandoned rather than disclosed in TIL disclosure statements. Some creditors have refused to bring those practices to the light of day as is required by the TILA. For example, the addition of illegal or usurious overcharges have seemed to decline (but not disappear) since TIL. The use of balloon payments that resulted in forced sales of many a low-income client's home has seemed to decline since TIL became effective in 1969. The APR's on consumer credit transactions have been relatively stable compared to the wide fluctuations of the prime commercial interest rate since 1970. The progress achieved in the last nine years by the TILA will be undermined by S. 108 as credit disclosures become less accurate, more simple-minded and less trustworthy.

Creditors claim that it is impossible to comply with the details of Truth in Lending, although the most common and persistent creditor violations are misstatements of finance charge and annual percentage rates. Even enforcement agencies concede that these basic violations sometimes occur on more than half the disclosures reviewed. Creditors claim that they are overburdened with irrelevant lawsuits, although more than 50 percent of the litigation challenges the computation of the

* The Center is a nonprofit organization which represents low-income consumers and works with over 2,000 legal services attorneys nationwide representing low-income consumers in litigation, legislative and administrative proceedings. Forty to fifty inquiries concerning the Truth in Lending Act are received each month by the Center so that this legislation constitutes a major part of the Center's work program. The Center has published a Truth in Lending (TIL) manual, maintains a categorized list of all reported TIL litigation, has participated in numerous TIL suits at all levels of federal and state judiciaries, has commented on many of the FRB's proposed amendments to TIL, and has generally maintained an active interest in TIL affairs across the country.

finance charge and although creditors spent four years litigating court rulings that prohibit false disclosure of an illegal security interest in all the household goods a consumer will ever own. Creditors have created the new work 'hypertechnical' to characterize the law, when as a group their attempts to comply with the Act are so mechanical and legalistic that they thwart the right of consumers to clear, conspicuous and meaningful disclosure. The unique efforts of a few concerns to make their contracts somewhat comprehensible to consumers is an exception which only underscores the rule. It is annoying that the arguments for weakening TIL come from the same interests that fought Truth in Lending for many years preceding its adoption, and are still bent on undermining the Act.

The major improvement that could be made is "clarification" of disclosures. Disclosure language and format should be made simple, clear, and understandable. The language should be comprehensible everyday language. The format should set disclosures apart from each other in orderly logical fashion with bold captions and in a manner permitting full disclosure of the credit obligations and responsibilities.

Present disclosure forms are not printed in a way gauged to be meaningful to consumers. Disclosure forms are written in legalese. They seldom read logically from left to right, top to bottom. They are filled with matters irrelevant to a particular transaction since they are designed for use with a multitude of transactions.

With full simplified disclosure, informed use of credit could further increase. Moreover, to the extent that disclosures are simplified, especially if model formats and clauses are prescribed, creditor compliance will be simplified. There would be no justification for eliminating needed disclosures. However, S. 108 fails to achieve the type of simplification which would truly benefit consumers.

There has been no credible effort to verify whether in fact present TIL disclosures result in "information overload" or "legalese overload" or whether consumers shopping for credit would welcome more credit information if plainly presented.¹ There has been no published study of whether in fact the use of the first person singular with reference to consumers' obligations in Citibank's simplified disclosure form is more or less confusing to consumers. There has been no study of whether the FRB's model lease disclosure forms using such jargon as "inception," "capitalized cost reduction," "pick-up charges"—have been useful for consumers. In short, the Senate efforts to radically alter an already successful credit disclosure scheme have taken place in an informational vacuum. The result of S. 108 is reduced information for consumers, reduced accuracy of the information provided, and reduced incentive for creditors to cooperate to comply.

If TIL is to be changed despite this informational vacuum, there are a number of changes that will make TIL disclosures more useful to consumers as well as facilitate compliance.

PRIOR DISCLOSURE

TIL is now practically worthless as a shopping tool because disclosures are provided too late. For example, the consumer in making a typical automobile purchase has spent a tremendous amount of energy before the TIL disclosure is ever made. The consumer has often compared and haggled over cash prices, trade-in value, accessories, prices and warranties. The consumer has usually filled out a credit application and waited for a credit approval. Often the consumer has orally agreed to buy the car. Many auto dealers require a nonrefundable deposit (\$100.00 or more) and a signed orderform before they provide a TIL disclosure. It would take a tremendously sophisticated, aggressive and well-disciplined consumer with plenty of spare time on his hands to change his mind after receiving a TIL disclosure statement under these circumstances. The consumer faces not only the loss of time expended on the transaction but also the risk that this deal will not be held open and that he cannot find a better deal.

This problem with lack of prior disclosure occurs with loans as well as sales: The consumer will be refused a TIL disclosure statement until he has filled out an application, waited for credit clearance and orally agreed to borrow the money. The TIL disclosure is often one of a stack of multiple page, carbon sets which the consumer is handed and instructed to sign while the salesperson's pencil taps in time with each passing second. There is a disclosure statement, a loan contract, a note, a security agreement, a credit insurance certificate * * *. Some of the documents have writing on the back, as well as the front, but it's difficult to look at the back with the carbon set still attached at the top.

¹ See NCLC Attachment B: The FRB's 1977 Consumer Credit Survey: You Ask A Stupid Question and You Get A Stupid Answer.

For TIL to accomplish its purpose as a shopping tool, there are three bare minimum requirements which must be added to S. 108 to make credit shopping a possibility.

First, the consumer should have the conspicuously disclosed right in transactions of \$300.00 or more to hold the creditor to the deal for one business day after the TIL disclosure is provided while the consumer compares and reflects over the credit terms offered. While experience indicates that most consumers will not exercise this option, enough consumers will exercise the shopping option to greatly enhance competition.

Second, creditors should be required to conspicuously display a large poster with the most common Annual Percentage Rates for their most common types of credit. Beneath this poster should be more detailed charts indicating the basic terms of the creditors' common transactions (e.g. amount of downpayment, payment schedule, late and early payment penalties) as well as copies of commonly used forms in consumer credit transactions.

Third, the disclosure statement should indicate that it is a useful tool for credit shopping. For example, there should be a statement, "Shop for The Lowest Rate" next to the Annual Percentage Rate disclosed.

While TIL is now very valuable to consumers after they enter into a credit transaction, only changes such as these will result in it becoming useful as a shopping tool.

CREDIT INSURANCE CHARGES SHOULD BE INCLUDED IN THE FINANCE CHARGE

The credit expense most commonly excluded from the finance charge under the present TIL law is of course credit insurance premiums (life, property and accident and health). These premiums can be very much overpriced. Indeed, one third of a lender's profit may come from credit insurance.

It is of course widely known that finance companies and auto dealers often make substantial excess profits from credit insurance commissions but as the recent studies of the comptroller have shown many national banks make enormous profits from credit insurance. As this Banking Committee knows from hearings it held several years ago, the sale of credit insurance is characterized by "reverse competition" which inexorably drives prices to their ceilings rather than pressuring them downwards. Commissions to creditors may exceed 50 percent. The amount of credit insurance income paid to claims is commonly less than 50 percent, and for some credit property insurance may be as low as 5 percent to 10 percent. Sales tactics are marked by overreaching, and overcharges amount to hundreds of millions of dollars annually. The Truth in Lending scheme by which creditors may include credit insurance premiums in the amount financed rather than the finance charge encourages high rate insurance and aggravates the abuses already so commonly associated with the sale of such insurance. Including credit insurance in the finance charge will help reintroduce competition in selling credit insurance and reduce the amount of TIL disclosures.

Credit insurance was once generally provided by creditors without a direct charge to the consumer. Its primary benefit was and still is the protection it provides to the creditor as a partial guarantee of its outstanding loans. Even as the chance for quick profits grow, some image-conscious banks continue to provide low-cost credit insurance at their own expense. However, with increasing competition, Truth in Lending's present scheme is causing more banks to take credit insurance costs out of the finance charge (or interest rates) so that they may claim a lower annual percentage rate. As a result of this change, premiums rise from about \$.40 per hundred per annum to about \$.70 or \$.80 per hundred per annum with no increase in protection coverage. Thus the process of excluding the costs of credit insurance from the finance charge facilitates "reverse competition" and understates the real cost of credit to the consumer.

The present Truth in Lending provisions also aggravate the unfairness inherent in credit insurance marketing. A creditor using split rate interest charges (as nearly all finance companies and most retailers do) cannot only boast a lower annual percentage rate by selling credit insurance excluded from the finance charge, but the more he sells or the higher his rate the lower the APR. This is because the highest split rate is only applicable to the first few hundred dollars of the loan so that this highest rate is diluted as more credit is extended. Thus, permitting credit insurance costs to be excluded from the finance charge not only removes the disincentive for "reverse competition" and concomitant abuses but also provides the creditor with an incentive for high penetration rates and excess coverage in order to gain a deceptively low statement of the cost of credit. As Senator Douglas

remarked, selling credit insurance can be "a smelly business"; Truth in Lending presently fosters its worst aspects.

Penetration rates for credit insurance (the percentage of all loans made which include credit insurance) continue to be very high. They are largely unaffected by price, terms, or the presence or absence of financing. For small loan companies, including major ones, the penetration rates for credit life insurance generally approach 100%. Although credit life and health insurance must ostensibly be "voluntary" before it is excluded from the finance charge, Truth in Lending has failed to alleviate the problem. That is, as the annual Federal Trade Commission reports to the Federal Reserve Board have repeatedly stated,

"The present provisions of [the Act and] Section 226.4(a)(5) of Regulation Z do not ensure the voluntary election of credit insurance since those creditors who wish to evade the intent of this section may do so by making disclosures which are in ostensible compliance with the Regulation, while orally informing or indicating to the consumer that insurance is required."

One district manager for a creditor explained the desired selling tactics this way "... [S]tate quite simply that [we] include it automatically on the loan ... [o]nly retract or switch after making every effort to sell the customer on accepting it in the loan.² Indeed, a creditor who refused to extend credit without a signed "voluntary" authorization might never be subject to challenge. Consumers would either have signed a voluntary authorization, or no consumer credit transaction would exist as a subject for suit. The fact is, it is impossible to distinguish between voluntary and required insurance. Moreover, the evidence suggests that it is generally required.

The Federal Trade Commission has often recommended that the Truth in Lending Act be amended to require that the cost of credit insurance be included in the finance charge regardless of whether a "voluntary authorization" has been signed. We strongly agree. This proposal would remove an anti-competitive and deceptive aspect of the Act and would guarantee a more accurate statement of the cost of credit. Moreover, it would be no more difficult for creditors to itemize³ the credit insurance premiums as part of the finance charge than to itemize them as part of the amount financed. In fact, it will highlight the costs and optional nature of the charges. Creditors may advertise annual percentage rates with credit insurance included (as do many credit unions and savings banks do in Massachusetts) or without credit insurance charges. If the lower APR (without credit insurance) is advertised, any addition of credit insurance charges will raise the APR and be especially noticeable. Where credit insurance is added at high premium rates and financed, as small loan companies may continue to do, the change in APR will be especially dramatic and may bolster the present trend in the marketplace from high rate to low rate creditors.

The Federal Reserve Board tentatively considered a proposal that credit insurance costs always be included in the finance charge, but now suggests that a 7 day right to cancel will ensure that the purchase of credit insurance is voluntary. However, as the Federal Trade Commission has shown, such a right to cancel has been tried and has not worked. Indeed, what could a borrower expect to learn about credit insurance in 7, 15 or 30 days? Nothing that would aid an informed judgment. The Board proposal is valueless and should be rejected.

MOST EXCLUSIONS FROM THE FINANCE CHARGE SHOULD BE ELIMINATED

Perhaps the single major source of Truth in Lending litigation arises from the provisions of the Act and Regulation which permit the exclusion of certain credit charges from the finance charge. These charges are unique to a credit transaction. A charge to record a security interest in collateral or to obtain a credit report are, for example, purely a cost of credit. In order to compare a credit transaction with an equivalent cash purchase, it is necessary to add these expenses to the finance charge. Nevertheless, under the Act a creditor may exclude several such charges out of the finance charge and add them to the amount financed. The creditor has every incentive to keep these charges out of the finance charge since he may usually disclose a smaller annual percentage rate by doing so. Actually these exclusions create a deceptively low finance charge and annual percentage rate and impinge upon the consumer's ability to rely on the APR for shopping purposes. Moreover the

² Annual FTC Report to the FRB (November 29, 1974).

³ Itemization of credit insurance is important whenever there is a separate identifiable charge. In those instances, the consumer who is made aware of the charges can seek to avoid them altogether or seek to obtain the same benefit at less cost. Since the charges generally will be separately identifiable whenever it is said to be voluntary and whenever it is added to the principle debt and in turn "financed", the charges could be itemized in exactly those situations characterized by reverse competition.

charges, once excluded from the finance charge, are often inflated for extra creditor profits. It is no wonder that the process of excluding credit expenses from the finance charge is a source of a high percentage of Truth in Lending litigation. The elimination of the exclusion provisions would establish a more accurate and honest finance charge, facilitate and simplify credit shopping, remove the single greatest cause of litigation and make the law much shorter and simpler.

THE ACTUAL AMOUNTS TO BE FINANCED SHOULD BE DISCLOSED AND DISCLOSURES OF
SUBTOTALS SHOULD BE ELIMINATED

S. 108 eliminates the disclosure of the actual amounts financed and substitutes a disclosure of only the total of these amounts. In a loan there would be no disclosure of how much cash the customer is supposed to get or in a consolidation loan⁴ no disclosure of how much is supposed to go to third parties. In an automobile sale there would be no disclosure of the cash price or the cash value assigned to the trade-in. Moreover, S. 108 would eliminate the disclosure of extra charges (e.g. filing fees, credit report fees, credit insurance) facilitating the hiding of overcharges for these items. The separate disclosure of these actual charges, which are usually self-explanatory and understood by many consumers, should be retained.

The disclosures that can be eliminated without much loss to consumers are the many subtotals which are now required by Regulation Z and the TIL Act, or added gratuitously by creditors. While their subtotals may be helpful to some consumers, these subtotals are not as important as the separate disclosure of the actual charges added and the actual deductions subtracted from the consumer's obligation. For example, on a Ford Motor Credit Corp. disclosure statement, the five required subtotals which can be eliminated are the "total downpayment," "unpaid balance of cash price," "unpaid balance," "amount financed," and "total of payments," and the two gratuitous subtotals which can be eliminated are the "total other charges" and "total cost of optional insurance." While we do not know the effect of eliminating these disclosures of subtotals upon the comprehensibility of the disclosures, it is clear that these subtotals with their jargonistic labels are far less useful to consumers than the disclosure of the actual charges and deductions which S. 108 would eliminate.

THE TIL THREE DAY COOLING-OFF RIGHT SHOULD BE RESTORED TO CONSUMERS MORTGAGING
THEIR HOMES FOR OPEN END CREDIT TRANSACTION

Despite letters from Senators Proxmire and Riegle and Congressman Annunzio and suit by Consumers Union, the FRB has retained its new exemption for open end credit from the TIL three day cooling-off protection for consumers mortgaging their homes. This new exemption, codified in S. 108, should be eliminated.

The incentives for abuses in the second mortgage market and the seriousness of using one's home for collateral has not changed since Congress enacted the three day cooling-off right in 1969. Open end credit is just as subject to these considerations as other than open end credit. The consumer's right to reconsider the transaction during the three day cooling-off period is a minimal protection which should not be taken away. A consumer giving a second mortgage on his home is not merely pledging his "equity" but is pledging his entire home, often the ability to stay in the neighborhood familiar to his family, and the low interest rate of the first mortgage on his home. Neither a consumer nor a creditor can liquidate the "equity" in a consumer's home: the entire home must be sold to satisfy a second mortgage.

Many are concerned with the increasing overavailability of credit. This concern would be amplified manifold if there were data available on the amount of open end credit lines available to but not currently used by consumers. There is a credit boom in the U.S. which could lead to disaster for thousands, perhaps millions, of American families particularly when a recession finally strikes. This dangerous situation should not be compounded by removing the mere right to reflect upon the use of one's home as collateral for an open end credit purchase. The spectre of forced sales, using the informal, unsupervised foreclosure procedures of most states, which result in great suffering and economic loss for consumers, may be just down the road if present forecasts of a recession in 1979 are accurate. This suffering and economic loss should not be exacerbated by taking this minimal protection from consumers.

SPURIOUS OPEN END CREDIT SHOULD BE CLEARLY DEFINED AND SUBJECT TO MORE
MEANINGFUL DISCLOSURES

As more and more creditors convert their operations from closed end to spurious open end (revolving) credit, the inadequacy of the abbreviated but complex open end

⁴ In 1975, 31 percent of the loans made by small loan companies were to consolidate existing bills. S. Lees Booth, "Finance Facts Yearbook 1977" (NCFA).

TIL disclosures for spurious open end transactions has become more and more apparent. In these transactions, there is never a disclosure of the actual annual percentage rate, the total finance charge, the amount of extra charges, and total of payments should the consumer make the minimum payments as scheduled. The present law provides a vague, unworkable subjective test for distinguishing between open end and closed end credit and does not provide appropriate disclosure requirements for these hybrid, spurious open end transactions.

For spurious open end credit sales the following disclosures should be provided: the cash price, the trade-in and downpayment, other charges, the new balance, the minimum payment schedule, the finance charge and the APR. For open end loans, the amount of the loan, other charges, the new balance, the minimum payment schedule, the APR and the finance charge should be disclosed.

These disclosures should be provided before a transaction of \$100.00 or more when that transaction occurs at the same time the open end credit account is opened (e.g. as in the sale of encyclopedias). In addition, these disclosures should be provided before the first payment date of transactions on existing accounts which are large (e.g. \$1000.00 or more) or are otherwise not routine because the creditor does a whole new credit evaluation before agreeing to the particular extension of credit. These are all types of transactions which do not fit in the concept of open end credit which existed when TIL was enacted in 1969. This new spurious open credit should be more clearly described in TIL disclosure statements. The existing schemes of disclosure are inadequate for these hybrid types of credit.

BALLOON PAYMENTS SHOULD BE CONSPICUOUSLY DISCLOSED WITH STATEMENT WHETHER BALLOON PAYMENTS WILL BE REFINANCED

Balloon payments, a large lumpsum payment at the end of a schedule of smaller payments, are an evil which have led to many foreclosures and executions often against consumer's homes. The abuse of balloon payment obligations seemed to diminish after TIL became effective and Regulation Z required the conspicuous labeling of balloon payments highlighted by a description of the conditions under which they would be refinanced. While the TIL Act and S. 108 are silent on the disclosure of balloon payments, FRB proposals to simplify Regulation Z have deleted the existing disclosure requirements for balloon payments. To insure against a resurgence of their use, S. 108 should incorporate the present Regulation Z disclosure requirements for balloon payments.

MULTIPLE CREDITOR RESPONSIBILITY AND IDENTIFICATION SHOULD BE RETAINED

S. 108 would radically change and limit the responsibilities and liabilities of multiple creditors in a single transaction. The proposal eliminates Truth in Lending responsibilities of a financier where the note is payable on its face to the seller, even when the financier has controlled all credit terms and the process of making disclosures. It permits loan disclosures for credit sale transactions, effectively eliminating any opportunity for a consumer to compare another dealer's offer. It successfully immunizes the true creditor from liability at the expense of small creditors least able to exercise their economic leverage and at the expense of the consuming public. The proposed changes also bring to a halt a growing number of cases which pierce the ostensible financing arrangement (with apparent seller responsibility) and identify the true economic and business arrangement among the creditors. This case law development has enhanced Truth in Lending compliance by attaching liability to the party that controls the credit transaction. Finally, the changes have one other unfortunate result: consumers dealing with disappearing sellers (e.g. some home improvement, door to door sales, or health spa businesses) may be denied any Truth in Lending recovery (hence enforcement) even where an existing financier controlled the terms of credit.

Not only would the Board destroy a more effective and accurate view of creditor responsibility and Truth in Lending enforcement, its proposal also contradicts or carves out a large exception to the abolition of the "Holder in Due Course Rule". Contrary to the modern trend, consumers who enter into a transaction with a seller may be foreclosed from raising Truth in Lending claims against the creditor who arranged and is collecting the debt. In addition, the draft adds new tests which add two questions of fact certain to increase the confusion of litigation: (1) who bears a portion of the credit risk and (2) which creditor plays a "Primary role" in the extension of credit. Congress should reject this proposal and retain an apportionment of creditor responsibility in a manner consistent with creditor control and other consumer protection law.

The elimination of separate recovery for each consumer in a single transaction reduces the incentive for private enforcement of the Act and introduces new diffi-

culties of application. It is the creditor who requires a co-signer as extra security and who is entitled to prosecute with co-signer for full amount of the debt. The co-signer often has as much interest in the credit terms as any other, and certainly has as much at stake. The courts have finally and rightfully come to recognize each consumer's right to recovery. Any other rule raises real and difficult questions of contribution, apportionment, and pleading procedures.

Lastly, consumers have a right to know the identity of the creditor with whom they are dealing. For the most part this has not proven a difficult standard. However, from time to time a creditor disguises his true identity for purposes of his own. Cf. *Vines v. Hodges*, 422 F. Supp. 1292 (D.D.C. 1976). At other times, a consumer may not want to deal with a particular creditor such as a finance company, especially since finance companies frequently pressure debtors into new loans at higher rates. Therefore, when sellers act as mere conduits for other creditors, consumers should have right to learn the identity of the true creditors at the outset of the transaction.

TIL SHOULD NOT PREEMPT ADDITIONAL STATE LAWS

Several industry representatives have urged this committee and the FRB to expand the preemption of TIL over state credit laws. S. 108 should incorporate the standards of preemption presently stated in Regulation Z in order to maintain the present law and to prevent greater preemption by a change in the FRB regulation. The present scheme preempting only those state disclosure laws which truly interfere with the federal disclosures has worked well. Greater interference with state laws may create the mischief of reducing state consumer protections tailored to deal with local conditions.

COMPUTER PROGRAMMING AND PRINTER'S ERRORS SHOULD NOT BE EXCUSED BY S. 108

The TIL Act excuses violations resulting from clerical or calculation mistakes. S. 108 would expand this excuse to include "computer programming, and printing errors." Such errors should not be encouraged, and when they do occur, the burden of the error should not fall upon consumers. Perhaps computer programming malfunctions (e.g. as a result of unusual electrical interference) or typewriter malfunctions (e.g. a key sticks) should be excused and probably would be by the existing provisions allowing for clerical or calculation errors, depending upon the circumstances.

ATTACHMENT A TO STATEMENT OF THE NATIONAL CONSUMER LAW CENTER

S. 108: A SECTION BY SECTION ANALYSIS

Section 2(a)(1). "Creditor." This amendment significantly reduces the scope of the Truth in Lending Act (TILA) by narrowing the key term "creditor." The present TILA definition of "creditor" is broad so that every type of business involved in financing a consumer credit transaction is responsible for complete, accurate disclosures whether it be a lender, credit seller, sales finance company, assignee, loan broker, pawnbroker, etc. Section 2(a) narrows the term "creditor" in such an ambiguous manner that years of litigation are likely to ensure to clarify its meaning. Purportedly, however, section 2(a) insulates sales finance companies, banks and other assignees from TIL compliance responsibilities in connection with their indirect credit placing the responsibility on the credit seller. In addition, where a retailer, loan broker or other credit arranger is involved in obtaining direct financing from a lending source, such an arranger would no longer share the responsibility for the disclosure under section 2(a). This amendment will do away with the existing system of cooperative checks and balances among multiple financiers and arrangers substantially decreasing the accuracy of disclosures and the likelihood of the cooperation among creditors necessary for compliance by the business providing the disclosure statement.

TIL of strengthened by overruling several FRB letters and adopting the case law by requiring a person who regularly arranges credit to provide disclosure when a private individual extends the credit. This occurs most frequently when an individual finances the sale of his own house with the details worked by a realtor. This amendment would require the realtor to provide TIL disclosures.

Section 2(a)(2). This is a technical amendment to conform the cross-reference to the amendments made by Section 13.

Section 2(b). Credit Sale. This amendment would weaken TIL by permitting sellers and financiers to cooperate to avoid providing the fuller, more meaningful "credit sale" disclosures. Section 2(c) changes the present TILA by allowing a sale to be disclosed as if it were a loan if the sales contract is payable on its face to the assignee or the seller is substantially involved in arranging direct financing for the

sale from a lender. The present law requires credit sale disclosures if a seller is involved either as an extender or arranger of credit.

Section 3. Agricultural Credit. Recognizing that small farmers, fishermen and other small agriculturalists may combine business and personal uses of credit in the same transaction, TIL covers agricultural credit of \$25,000 or less. Section 3 excludes agricultural credit from all disclosure requirements unless it is used "primarily" for a family, household or personal purpose.

Section 3(c)(2). Mobile Homes. This section removes the \$25,000 price ceiling on the coverage of mobile homes for a mobile home transactions in states which would not consider a mobile home sale to be a "real property" transaction. Since the average price of double-wide mobile homes is expected to reach \$22,300 by 1979, this provision's impact would depend on future inflation in mobile home prices.

Section 4. Spurious Open End Credit. Open end (i.e. revolving) credit disclosures are less accurate and less meaningful under the existing scheme of the TILA. Increasing use of open end credit in situations where fuller, more accurate information should be disclosed demands a stricter definition of open end credit. By merely adopting the standard set forth in the leading court decision, Section 4 fails to address the issue of spurious open end credit. Since that decision was rendered in 1973, spurious open end credit has continued to flourish. It is highly unlikely that Section 4 will make any difference. Since a creditor offering spurious open end credit never discloses the total finance charge, the dollar amount of each future payment, the total of payments or deferred payment price, or the dates of the payments prior to the extension of credit, the consumer is severely hampered in comparing the prices of credit, choosing between credit and cash, and otherwise being informed about the spurious open end credit.

There are several situations in which open end credit disclosures are spurious. Where a retailer markets a single high priced product (e.g., encyclopedias or sewing machines) full disclosures should be made for those products regardless of the fact that lower priced products (e.g., annual, single volume encyclopedia supplements or thread) may be purchased on the account later.

In another type of situation, the spurious open end credit is extended only after the consumer has selected a high priced product. In those cases, fuller, more meaningful, prior disclosures should be provided since the credit is extended for a specific transaction. Also, any cost arguments for reduced open end disclosures do not apply to spurious open end transactions which are not handled in the routine, low-cost manner of most open end credit. For example, if the creditor reverifies the consumer's credit worthiness for a transaction or the transaction is substantial (i.e. over \$500.00), then the consumer should be provided with more meaningful, fuller disclosures before being bound to a new contract.

Section 5. Model Forms and Annual Revisions. This section creates a new defense for creditor noncompliance, requires the FRB to devise model forms, requires the FRB to use readily understandable language in doing so, requires the FRB to consider the computer compatibility of model forms, allows creditors to use, disregard or alter model forms, provides for Federal Register notice and comments on proposed model forms, provides for annual Regulatory amendments and requires a minimum of 6 months (and up to 17 months) before regulatory amendments become effective.

The concept of model forms is appealing in the abstract but is susceptible to abuse in execution. The concept of model formats and clauses may be more practical and less susceptible to abuse.

The principle hazard is that the process of simplifying language may well result in hiding rather than revealing important aspects of and differences between credit transactions.

Many complex credit terms and types of contracts cannot be accurately described in a simple manner because of the complexity of the mathematics or concepts underlying the specific term or type of credit. Efforts to simplify language will often decrease the accuracy of the disclosure. As long as highly technical (often unnecessary) credit terms are dreamed up by creditors and imposed by creditors on consumers, such as balloon payments, variable interest rates, acceleration clauses, prepayment penalties, precomputed interest, high late charges, future advances clauses, after-acquired property clauses, security interests, and attorney fee clauses—disclosure will be more complicated than it need be. Simplified disclosures of complex terms may at best lead to simple-minded consumer decisions but most likely to more costly, poor credit decisions by consumers.

Since many firms in the credit industry have consistently sought to evade and avoid full, meaningful disclosure of credit terms, there is no reason to believe that their compliance will be more than that minimally required, when they do comply. Since the FRB has no expertise in and a record of indifference to the science and act of effective communication with consumers, there is little basis for believing that models prepared by the FRB will accomplish better informed decisions by consumers.

Certainly the usual arcane legalese of many consumer credit clauses can be made clearer. However, the format is likely to be the key to communicating with consumers and Section 5 permits the final format decisions to be made by the industry and permits the computer's limitations to take precedence over simple, conspicuous, clear and meaningful disclosure.

Another substantial obstacle to meaningful disclosure and meaningful model forms, formats and clauses is the resistance of the credit firms to the use of different forms for their different types of credit transactions. The same loan form is often used for simple loans of cash, refinancings and consolidation loans resulting in line upon line of irrelevant language and empty spaces with each disclosure. The same credit sale form is used whether or not the many types of credit insurance are in fact purchased through the seller, a trade-in is involved, irregular, balloon or pickup payments are to be made, etc. S. 2802 and the F B avoid this problem at the expense of providing clear and meaningful disclosure by dropping disclosures and requiring disclosure of obtuse subtotals and totals of actual charges rather than disclosure of the actual, real costs involved in a transaction. Thus the "amount financed" will be disclosed in a credit sale rather than the fact that the consumer agrees to finance a disclosed sale price plus sales tax, dealer preparation, etc. minus the downpayment and trade-in. It is highly unlikely that consumers are more likely to relate to the term "amount financed" than to the real costs (sale price, extra charges, trade-in price, etc.) that they have shopped and perhaps bargained for.

It is highly unlikely that model forms will be successful except for simple transaction. If they must be designed for both simple and complex transactions, they are likely to severely underline the truthfulness and credibility of all TIL disclosures.

Section 6. Definition of Finance Charge. This section codifies one of the FRB staff's standards for distinguishing between finance and non-finance charges. While the standard is entirely consistent with the present definition of finance charge and may be conceptually useful in a few situations, it neither aids nor hinders in difficult cases. For example, if an "extended warranty" for \$50.00 a year by a dealer is offered by the dealer but seldom purchased in cash transaction but somehow almost always sold by the dealer in credit transaction, the standard added by Section 6 is sufficiently ambiguous to be of little utility.

Section 7. Annual Percentage Rate (APR) Error Tolerances. This section creates a new tolerance of APR error of $\pm .125$ percent, removes obsolete TILA § 107(f), and permits the FRB to allow greater APR tolerances for irregular payment transactions. For many credit transactions, these tolerances will probably not make much difference to shoppers even though rate competition may well be within the proposed .25 percent range. For credit transactions of large amounts of money or of long duration, however, a .125 percent to .25 percent difference in APR would be a significant amount of money. Thus, there is a \$20.30 difference between a \$3500.00 four year car loan at 10 percent and 10.25 percent APR's, an \$130.00 difference between \$10,000, 10 year mobile home loan at 11 percent and 11.25 percent APR's, an \$130.00 difference between \$10,000, 10 year mobile home loan at 11 percent and 11.25 percent APR's, and a \$3622.50 difference between a \$35,000, 25-year mortgage at 9 percent and 9.25 percent APR's. None of these differences could be thought to be minimal to today's cost conscious consumers. There is no evidence of a problem of compliance with the existing requirement of disclosure to the nearest 1/4 of 1 percent (a .125 percent rounding tolerance) with higher tolerances for inaccuracies for irregular payment transactions.

Section 8(a). FTC Enforcement. Section 8(a) codifies the FTC's existing enforcement powers. Present law permits the FTC only to seek a cease and desist ("sin no more") administrative order, a process which takes a least one to three years in contested cases, does not correct past wrongs, and has little deterrent value.

Section 8(b). Administrative Restitution of Overcharges. Section 8(b) establishes new, detailed rules for the substantive and procedural handling of overcharges by administrative agencies. Section 8(b) proceeds from the false notion that creditors ought to retain the spoils of their mistakes and neglect at the expense of consumers and compounds the fallacy by prohibiting administrative agencies from ordering restitution for many common types of overcharges or at all if it affects the safety or soundness of the creditor. Where there is an understated APR or an overstated finance charge, Section 8(b) requires the agency to notify the creditor, permits the agency to order an adjustment, and requires an order of adjustment where the overcharge was part of a pattern, grossly negligent or willful. However, no adjustment at all may be ordered if it significantly affects the safety or soundness of a creditor, if specified short time periods have expired, in the absence of a cease and desist procedure, or if the overcharge does not involve the finance charge or APR. The existence of Section 8(b) would have hindered or prohibited the FTC's efforts to obtain millions of dollars of refunds of credit balances held by retailers since those spoils are not related to a misstatement of the finance charge or the APR. If a creditor involved in a home improvement scam violates TIL by misstating the cost of the repairs, not showing the taking of a second mortgage, or failing to disclose a balloon payment, an enforcing agency would be prohibited from obtaining appropriate restitution by section 8(b). Moreover, even if the home improvement scam involved an APR or finance charge overcharge, the enforcing agency could not order restitution if it threatened the safety or soundness of the creditor, shielding the most incompetent or fraudulent creditors from the normal risks of their own ineptitude or fraud. Finally, section 8(b) provides unnecessarily short periods of limitation after which creditors may keep the spoils of their incompetence or neglect. Even spoils obtained by fraud may be kept by creditors if the transaction is still being paid but was entered into as recently as four years ago.

Section 9. Examination of Each State Disclosure by FRB for Inconsistency and Similarity. This amendment requires the FRB to determine the inconsistency or similarity of state required disclosure upon the request of any creditor, State or interested party. If the State required disclosure is inconsistent, the creditor may not make the disclosure and is protected from liability for not doing so. If a State required disclosure is substantially the same as the TIL disclosure, then the state disclosure may be substituted. Aside from the increased governmental resources this procedure will require, it will severely hamper or defeat efforts at the state level to perfect better means of disclosing credit costs and terms to consumers or to fashion disclosure methods most appropriate to the locale. Since most credit disclosures must be tailored to state rate and consumer protection laws anyway, there is no reason not to allow experimentation with other disclosure schemes to continue at the state level. Since there is no basis for believing the present or future federal credit disclosure schemes are or will be the most effective possible schemes, states interested in experimenting with disclosure schemes believed to be more effective should be encouraged to experiment.

Section 10. Annual Reports to Congress. Section 10 deletes the present deadlines for annual administrative TIL reports to Congress. This purpose of the amendment is to allow the agencies to incorporate the TIL annual reports with other reports.

Section 11 amendments to TILA § 121. Multiple customers, multiple creditors, and increased tolerance for inaccuracy. This part of section 11 substantially weakens TIL. It provides that there is an obligation to disclose to only one customer if there is more than one customer, e.g., a cosigner or a guarantor. Present law requires disclosure to both customers and gives each an action for any violations, although only one copy of the disclosure statement must be given to multiple customers under present law. The amendment would probably deprive the cosigner of any action for TIL violations. This amendment is clearly contrary to the interest of consumers. A recent survey disclosed that more than 70 percent of finance company cosigners ended up paying on the cosigned debt. Cosigners should not only receive their own copy of the disclosure but it should contain a warning that cosigning is dangerous to the pocketbook. The FTC has proposed a cooling-off period and disclosure of responsibilities for cosigners which is the much sounder direction in this area.

Section 11 also removes the disclosure responsibility from each creditor in a multiple creditor transaction and places the responsibility upon the FRB to specify which of several creditors must make the disclosures. This will reduce the incentives for cooperation and the system of checks and balances between multiple creditors. It is likely to increase the prevalence of inaccurate and incomplete disclosures.

Finally, this section requires the FRB to permit numerical inaccuracies other than the APR inaccuracies if it will "facilitate compliance." It is difficult to understand how a standard of less than fully accurate numerical disclosures, as presently required, would not facilitate compliance: a lower standard is always easier to comply with. However, there is no reason why a creditor should not and cannot provide precise disclosure of the known numerical amounts involved in a consumer transaction, and there are existing provisions for estimating unknown amounts. Furthermore, tolerances for inaccuracies in the dollar amounts or payment terms will increase the existing tolerances for inaccuracies of the APR.

Section 11 amendments to TILA § 122. General disclosure requirements; Regulations on Conspicuousness, Terminology and Sequence. With one exception the amendment to TILA § 122 adopts the general disclosure requirements from Regulation Z and the present TILA §§ 121 and 122. The one exception is the allowance of additional information without the present qualification imposed by Regulation Z § 226.6(c) that additional information not mislead or confuse consumers or contradict, obscure or detract attention from required disclosures. This allowance of additional information without qualification is completely contrary to the Senate's concern with "information overload" since a major problem with many present disclosure statements is that they are filled with superfluous blank spaces, irrelevant legalese, and other additional information. The explicit sanction of overloading TIL disclosure statements with additional information in Section 11 may be remedied by the amendments of TILA § 128 by Section 14 of the S.2802 requiring segregation of TIL disclosures. If that is the case, the TILA § 122(b) proposed by section 11 is superfluous and should be deleted for that reason.

Section 12. Rescission. Recognizing that the equity in the home was generally the most substantial asset of many Americans, the House of Representatives added the TILA § 125 cooling-off period to the Senate TIL bill in 1968 giving consumers the right to reflect on the decision to use their home equity as collateral for a sale or loan. The House also provided the cooling-off period for the purchase of a vacant lot to be used for the construction of a dwelling. Purchases of vacant lots are often risky to consumers because of hidden problems with the land, e.g., seasonal or tidal flooding, zoning restrictions, inadequate utility services, roads, or sewer services. Section 12 substantially reduces the number of transactions in which the cooling-off period will be available and increases the likelihood of litigation to enforce this right.

Section 12 reduces the cooling-off opportunity by deleting coverage of vacant lot purchases altogether, certain mobile home purchases, certain "land contracts," open-end credit purchases, rescindable transactions which are refinanced, and transactions where there are substantial disclosure violations. Coverage of vacant lots is deleted by deleting the phrase in TILA § 125(a) "real property which . . . is expected to be used as the residence." A mobile home transaction in which the financier takes a lien in the consumer's previously owned land is now rescindable. *Pierson v. Fairmont Mobile Home Sale*, 5 CCH Cons. Credit Guide ¶98,006 (S.D.W. Va., March 21, 1978). By including mobile homes within the new definition of "dwelling," such mobile home transactions would no longer be subject to a cooling-off opportunity even though mobile home sales are notorious for problems of consumer dissatisfaction. While this amendment would theoretically increase the coverage of TILA § 125 by making it available should a second lien be taken on a mobile home, NCLC believes that the taking of second liens on mobile homes is extremely rare since mobile homes rapidly depreciate leaving no equity for collateral. Many contracts for deed and land contracts [a sale of real estate providing that title does not pass to the buyer until all payments are made and that the buyer does not accumulate any equity in the real estate] are entered into subject to an existing mortgage on the real estate and therefore subject to the right of rescission. By excluding all acquisition security interests, not just first liens as in the present TILA § 125(e), Section 12 drops coverage of these highly risky transactions leaving the purchaser without the right to reflect on the risk of pre-existing mortgages and liens and the risk that the seller may not satisfy them at the end of the contract. The deletion of the "first lien" requirement will also remove the coverage of second mortgages taken to finance the acquisition or construction of a dwelling. Since there is a wide variation in interest rates for second mortgages among lenders, a cooling-off period is useful to consumers who require a second mortgage and who are also likely to be facing the myriad of other tasks and decisions involved in purchasing a house.

Section 12 codifies two FRB created exceptions to TILA § 125 which would remove doubts under TILA § 105 about the validity of the FRB's actions. Section 12 amends TILA § 125(e) to except consolidation or refinancing transactions (with no advances) from the cooling-off right. This allows creditors to avoid any sanction for not having

provided a required cooling-off period simply by refinancing a transaction. Since 2/3 of finance company accounts are generally refinanced accounts, it appears that a loophole of enormous proportions has been created. If such a provision is necessary, it should contain a proviso that a refinancing or consolidation does not cut off existing rescission rights arising out of the prior transaction.

Section 12 also adopts a pending FRB regulation which would facilitate the use of consumer's homes as collateral for open end credit transactions. Given the inadequacy of the present law or S. 2802 in dealing with spurious open end accounts, this new exception to the cooling off requirement may also provide a significant loophole. Because of the incompleteness and technicality of open end disclosure and the ignorance of many consumers of the consequences of using their home as collateral, this amendment may facilitate the uninformed use of credit and the overcollateralization of both trivial and large purchase through open end credit.

Section 12 further reduces the scope of consumers' rights to a cooling-off period by reducing the amount of accurate credit information which the consumer must be given at the beginning of the cooling-off period. This is accomplished by a narrow definition of "material disclosures." The result is that much of the information required by existing law or even many of the fewer disclosures required by S.2802 may be missing or incorrect during the period the consumer is provided by TILA § 125 for reconsidering the use of his or her home for collateral. Most astounding is the absence of a requirement that the consumer be informed of the types and extent of security interests during the cooling-off period. Since a home improvement transaction could frequently result in numerous liens (a materialman's lien in favor of a lumber company, mechanic liens for wages in favor of workmen, a mortgage in favor of the seller) and this is usually not known to most consumers in the absence of disclosures, this disclosure is most important. Other disclosures permitted to be absent or incorrect may be paramount to many consumers—the amount of prepayment penalties, late charges, the cash price, the downpayment, insurance charges, closing costs, a required deposit balance. However, S. 2802 determines that the absence or incorrectness of this information is never material to a consumer contemplating a transaction secured by his or her home. The present approach of permitting the parties or the courts to determine whether an omitted or incorrect disclosure is "material" to a particular transaction has created no problems and is preferable to the rigid approach of S. 2802.

Section 13. Open End Disclosures. This section makes mostly minor changes to open end disclosure requirements. The FRB represented to the Senate Subcommittee that the FRB would study reform of TIL open end disclosures in the future.

Section 13 would delete the present permission for the disclosure of the annual yield on open credit accounts allowing only a disclosure of the rate of computing finance charge, require disclosure of the absence of a "free ride" without finance charges, modify the disclosure of additional charges by deleting the requirement that the condition for imposing additional charges be disclosed, while requiring that such charges be identified, modify the security interest disclosures by deleting the requirement that the conditions for taking a security interest or that the type of security interest be disclosed while requiring that the non-purchase money collateral be identified, reduces the number of billing error statements of rights mailed to consumers from two to one per year, and the requirement that changes in TILA § 127(a) require new disclosures for existing accounts. Section 13 also codifies the present regulatory approach to the absence of required information in an open end periodic statement by treating such as compliance if any resulting consumer inquiries are treated as billing errors by the creditor and the creditor maintains reasonable procedures to obtain the absent required information. Given the confusion involved with and the cost of changing credit disclosure forms, substantive amendment to TILA § 127 should be deferred until the FRB has studied the problem and made its recommendations.

Section 14. Other than open end disclosures. Section 14 deletes requirements of disclosing most actual costs and charges, retains disclosures of subtotals and totals of actual costs and charges, makes many disclosures vaguer, adds a requirement that disclosures be segregated from other information, adds a requirement that home mortgage disclosures must state the amount of the finance charge and indicate if the mortgage may be assumed, adds a requirement that the subtotals or totals of costs or charges be explained, adds a requirement that a single creditor be identified, and adds a statement referring the consumer to the default terms of the contract which are usually written in arcane legalese, in small print on the reverse of the contract.

The principal failing in the approach of S. 2802 to provide more meaningful, but fewer disclosures for consumers is the erroneous assumption that consumers will

relate more readily to mathematically vague, federally created concepts—e.g. “amount financed,” “total sale price”—than to the much more familiar actual costs and credits—e.g. “trade-in,” “interest,” “cash to Mr. Smith.”

NCLC believes that there are many potentially effective means to improve the usefulness of TIL other than open end disclosures for consumers. Disclosed information could be provided earlier when it can be used, grouped in related clusters with bold headings, most important terms could be in large, bold print, irrelevant information and blank spaces could be minimized by requiring different forms for more different types of transactions, many subtotals and totals could be eliminated, different mathematical computation methods for prepayment and default penalties could be described on a word-scaled basis, late charges could be disclosed in terms of a dollar amount rather than a computation method, etc. However, NCLC is aware of no serious empirically based attempts by industry or government to gain insights into the most effective means of providing meaningful credit disclosures to consumers. Given this lack of interest by industry and government, NCLC believes that changes in TIL disclosures should be postponed. There is strong evidence that the existing TILA has been effective in increasing the awareness of consumers of credit terms and increasing the market share of lower rate financiers. There is good reason to believe that the disclosure scheme of S. 2802 will undermine the progress made under the present TILA. Less accurate disclosures will undermine the existing public confidence in TIL disclosures, decreasing the attention paid to them, much like the federally required sticker prices on new cars, which only the most gullible consumers rely on as a true price.

Most destructive to the truthfulness of TIL disclosures will be the absence of disclosure of the actual amounts of charges and advances of credit involved in consumer transaction. In the absence of a disclosure of actual charges and advances, overcharges may be hidden with impunity since private enforcement becomes impractical without disclosure of actual charges and advances and administrative enforcement agencies lack the resources to enforce TIL. Hidden surcharges and “extra” charges will increase, costing consumers more in the long run. Ironically, such charges will be included in the “amount financed” reducing the disclosed Annual Percentage Rate while the cost of the transaction to consumers actually rises. Since the presence, purpose and amount of the added charges will not be disclosed, consumers will no longer be able to use the TILA private remedy to guard against overcharges. Since S. 2802 does not provide an administrative enforcement penalty for many types of creditors or violations, the removal of an effective private enforcement tool will remove financial incentives for creditors to avoid imposing hidden overcharges. Former, present and future overcharges are likely to multiply in the credit industry’s quest for additional profits and lower disclosed APR’s. Consumer confidence in the APR and other disclosed figures will wane. Knowledgeable consumer educators and advocates will no longer rely on TIL in their teaching efforts to increase the awareness, skills and knowledge of credit consumers. Compliance by industry will become a snap, just as it is with federally required automobile sticker prices. However, TIL will no longer be truthful and will be no more meaningful or useful than automobile sticker prices.

Section 15. Private Enforcement. The two most significant changes proposed by Section 15 are the allowance of many TIL violations without providing for a meaningful private remedy and the forgiveness of violations which are related to using computers. Section 15 deletes the statutory civil liability for failing to disclose or truthfully disclose such things as the creditor’s identity, late payment charges, prepayment or default penalties, the types of security interests taken, the cash price, the trade-in value, the amount of each extra charge, the terms of a deferral or extension of payments. In addition, private enforcement will no longer be available if disclosures are not given prior to consummating the transaction, if the disclosures are not clear, conspicuous or in a meaningful sequence, if additional information is placed in the disclosure in a confusing or distracting manner, or if an estimated figure is disclosed as an actual figure. In open end transactions, there would be no private enforcement for failing to disclose the outstanding balance at the beginning of the period, to identify the transaction during the period or to provide the total amount credited to the account during the period.

A drafting technicality which may actually increase confusion and perhaps litigation is that S. 2802, section 15(b)(2) requires compliance with particular sections of the Act rather than “under” the Act or “under” particular sections of the Act in order for a creditor to avoid civil liability. This will restrict the flexibility of the FRB’s regulatory powers since any regulation under those sections would have to be identical to those sections to insure that creditors are complying with both the Act

and the regulations. Since other parts of the TILA and S. 2802 contemplates some flexibility in FRB rulemaking powers, this is likely to be a drafting error.

Section 15 also reduces the potential recovery in TIL class actions by changing the maximum recovery to a maximum liability in the event of several similar class actions against the same defendant, codifies the case law that attorney fees are available for the successful enforcement of rescission rights, increases the period for correcting violations without exposure to civil liability from 15 to 60 days from discovery, codifies the dominant case law position that multiple creditors are not subjected to a multiple recovery, codifies the existing case law which in all but three states permits TIL claims to be raised defensively more than one year after the date of the transaction, clarifies the availability in administrative enforcement actions of the defense of good faith compliance with existing but invalid regulations or interpretations, codifies the case law that civil liability and rescission remedies are cumulative and not exclusive, and clarifies the availability of the civil liability for the failure to meet rescission requirements.

The substantial reduction of private enforcement by section 15 will serve to take the "truth" out of Truth in Lending. Truth in Lending will increasingly become just more bureaucratic red tape ignored by consumers, enforced by a mindless bureaucracy and fussed about by business. Private, grassroots enforcement has been the heart of TIL enforcement and the major factor in deterring overcharges and frauds and encouraging truthful, full disclosure.

Section 16. Liability of Assignees. This section removes assignee liability for violations known to the assignee which are not apparent on the face of the transferred documents. Thus, under section 16, if an assignee knows that the disclosure statement was not given to the consumer, the assignee is not liable and has no incentive to prevent such a violation. If the assignee knows that the amount financed contains overcharges, the assignee is not liable and has no incentive to guard against the overcharge as long as the overcharge is disguised so as not to be apparent on the face of the instruments, an easy task if the abbreviation disclosures of S. 2802 become law. In effect, section 16 creates a new Holder in Due Course Doctrine years after the Doctrine was abolished by FTC regulation and most states. Despite the fact that courts looking at the substance of the transaction, rather than mere legal form, have repeatedly found assignees in TIL suits to be the actual extender of credit, sections 2 and 16 recreate the fiction that assignees are less involved than they actually are. Allowing financiers to formalize their role in credit transactions as "assignees" not responsible for the fraud or overreaching committed by the sellers they finance, will decrease the level of compliance with and truthfulness of TIL.

Section 16 also gives examples of what is meant by "violations apparent on the face," clarifies the availability to consumers of rescission rights after assignment, and repeals TILA § 115 which made assignees liable for known as well as apparent violations and section 130(d) which shifted the burden of establishing lack of knowledge to the assignee in certain real estate transactions.

Section 17. Responsibility for Unauthorized Credit Card Use. Section 17 clarifies the limitations of a consumer's liability for unauthorized credit card use by making it clearer that the consumer can notify the card issuer by phone, telegram or other ordinary means, by deleting the requirement that card issuers provide postage paid notices of loss to consumers, deleting obsolete transition periods, and making it clear that the consumer's notice is effective when sent.

Section 18. Comparison Shopping. A major flaw in the present TILA is its failure to provide cost disclosures sufficiently in advance of a final agreement to permit the consumer to comparison shop for credit. The creditor is not required to provide TIL disclosures until the second before the consumer signs the contract. Thus disclosures are usually presented as if an afterthought and not at the beginning point of shopping. In fact one small survey of finance companies in New Orleans resulted in unanimous creditor refusal to provide TIL disclosures for shopping purposes. Section 18 requires the FRB to establish a pilot study of credit shoppers' guides for large metropolitan areas, a method already tried in Massachusetts and California.

Two other methods are more likely to encourage widespread credit shopping and competition in the credit industry. Most effective would be a consumer right and opportunity to hold the creditor to the disclosed terms for a brief period while the consumer shops for credit. Too many salespersons "close" their sales with a warning that someone else could buy the car or the credit manager may change his mind if the consumer does not buy immediately. A consumer right to hold the creditor for one business day to his credit offer in larger transactions would give consumers the opportunity to shop for credit. If only a small portion of consumers avail themselves to this right, the impact on competition would be beneficial.

Another method of providing for credit comparison shopping would be to require the posting on premises of typical APR's and terms for major credit categories, e.g., auto loans, personal loans. This would considerably shorten consumer shopping and search time because the consumer would not have to wait to talk to a credit employee to find this information. Even then it might not be available under existing practice. Posted terms would be more general and less precise disclosure than an individual disclosure statement but would still have some shopping value. It would not involve a government bureaucracy gathering and distributing the information as is the case of shopper guides making it more current, less costly, and more widely available.

Section 19. Credit Advertising. Section 19 reduces the number of items which must be disclosed in certain credit advertisements and broadens the FRB's authority to require more items to be disclosed in open end credit advertisements. For open end credit transactions advertisers will no longer be required to disclose the presence, absence or duration of a "free ride," which method is used to determine the balance on which finance charges are calculated, the method of determining the finance charge, and perhaps the presence of fixed or minimum finance charges given the ambiguity of the section 19(a) amendment to TILA § 143(1). For other than open end credit transactions, the requirement that advertisers disclose the cash price or amount of loan is deleted and the requirement for disclosure of repayment terms is made vaguer.

The confusion that necessarily results from the existing allowance of advertising of both simple interest rates and APR's when they are different is not addressed. APR's are frequently higher than simple interest rates because of the addition of finance charges, such as closing costs, to simple interest. Only the APR should be permitted to be used in ads. If the simple interest rate is permitted, the nature and amount of additional finance charges also should be required to be conspicuously and meaningfully disclosed in the ad.

Advertisements which state that the first payment is deferred for more than a month should be required to state whether or not finance charges accrue during that period. Because such credit advertisement is frequent, particularly around Christmas, and the presence or absence of accruing interest during the deferred period can represent quite a few dollars, this requirement should be included in TIL.

Section 19 does not address the inadequacy of the existing provisions authorizing only administrative enforcement. The vast quantity of credit advertising in newspapers, direct mailings, television, radio and catalogues cannot be monitored by the federal enforcement agencies. Because such ads may be the basis for many consumers' credit decisions, advertising compliance is highly important. Only by providing for private enforcement will compliance with these minimal provisions be adequately guaranteed.

Section 20. Billing Errors: Changes of Address and Billing for Finance Charges on Disputed Billing Errors. The issue involved in extending the period for a creditor to record a change in a credit card holder's address from 10 plus days to 20 plus days prior to mailing a bill is whether the complaining consumer should be penalized through additional finance and late charges for the creditor's inefficiency in changing the consumer's billing address. The problem is that a bill sent to a consumer's former address may be so delayed that it cannot be paid prior to the imposition of additional finance charges. The lure of additional charges provides a financial incentive to creditors to delay correcting consumer's addresses that will be balanced only by the costs of correcting an account under the billing error rights law or the costs of customer dissatisfaction with such obvious inefficiency. The consumer should not be penalized for the creditor's inefficiency. Ten plus days is a long period for the simple process of changing an address—it need not be doubled. The present law is a weak disincentive to overcome the financial incentive of creditors to obtain finance and late charges by not promptly changing addresses. It should not be weakened further.

The allowance in Section 20 of billing for finance charges on disputed amounts is an implicit adoption of the FRB's view that finance charges may be charged on amounts disputed erroneously but in good faith by consumers. When Congress passed the Fair Credit Billing Act, it failed to address this issue. The FRB's approach discourages consumers from disputing billings which may be erroneous but are not clearly erroneous. NCLC believes that there should be a moratorium on the accrual of finance charges on the disputed portion of bills as long as the dispute is raised in good faith by the consumer and is not frivolous.

Section 21. Return of Customer Credit Balances. A series of FTC actions against large creditors who were holding millions of dollars of their customer's unpaid

refunds focused attention on the problems addressed by section 21. This section adds to the present law the responsibilities of paying such balances after six months and of taking reasonable steps to trace the consumer's present address if it has changed. This section also expands these obligations to all "creditors" although that term is considerably circumscribed by Section 2 of § 2802. The obligations of TILA § 165 should also run to assignees.

Section 22 Immunity for Violations in Government Bureaucrats' Forms. Section 22 expands the present TILA governmental immunity provision to provide immunity to creditors "required" to use instruments devised by government bureaucrats. This expansion of immunity is particularly distressing because there is no existing private remedy or effective administrative remedy for insuring that the hundreds of governmental agencies now extending consumer credit comply with TIL. Municipal utilities, sewer districts, state universities, vocational schools and others are presently immune and frequently disregard TIL disclosure and rescission requirements. Section 22 will expand this immunity to creditors who are required to use the bureaucrats' forms which may include or grow to include much mortgage credit and many student loan programs. If a civil penalty is an inappropriate reward for a consumer who draws a bureaucrat's attention to a violation of federal law, the consumer should at least have an explicit right to damages, reasonable attorney fees, and an injunction for government violation of its TIL obligations.

Section 23. Disclosure of Hidden Finance Charges and Oral Disclosure of Interest Rates. This section repeals the present TILA minimal requirement of disclosing the existence (but not the estimated amount) of hidden finance charges and codifies FRB interpretation 226.101 regarding the types of interest rates that may be orally quoted by creditors. While recognizing the abuse of some retailers of hiding finance charges in the cash price of their products, neither the original TILA nor Regulation Z dealt directly with the problem. In 1974 Congress added TILA § 146 requiring a disclosure of the existence of hidden finance charges in advertisements. Section 23 repeals that provision without the issue being directly addressed elsewhere. On the other hand, the courts have found that hidden finance charges may be measured by the amount of discount for cash sales in comparable transactions, the seller's discount rate for assigned contracts, and the difference between the "deferred payment price" and the fair market retail value of the product. The TILA provisions for hidden finance charges should be strengthened at least to the extent of codifying the case law.

Section 23 also codifies the FRB's restrictions on the oral use of different types of interest rates. The provision requires the oral use of the estimated APR, if any rate is quoted, and permits the use of simple interest rates and open end periodic rates. The use of simple interest rates should be prohibited since the disclosure of two different annual rates can only result in confusion and the simple rate does not reflect the noninterest finance charges which cause the differences between the two rates.

Section 24. Effective Dates. This section requires FRB regulations and forms within one year of enactment, requires compliance within 2 years and permits earlier creditor compliance. Depending upon the date, if any, of enactment, this schedule may conflict with the requirements of Section 5 of § 2802.

Because so little is known about why TIL has been so effective or of its shortcomings, and because changes to TIL are so controversial, Congress should not mandate changes in TIL disclosures at this time but rather require the FRB to determine which methods of disclosure and disclosure formats are most effective in communicating with consumers and which disclosure methods and formats will be most effective in the future in conjunction with the increasing emphasis being given to consumer education.

ATTACHMENT B TO STATEMENT OF THE NATIONAL CONSUMER LAW CENTER

S. 108: THE FRB'S 1977 CONSUMER CREDIT SURVEY DOES NOT SUPPORT S. 108 OR YOU ASK A STUPID QUESTION YOU GET A STUPID ANSWER

It is distressing that the FRB's long awaited "1977 Consumer Credit Survey" wasted so much time and energy to produce so little information useful to the process of amending TIL. It is even more distressing that the response of the 2563 respondents interviewed are being interpreted in unwarranted ways by the FRB Survey and for purposes which many of the consumers who participated would

probably oppose. Most disappointing is the FRB's failure to take advantage of modern, sophisticated methods for studying factors influencing consumer decisions.¹

The FRB Survey and 1977 Annual Report has reported and interpreted the responses to five questions which the FRB believes relevant to "TIL simplification." An additional six questions relevant to TIL disclosures were not reported at all by the FRB much less interpreted.² While the methodology used undermines the usefulness of any of the information gathered by the FRB, it would be interesting to know the unreported responses to these questions and why the responses were not reported in any fashion.

The questions and responses tabulated in Tables 4-3 and 4-5 show the flaws of the technique of the survey which are compounded by the interpretations the FRB attributes to the responses. The questions were biased in favor of the policy of reducing the number of disclosures since the respondents were only permitted to describe only three disclosures in one question and four in the other question as "important."

Since TIL now requires the disclosure of at least seven bits of information in simple loans (S. 108 would not reduce this number) and more than 26 bits of information in complex credit sales, the respondents were not allowed to provide answers that would support either the present Act or S. 108.

Neither did the ranking process work. The overwhelming first choice in Table 4-3 is "interest rate/annual rates" (67.5 percent) while the similar choice in Table 4-5, "Annual Percentage Rate of Interest," was the third choice (22 percent). Indication of the futility of the ranking process is provided by the fact that the second most popular response to the inquiry of the "most important" credit term was a refusal to answer. The second most mentioned response in Table 4-3—"length, maturity of contract"—was not even a possible response in Table 4-5. The most popular first response in Table 4-5, "Finance Charge," was the third to fifth choice in Table 4-3. The most often mentioned response in Table 4-5, "size of monthly payments," was a distant third in Table 4-3. The most mentioned first choices in Table 4-5 were not mentioned at all by more respondents than as mentioned by others as first, "Rebates For Prepayment" in Table 4-3 and "Rebate For Early Payoff Of Loan" were very high ranking third and fourth choices indicating that this disclosure is important if there are more than three or four choices presented. This analysis indicates that there are very great consumer differences as to the most important credit terms and that the consumer's opinions are vastly different when asked the same question as an open end question than when asked it as a multiple choice question. Since there is no way to determine why these discrepancies occurred, all we can confidently determine from Tables 4-3 and 4-5 are that the questions or the methodology are unsuitable. When asked to name and rank important credit terms on the spur of the moment, without a presentation of possible responses, consumers give vastly different rankings than when presented with a list of credit terms.

The manner in which the questions were framed was likely to confound interpretation and bias the responses. For instance, the question tabulated in Table 4-3, first four columns, was Q.5 "If you were shopping for a large item such as a car and were going to use credit, what specific things would you like to know about the credit terms?" While Table 4-3 was labelled and discussed as dealing with "automobile credit," an examination of the question shows that it also dealt with other "large items" which might be a stereo, fur coat, or house to some consumers. Such other "large items" are usually financed in different ways (e.g. bank card for the stereo, retail charge for the coat, and mortgage for the house) and with different types of terms predominating.

An example of the bias in the framing of the questions may also be found in the fact that "security interests" (the 5th most popular third response in Table 4-5) is not even mentioned in response to question 5 (Table 4-3). This is probably because consumers have little experience with a variation in the terms of security interests

¹ E.g. J. Jacoby, G. Szablos, and Berning, "Time and Consumer Behavior: An Interdisciplinary Overview," 2 J. of Consumer Research 320,326 (March 1976) (Using continuous, dynamically continuous, and discontinuous innovations (see Robertson, 1976) they found that consumers provided with only four purchase alternatives and 3, 7, 11, 15, 19, 23, or 27 items of information on each alternative [supermarket product] continued to devote time to inputting this information in positive linear fashion as the amount of information per alternative increased. Thus, while consumers appear unwilling to devote time to read information on existing, established [supermarket] brands, they do seem willing to devote time to reading substantial amounts of information when a new purchase alternative is involved.

² E.g. Q.B.6d. "Truth-in-Lending makes people more confident when dealing with creditors"; Q.A14. "Do you think that creditors usually give enough information to customers to make good credit decisions?"; Q.A15. "Do you think that getting useful information on credit terms is very easy, somewhat easy, somewhat difficult, or very difficult?"; Q.A19. "In general, do you feel consumer protection laws in the area of credit are effective or not?"

with automobile or other "large item" credit. The typical creditor practice is to take a security interest in the large item sold with nothing more serving as collateral. If the consumers were asked about "personal" loans, consolidation loans, or home improvement loans, it is more likely that "security interests" would have been mentioned because there is greater variation in the amount of collateral required such credit. If the consumer had an experience with the less typical large item transaction where collateral in addition to the item purchased was required and that fact had been brought to the consumer's attention, information on security interests with "large item" credit might have loomed larger. It should be noted that Table 4-3 does record 86 responses mentioning "willingness to defer payments" and "repossession conditions," and 13 respondents ranking these as the "most important" credit terms. These responses, along with responses regarding late charges and credit insurance, do indicate concern of many consumers with the riskiness of using credit, one element of which is the security interest. However, by choosing the "large item" question, responses concerned with security interests were probably minimized.

Another example of the framing of a question in a manner to confound interpretation is Q.B6a. "Most people read their Truth-in-Lending statements carefully." How would anyone have any basis to make such a judgment about others when the millions of credit transactions that occur annually almost always occur in a private office and TIL disclosure statements are usually retained by consumers in a private place? 91.3 percent of the respondents ventured a response to this question despite their obvious lack of a basis to provide such information. It is difficult to understand why no inquiry was made as to the care with which each respondent had read any of their own TIL disclosure statement in the past. The respondent would have at least had a basis to make that observation although it could be predicted that consumers might exaggerate their own "careful" reading of TIL disclosures because they think they "ought" to be reading them more carefully than they do.

The interpretations given to the responses tabulated in Table 4-2B and C illustrate the bias in the reporting of the survey. The responses tabulated were to the questions "Truth-in-Lending statements are complicated," and "Some information on the Truth-in-Lending statements is not very useful." The unwarranted interpretation given to the responses is that "In sum, the views many consumers appeared to agree with the hypothesis that Truth-in-Lending disclosure statements present too much information."³ However, the respondents were never asked if there was "too much" information—this was the interpreters' biased construction. There are many ways, other than reducing information, to make TIL disclosures less "complicated" and more than "not very useful." For example, bold captions, larger type-size, shorter sentences, less legal and credit jargon, parenthetical explanations, and descriptive ranking of early payment penalties (as substantial, moderate, etc.) could all make TIL less "complicated" and more "useful" without necessarily reducing the amount of information. In fact, these approaches (used in newspapers, advertising and marketing) may have been the basis of comparison which the respondents had in mind. However, we do not know the basis of comparison used by the respondents, i.e., "complicated" or "not very useful" compared to what? Moreover, far fewer (58%) respondents thought some of the information was "not very useful" than thought the disclosure statements were "complicated" (72 percent) indicating that even "complicated" disclosures were "very useful" to many of them. In addition a substantial minority disagreed with the statements that TIL disclosures were "complicated" or contained some "not very useful" information. The survey provides no basis to determine whether the respondents wanted less or more or the same amount of information if more clearly presented in TIL disclosure statements. The respondents were not asked direct questions on these issues. Their responses should not be construed as responses to questions never asked.

The most difficult issue in analyzing the responses in part 4 of the Survey is not at all addressed in that part. At what point do you deny important credit information clearly presented to a minority of consumers who want it? This is certainly not an area where policy makers should be guided by a simple majority or plurality tally. As is later noted in the Survey, "... * * all consumers may benefit from the activity of only a small proportion of borrowers who do engage in extensive credit shopping * * * it is the undecided minority that influence the sellers."⁴ In addition, education to make credit less complicated seeming to consumers can only be useful if the consumer has ready access to the key terms of their transactions. While there may be as few as seven bits of key information in a simple credit transaction, that total may rise to 30 or more bits of information as transactions become more

³ FRB, "1977 Consumer Credit Survey 16."

⁴ Ibid. 23-24

complicated. If our free market forces are to operate, the consumer will need ready access to those 30 bits of information in complicated transactions. That minority of consumers who can and will use this additional information should have the right to have it provided in a clear, meaningful manner. Without it, the important differences between complicated and simple transactions will be hidden. For those consumers who cannot use this additional information (or any of it), they will at least not be misled to believe that they understand the many key terms of a complicated (or simple) credit transaction. And, if TIL was to be amended to make present disclosures clearer, perhaps the knowledgeable minority will become the majority with the trend of increased emphasis on consumer education. Both the younger respondents and the more educated respondents disagreed more frequently than others with the statements that TIL disclosures are "complicated" and "not very useful" perhaps indicating the recent attempts at consumer education have had a beneficial impact.

Mr. CHAIRMAN. Thank you very much, Mr. Hobbs.
Mr. Hogan.

STATEMENT OF GERALD F. HOGAN, CONSUMER FEDERATION OF AMERICA

Mr. HOGAN. Thank you, Mr. Chairman.

When CFA learned that there would be hearings on the subject of Truth-in-Lending, I must say that it came as no surprise to us because indeed it's becoming somewhat of an annual crusade on Capitol Hill that Truth-in-Lending is winding its way through the various channels.

I would not equate it with death and taxes, but someone once did say that if Rip Van Winkle had been an industry lobbyist for Truth-in-Lending that he wouldn't need to know what time it was when he awakened; he would merely need to ascertain at what stage the Truth-in-Lending legislation was.

Fortunately, for consumers at least, I must say that so far Rip Van Winkle would not have accomplished any less than his colleagues.

I think that the important thing to say at the outset is to make the distinction already noted by Mr. Hobbs—that is, that the definition of simplification for consumers is entirely different from that of industry's.

We do appreciate the approach toward clarification. We do appreciate the approach toward minimizing the number of disclosures that might not be necessary or are included by lenders to add to the consumer's confusion.

However, we are opposed to any legislation which under the guise of simplification would merely gut a piece of legislation that has provided consumers with what most people consider to be the most important consumer legislation in the area of credit.

I think during this period of inflation the danger that exists at least as far as Truth-in-Lending is concerned, that any removal of some of the essential disclosures that are currently required could only contribute to the inflationary saddle that has already been saddled upon the consumer. Furthermore, I think it's important that, during a time when public trust of their elected officials is at an all-time low, it would be dangerous to strip them of some of these protections at a time when they really need reassurances from their elected officials that their protection is secure.

I think the important thing to consider is not the details of various pieces of legislation, but to really reexamine the arguments that are popularly used by both sides.

First of all, the most popular argument is that disclosures are so voluminous that consumers are not even using them. I think to really bring that into perspective it must be pointed out it's not a proper measure of success of Truth-in-Lending to simply count the number of people who are using it. The important thing is that the availability of information is there. It provides, if nothing else, the opportunity for groups such as the Cleveland Consumer Action Group to publish a 133-page booklet providing basic information to consumers. The book is now in its third printing—in fact, one bookstore reported that it was its top seller for a time. One of the effects of that publication by the Cleveland Consumer Action Group was that it alerted borrowers that Cleveland Trust, the No. 1 lending institution in Ohio, was using at that time a low-balance method, where if you had on deposit \$5,000 during a given 3-month period and for 1 day withdrew \$4,500 you would draw interest on only \$500 for that period. Once this became known, it prompted several depositors to withdraw their savings from Cleveland Trust and one depositor withdrew \$200,000 once he learned of the practice.

Another popular argument is that Truth-in-Lending has been impossible to comply with. Many creditors are complying with it quite well and nothing suggests that any determined creditor cannot.

The contention that it is overburdening the courts has been continually discounted by the National Consumer Law Center pointing out that, as early as 1976, Truth-in-Lending filings represented only 0.3 to 1 percent of all the cases filed in district courts and less than 2 percent of all civil cases. That trend is encouraging when one considers that it represented a 4-percent decrease from the year before.

The itemization of the finance charge is often claimed to be unnecessary. It's our belief that without that itemization there would really be no opportunity for any astute borrower, let alone an inexperienced one, to avoid or negotiate any of the costs which would otherwise be required to itemize.

Someone once claimed that Truth-in-Lending created an impression in one borrower's mind that he really gained a tremendous success because he had obtained a mortgage loan for 13 percent whereas he knew convenience credit rates were 18 percent. The contention was that although Truth-in-Lending enabled him to obtain this information it really didn't provide him with anything because he still didn't understand the difference between the two types of credit.

I would suggest that the difference would be appreciably different if such disclosures were not required. The mortgage rate would be even higher and the convenience credit rate would be higher.

Finally, I wish to point out that Consumer Federation of America, supports the retention of agricultural credit within the coverage of Truth-in-Lending protection. Any exemption of agriculture would be disastrous for the family farmer. The family farmer continues to need the protection that Truth-in-Lending provides and to

equate him with a businessman would be just saddling him with an additional handicap. I believe that the beleaguered farmers certainly do not need another handicap.

Thank you very much.

[Complete statement of Mr. Hogan follows:]

STATEMENT OF GERALD F. HOGAN, LEGISLATIVE DIRECTOR, CONSUMER FEDERATION OF AMERICA

Consumer Federation of America is a federation of 240 national, State and local non-profit organizations that have joined together to espouse the consumer viewpoint. CFA and its member organizations represent over 30 million consumers throughout the United States. Among our members are: 17 cooperatives and credit union leagues; 60 State and local consumer organizations; 66 rural electric cooperatives; and 27 national and regional organizations.

This morning marks the renewal of efforts by industry, government, and consumers to "simplify" the Truth-in-Lending Act of 1968—an act considered by most to be one of the strongest consumer protection laws ever enacted in the area of credit. Similar efforts have, of course, been launched in the past but without success, except for a few relatively minor amendments. In fact, attempts to comprehensively overhaul Truth-in-Lending have virtually become an annual crusade on Capitol Hill. These hearings will hopefully provide an opportunity for consumers to, at least, be heard, though our call for simplification can hardly be compared to industry's nor will it match the amplitude of industry's clamor for reform.

Since nearly everyone subscribes to the goal of simplification of existing laws, it is important at the outset of any discussion exploring the simplification of the Truth-in-Lending Act to differentiate between industry's definition of simplification (purported to benefit consumers) and the consumer concept of simplification. This is essential in order to avoid the erroneous assumption that consumer support of simplification means automatic support of any Truth-in-Lending Simplification Act. A poignant example of this misconception was S. 2802, passed by the Senate in 1978, widely acclaimed by industry, but vehemently attacked by public interest groups.

CFA continues its strong opposition to any measure which would weaken the Truth-in-Lending Act of 1968, but particularly any bill which would, under the guise of "simplification", effectively gut the Act's Requirements, thus undermining the progress that has been made during the ten years since the bill's enactment.

Initially, CFA urges this committee to reexamine the most popular arguments used to justify amending the Act. Specifically, proponents of simplification argue that:

1. Consumers are not currently using Truth-in-Lending disclosures—CFA believes that the benefits of Truth-in-Lending cannot be measured by the number of individuals who choose to utilize the required disclosures. In addition, even if individual consumers do not use the information in large numbers, the very availability of essential disclosures provides a means for consumer groups to educate consumers of their legal rights. For example, the Cleveland Consumer Action group compiled easily understood information into a booklet which, due to its popularity among consumers in the Cleveland area, is now in its third printing. (One bookstore even reported that for a period of time it was the leading seller.) It is typical of the consumer guide books which help consumers understand and use Truth-in-Lending information.

2. Truth-in-Lending is "impossible" to comply with—CFA maintains that compliance is quite possible and is achieved by most creditors. But the fundamental problem has been the resistance of many creditors to make meaningful and useful disclosures.

3. Truth-in-Lending has overburdened the Courts. This has long been a popular argument of proponents for simplification. Unfortunately for them, it has become stale, if not invalid. As early as 1976, as the National Consumer Law Center has continually pointed out, Truth-in-Lending filings represented only 0.3-1 percent of all cases filed in federal district court, less than 2 percent of all civil cases, representing a 4 percent decrease over the year before.

4. Disclosures regarding the "terms" of credit are already required by many state laws or are in the body of the contract, and therefore shouldn't have to be required by Truth-in-Lending—CFA is unaware of any disclosures that are required by all States or required in similar language by those that do require disclosure. Furthermore, when disclosures are included in the body of the contract they are typically difficult to find and often incomprehensible to the consumer.

5. Itemization of finance charges is unnecessary and should be eliminated—CFA firmly maintains that such itemization (including, for example, brokers' fees, finders' fees, or insurance charge) does have an important function. By disclosing these costs which can often be avoided or negotiated, the consumer benefits from less expensive credit than might be otherwise available.

Accordingly, CFA urges this committee to reject the arguments described above and to resist any efforts to eliminate some of the provisions which are now required under the Act. Specifically, CFA believes there is no justification for eliminating the following requirements:

1. Itemization of the Amount Financed. Absent this requirement, private enforcement will be ineffective since it will become much easier to camouflage overcharges within the amount financed.

2. Itemization of the Finance Charge. CFA believes that it is difficult at best to accurately assess the annual percentage rate without this information.

3. Liability for Mechanical Errors. Without liability, no incentive will exist to strive for accuracy. Besides, the remedial effect of civil recoveries far outweighs the penal effect.

4. Itemization of Credit Insurance. While industry strives to eliminate this requirement, CFA recommends stronger monitoring of its inclusion in credit transactions. As stated in CFA's 1978 Policy Resolutions, "Credit insurance shall be prohibited unless its terms are stated in clear, understandable language if credit insurance is included. Charges for credit insurance shall be included in the finance charge and the annual percentage rate."

The importance of disclosing credit insurance charges was graphically demonstrated by the Paul H. Douglas Consumer Research Center in the booklet entitled "Credit Insurance: A Handbook For Consumers." In computing the cost of a \$15,000 mobile home, it found that the amount paid for typical credit insurance, including the finance charge on the insurance, could easily bring the final cost to \$31,563.31. The same purchase without the insurance would be only \$25,500—a difference of more than \$6,000. Could anyone deny the importance of requiring the disclosure of credit insurance in such a transaction?

CFA does believe, however, that if Truth-in-Lending is eventually amended to require fewer disclosures (such as the elimination of the requirement to describe the security interest), then there should be a corresponding increase in civil penalties for the creditor who fails to meet the minimal requirements.

In addition, CFA joins other consumer groups in their opposition to—

1. The deletion of civil liability for failure to provide clear, conspicuous disclosures in logical sequence;

2. The deletion of assignee liability responsibility;

3. The elimination of civil liability for nondisclosure of credit insurance charges; and

4. The deletion of the requirement that the type of security interest be adequately described.

Finally, CFA strongly opposes any amendment which would remove agricultural credit from the Truth-in-Lending Act. Many farm organizations were instrumental in the struggle to obtain Truth-in-Lending legislation. More importantly, however, is the logical inclusion of agricultural credit within the Act. Indeed, no type of credit should be exempt from the Act.

Rather than seriously weakening a workable and, in large part, successful bill, CFA recommends using any Truth-in-Lending simplification as a vehicle for improving the present Act. The Act could be strengthened through the clarification of disclosures rather than elimination of information which consumers need and deserve. Therefore, CFA continues its support for proposals allowing for model disclosure forms (provided built-in safeguards are included which would diminish the risk of lessened competition, since the economic incentive for a creditor to simplify even further would otherwise be eliminated), improved public enforcement of the law, restitution to borrowers in certain cases of violations, and dissemination of information about prevailing annual percentage.

In addition, CFA joins other groups in strong support of provisions which would—

1. Increase the statute of limitations;

2. Increase class action liability;

3. Provide for Federal Trade Commission restitution and civil penalties; and

4. Require that prepayment and default terms be disclosed clearly in a separate part of the Truth-in-Lending disclosure.

In short, CFR urges this committee to take the opportunity to improve consumer rights in credit transactions while rejecting those efforts which attempt to erode the advances that have been made in the past ten years.

The CHAIRMAN. Thank you, Mr. Hogan.
Mr. Boyle.

STATEMENT OF JAMES BOYLE, TEXAS CONSUMER ASSOCIATION

Mr. BOYLE. Mr. Chairman, I'm here representing the Texas Consumer Association and I want to congratulate this committee for working on S. 2802 and now S. 108. I think much of what is in the bill is needed now but there are some disclosures that are being eliminated which the consumers desperately need.

[Complete statement follows:]

TEXAS CONSUMER ASSOCIATION,
Austin, Tex., February 2, 1979.

From: James G. Boyle, Executive Director, Texas Consumer Association.

To: Consumer Affairs Subcommittee of the Senate Committee on Banking, Housing
and Urban Affairs,
Re Truth in lending simplification.

Mr. Chariman, I am Jim Boyle of Austin, Texas, Executive Director of the Texas Consumer Association, which is composed of hundreds of individual Texas consumers. I am also immediate past Chairperson of the Consumer Law Section of the State Bar of Texas and current editor of the Section's newsletter, *Caveat Vendor*. One thousand-six hundred lawyers are members of the Section. Currently I am serving on the Board of Directors of the Consumer Federation of America located in Washington, D.C. Today I present these remarks on behalf of the Texas Consumer Association.

This Subcommittee is addressing itself to the question of how to simplify Truth in Lending disclosures. I suggest that this Subcommittee should take a look at whether simplification is really necessary before deciding on how to simplify. To some extent I believe the Congress is being fast-talked about the reasons for simplification. There are three reasons commonly given to support the need for simplification. First, in order to comply with the disclosure requirements, the creditor must draft disclosure statements that are sometimes as long as two feet. The creditor argues that having to draft such lengthy statements means that there is a strong likelihood the good faith creditor will violate the disclosure requirements. Second, because of the number of required disclosures, the consumers suffers from "information overload" and is unable to effectively utilize the information given. Third, consumer lawyers are reaping current financial success at the expense of the good faith creditor. Under close scrutiny none of these propositions has much validity.

YOU CAN'T BLAME DESENEX—BUT FOR SURE DON'T BLAME TRUTH IN LENDING FOR LONG CONTRACTS

Truth in Lending has received a bum rap as far as the lengthening of contracts is concerned. Yes, I have seen contracts two feet long. But those very same contracts are full of archaic language and boilerplate. The security agreement is usually so complicated it seems to reserve everything the consumer might acquire during his lifetime. These contracts often contain long statements on the duties between assignor and assignee, even to the extent of under what conditions reassignment or repurchase of the contract is to occur. Great length is gone into on trying to give the creditor every conceivable advantage on default. For example, if a motor vehicle is taken on repossession, the consumer waives the right to any personalty in the vehicle unless the consumer makes demand for the personalty within 24 hours. The consumer waives notice and presentment prior to acceleration. In most retail installment contracts, there are about forty clauses which could be eliminated with very little disadvantage to the creditor. As a general rule the creditor who screams the loudest about Truth in Lending's adding great length to a retail installment contract is also the same creditor who retains useless boilerplate.

Citibank of New York City has written a loan agreement in plain English where much of this boilerplate has been eliminated. Citibank is a good example of a creditor who, as far as I know, complies with Truth in Lending but does not need a very complicated contract and disclosure statement. I have seen contracts which are even simpler than Citibank's, and none of those creditors have complained to me about how difficult it is to comply with Truth in Lending.

COMPARISON SHOPPING IS NOT THE SOLE REASON FOR REQUIRED DISCLOSURES

Some social scientists have argued that consumers can absorb only five or six "bits of information" about credit prior to the consummation of a credit transaction. They maintain that if consumers are given more information they will suffer "information overload." To them the more information the consumer receives, the more difficult it is for the consumer to remember any information. There may be some truth to this idea, but it has very little to do with whether the information should be given in the first place.

The social scientist is testing how much information the consumer can absorb for the purpose of comparison credit shopping. It does not take any high-price marketing survey to determine that the low income or unsophisticated consumer is usually interested in only one disclosure prior to purchasing an automobile on credit—"How much do I have to pay per month?" In all likelihood such consumers are not interested in comparing the finance charge or the annual percentage rate with the rates charged by other dealers. Simply because these consumers do not use either the finance charge or the annual percentage rate or any other required disclosure to shop for credit certainly does not mean these disclosures should be eliminated.

First, by having to disclose in an automobile transaction, for example, the cash price, the downpayment, the other charges like registration fees or documentary fees and fees for each kind of insurance sold in connection with the transaction, in itemized fashion, has had an extremely beneficial effect for the consumer. In almost every transaction where the seller has failed to itemize these fees, which I have examined, he has overcharged the consumer for what these fees actually cost him. I have found contracts where there were hidden documentary fees of up to \$200.00. It is very common for the dealer to overcharge the consumer as to the actual amount of the registration fee paid. When the charges are itemized, the instances of overcharging are much fewer. The mere fact of having to itemize all costs in connection with a credit transaction helps serve a primary purpose for the enactment of Truth in Lending—preventing the fraudulent or deceptive credit transactions. The unscrupulous creditor does not want to put his dirty wash out for the public to see.

Second, all of the litigation over various disclosure items has caused a very healthy re-examination by creditors as to how these items might more simply be disclosed in plain English. There is no doubt in my mind that if the Truth in Lending Act had only five required disclosures that many creditors would lose interest in putting the rest of their contract into readable English. It has been the litigation over disclosure items like the method of rebating the unearned finance charge in the event of acceleration or the description of the security interest which has caused creditors to think about simplifying their contracts.

Third, although studies may currently show that consumers are making use of only five or six bits of information, that does not mean in the future that they may not be able to make better use of more information. Consumer education is in its infancy. In the last couple of years, high school students in Texas are being taught about shopping for credit. It would be a shame to eliminate disclosures about default charges, for example, that these students may be able to make very effective use of, just because many consumers today are very unsophisticated when shopping for credit. The number of bits of credit information which consumers can make effective use of should increase as future generations take consumer education courses.

Fourth, the required disclosures are not important only prior to the consummation of a credit transaction. When a consumer is worried about going into default, he or she may pull the contract out to see what the consequences of that are. The clear disclosure of charges on default and the clear disclosure of the property secured by the transaction may be deciding factors on whether to refinance or consolidate. After a transaction has been consummated, the consumer may be thinking about prepaying; so the disclosure of a prepayment penalty and method of rebating unearned finance charge on prepayment may be the deciding factors in determining whether to prepay or not. The consumer needs the information provided by the required disclosures for decisions which must be made subsequent to the consummation of the transaction.

TRUTH IN LENDING LITIGATION IS SLOWING DOWN

I have been fortunate to get to know many of the lawyers in the country involved in Truth in Lending litigation. One should not be misled by the amount of Truth in Lending litigation by focusing only on the federal district courts located in the Northern District of Georgia, or the Eastern District of Louisiana. The fact of the matter is that within the last eight months the amount of Truth in Lending litigation is much less than in the past within both those districts. To the best of my

knowledge this is true across the country. There are several reasons for this phenomenon.

Consumer lawyers have traditionally been idealistic—usually just out of law school. In the late 60's and early 70's there was great interest among young lawyers in trying to redress the lack of bargaining power between individual consumers and large credit institutions. This interest is not nearly so great today. Recent law school graduates are less idealistic and more interested in trying to make a lot of money through the practice of law.

Many of the areas of confusion about making proper disclosures are becoming well settled through interpretations by the Federal Reserve Board and by the courts. This has had an impact in decreasing Truth in Lending litigation. Also, many creditors are trying harder to see that their contracts are in compliance.

CERTAIN DISCLOSURES SHOULD NOT BE ELIMINATED

S. 1312 calls for the elimination of the civil penalty for failure to disclose default charges, prepayment rights and penalties, the creditor's identity, the cash price, downpayment, itemization of the amount financed and total of payments. The effect of eliminating the civil penalty has the effect of no longer making these disclosures required in order to comply with the Act. The loss of these disclosures will make it easier for unscrupulous creditors to hide overcharges for registration and documentary fees. It will be next to impossible for the consumer to be able to determine if the amount financed was properly calculated. Valuable information is denied the consumer which could be used when deciding whether to prepay or to consolidate.

PRESENT LAW COULD BE CLARIFIED

Three of the most active areas of litigation concern whether credit life or credit accident and health insurance should be added to the finance charge, whether the security interest is properly described, and whether the method for rebating unearned finance charge upon acceleration should be disclosed. Much of the confusion about making proper disclosures could be eliminated if the Act was amended to clarify how these should be disclosed.

The Texas Consumer Association believes that the premiums for credit life or credit accident and health insurance should always be added to the finance charge. TCA further believes that rebating upon acceleration should be done by the actuarial method. This method gives the creditor the rate of return which he contracted for. Just clarifying the three areas mentioned should significantly reduce the amount of Truth in Lending litigation.

CORRECTION OF DISCLOSURE ERRORS WITHOUT LIABILITY

Truth in Lending should not be a trap for the unwary. The Texas Consumer association endorses the Federal Reserve Board's proposed civil liability section which allows the creditor to correct any error within thirty days after discovering the error but prior to written notice of the error from the consumer. This should amply protect the good faith creditor who is maintaining reasonable procedures to avoid disclosure errors.

CONCLUSION

There is no major need for Truth in Lending simplification. The law should be clarified as to what is expected of the creditor when rebating upon acceleration, in describing the security interest, and in adding the cost of credit life insurance or credit accident and health insurance to the finance charge. The good faith creditor should receive extra protection by being able to correct errors and avoid liability if he has not been notified of the error by the consumer.

Too much emphasis is placed on "information overload" or looking at Truth in Lending as serving only one purpose, that is, allowing consumers to effectively shop for credit. Too little attention is paid to the fact that the complete cost disclosures currently required by the Act lessen the likelihood of fraud and deception. Too little attention is paid to the beneficial effects such complete disclosures have on the consumer's decision-making subsequent to the consummation of the credit transaction.

Truth in Lending litigation is decreasing. The law and regulations are becoming more certain.

Legislation should not be based on the turbulent period of litigation that occurred in the first four or five years after the Act went into effect or on the litigation experience of only the Northern District of Georgia or the Eastern District of Louisiana.

Consumers are becoming more sophisticated in the area of credit information. In the future, consumers should be able to effectively utilize more information in shopping for credit. This information should not be taken from them.

The CHAIRMAN. Thank you very much. I want to thank all four of you for a very forceful and effective presentation. You obviously know the subject and know it well and present your case very, very compellingly.

Ms. Broadman, I'm concerned. You say that you would like to see a simpler form. You would like to see something that would be more easily understood and yet you seem to oppose the elimination of any disclosures. That seems to be—although some of your fellow panelists disagree with that conclusion on my part—you seem to be saying that you don't want any disclosures eliminated and yet you want a simpler form. How can you do that?

Ms. BROADMAN. In our written testimony we mention some information that we think could be taken out of the disclosure statement. We are opposed to eliminating other important information.

You could take most of the forms that are being used now, keep all the information in those forms, and simplify them significantly by shortening the sentences, using different terminology, setting the forms out in a different layout, highlighting information, having good subject headings above paragraphs.

The National Bank of Washington has come out with a form which is far simpler than most and which adopts many of these principles and is fairly good. It's attached to our testimony.

The CHAIRMAN. Yes, I have that. It's been called to my attention by the staff. When you compare these two forms, I think that makes it pretty compelling. They are not up on the Board now, but they were. That makes a pretty compelling argument for the job the Federal Reserve has done for the last couple years in trying to reduce the disclosures required and yet keep the essential requirements and disclosures.

Ms. BROADMAN. But it does eliminate some of the disclosures we would like to see retained. I think Jim Boyle made a very strong case for keeping itemization of amount financed and finance charges. Also, with mortgages, we would like to see the prepayment penalty disclosures as part of the disclosure statement on the front.

There's another change we would like to see made. We would like some of the technical jargon eliminated. Rather than say amount financed, say amount borrowed.

The CHAIRMAN. We are all against technical jargon. You're a lawyer, though, and you know how difficult it is for lawyers to get away from technical jargon. They think these words are essential because of court cases and so forth.

I'd like to ask you, Mr. Hogan, why you conclude this has to include the farm sector. We excluded all loans over \$25,000 to the farm sector. Now we exclude all farm loans for farm purposes. If the farmer wants to buy a car or something like that, then he would be covered. I have talked to lots of farmers and all the members of this committee do, and I have yet to hear a farmer say, please cover us. I have yet to hear a farm organizations, Farmers Union, Farm Bureau, NFO—none of them seem to think it's important to be covered in here. Farmers are very smart about borrow-

ing and they borrow all the time. They are in the business constantly. They have to borrow for all kinds of purposes on their farm. And for us now to move in and give them something they haven't asked for—have you talked to farmers about this and, if so, how many?

Mr. HOGAN. I'm not aware that National Farmers Union has withdrawn their objection to providing agricultural exemption. I know that they were very much opposed to the possibility during the 2d session of the 95th. I haven't spoken to them this session, but it would surprise me very much if National Farmers Union did not oppose the exemption.

The CHAIRMAN. They are pretty strong in our State. They haven't made any representation to me, even though I'm chairman of the committee and I'm author of the bill, and if they felt that strongly I presume they would. Maybe after this conversation they will.

Mr. HOGAN. I think you will find that National Farmers Union opposes the agricultural exemption.

The CHAIRMAN. Ms. Broadman, the retailing industry is very much opposed to section 8(A) of the bill which modifies the FTC's enforcement authority making it identical to the Commission's authority under the Equal Credit Opportunity Act.

In your opinion, how important is that provision?

Ms. BROADMAN. We consider that provision to be vitally important. The FTC has 31 attorneys who are charged not only with enforcing the Truth in Lending but seven other statutes and the FTC Act. They have over 1 million creditors they have to monitor. There's no way in the world the FTC is going to be able to go to each of those creditors and examine them the way the Federal Reserve Board does, the Federal Home Loan Bank Board does and the Comptroller of the Currency does. And, the creditors know that. They know the chances of being investigated by the FTC are minimal and they also know now the FTC cannot really do anything to them if they find them violating the law. The FTC has to go through an administrative procedure and the result of that is basically a slap on the hand and a warning, don't do it again. Creditors who don't comply with the law know they can sit back and wait for the FTC to come after them.

This act will allow the FTC to take violators directly to court and they need that kind of provision. There are checks on the amount of penalties that will be obtained. The FTC does not determine that amount. The courts do. And there are specific criteria that the courts will follow in deciding what sort of penalties to assess.

So we think it's vitally important to the enforcement of the act.

The CHAIRMAN. Mr. Boyle, how do you feel about that?

Mr. BOYLE. I would just agree with Ms. Broadman.

The CHAIRMAN. Now, Mr. Hobbs, several creditors will argue later that civil liability should be limited to just two or three items: The annual percentage rate, the finance charge, and the payment schedule. There's some logic behind that and I'd like to hear your rebuttal of that.

Mr. HOBBS. I think that would be fine if consumers were only obligated to two or three terms of a credit transaction, but such is

not the case. Consumers are interested in their payment schedule, for example.

The CHAIRMAN. How about following the recommendation of Governor Teeters or the suggestion we might consider instead of eliminating it of reducing the penalty or changing the penalty so there's a differential?

Mr. HOBBS. I think there's two points to be made. Administrative enforcement has proved inadequate in the past, and it will be insufficient on the future. My second point is what was pointed out by Mr. Boyle, in Texas there's only four out of I believe 31,000 lawyers who do any consumer credit representation at all. The bounty is so small now for the consumer and for the attorney that what you will do is you will do away with private enforcement by reducing civil liability.

Mr. BOYLE. Senator, if I could comment, clearly many of the trade associations that appear here will comply, but you've got a—I mean to those items where there was not a penalty—but in a marketplace which is highly competitive and where there's a real effort to get the consumer locked into a transaction right away, I think if you don't have that penalty you're going to find disclosures not given. Whatever can be hidden to make that sale easier is going to occur. I don't think there's any question about it, once they find out there's no liability for this. Those disclosures will be meaningless and then not made.

The CHAIRMAN. I'm not sure. That may be true, but that assumes the marketplace operates on the basis of being able to do business, if not unethically, in a way that's harmful to the consumer and having to pay the price after a while. Almost all business people value their reputation for fair dealing and concern for the consumer's well-being.

Mr. BOYLE. That's true in general, but when you move into an urban market—what happens when a dishonest—dealer—for instance, here's a mobile home dealer and they are taking advantage of all these consumers. They are hiding all their charges. They are hiding charges. What can I do; I can't compete. I feel like doing the same thing—and they want to be honest. The consumers don't know these people. It's not like being in a small setting where you know everybody in the community. You're basically moving into an urban setting and it's highly competitive. There's no question that the amount of deception will increase dramatically.

The CHAIRMAN. Before I yield to Senator Garn, let me just say I was very interested in your assertion about getting together with the creditors to negotiate a bill. Frankly, I hope that we can pass the bill we have. It was a bill that we passed last year. It's terribly hard to get a consensus but I'm delighted you're going to get together with them and when you come out from that I'll be very interested in seeing the proposals. I'm sure the committee will be very impressed indeed. I want to encourage you to do it.

Senator Garn.

Senator GARN. Thank you, Mr. Chairman.

First of all, may I say that I agree with all four of you that Truth in Lending has had a beneficial effect. I don't think those of us who feel very strongly that it should be improved take any

position that it has not. It has opened up credit. It has provided people with information that they needed.

But I really become rather puzzled after nearly 3 years of work on this of not getting at the heart of what I think is the problem. It isn't the businesses that are of most concern, of course I worry about overload and cost, but I really am concerned about the consumer. I have heard consumer groups for years. You all come in and talk like you had some mandate from them, yet I am not aware of any of you who have to face an election anywhere in any State or that you have any wide mandate from the average consumer.

Whether we have low respect or not, at least we have to face the voters in our State and if they don't like the job we do or the positions we take they can get rid of us in the next election. A lot of that happened in the last election. It happens all the time. In fact we have several new members of this committee, but that doesn't ever happen to you.

So sometimes I am a little bit disturbed with the broadness of your assertions of how many consumers you represent.

I want to get back to the point I have been trying to make for years. Ms. Broadman, you talked about the three days' rule. I have no objection to people having three days to decide whether they accept or reject a loan—none, whatsoever—but, I would like to get back to my point: What's the good of having 3 days or 25 days or a year if the people can't understand what's been given to them?

I cannot be convinced that if we brought somebody in here from the audience, let alone somebody from the public here in Washington, and displayed one of these forms to them that they could come back in 3 days all by themselves and explain what they have been told and what good it is to them. That is my whole point in trying to simplify Truth in Lending. I would like any of you to defend the fact that you think the average consumer understands any of this garbage that we have been putting out—because these hearings are right back where we were 2 or 3 years ago.

You're experts. You're well informed. You understand the laws, but do you really think the consumers do? Do you think we have accomplished what we should or that the 3 days or 12 days or any other period of time is a benefit unless somebody can go hire an attorney or an accountant? And I doubt most of the people I'm talking about would know where to go to get one or if they could they couldn't afford one to interpret these forms for them and tell them whether or not they should borrow from this company or whether they should search other places.

MS. BROADMAN. I think we share your concern that consumers do not understand the form that most of these disclosures are made in. We have attached to our statement—and Bob has to his—what we consider a simplified form that uses plain language.

Senator GARN. And I would look at your appendix A and say even I can understand it, but at the bottom it says "This form does not comply with Truth in Lending."

MS. BROADMAN. That's correct. We do not say Truth in Lending should not be amended. We have said we would like to see the act amended to require these terms be made in plain language. That form does not comply because it uses amount borrowed rather than amount financed. We would like to—

Senator GARN. I agree with the sample forms you have displayed. I would agree completely. That's what I would like to accomplish. But we never seem to do that, in all these years of hearings.

Mr. Hogan, one thing you said disturbed me very much. You made a comment along this line—and I'm paraphrasing—that even if people didn't understand something, nevertheless various action groups were available to them to get into the courts, but that disturbs me—your lack of apparent interest in the individual consumer, that your group or someone else can gain some information to file suit. But I would hope you would clarify that statement because I certainly didn't like the sound of it.

Mr. HOGAN. Well, I'm sorry if I disturbed you, but I think what you're referring to is my reference to the Cleveland Consumer Action Group and not going into court but, rather, that it published a book of information explaining consumers' rights under Truth in Lending. I don't think I made any reference to its representing the individuals in courts and if I did I misspoke.

Senator GARN. But my point is, shouldn't the ultimate aim of this be to get simpler information to that unsophisticated borrower that doesn't understand all this legalese and so on so that he can actually make a comparison during that period of time and make an intelligent decision of whether he's being ripped off or can get a better deal?

Mr. HOGAN. Absolutely. I agree that there is a common goal among all of us in that Truth in Lending be simplified. The difference is that some of us are equating simplification with elimination. I think simplification can occur without elimination. I think simplification can occur with clarification.

Mr. BOYLE. Senator, if I could respond for a minute or two, if we took mobile home purchasers that I have seen, 150 or so within the last 3 or 4 years, and ask them about annual percentage rate, I would venture to say that most of them do not understand it. They are not a very highly sophisticated group. They have not been educated. I don't think anybody would advocate that you do away with the annual percentage rate.

One thing that's happened here is because we have failed in consumer education. We have not even begun to educate consumers as to how to use the terms that are used. That's one reason when you get surveys they come out and they look real bad, but we haven't begun to spend any money, to devote any resources—almost no resources from HEW are devoted to that purpose, and we need to start with that. Much of this information would be utilized if we began to provide some money, some teaching, some workshops, some curriculum to be able to do this even for the most unsophisticated.

Senator GARN. I would suggest that you could spend hundreds of millions of dollars and you would not be able to educate the average person unless you have a form that is understandable to begin with. You would be wasting your money trying to educate them to some of these forms. It would be impossible for you to do it.

My major concern is the consumer and whether he really does benefit from this. I don't worry about Chase Manhattan or Bank

America to interpret these forms. They have their batteries of accountants and attorneys.

I do worry about the small financial institutions who very sincerely want to comply and the cost burden is very significant to them. Ms. Broadman talks about overcharges of a million and a half dollars in a particular case. I don't have any doubts that there have been overcharges and ripoffs and dishonest people in any profession. On the other hand, don't we have to weigh that against the ripoff by Government with unnecessary regulation? How much do some of these forms cost to be printed, the interpretations, the attorneys and accountants that are paid?

I think we need to recognize that that cost will be passed on to the consumer. There's no doubt about it. It's you and I as consumers who pay the cost of overregulation and unnecessary regulation. If I had hair I would be tearing it out over this problem because it's so frustrating to sincerely want to try and help that consumer and yet see a monstrosity of a law that has good intent. We don't disagree on that principle, and yet really it's an absolute monstrosity with lack of understanding in the financial institutions themselves and practically no understanding whatsoever by a consumer.

Now why can't we—I'm almost pleading—why can't we in some way get together and come up with something that will minimize the cost burden on the financial institutions that is going to be passed on to the consumer and have something that a consumer will understand, at least maybe 10 percent of them? I have not conducted scientific surveys, but I have certainly personally interviewed people in my State and asked them about the form. I have gone into bank lobbies and after they have come out from an interview asked them, "Would you explain it to me?" I have yet to find one who can explain to me what had been disclosed to them.

So it gets back to my point of 3 days.

Mr. BOYLE. You have got S. 108 here and it attempts to perform simplification.

Senator GARN. I don't agree with S. 108 and I will not vote for it in its present form and I didn't last year, so on that we are in some agreement.

Mr. BOYLE. But you have got in an average mobile home transaction you get ten pieces of paper and you get not only your Truth in Lending disclosures but you will get paragraph after paragraph of nonrequired disclosures, all of which are trying to bind the consumer.

Now the question is, what do you do when you make these disclosures simple? Where do you reach information overload when you have all these additional disclosures, when they get ten separate papers? We aren't even beginning to address that problem. You can pass this law, but you will not address the information overload problem.

Senator GARN. I agree with you.

Mr. BOYLE. If you do not begin to make them more readable all the other clauses, then you don't begin to deal with simplification.

Senator GARN. I agree with you. S. 108 is not simplification. Neither was the bill last year. I have no more questions at this time, Mr. Chairman.

The CHAIRMAN. Senator Tsongas.

Senator TSONGAS. Thank you, Mr. CHAIRMAN.

First, Mr. Boyle, whatever happened to the southern drawl?

The CHAIRMAN. Are you a native of Texas?

Mr. BOYLE. No. I'm from Illinois originally, very close to the Wisconsin border.

The CHAIRMAN. Those boots had us fooled.

Senator GARN. Maybe he borrowed them from John Tower. [Laughter.]

Senator TSONGAS. Just one question. I have a time problem.

The suggested form that Mr. Hobbs put together seems to me to be quite easily read and digested by a consumer and I would be curious as to whether the rest of you five have seen this—

Mr. HOGAN. Yes.

Ms. BROADMAN. Yes.

Senator TSONGAS. The National Bank of Washington's consumer loan form I think was also digestable. This is clearly something the average person would wend their way through.

Do the rest of you feel this would be a worthwhile sample form?

Ms. BROADMAN. Yes.

Mr. BOYLE. Yes.

Senator TSONGAS. It seems to me that if the question is not what is disclosed but how it is disclosed, one takes a very different perspective on this particular Act and especially given what potentially can be done. At some point I would ask you to send to my office a priority list of which are the more important disclosures so when we get to the realities of dealing with this bill we have some guidelines as to what really is important and why it is, and if it is necessary, in the process of compromise.

I would only conclude by telling you not to worry too much about the fact you're going to have to get elected. A lot of people don't have to and they survive very well.

The CHAIRMAN. I want to thank you very much for your excellent presentation.

Our next panel is the lending institutions: Mr. Joseph Salm, U.S. League of Savings Associations; Mr. David Smith, Jr., American Bankers Association; Mr. Robert Evans, National Consumer Finance Association; Mr. Sheldon Feldman, National Retail Merchants Association; Mr. Milton W. Schober, American Retail Federation; and Mr. James L. Smith, Consumer Bankers Association.

Gentlemen, we are honored to have you with us today. We would like to proceed as we did with the other panel, 5 minutes, and we will ask you to keep an eye on the light.

Mr. Salm, go right ahead.

STATEMENT OF JOSEPH SALM, U.S. LEAGUE OF SAVINGS ASSOCIATIONS

Mr. SALM. Thank you.

[Complete statement follows:]

STATEMENT OF JOSEPH SALM ON BEHALF OF THE U.S. LEAGUE OF SAVINGS
ASSOCIATIONS*

Mr. Chairman, My name is Joseph Salm of Chicago, Illinois. I am a Staff Vice President of the U.S. League of Savings Associations and I appear today as a representative of that organization and its 4,400 member savings and loan associations nationwide. We are most happy to be invited to testify at this hearing on simplification of the Truth-in-Lending Act.

Since 1969 I have had the assignment, among others, of being the League "specialist" on Truth-in-Lending. I have attempted to keep abreast of the statutory, regulatory, and practical "on-the-firing-line" considerations with respect to the Truth-in-Lending statute and Regulation Z. I would be the first to admit that I have not mastered each and every legal, mathematical, or practical nuance of this highly complex topic. Indeed, I don't think any person could. Nonetheless, I do feel that I have a quite good general and technical background in the area, particularly as it affects our member institutions.

It is obvious that Truth-in-Lending is not working to the satisfaction of any of the parties involved. The Federal Reserve's most recent "Consumer Awareness Survey" reportedly shows that consumers are not utilizing the information as well as had been hoped. Thus, the concept of simplification has much appeal. Achieving the objective, however, has been frustrated by the inability to find a common vein of understanding among the technical experts, consumers, Congress, the courts, the regulators, etc., as to "what's wrong with it?" My testimony will, I hope, help bridge that communication gap.

Summarizing at the outset, I believe that Truth-in-Lending can be "simplified" without major change and without eliminating major portions of the current information provided. The objective should be to provide meaningful disclosures, using meaningful language, with meaningful numerical accuracy. Once the basic problem is understood, this objective can be achieved merely by providing the TIL information in a manner corresponding to the reasons for which people borrow.

The basic problem is that every Truth-in-Lending statement comprises a combination of two distinct elements, language and numbers. In order to understand the difficulty, each of these elements has to be looked at separately, and then together.

The language part of Truth-in-Lending is the printed word. It may be simple English or it may be legalese. The utility of a particular word or phrase to effectively communicate a thought or idea can best be measured by a word technician or a dictionary maker. At best that utility will always involve a subjective judgment on the part of the word experts.

Most of today's required Truth-in-Lending language uses terminology which seldom, if ever, is found in the lexicon of the typical consumer. Terms such as the Finance Charge, Amount Financed and Annual Percentage Rate are unfamiliar to the borrowing public. The terms with which a consumer may have been previously familiar—such as "interest rate", "real estate loan", "auto loan", "personal or signature loan",—are not found in the Truth-in-Lending terminology. Yet if these terms are, or have been, in the consumer's lexicon, then their absence on the TIL statement causes problems with understanding. Another problem with today's Truth-in-Lending has been the use of this unfamiliar, but uniformly applied language for all types of credit—even though other terminology in common usage would communicate far more effectively.

For example the term "auto loan" by itself communicates the purpose of the credit being extended, the probable security interest involved, and even suggests a typical loan amount and loan maturity. Likewise, the term "real estate loan" communicates a great deal about the credit being extended. But requisite Truth-in-Lending language submerges these basic conceptual differences into a uniform format of unfamiliar terms which obscures rather than communicates. Much of the cry for "simple English" and explanatory phrases stems, we believe, from recognition of this deficiency. The obvious solution is to simplify Truth-in-Lending by establishing appropriate language and terminology requirements for different forms of credit according to the purpose for which the funds are being borrowed. This is

*The United States League of Savings Associations (formerly the United States Savings and Loan League) has a membership of 4,400 savings and loan associations representing 99% percent of the assets of the \$510 billion savings and loan business. League membership includes all types of associations—Federal and State-chartered, insured and uninsured, stock and mutual. The principal officers are: Joseph Benedict, President, Worcester, MA; Ed Brooks, Vice President, Richmond, VA; Lloyd Bowles, Legislative Chairman, Dallas, TX; Norman Strunk, Executive Vice President, Chicago, IL; Arthur Edgeworth, Director-Washington Operations; and Glen Troop, Legislative Director. League headquarters are at 111 E. Wacker Dr., Chicago, IL, 60601; and the Washington Office is located at 1709 New York Ave., N.W., Washington, D.C. Tel: 202-785-9150.

not to say that all of the current language and terminology must be eliminated or that each different type of credit would have vastly different terminology. It merely suggests that the use of differing terminology and disclosure formats for different types of loans could go a long way toward more effectively communicating to the consumer.

The other element of Truth-in-Lending is the numbers that must be disclosed. While language often seems indefinite, numbers seem to have an exactitude. A 2 is a 2 and a 4 is a 4. Yet numbers' technicians recognize that a 2 may not necessarily always be a 2, if the underlying assumptions surrounding the computation are changed only slightly.

Those unfamiliar with the mathematics of finance may mistakenly be led to believe that because Truth-in-Lending calls for "uniform" numerical disclosures, technicians have few problems in determining these disclosures. The uninitiated may also feel that the same standards of accuracy apply in all instances, so that consumers actually receive uniformly accurate numerical disclosures. Such is not the case.

First, the complexity of computing the numerical disclosures, particularly the APR, is directly related to the type of credit being extended, in other words the purpose of the loan. If the finance charge is precomputed, as it often is on short-term personal and auto loans, the technician is faced with one set of problems; if it is not precomputed, as is the case on a real estate loan, the technician has another set of problems. If all payments are exactly the same in size, as is typical of precomputed loans, the APR computation is facilitated; if just one payment is not the same size, the APR computation is more complicated.

We recognize that one of Truth-in-Lending's intentions was to render financial transactions comparable. Ignoring for a moment the question of whether consumers shopping for auto loans really know or care about the cost of real estate credit, it certainly seems appropriate to ask whether the standards of accuracy should apply uniformly to all types of credit. There are many examples within the Truth-in-Lending regulation and its official interpretations which show that the rules do not apply uniformly. The best current example of this is provided by the so-called Uniform Enforcement Guidelines (for restitution and similar enforcement purposes) recently published by the regulatory agencies.

The margin for error in the disclosed APR under the guidelines is $\frac{1}{8}$ of 1 percent—apparently in deference to the statutory authority for creditors to disclose the APR to the nearest $\frac{1}{4}$ of 1 percent. But the tolerance ignores the magnitude of the APR. Thus, any lender who might make a $\frac{1}{4}$ of 1 percent error in APR disclosure would have his finance charge income on the loan reduced by $\frac{1}{4}$ of 1 percent. That could represent a small, 1 percent income loss for a lender making loans at higher rates of interest; but the income penalty for a lender making loans at lower rates of interest would be two or three times greater. Similarly the \$100 or 1 percent of Finance Charge "overcharge" trigger in the Guidelines in practice works out to a full 1 percent margin of error for a lender making short-term, higher rate loans. But this same trigger represents as little as a $\frac{1}{100}$ th of 1 percent margin of error for lenders making longer term, lower-rate loans. As to the \$1 required restitution amount, this could represent an error equal to perhaps as much as 5-10 percent of the finance charge on a very small, high-rate one-year loan. But it would be equal to an error of 10-15/10,000ths of 1 percent on a long term real estate loan. Moreover, the Guidelines themselves only apply to closed-end credit, not open-end—where the current standards of accuracy, particularly with respect to the APR, provide a tolerance much greater than $\frac{1}{8}$ th of 1 percent.

The point, of course, is that uniform accuracy has not been achieved under the Guidelines because they have failed to take into account the differences between different types of credit.

Some might respond to these comments with the thought that if creditors have made financial computations as complicated as they are, then they only have themselves to blame for the problems they are having with Truth-in-Lending. But such a thought would miss the point because it overlooks two basic questions. The first, and most important, is what standard of numerical accuracy is stringent enough to provide meaningful disclosures to consumers. The second, and almost as relevant, is what means (as a practical matter) are available for lenders to meet that standard.

As to the first, it may be, for example, that consumers when shopping for a color television set, will make their decision on the basis of whether or not one is priced at \$349.95 or \$359.95. It further may be that their decision will be influenced by whether or not the financing available for that purchase is at an 18 percent APR or a 20 percent APR with payments of \$23.54 or \$22.69.

But for larger purchases, and borrowings of larger dollar amounts, "to the penny" accuracy for all the numerical disclosures probably isn't even utilized, as such, by the consumer. To my knowledge I've never heard of a home priced at \$55,269.89 nor have I ever heard of a mortgage loan request in the amount of \$48,629.33. Even if home prices and loans amounts were phrased this way it seems reasonable to suggest that consumers typically would "round" the numbers to some more relevant figures and say that they were purchasing a \$55,000 home with a \$48,600 loan. By the same token since the monthly payments to repay a loan of that size over a possible 30-year maturity would be in the hundreds of dollars it seems unreasonable to suggest that consumers would shop and compare various loan offerings on the basis of whether or not the monthly payments were \$241.33 or \$242.00.

To illustrate this point, I have included as Appendix A a short paper and chart entitled "Shopping for Real Estate Credit Using Truth-in-Lending Credit Cost Disclosures". A brief review of the numerical disclosure examples clearly indicated that the requirement for "to the penny" accuracy (which the chart is not) would not add to the meaningfulness of the disclosures. Parenthetically, I might add that the chart illustrates my point that the format for disclosures should take into account the purpose of the credit being extended. Some have suggested that the term Prepaid Finance Charge should be eliminated from the disclosure. But the chart shows different Prepaid Finance Charges for each of the loan offerings, so this item can be useful to consumers. On the other hand, because of the nature of the transaction, the Total of Payments disclosed is the same for three of the offerings—even though the Prepaid Finance Charge, Amount Financed, Finance Charge and APR are different. This suggests that the Total of Payment may be of little value to the consumer and might even be confusing.

It is not the intention of the League to suggest that all lenders, offering all types of credit, should be permitted to arbitrarily round numbers on the Truth-in-Lending statement; omit any important disclosures; or be given broad unreasonable standards of accuracy for numerical disclosures. Rather, our point is that some disclosures may be more important than others and "to the penny accuracy" may not really be meaningful to consumers in all instances. Truth-in-Lending should recognize this. It doesn't now. And, to a certain extent, it could be said that the current standards of accuracy, as set forth by the Uniform Guidelines, actually provide one standard for one class of transactions and another for others without specifically, or logically, differentiating between them.

To some, the concern I have expressed over meaningful numerical accuracy may seem confusing. It might be thought that determining the requisite disclosures is really not a great problem inasmuch as creditors merely have to push a button or two on a computer or refer to a single set of tables in order to determine the necessary information. This would, however, be a misconception—one which prompted my earlier comment that the standards of numerical accuracy must take into account the means reasonably available through which creditors can achieve the required accuracy.

To be sure, for some classes of credit, determining the numerical disclosures is as simple as pushing a button or two on a computer or referring to a single set of tables. But the vast majority of creditors—whether banks, savings associations, credit unions, or vendors—simply do not have access to large, on-line computer systems which will perform the mathematical computations for them. It would be ideal if they did—but as a practical matter they do not.

Specialized tables are also commonly used. Here the complexity of determining the disclosures depends upon the complexity of the transaction. As the Committee is probably aware, the Federal Reserve has published two separate tables for computing the annual percentage rate (APR) for those transactions other than open-end. Volume I of these tables can be used with relative ease by lenders making closed-end, pre-computed loans such as automobile loans. But, for loans which may have irregular payment schedules such as, for example, an FHA-insured loan, or any graduated payment mortgage, Volume II of the Federal Reserve's tables must be utilized.

To illustrate the complexity involved with Volume II, Appendix B with this statement contains an example of the computation of the annual percentage rate for one, single loan with irregular payments. The procedure requires the person computing the APR to utilize three pages on the prescribed computation form. Each of the individual entries must be found by reference to various factor tables in the Volume II booklet. If the computation were to be performed by paper and pencil, I would estimate that it would require approximately 300 to 350 computational steps to compute the annual percentage rate. That estimate includes the separate computations necessary to compute the amount financed, and the size and timing of the

individual payments necessary to repay the loan—all of which are an integral part of the procedure. Obviously, anyone acting in the best of faith could make an error, inadvertently, in this highly complex process which could result in an inaccurate disclosure of the APR.

The obvious question that arises is whether or not an electronic calculator might simplify this task. The answer is—it depends. For a relatively simple transaction such as a closed-end, pre-computed automobile loan, some electronic calculators might be used—and used even more easily than Volume I of the Federal Reserve's Annual Percentage Rate Tables.

But for more complex transactions such as real estate loans, again the situation is different. By way of further example, Appendix C contains a portion of a booklet published by the Office of the Comptroller of the Currency entitled "Computational Procedures". This booklet, made available by the Consumer Affairs Division, is designed to assist examiners and creditors in determining whether they are complying with the requirements of Truth-in-Lending.

Appendix C reproduces the method for determining whether or not a disclosed APR is accurate on a loan which includes private mortgage insurance. This is another irregular payment situation—and one which is commonly encountered by mortgage lenders. Frequently the mortgage insurance charges only extend for the first 10 years of a 30-year mortgage loan, and that is the example presented in Appendix C.

What does the Comptroller's Manual, Appendix C, show? (First it must be noted that the procedures described in the manual are only accurate with respect to one specific type of electronic calculator produced by one individual manufacturer—Texas Instruments; this particular calculator is substantially more complicated and sophisticated than the one that have flooded the marketplace in recent years; it can do more than add, subtract, multiply and divide; it costs more, too.)

Now, as to the question, "What about the use of electronic calculators?" Appendix C shows that in order to verify whether or not the disclosed APR on the loan is accurate, the examiner must go through separate data entry and function steps totaling 75 to 100 keystrokes. Importantly, all of these steps only determine whether or not the methodology used to achieve the disclosed APR is accurate or not. In other words they don't tell what the APR actually is. An entirely different set of instructions is necessary in order to try and establish what the true APR might be.

Thus, my answer to the question of whether electronic calculators simplify Truth-in-Lending calculations is that their utilization can also involve considerable complexity. To be sure, more sophisticated hand-held calculators are becoming available—but even these have their limits in determining the numerical disclosures if the standards of accuracy are too stringent. For example, calculators produced by different manufacturers, and even different models produced by the same manufacturer, may not produce exactly the same answers to the same problem. Moreover, setting such standards would impose a greater requirement upon creditors than merely the cost of whatever computer might be purchased. Training costs would depend upon how complex the process would be, and, of course, the more complexity, the more sophisticated the device, and the greater the possibility of error on the part of the user.

We are aware that it might be possible for lenders in some instances to "use" technical flexibility in a manner which would work to the disadvantage of consumers. We certainly would not envision this effect if our suggestions here were adopted, nor would we condone the practice. The solution to this potential problem, however, is not to suggest that there be no technical flexibility or, as the Federal Reserve apparently has recently proposed, that virtually every factor which may have some minute impact on the disclosures for any class of credit should be taken into account in making the computations. Such an approach only complicates the disclosures more than they are already—to the distinct advantage of those creditors which may extend certain classes of credit and/or those, primarily large ones, which may have access to huge on-line computer facilities. Numbers technicians recognize that beyond a certain point of reasonable accuracy, attempting to determine the true annual percentage rate is almost equivalent to asking a scientist to achieve a perfect vacuum. While theoretically possible, scientists never actually achieve a perfect vacuum in the laboratory simply because such accuracy is never required and the costs of achieving it would far outweigh the benefits derived from so doing. The same might be said, we believe, of attempts to "improve" the accuracy of numerical disclosures without first relating them to the classes of credit to which they pertain. The standards should be reasonable and meaningful. With respect to those who might "misuse" the current, or future, technical flexibility of Truth-in-Lending, therefore, the better solution would be simply to include in Regulation Z a

"pattern and practice" standard which would preclude lenders from making use of technical flexibility in a manner which would disadvantage consumers.

Summarizing, Truth-in-Lending should provide meaningful information with meaningful language with meaningful technical accuracy. Most of the current problems stem from the language of TIL and from the numerical disclosures. Both of these problems could be solved together merely by first recognizing through the statute and regulation that there are different classes of credit and then devising disclosure formats and routines specifically for those classes of credit. Indeed regular monthly statistical reporting by the Federal Reserve and other bodies of the specific volume of "auto credit", "real estate credit", "revolving credit", "home improvement credit", etc., not only proves that extensions of credit do differ according to loan purpose but also underlines our contention that TIL disclosures could be made more meaningful if they utilized, rather than overlooked, these differences. Again, I believe this could be accomplished so that most, but not necessarily all, of the current language and numbers would still appear on all TIL disclosures. Moreover, this approach would facilitate the establishment of reasonable standards of accuracy which would be consistent in approach and application.

We are encouraged by some of the language in S. 108, particularly Sections 5, 7, and 11. These sections implicitly, if not explicitly, recognize the existence of different classes of credit and the need for technical flexibility. By the same token, we note that Section 14(b)(2) would single out real estate credit for RESPA-type advance disclosure. We can see no particular reason why consumers should be given advance disclosure for real estate credit any more than for any other type. Moreover, the specific requirement for disclosure three days after application is reminiscent of the inflexible timing imposed by the original RESPA statute in 1974, which as the Committee knows, ultimately was amended. If the Committee feels there must be some advance disclosure requirement for mortgage lending, we would recommend alternative, and more flexible language to require this disclosure "as soon as reasonably possible" after loan application rather than the rigid three-day approach. This alternative would benefit consumers, as well as lenders, inasmuch as it would permit home lenders to determine a number of disclosure terms precisely rather than have to rely upon estimates.

Nonetheless, we do find it significant that real estate credit is recognized in Section 14(b)(2) as a separate class of credit under the statute as to: (1) the timing of the disclosure, (2) the ability to use "good faith estimates", and (3) the "assumption" disclosure. And we point out, as we have before, that the existence of other statutes such as RESPA, Home Mortgage Disclosure, CRA, ECOA monitoring, etc., also show Congressional cognizance that real estate credit is different than other classes of credit.

While S. 108 does contain language which we feel is responsive to consumers' and lenders' needs, the history of the regulatory implementation of the statute suggests that the Federal Reserve apparently has not felt it had sufficient statutory direction to enable it to set up separate classifications of credit. To be sure, real estate credit has been singled out in certain instances—such as with variable rate mortgage disclosures—but a separate format, with separate technical requirements, has never been set forth for this credit category. If the Committee therefore feels, as we do, that separate classifications for all types of credit could simplify Truth-in-Lending and increase its utility to consumers, then we would suggest that this be recognized by specific mention in the statute. Perhaps Section 105, regarding regulations, could be changed to read: "These regulations shall contain classifications, differentiations or other provisions according to loan purpose, and may provide for such adjustments and exceptions for any other class of transaction . . ."

With such an amendment and direction to the Federal Reserve, the U.S. League would be far more supportive of the remainder of S. 108 even though some of its provisions could, we believe, still be troublesome. On page 8 above, we illustrated why the Total of Payments can be a confusing figure. A far more serious concern is the required \$1 restitution "trigger"—for the reasons recited on page 6. In addition, we are not certain that the specific procedure under Section 14 (a) for determining the Amount Financed—and the prohibition from disclosing (at the same time) the computation leading to that number—will always provide a useful aid to the consumer. (We recognize and appreciate the reasons why Truth-in-Lending disclosures should be grouped "together"—uncluttered by other additional information and computations; nonetheless, disclosing the mathematical progression from loan amount, to amount financed, may be more useful to consumers than by merely stating the single Amount Financed figure by itself.) Because market rates change frequently, we further question whether the requirements of the Federal Reserve

Board to collect and publish representative annual percentage rates will provide timely information for consumers.

In the interest of time I have devoted all of my comments to what I perceive is the basic problem of Truth-in-Lending today and what I believe is the best solution to that problem—a solution which will benefit consumers and all other parties involved. Another area which I might have explored—in order to further illustrate how Truth-in-Lending is not working as intended—would have been to discuss some of the unintended side effects of the present law and Regulation Z. Among these unintended results, I would list: (1) a reduction in credit advertising by many lenders; (2) the fostering of open-end credit over closed-end credit; (3) the requirement to provide sometimes inaccurate disclosure; (4) a misleading presumption that Truth-in-Lending by itself can provide all the information a consumer might need; (5) a reduction in customer convenience in order to make a transaction “fit” into the Truth-in-Lending routine; and (6) frivolous lawsuits. We would be pleased to amplify on these observations during the question-and-answer period or whenever desired by the Committee and its staff.

S. 37, AMENDING THE RIGHT TO FINANCIAL PRIVACY ACT

We appreciate your Committee's focusing on the problems created by Section 1104(d) of the Right to Financial Privacy Act, Pub. L. 95-630. When this section becomes effective March 10, 1979, it will require our institutions to “promptly notify all” of our customers of their rights under this new law. This could very well mean that every savings and loan association would have to search its records for the identity of every customer who had ever had an account relationship with the institution in order to notify the customer of these rights. This is an unreasonable prospect—necessitating an undue expenditure of time, effort and money which will not be matched by any significant benefit to the customer.

The financial institution could notify the customer of his or her rights at the time the Federal government requests access to the customer's records. This is the point at which the Statement of Rights would be the most appropriate. We seriously doubt that such a statement would have any benefit if provided our customers at any other time than when the government is actually seeking their records through the provisions of the Act. We would also recommend that legislation implementing this recommendation ensure that the financial institution does not have any liability in terms of delivery of the notice if it makes a good forth effort to comply upon receipt of the Government's request. Also the legislation should clarify the financial institution's responsibility in circumstances in which the Government has obtained a court order delaying Government notice to the customer of their request for access.

We understand that this situation cannot be corrected satisfactorily without an amendment to the 1978 Act. We thank you, Mr. Chairman, for taking the lead by introducing S. 37 and adding this subject matter to the scope of these hearings.

Of the several legislative alternatives, we believe that a reasonable approach should include the elimination of the requirement that the financial institution provide a blanket notification to its customers. In its place, the Congress might require that financial institutions notify the customer of his or her rights at the time when the Government seeks access to a particular customer's records. This is the point at which the Statement of Rights would be most meaningful and timely. We would also recommend that remedial legislation ensure that financial institutions do not incur liability for non-delivery if the institution makes a “good faith” effort to comply following receipt of the Government's request for records' search. Also, it would be desirable if the legislation could clarify the institution's responsibility in circumstances where the Government has obtained a court order delaying notice to the customer of the request for access.

We welcome this opportunity to testify and to work with you towards a successful resolution of this problem.

APPENDIX A

SHOPPING FOR REAL ESTATE CREDITUSING TRUTH-IN-LENDINGCREDIT COST DISCLOSURES

Assumptions:

1.	Home Price	\$37,500
2.	Purchaser's Cash Resources	10,000
3.	Down Payment Desired 20%, i.e.	7,500
4.	Loan Amount Desired 80%, i.e.	30,000

Thus, the purchaser is shopping for a "\$30,000" loan amount utilizing \$7,500 of his cash for a downpayment and the remaining \$2,500 for closing costs, moving expenses, etc.

Should the purchaser submit as many as six applications for a "\$30,000" loan, lenders' loan offerings would likely differ somewhat -- otherwise there would be little point to the exercise at all. The following table illustrates the Truth-in-Lending credit cost disclosures for six different loan offerings, all of which could reasonably be expected to be quoted at the same time, in the same marketplace, to the same borrower. In typical real estate loan terminology the offerings: a) bear contract rates of 8.75% to 9.25%; b) "service charges" of 0% to 4%; and c) an "interest to date" charge of \$70 to \$80.

The chart illustrates that the information provided does not specifically identify the offering which would clearly be in the best interest of the borrower to accept.

TRUTH-IN-LENDING

CREDIT COST DISCLOSURES

FOR "\$30,000" LOANS

	L O A N O F F E R I N G					
	A	B	C	D	E	F
Prepaid Finance Charge ¹	\$ 75	\$ 375	\$ 80	\$ 675	\$ 1,270	\$ 970
Amount Financed ¹	\$29,925	\$29,625	\$29,920	\$29,325	\$28,730	\$29,030
Finance Charge ^{1,3}	\$56,975	\$57,275	\$47,153	\$57,575	\$56,234	\$55,934
Total of Payments ^{1,3}	\$86,900	\$86,900	\$77,073	\$86,900	\$84,964	\$84,964
Annual Percentage Rate ²	9.03%	9.14%	9.28%	9.26%	9.23%	9.12%
Number of Payments	360	360	300	360	360	360
Amount of Payment ¹	\$241	\$241	\$257	\$241	\$236	\$236

- NOTE:
1. For ease in presentation, rounded to nearest \$1, a practice not currently permitted for disclosure purposes.
 2. Not rounded to nearest 1/4% as permitted by Regulation Z.
 3. Disclosure not required on purchase money home loans.

APPENDIX B

REGULATION Z

Double-run rate computation form for irregular transactions as described in Volume II of Annual Percentage Rate Tables.
(For general explanation see pages 2 through 5.)

CP = Number of months (or weeks) in the computation period = _____

Fill in the first 4 columns in the table below

*FC/100 = (Finance charge) $\times$ (100) $\div$ (Amount financed) = _____

Estimated equivalent number of monthly (or weekly) payments = _____

Estimated rate, using Volume I rate table and preceding 2 lines = _____ %

Computation rate = CP $\times$ (Estimated rate) = _____ %

(1)	(2)	(3)	(4)	(5)	(6)
Months (or weeks) to start of each sequence	Amount of advances or payments in each sequence	Number of advances or payments in each sequence (Factor A)	Deferment = Col. (1) - 1 CP (To be added to Factor B)	Finance charge per \$1,000 (Factor C)	Finance charge = Col. (2) $\times$ Col. (5) $\div$ 1000
				5% (10%)	5% (10%)
ADVANCE				()	()
0.0	2,700.00	1	-1	0 (0)	0 (0)
PAYMENTS				()	()
1.0	2,917.92	12	0	27 (52)	7878 (151.73)
13.0	2,916.72	"	12	74 (143)	21584 (412.09)
25.0	2,915.52	"	24	119 (224)	34695 (653.08)
37.0	2,914.08	"	36	162 (297)	47208 (845.46)
49.0	2,912.52	"	48	203 (364)	59124 (1060.16)
61.0	2,910.96	"	60	242 (424)	70445 (1234.25)
73.0	2,909.16	"	72	278 (479)	80875 (1393.49)
85.0	2,907.12	"	84	314 (528)	91284 (1534.96)
97.0	2,904.96	"	96	347 (573)	100802 (1644.54)
SUBTOTAL	26,208.96			()	15,138.95 (18,974.72)

Computed finance chg. = (Col. (6) for pmts.) - (Col. (6) for advances) = _____ ()

(a) = (Given finance charge) $\times$ (Col. (6) rate) $\div$ (Preceding line) = _____ %

(b) = Difference between (a) and column (6) rate = _____ ()

(c) = Sum of two values on line (b) = _____

Cross multiply (a) and (b) and divide by (c) = _____ %

Divide the rate on the preceding line by the CP = _____ %

Number of months (or weeks) in the unit-period as defined on page 27 = _____

If the unit-period is not the same as the CP, convert the rate above using the table on page

24 or 26 = _____ %

NOTE: The final rate obtained by this method may be disclosed to the nearest $\frac{1}{8}$ % only.

* If an approximate rate is known, omit lines 3, 4, and 5.

APPENDIX B
PAGE 2

REGULATION Z

Double-run rate computation form for irregular transactions as described in Volume II of Annual Percentage Rate Tables.
(For general explanation see pages 2 through 5.)

CP = Number of months (or weeks) in the computation period = _____

Fill in the first 4 columns in the table below

* $FC/100 = (\text{Finance charge}) \times (100) \div (\text{Amount financed}) =$ _____

Estimated equivalent number of monthly (or weekly) payments = _____

Estimated rate, using Volume I rate table and preceding 2 lines = _____ %

Computation rate = $CP \times (\text{Estimated rate}) =$ _____ %

(1)	(2)	(3)	(4)	(5)	(6)
Months (or weeks) to start of each sequence	Amount of advances or payments in each sequence	Number of advances or payments in each sequence (Factor A)	Deferment = $\frac{\text{Col. (1)}}{\text{CP}} - 1$ (To be added to Factor B)	Finance charge per \$1,000 (Factor C)	Finance charge = $\text{Col. (2)} \times \text{Col. (5)} \div 1000$
				5% (10%)	5% (10%)
06 TOTAL	26,208.96			(	15,138.95 (8,974.78)
10	2,902.68	12	108	379 (613)	1100.12 (1779.34)
11	2,900.16	"	120	409 (650)	1184.17 (1885.10)
12	2,897.40	"	132	438 (683)	1269.04 (1978.92)
13	2,894.40	"	144	465 (713)	1345.70 (2063.21)
14	2,891.16	"	156	491 (740)	1419.52 (2139.46)
15	2,887.56	"	168	516 (765)	1487.78 (2208.98)
16	2,883.72	"	180	540 (787)	1557.21 (2269.49)
17	2,879.52	"	192	562 (807)	1618.29 (2323.27)
18	2,874.96	"	204	583 (826)	1676.10 (2374.72)
19	2,869.92	"	216	603 (842)	1730.56 (2416.47)
20	2,864.52	"	228	623 (857)	1784.06 (2454.89)
21 TOTAL	57,954.96			(	28,314.50 (32,869)63

Computed finance chg. = (Col. (6) for pmts.) - (Col. (6) for advances) = _____

(a) = (Given finance charge) $\times$ (Col. (6) rate) $\div$ (Preceding line) = _____ %

(b) = Difference between (a) and column (6) rate = _____

(c) = Sum of two values on line (b) = _____

Cross multiply (a) and (b) and divide by (c) = _____ %

Divide the rate on the preceding line by the CP = _____ %

Number of months (or weeks) in the unit-period as defined on page 27 = _____

If the unit-period is not the same as the CP, convert the rate above using the table on page 24 or 26 = _____ %

NOTE: The final rate obtained by this method may be disclosed to the nearest $\frac{1}{4}$ % only.

* If an approximate rate is known, omit lines 3, 4, and 5.

APPENDIX B
PAGE 5

REGULATION Z

Double-run rate computation form for irregular transactions as
described in Volume II of Annual Percentage Rate Tables.
(For general explanation see pages 2 through 5.)

CP = Number of months (or weeks) in the computation period = _____

Fill in the first 4 columns in the table below

*FC/100 = (Finance charge) X (100) ÷ (Amount financed) = _____

Estimated equivalent number of monthly (or weekly) payments = _____

Estimated rate, using Volume I rate table and preceding 2 lines = _____ %

Computation rate = CP X (Estimated rate) = _____ %

(1)	(2)	(3)	(4)	(5)	(6)
Months (or weeks) to start of each sequence	Amount of advances or payments in each sequence	Number of advances or payments in each sequence (Factor A)	Deferment = Col. (1) - 1 CP (To be added to Factor B)	Finance charge per \$1,000 (Factor C)	Finance charge = Col. (2) X Col. (5) ÷ 1000
				5% (100)	5% (100)
3 TOTAL	57,954.96				27,316.50 (32,469.63)
21	2,858.64	12	240	641 (871)	1832.39 (2439.88)
22	2,852.16	"	252	659 (883)	1879.62 (2510.42)
23	2,845.20	"	264	675 (894)	1920.57 (2543.61)
24	2,837.64	"	276	691 (904)	1940.81 (2565.23)
25	2,829.36	"	288	706 (913)	1977.53 (2583.21)
26	2,820.24	"	300	720 (921)	2035.52 (2597.44)
27	2,810.52	"	312	734 (929)	2062.92 (2610.92)
28	2,799.84	"	324	747 (936)	2071.48 (2620.65)
29	2,788.20	"	336	759 (942)	2116.24 (2626.48)
30	2,775.48	"	348	771 (947)	2139.90 (2628.38)
TOTAL	86,172.24				41,348.42 (58,653.94)
33 FINANCE	29,700.00				
NET	56,472.24				
Computed finance chg. = (Col. (6) for prnts.) - (Col. (6) for advances) =					41,348.42 (58,653.94)
(a) = (Given finance charge) X (Col. (6) rate) ÷ (Preceding line) =					6.8288% (9.6280%)
(b) = Difference between (a) and column (6) rate =					1.8288 (.3720)
(c) = Sum of two values on line (b) =					2.2008
Cross multiply (a) and (b) and divide by (c) =					9.1548%
Divide the rate on the preceding line by the CP =					%
Number of months (or weeks) in the unit-period as defined on page 27 =					1
If the unit-period is not the same as the CP, convert the rate above using the table on page 24 or 26 =					%
NOTE: The final rate obtained by this method may be disclosed to the nearest 1/4 % only.					
*If an approximate rate is known, omit lines 3, 4, and 5.					
					NET RATE 1/4 %
					= 9.25% APR

APPENDIX C

CLOSED-END CREDIT-CALCULATING OVERCHARGES FOR LOANS
WITH IRREGULAR PAYMENTS

(SOURCE: "COMPUTATIONAL PROCEDURES," OFFICE OF
COMPTROLLER OF THE CURRENCY)

Solving for overcharges on loans that are structured with differing streams of payments is somewhat similar to the instructions given in Section V.G. The initial steps are different, but the ultimate technique would be to isolate a particular group of regular payments and solve for the maximum permissible amount of those payments. As with other types of loans, the idea is to eliminate the irregular portions of the loan and solve for payments on the regular portion, using the Maximum Permissible APR.

Suppose you had a 30-year real estate loan with a note in the amount of \$25,000. The amortization schedule calls for 360 payments but during the first 10 years of the loan the monthly payments decrease on an annual basis. The monthly payments for the last 240 months of the loan are equal in amount. Such would be the case if the loan includes MGIC insurance with decreasing annual premiums for a term of ten years. Since premiums are paid in advance, the first year's premium would be paid at settlement and disclosed as a prepaid finance charge, as it is a finance charge paid at the "front-end" of the loan. (Note that in the example given in Section II.F, the premium for the first 10 years of the loan would also be considered a prepaid finance charge, if premiums are paid on a 10-year term basis. For illustrative

purposes, the example was simplified by just giving the amount financed after all adjustments had been made.) The loan now in question has a disclosed APR of 9%. To summarize, the loan is structured as follows:

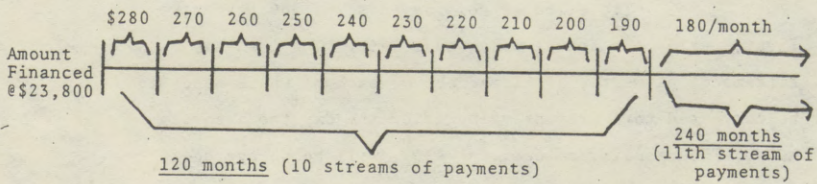
25,000	Amount of loan
-1,200	Prepaid finance charge (first year's insurance premium)
23,800	AMOUNT FINANCED
360	Number of monthly payments
9%	Disclosed APR

Payment Schedule

280	each month for the first year (12 payments)
270	each month for the second year (12 payments)
260	each month for the third year (12 payments)
250	each month for the fourth year (12 payments)
240	each month for the fifth year (12 payments)
230	each month for the sixth year (12 payments)
220	each month for the seventh year (12 payments)
210	each month for the eighth year (12 payments)
200	each month for the ninth year (12 payments)
190	each month for the tenth year (12 payments)
180	each month for the next 20 years (240 payments)
	(total number of payments) 360 payments

First, verify the annual percentage rate. The loan has 11 streams of payments, as listed above, each of which needs to be converted to a present value as of the day the loan was made. The results, as derived below, will be an aggregate present value of \$27,022.544. This means an annual percentage rate of 9.125% (Maximum Permissible APR) applied to an amount financed of \$27,022.544 can yield a payment schedule such as is the one for this loan. Under the conditions present with this loan, a lower amount financed results in a higher APR, so that the true APR for this loan must be higher than the one disclosed. Thus, more is being collected over the life of the loan than is justified by a 9.125% APR. There is an overcharge.

Solving for the overcharge over the life of the loan requires eliminating all of the irregular payments, leaving one regular portion of the loan for which payments can be determined. Any stream of payments can be isolated for this purpose. This example will isolate the last 240 payments, as they occur most frequently throughout the loan and adjustments to these payments will be less drastic than if we were to isolate one of the 1-year stream of payments. Keep in mind this approach is optional and arbitrary, used only for illustration. The diagram below illustrates the structure of the loan. As with the previous example, each of the streams of payments must be moved back in time to the day the loan was made. The calculator operations below the diagram accomplish this.



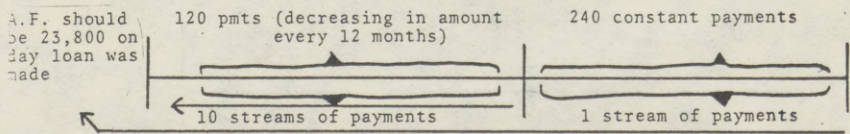
<u>Enter</u>	<u>Keystroke</u>	<u>Results</u>	<u>Stream of Payments</u>
240	(N)	240.	11th Stream
9.125	(-)	9.125	
12	(=) (%i)	.76041667	
→ 180	(PMT)	180.	
	(2nd) (PV)	19,828.575	
	(2nd) (AN-CI) (FV)	"19,828.575	10th Stream
120	(N)	" 120.	
	(2nd) (PV) (STO)	" 7,989.083	
	(2nd) (AN-CI)	7,989.083	
12	(N)	12.	
→ 190	(PMT)	190.	9th Stream
	(2nd) (PV)	2,171.194	
	(2nd) (AN-CI) (FV)	" 2,171.194	
108	(N)	" 108.	
	(2nd) (PV) (SUM)	" 958.03971	
	(wnd) (AN-CI)	958.03971	9th Stream
12	(N)	12.	
→ 200	(PMT)	200.	
	(2nd) (PV)	2,285.4673	
	(2nd) (AN-CI) (FV)	" 2,285.4673	
96	(N)	" 96.	
	(2nd) (PV) (SUM)	" 1,104.433	
	(wnd) (AN-CI)	1,104.433	

<u>Enter</u>	<u>Keystroke</u>	<u>Results</u>	<u>Stream of Payments</u>
12	(N)	12.	8th Stream
→ 210	(PMT)	210.	
	(2nd) (PV)	2,399.7407	
	(2nd) (AN-CI) (FV)	"2,399.7407	
84	(N)	" 84.	
	(2nd) (PV) (SUM)	"1,270.0129	
	(2nd) (AN-CI)	1,270.0129	
12	(N)	12.	7th Stream
→ 220	(PMT)	220.	
	(2nd) (PV)	2,514.0141	
	(2nd) (AN-CI) (FV)	"2,514.0141	
72	(N)	72.	
	(2nd) (PV) (SUM)	1,457.1054	
	(2nd) (AN-CI)	1,457.1054	
12	(N)	12.	6th Stream
→ 230	(PMT)	230.	
	(2nd) (PV)	2,628.2874	
	(2nd) (AN-CI) (FV)	" 2,638.2874	
60	(N)	" 60.	
	(2nd) (PV) (SUM)	" 1,668.3055	
	(2nd) (AN-CI)	1,668.3055	
12	(N)	12.	5th Stream
→ 240	(PMT)	240.	
	(2nd) (PV)	2,742.5608	
	(2nd) (AN-CI) (FV)	" 2,742.5608	
48	(N)	" 48.	
	(2nd) (PV) (SUM)	" 1,906.5071	
	(2nd) (AN-CI)	1,906.5071	

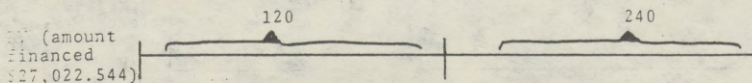
<u>Enter</u>	<u>Keystroke</u>	<u>Results</u>	<u>Stream of Payments</u>
12	(N)	12.	
→ 250	(PMT)	250.	4th Stream
	(2nd) (PV)	2,856.8342	
	(2nd) (AN-CI) (FV)	"2,856.8342	
36	(N)	36.	
	(2nd) (PV) (SUM)	"2,174.9369	
	(2nd) (AN-CI)	2,174.9369	
12	(N)	12.	
→ 260	(PMT)	260.	3rd Stream
	(2nd) (PV)	2,971.1075	
	(2nd) (AN-CI) (FV)	" 2,971.1075	
24	(N)	24.	
	(2nd) (PV) (SUM)	" 2,477.1908	
	(2nd) (AN-CI)	2,477.1908	
12	(N)	12.	
→ 270	(PMT)	270.	2nd Stream
	(2nd) (PV)	3,085.3809	
	(2nd) (AN-CI) (FV)	" 3,085.3809	
12	(N)	" 12.	
	(2nd) (PV) (SUM)	" 2,817.2756	
	(2nd) (AN-CI)	2,817.2756	
12	(N)	12.	
→ 280	(PMT)	280.	1st Stream
	(2nd) (PV) (SUM)	3,199.6543	
	(RCL)	27,022.544	Aggregate present value of all streams of payments

The final answer above at 27,022.544 is an aggregate of all the present values as of the day the loan was made for the 11 streams of payments. It is a greater amount than the true amount financed of 23,800. This means the APR for the loan is higher than what was disclosed, and there is an overcharge (i.e., the consumer is paying back amounts to amortize \$27,022.544, while only \$23,800 was "borrowed").

The diagrams below show the approach that can be taken for adjusting the various portions of the loan (streams of payments) and deriving the amount of the overcharge. The 27,022.544 in the display window of the calculator was the last operation performed and the necessary operations provided below, following the diagrams, continue from this last operation.



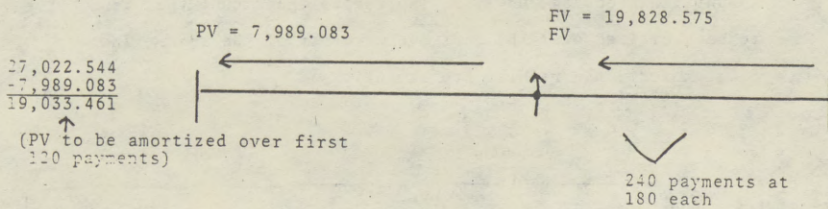
All 11 streams of payments are reduced in value to their equivalent value on the day the loan was made. The total of payments for this loan at \$71,400 is thus reduced to a present value of 27,022.544 at a Maximum Permissible APR of 9.125%. The finance charge to be collected is, therefore \$44,377.456. If the present value is to be reduced to 23,800, the corresponding finance charge must also be reduced for the APR to remain the same. Calculator operations so far have given the results shown in the diagram below.



At 9.125% APR, this amount is amortized by the 11 streams of payments. The first step for calculating overcharges is to isolate on the day the loan was made the present value of the last 240 payments. This is accomplished as follows:

<u>Enter</u>	<u>Keystroke</u>	<u>Results</u>
240	(N)	240.
180	(PMT)	180.
	(2nd) (PV)	19,828.575
	(2nd) (AN-CI) (FV)	"19,828.575
120	(N)	" 120.
	(2nd) (PV)	" 7,989.083
	(+/-) (+) (RCL) (=)	"19,033.461

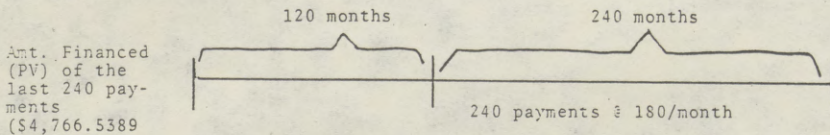
The(%i) has already been programmed from previous operations and need not be programmed again for the operations above. The diagram below shows the present value of the last 240 payments on the day the loan was made as a component of the amount financed (derived above) at 27,022.544 for this loan. When deducted from this amount financed, the remaining value represents the amount financed that is amortized over the first 120 payments of the loan at 9.125%.



The resulting present value of \$19,033.461, to be amortized over the first 120 payments at 9.125% APR, is an accurate figure. It must now be related to the true amount financed of the original loan which is \$23,800. After subtracting \$19,033.461 from \$23,800 the remaining \$4,766.5389 represents the present value of the last 240 payments, but not at 9.125% APR.

To summarize:

The loan has an amount financed of \$23,800. However, at a 9.125% APR, the payment schedule of the loan reflects an amount financed of \$27,022.544. By determining the components of this amount financed, i.e., which part pertains to the first 120 payments of the loan and which part pertains to the last 240 payments, the present value (as of the day the loan was made) of the first 120 payments can be isolated and related to the original amount financed of \$23,800. Thus \$19,033.461 of the \$23,800 can be amortized over 120 payments (with 10 streams of payments) at 9.125% APR. Then, by subtracting this \$19,033.461 from \$23,800, the resulting present value of the amount financed, \$4,766.5389, represents the amount that is to be amortized over the last 240 payments of the loan. In diagram form, the results are as follows:



The CHAIRMAN. Thank you, Mr. Salm, very much.
Our next witness is David Smith,

**STATEMENT OF DAVID SMITH, JR., AMERICAN BANKERS
ASSOCIATION**

Mr. DAVID SMITH. Mr. Chairman, I am David S. Smith, Jr., vice-president of the National Savings and Trust Co. in Washington, D.C., a member of the executive committee of the Installment Lending Division of the American Bankers Association and Chairman of the Division's Task Force on Truth in Lending. Accompanying me today is Walter W. Vaughan, senior vice-president of Lincoln First Bank, N.A., of Rochester, N.Y., a gentleman who has been closely involved with Truth-in-Lending on behalf of our association for more than 10 years. The American Bankers Association, whose membership consists of approximately 92 percent of the Nation's more than 14,000 full service banks, appreciates this opportunity to present our views today.

A decade has elapsed since Truth in Lending was enacted and while it has appeared to achieve its initial goal of increasing consumer awareness of the cost of credit, there can be little doubt we have now reached the point of diminishing returns. The act is in need of substantial improvement.

Our association supports Truth in Lending reform through legislative amendments. We generally endorse S. 108. However, we support the bill with general reservations. First, there are several provisions we have previously opposed and will continue to oppose, as well as provisions we believe should be amended. Second, our Association has undertaken a project to review in its totality the Truth in Lending Act and the issue of credit disclosures to customers. Therefore, we would like to make it clear that our position today may be modified upon completion of this project. We expect to complete our review shortly and will make our findings available to this committee.

Our association believes agricultural credit is essentially commercial in nature and supports the exclusion of agricultural credit from the coverage of the act.

The American Bankers Association believes that there are two essential ingredients to any reform of the Truth in Lending Act. It must involve simplification by reducing the number of disclosures given to the consumer and a restriction of the scope of creditors' exposure to civil liability.

Simplification of the disclosure statement must be a primary objective of any Truth in Lending revision. The number of required disclosures should be reduced substantially by distinguishing between essential disclosures which enable the consumer to evaluate the cost of credit and additional term disclosures which are not necessary for credit shopping. S. 108 has taken a step in the direction of realizing this important objective. However, we believe the number of disclosures could be reduced further without hampering the consumer's ability to shop credit costs. In addition, in the area of residential mortgage transactions the proposed amendments actually take a step backward.

Our association applauds the proposed issuance of model forms and clauses by the Federal Reserve Board so long as their use is

optional, and such use protects creditors from charges of noncompliance with the disclosure provisions of the act. We also agree with establishing October 1 of each year as the effective date for disclosure statement changes, but believe a 9 month rather than a 6 month lead time would be more appropriate.

Our association endorses the provision establishing a tolerance in the disclosure of the annual percentage rate and also the provision permitting the Federal Reserve Board to determine whether tolerances for other numerical disclosures should be allowed.

We support the provision which resolves the "multiple creditor" problem by clarifying that the creditor who must make disclosure is the one to whom the note is payable.

The American Bankers Association believes a reduction in the number of violations subject to civil liability must also be a primary objective of any revision effort and we support the approach taken in S. 108. However, just as we believe the reduction in required disclosures has not been taken far enough neither has the reduction in provisions to which civil liability attaches.

Our association endorses the bills limiting of a creditors maximum class action liability to \$500,000 or 1 percent of net worth for all class actions arising out of the same violation or course of conduct.

We support S. 108's expansion of the period during which a creditor can appropriately adjust a consumer's account without incurring civil liability, from 15 to 60 days. We further support the amendment which clarifies that bona fide errors are those which are clerical or mechanical in nature, but also believe that bona fide errors should not be subject to administrative enforcement.

The American Bankers Association continues to oppose the \$100 minimum recovery in an individual civil action suit on the grounds that such a minimum encourages nuisance suits.

In order to protect consumers' rights and to assure creditor compliance, S. 108 counters the reduction in civil penalties by increasing the administrative enforcement powers of the regulatory agencies. While we find these provisions generally fair and equitable to both creditors and consumers, we take issue with a few of the specific requirements. We oppose the provision permitting an agency to order creditors to pay amounts of less than \$1 into the U.S. Treasury. We also would like to see the time limitation for restitution procedures correspond to the 1 year statute of limitations for civil liability.

Our association generally supports the amendments on rescission rights, however, we oppose the imposition of civil liability for other violations after a consumer has exercised the right to recind.

The American Bankers Association believes that full Federal preemption is vital to the successful simplification of Truth in Lending. Despite our strong belief in States rights, we support Federal preemption in the area of Truth in Lending where the Federal Government has already thoroughly occupied the field. Federal preemption will permit the continued existence of a law which adequately protects all consumers, and creditors and consumers will be benefited by the reduced complexity of disclosure statements.

In conclusion, the American Bankers Association believes simplification of Truth in Lending is necessary to insure the continued effectiveness of the Act and we are equally confident such action will be to the benefit of all parties concerned. While we have stated our position on S. 108, we would like to submit for the record a summary of the proposals for change contained in our more detailed written statement.

We support this committee's efforts and once again would like to thank you for giving us this opportunity to present our views.
[Complete statement of Mr. Smith follows:]

STATEMENT OF THE AMERICAN BANKERS ASSOCIATION

Mr. Chairman and members of the Committee, I am David S. Smith, Jr., Vice President of the National Savings and Trust Company in Washington, D.C. and a member of the Executive Committee of the Instalment Lending Division of the American Bankers Association, whose membership consists of approximately 92 percent of the nation's more than 14,000 full service banks. I am here today as Chairman of that division's Truth in Lending Task Force. Accompanying me today is Walter W. Vaughan, Senior Vice President of Lincoln First Bank, N.A., of Rochester, New York, a gentleman who has been intricately involved with Truth in Lending on behalf of our Association for more than 10 years. The American Bankers Association appreciates the opportunity to present our views today.

It has now been more than a decade since the enactment of the Truth in Lending Act; and although it has appeared to achieve the initial objective of increasing consumer understanding and awareness of the cost of credit, time has proven the need for substantial improvements. There is considerable evidence that disclosure forms are too lengthy and complex for consumer understanding or utility. Creditors, on the other hand, are faced with a continuous barrage of regulatory amendments and administrative and legal interpretations, which make total compliance virtually impossible. Many creditors sincerely attempting to comply with Truth in Lending are finding themselves in violation and subject to litigation due to these frequent changes and the resultant complexity of the law. This problem is multiplied for those creditors with operations in more than one jurisdiction.

The problem of "information overload" is strongly supported by the 1977 Consumer Credit Survey of the Board of Governors of the Federal Reserve System. In chapter 4 of that report, titled "Important Credit Terms," the Board found that Truth in Lending disclosure statements may actually cause confusion for consumers who are not able to digest a great amount of information at any one time, and therefore the purpose of enlightening borrowers has not been fulfilled. The survey found that many consumers agree with the hypothesis that Truth in Lending disclosure statements present too much information. The majority of those consumers acknowledged that they did not read the disclosure statement carefully, primarily because they found the statements too complicated. These same consumers stated that much of the information on Truth in Lending statements is not very useful and they supported the idea that consumers would be more likely to read less lengthy Truth in Lending statements.

The American Bankers Association believes that this study reinforces the need for immediate simplification of the Truth in Lending Act. Because of its technical and complex nature, Truth in Lending has reached the point of diminishing returns. Customers find it difficult to cope with and understand these complex disclosures, and the cost inherent in compliance with such technical requirements cannot help but be reflected in the cost of credit to the consumer.

Our Association strongly supports Truth in Lending reform through legislative amendments. For this reason we generally endorse S. 108, and in fact support many of the individual provisions within the bill. However, we support this bill today with two general reservations. First, there are several provisions in S. 108 which the American Bankers Association has previously opposed and will continue to oppose, as well as a number of provisions which we believe should be amended. Secondly, our Association has undertaken a project to review in its totality the Truth in Lending Act and the issue of credit disclosures to customers. Therefore, as Truth in Lending moves through the legislative process our position may be altered somewhat, based upon the outcome of that project.

This project has been divided into two basic components. The first component involves the identification and resolution of a number of specific issues which have

arisen under the Truth in Lending Act, Regulation Z and numerous judicial interpretations of both. This analysis coincides with the approach to reformation of the Truth in Lending Act which has been undertaken by this committee. In other words, it analyzes the Truth in Lending Act in its present form and format, and the specific issues which have arisen under that Act. From this analysis we are attempting to draw the optimal resolution for each of the issues identified.

The second component of this project involves a conceptual approach to the overall issue as to the optimal method for making credit disclosures. It is our belief that throughout the history of federal Truth in Lending, there has been an assumption that further development by statutory amendment and regulation constitutes movement in a direction both palatable to the industry and helpful to the consumer. In retrospect, it seems altogether possible that this may not be the case, and that it may be possible to design a new conceptual approach to credit disclosure. It is with this thought in mind that our Association has undertaken this second aspect of the project which involves a close examination of the entire question of the nature and timing of credit disclosure. Therefore, we would like to make it clear that our position today is contingent upon the completion of this project and the conclusions which will be derived therefrom. I hasten to add that we will make our findings available to this Committee.

In light of the fact that we are today addressing amendments to the existing Truth in Lending Act, which presumes statutory amendment conforming to its present format, we again state that we generally support this bill. With this in mind, I would like to now move to a discussion of the individual issues outlined in S. 108.

The scope and coverage of the Truth in Lending Act is a problem which has been recognized by all of those concerned with this Act. There is almost unanimous agreement among creditors, consumers and legislators that agricultural credit should be excluded from the coverage of the Act. Currently, agricultural credit of less than \$25,000 is not among the list of exempted transactions. These transactions should not be subject to Truth in Lending requirements since they are essentially commercial in nature and the terms of agricultural credit transactions are more susceptible to change subsequent to the original agreement than are ordinary consumer credit transactions.

Strong support for the exemption of agricultural credit from the requirements of Truth in Lending is given by a survey which was conducted by the Agricultural Bankers Division of the American Bankers Association. The purpose of the survey, which was mailed to 54 banks last January, was to analyze interest disclosure on agricultural loans. The survey results showed that the vast majority of agricultural loan advances are under \$25,000, and the payout in the majority of these advances result in actual interest amounts different from that originally disclosed in the Truth in Lending statement.

The Summary Statement of that survey is revealing. "According to the survey sample, 3,507 advances under \$25,000 were reported. The payout on 3,105 of these advances resulted in actual interest amounts different than originally disclosed. In nearly all instances, this was because the date of maturity was different from the originally scheduled maturity. Agricultural credit line maturities are set up to correspond with the projected receipt of income which is difficult to predict because of crop and livestock market fluctuations and harvest conditions. The net effect is that the actual interest amount was different from that originally disclosed for nearly 9 out of 10 of the loan advances covered by Regulation Z."

We believe this survey demonstrates the reasons for exempting agricultural credit from the Truth in Lending Act, and therefore we support this provision of the simplification bill.

Once the scope of the Act has been determined, a second issue, which affects the entire Act, needs to be addressed. It is the "multiple creditor" issue. A major problem which has come to light involves the question of who is responsible for making Truth in Lending disclosures. Recent court decisions have held that a creditor who purchases a retail instalment obligation from the original seller-creditor is a creditor rather than a subsequent assignee and therefore responsible and liable for Truth in Lending disclosures. By recharacterizing the legal status of indirect financiers from that of subsequent assignee to original creditor, these decisions have increased dramatically the liability of assignees from that set forth by Congress in the 1974 amendments to the Act. In addition, other cases have gone one step further by requiring that the identity of the subsequent assignee, who is now recharacterized as a creditor, be disclosed on the face of the disclosure statement. Therefore, even if these transactions are completely free of other Truth in Lending

violations, this failure to identify the assignee renders the vast majority of the disclosure statements given in these transactions violative of the Act.

The problems and potential liability raised for a financier of indirect paper by these decisions are enormous. It is estimated that banks, thrifts and finance companies hold approximately \$40 billion in indirect financing obligations of one sort or another.

We support the provisions in S. 108 which resolve this ambiguity in the current Act. By amending the general disclosure requirements of Section 121 to clarify that only one creditor must make disclosures, and by amending the definition of a "creditor" to include a person who both (1) regularly extends consumer credit, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness, the "multiple creditor" problem has been resolved in an equitable manner.

Our Association believes that there are two essential ingredients to any simplification of the Truth in Lending Act. True simplification must involve both a reduction in the number of disclosures given to the consumer and a restriction of the scope of creditors' exposure to civil liability. We commend the Senate Banking Committee for their efforts in both of these areas. Reduced disclosures and model forms or clauses are both important in order to enhance consumer understanding and to promote greater creditor compliance. Tolerances in the annual percentage rate, and in other disclosures as may be deemed necessary by the Board, as well as reduced civil liability, are both essential elements of relieving both creditors and the court system of the myriad of Truth in Lending suits. In addition, any protections which it may be perceived are being lost by consumers due to the reduced civil liability, are more than offset by the increased protections in the area of administrative enforcement; and, in fact, these protections are more efficient.

As stated above, simplification of the disclosure statement should be the primary objective of any Truth in Lending revision. The number of required disclosures should be reduced substantially by distinguishing between essential disclosures which enable the consumer to evaluate the cost of credit and additional term disclosures which are not necessary for credit shopping. Only making this distinction, and eliminating the latter, will the problem of "information overload" be solved. The bill we are addressing today has taken a step in the direction of realizing this important objective. However, we do believe that S. 108 does not go far enough in requiring the disclosure of only those important items which are necessary for a consumer to shop for credit costs. In addition, as we will discuss later, we believe that in the area of residential mortgage transactions the proposed amendments actually take a step backward in simplification of disclosures.

The American Bankers Association approves of the approach taken in S. 108 in the area of disclosures for closed end credit. By reducing the number of required disclosures in closed end transactions and by eliminating itemization of the amount financed and the finance charge, Section 128 disclosures will be more beneficial to consumers and easier to comply with for financial institutions. Since "information overload" has been a recognized problem which is supported by the Federal Reserve Board's "1977 Consumer Credit Survey," we believe this reduction in disclosures is essential.

Our Association believes, however, that in keeping with the position of only disclosing those essential cost items which are useful to credit shopping, changes should be made in the area of security interests, late payments and prepayments. Security interests should be limited to a disclosure of whether or not a security interest has been or will be taken and late payments and prepayment penalties or rebates should not be part of the Truth in Lending disclosures. We contend that, if, in fact, there is such a practice as "credit shopping", collateral, late charges, and rebates or penalties for early payment are not the basis upon which consumers shop for credit. This belief is supported by the Federal Reserve Board's Consumer Credit Survey which found that the finance charge, the annual percentage rate and the size of the monthly payments were by far the disclosures most important to consumers.

Besides not being necessary disclosures to facilitate credit shopping, there are other reasons for excluding these from the Truth in Lending statement. Late fees and prepayment penalties and rebates are in essence contingent fees, which are triggered only in the event of some later occurrence. Further, by describing the type of security interest, consumers may in fact be dissuaded from referring to the contract, which contains the actual description of the security interest as required by the Uniform Commercial Code.

Our Association strongly objects to the new provisions required in mortgage transactions. Primarily, we oppose the addition of the finance charge, the total of

payments, and a statement of whether the mortgage debt is assumable, in these transactions. First, we do not believe that the disclosure of whether a mortgage is assumable is really a useful shopping tool as suggested in the section-by-section analysis accompanying S. 180. More importantly, and as recognized in the present Truth in Lending Act, disclosing the finance charge and total of payments in mortgage transactions results in such a large figure that it may discourage home purchases. Even more to the point, these disclosures are in most cases meaningless as almost all mortgage transactions never come to term. Finally, we disagree with linking Truth in Lending disclosures with the disclosures under RESPA and requiring that these disclosures be given within three days of receiving a consumer's written application.

Section 13 of S. 108 deals with simplification of disclosures for open end consumer credit plans. While compliance with open end disclosure requirements has not been as problematic for creditors as compliance with the closed end credit requirements, we believe there could still be a substantial reduction in open end disclosures without hindering the customer's ability to credit shop. We agree, however, with the elimination of the provision dealing with the average effective rate of return, as it is an unnecessary disclosure requirement which is not being utilized.

In particular, we believe this bill does not go far enough in simplifying the disclosure of any security interest taken to secure payment of the credit extended. While the proposed amendment simplifies the current requirement by eliminating the need to disclose the conditions under which a security interest may be retained and a description of the interest, as in closed end transactions, it still mandates an identification by item or type in those instances where the loan is secured by property other than the property purchased. It is our position that a statement of whether or not a security interest has been or will be taken is sufficient to inform the consumer of the "cost" of the credit being sought. As in all other disclosures, the actual description of the security interest being taken can be discovered by the consumer by a mere referral to the contract document.

In conjunction with reduced and simplified disclosures, our Association supports the issuance of model forms and clauses by the Federal Reserve Board so long as their use is optional, and such use protects creditors from any charges, through civil suit or administrative enforcement, of non-compliance with the disclosure provisions of the Act. It is our position that model disclosures can be helpful to both consumers and creditors, by assisting creditors in compliance and making easier the comparability of cost.

Model forms cannot be discussed without attempting to integrate the other issues of simplified disclosures, segregated disclosures, and federal preemption of state laws. Presently, we oppose the segregation of disclosures as required in Section 14 of S. 108. Even with the reduced disclosures contemplated in this Section, the disclosures are lengthy enough to fill at least half of the front of a disclosure form. Segregated disclosures and even model forms in "readily understandable language" present a problem if there is not complete federal preemption of state laws. Although we will discuss at length at a later point in our testimony the issue of federal preemption, it needs to be referred to here. It appears that if state disclosures are neither "inconsistent" with federal disclosures nor "substantially the same" as the federal disclosures as set forth in S. 108 then the state and federal disclosures will exist side by side. This creates problems for creditors and consumers if federal disclosures are required to be segregated.

A discussion of model forms would not be complete without addressing the issue of form changes every time a new interpretation or regulation is issued by the Board. The large number of form changes which have resulted under the current Truth in Lending law from the continuous stream of interpretations and amendments to Regulation Z have cost creditors substantial sums of money. To alleviate this problem, S. 108 would set October 1 of each year as the effective date for any regulation or interpretation which would require new or different disclosures. We agree with this approach. We believe, however, that the lead time prior to that October 1 date should be nine months rather than the six months which is currently being proposed.

Our Association supports the treatment of both finance charges and annual percentage rates under Sections 6 and 7 of the bill, and also support the provision permitting the Federal Reserve Board to determine whether tolerances for other numerical disclosures should be permitted. By establishing an acceptable tolerance for the disclosure of the annual percentage rate, and possibly other numerical disclosures, the technical nature of Truth in Lending is reduced and compliance is made easier. We find it incongruous that under the current law while creditors can round the APR to the nearest one-quarter of one percent, creditors electing not to

round are in the absurd position of violating the law if the annual percentage rate is not stated with complete accuracy. We strongly support the acceptable tolerance of one-eighth of one percent in the event a creditor does not take advantage of the rounding allowance.

As mentioned previously, Truth in Lending simplification would not be complete without a reduction in the number of violations subject to civil liability. We support the approach which has been taken in S. 108, namely, including within the civil liabilities section a specific list of the disclosures which give rise to liability. By limiting statutory penalties to just enumerated essential disclosures, litigation based on purely technical violations of the Act should be eliminated. We believe, however, that just as the reduction in required disclosures has not been taken far enough in S. 108, neither has the reduction in provisions to which civil liability attaches. This is particularly true for open end credit.

Our Association endorses the treatment of class actions under the bill. Under the current law a creditor may be subject to a series of separate class actions arising out of the same course of conduct or violation. To remedy this problem, the bill makes it clear that a creditor's maximum aggregate liability cannot exceed \$500,000 or 1% of net worth, whichever is less, rather than that limit applying to each of several class actions initiated as the result of the same disclosure violation.

S. 108 would also expand, from 15 to 60 days, the cure period within which a creditor can appropriately adjust a consumer's account without incurring civil liability. We support this provision as being equitable to both consumers and creditors. If a creditor discovers an error, it is in the best interest of both the creditor and the customer for there to be sufficient time allotted for that error to be corrected without resorting to the courts. It will save both parties to the transaction the time and expense involved in court proceedings. We believe it is commonly acknowledged that in nearly all instances 15 days is much too short a period in which to make proper correction of account errors. Determining the persons affected by the error, the extent of the error, and then preparing the adjustments and actually mailing the correction may take considerable time. Moreover, in the open end credit situation, the most practical way to correct errors is to make an adjustment in a subsequent billing statement. For all of these reasons we support the increase from 15 to 60 days. The increased time period will suffer the customer no harm, and the creditor will have a reasonable period within which to make the adjustment.

We further support the amendment which would provide protection where errors of a financial institution are clerical or mechanical in nature. Although under the current law bona fide errors protect a creditor or assignee from liability, it has always been open to question what exactly constitutes a bona fide error. By giving as examples of bona fide errors, clerical, calculation, computer malfunction and programming and printing errors, both creditors and the courts will be guided as to the sufficiency of that particular defense.

We do question, however, whether it was the intent of the committee not to include bona fide errors as a defense to an administrative enforcement action. Although the bill extends the defense to cover actions under the section dealing with rescission rights, it fails to include it as a defense to restitution. We believe that this defense is equally applicable in the area of administrative enforcement, and a reference to Section 108 should be included within this section of the bill.

Our Association has opposed and continues to oppose the \$100 minimum recovery in an individual civil action suit which is automatically granted under the present law. We believe that the statutory damages, over and above actual damages, in an amount of twice the amount of any finance charge is sufficient to compensate the consumer for any Truth in Lending violations. On the other hand the \$100 minimum recovery provision should be eliminated in order to discourage nuisance suits.

In order to protect consumers' rights and to assure creditor compliance, S. 108 counters the reduction in civil penalties by increasing the administrative enforcement powers of the regulatory agencies. In large part these provisions in this bill are equitable and fair as to the creditor and the consumer. We do take issue, however, with a few of the specific requirements. We certainly support the provision that restitution would be required only when an APR or a finance charge is inaccurately disclosed, and that reimbursement must be required only in those situations where is a clear and consistent pattern, gross negligence, or willful violation intended to mislead the consumer. We also agree that it is important to protect the safety and soundness of the financial institution by prohibiting restitution or requiring only partial adjustment when restitution may significantly impact the safety and soundness of that institution. It is also important to include the de minimus figure of \$1.00 in order that the costs of reimbursement to the creditors will not greatly exceed the benefit to the consumer.

While the bill would not require restitution to individual customers for adjustments of less than \$1.00, it would permit an agency to order the creditor to pay the sum into the U.S. Treasury. We oppose this provision since it appears to be punitive rather than remedial and will be of no benefit to the affected customers. Since administrative orders should be remedial, and not punitive, we question whether such a lump sum reimbursement is appropriate.

We would also like to see the time limitation for restitution procedures correspond to the statute of limitations for civil liability. We believe it would be unduly burdensome to both agencies and creditors to grant restitution authority with respect to violations occurring more than one year prior to the discovery of the violation.

Although not contained in the bill, our Association has noted that the section-by-section analysis, for S. 108 states that "restitution should compensate the consumer for the time value of money." It is our belief that the inclusion of this concept within the report language is clearly erroneous, and any such formula for making restitution would be inequitable to creditors.

While we approve of, and generally support most of the amendments contained in Section 12 dealing with rescission rights, it is our Association's belief that it is time to reassess the appropriateness of the application of rescission rights to loan transactions which result in a lien on a customer's home. The right of rescission was made a part of Truth in Lending in order to protect consumers from pledging their homes under circumstances of high pressure where the seller of goods and services may be soliciting and consummating a sale at the borrower's residence or where the seller and creditor are the same person. Minus any showing of abuses in loan transactions conducted directly between a borrower and a financial institution, and in light of the limited exercises of rescission rights by consumers in such transactions, we believe there should be a reassessment of the applicability of this section of the Act to direct loan transactions. In these transactions a consumer is not caught unaware or in a weak moment, and it is the consumer who has approached the lender with the intent of obtaining credit. Therefore, in these circumstances it seems unnecessary to burden both consumers and creditors with the three-day "cooling off period."

Putting aside our belief that there should be a reassessment of the right of rescission in the direct loan transaction context, we would like to address the amendments to this section as they appear in S. 108. We support most of these revisions.

Our Association supports the provisions exempting from the rescission right protections those transactions which constitute a refinancing or consolidation, and all advances under a pre-existing open end credit plan. In both instances the consumer will have received the notice of rights and will have had the opportunity to rescind the transaction, at that point in time when it is most important, namely when the consumer first learns that the home will be used to secure a transaction or will be pledged to secure a particular line of credit. In refinancings, the customer will have had the opportunity to rescind the transaction when entering into the original loan, and in the open end credit situation, the consumer will have the opportunity to rescind the transaction when first contracting for the line of credit and at any point when that line of credit is increased.

Our Association would also like to support the exemption of vacant lots from this section of the Act. The mere pledging of a vacant lot as security for a loan does not need the extraordinary protection of the right of rescission that is needed in the situation where the right is being taken in the customer's home.

We also support the extension of the time period within which a creditor has to return any money or property to the obligor after the obligor has exercised the right to rescind. This gives creditors a better opportunity to determine whether or not the right to rescind is valid and has been appropriately exercised. However, it is our belief that 30 days rather than the 20 days enumerated in S. 108 would be more appropriate.

Our Association also endorses certain limitations on the continuing right to rescind after the initial three-day waiting period. After the initial period, we believe it is only equitable to require the obligor to tender to the creditor, as a condition of the exercise of the right to rescind, the property, principal amount, or other consideration. It is our belief that such an amendment would restore balance and fairness to the process without depriving the obligor of any basic rights under the section. In addition, we support the attempt to limit this continuing right to rescind by relating it to a point in time when the consumer receives the rescission forms and a statement containing the material disclosures under Truth in Lending. However, we perceive a problem with this section since the language of the Act requires the right

to rescind to hinge upon the delivery of the rescission information *together with* a statement containing the material disclosures required under the Act. It is our concern that by using the words "together with" instead of "and," if the disclosures are not given at the same time as the rescission rights statement and forms, that requirement will not have been met. In addition, although we believe the definition of material disclosures attempts to clarify that the right to rescind does not continue beyond the initial three-day period simply because the creditor makes technical violations of Truth in Lending, we believe a "good faith" standard should be included.

Although we do not oppose the provision which is designed to preserve the consumer's right to rescind where an enforcement agency is investigating the rescission procedures of an institution, and the consumer's right to rescind is based at least in part on the matters involved in that proceeding, we believe more shortened periods of time in this section are more appropriate. It is our belief that the continuing right to rescind would adequately protect customers if it were limited to a one-year period, and if an agency is investigating the institution the consumer then should be allowed six months after the conclusion of the proceeding in which to exercise these rights.

Finally, we strongly oppose the imposition upon creditors of civil liability in addition to the relief offered consumers under the rescission rights section of the law. Once a consumer has exercised the right to rescind, both the creditor and the consumer are returned to the status quo. To permit a consumer to then sue for errors in Truth in Lending disclosures, which violations are no longer applicable to that consumer, is to impose penalties upon an institution for a transaction which no longer exists, and from which the consumer has suffered no injury.

We now turn to the important issue of federal preemption of state law. As discussed above, we believe full federal preemption is very important to any successful attempt to simplify Truth in Lending for creditors and in fact our Association's position on model forms and segregation of disclosures is in part contingent upon this issue.

The overlapping of state law with federal law in the area of Truth in Lending is a growing, not a diminishing problem. During the period since the federal Truth in Lending Act was first enacted, state legislatures, spurred by the federal example, have enacted similar respecting disclosure, credit reporting, billing error procedures, credit discrimination, etc. In nearly every case the state law, although similar to the federal act, contains one or more provisions different from that in the federal law. By allowing these state and federal laws to coexist, the efforts being undertaken by this committee to limit "information overload" and simplify disclosures will be all but nullified.

Although the amendments in S. 108 attempt to eliminate the overlap of state disclosure laws with this Act, as written, the section would not prohibit the coexistence of state and federal provisions. Although the Board is required to determine whether state disclosures are "inconsistent" with the Act or whether they are "substantially the same" as the Act, and in the former case annul the state provision and in the latter case permit only the state requirement to apply, this does not cover all those disclosures in the gray area which are neither "inconsistent" nor "substantially the same." Many factors will invariably appear to insure that state provisions are not identical to nor even "substantially the same" as the federal statute. On the other hand the fact that they are not "substantially the same" will not necessarily mean they are "inconsistent" with the federal requirements.

The problem of state/federal overlap is exacerbated when it is applied to multi-state creditors and to those consumers who may reside in more than one state. Consumer and creditor alike must contend with a bewildering variety of differing state and local laws on subjects which the federal government has presumably already laid down adequate rules of protection.

For these reasons our Association supports full federal preemption in the area of Truth in Lending where the federal government has already legislated in a comprehensive and detailed manner and has in reality thoroughly occupied the field. We make this recommendation cautiously and with full awareness of the objections which will be raised due to our strong belief in the principle of the continued right of states to legislate in fields in which they have traditionally exercised jurisdiction. We do not recommend additional federal incursions into those areas which we believe are properly left to state law. We do recognize, however, that in the area of Truth in Lending in which the federal law has already fully occupied the field the practical situation must prevail. The only remaining question is whether state authorities should be able to impose additional and different standards, which in many cases may not fit within the "inconsistent" or "substantially the same"

parameters within which the Federal Reserve Board would operate under the language of this section of the bill.

The solution to these problems is full federal preemption. It is our belief that Federal preemption will allow for the continued existence of a law which adequately protects all consumers in the area of Truth in Lending. In addition, by preempting State laws, both consumers and creditors will be served by the reduction in the complexity of disclosures and the confusion which arises therefrom.

Sections 13 and 17 of S. 108 contain provisions relating to a customer's billing error rights in credit card transactions. Section 13 of the bill would amend the requirement that a customer be mailed a billing rights notice semi-annually, and instead required that it be sent annually. The reason for this amendment, as discussed in the section-by-section analysis, is to reduce the flow of paperwork, and because consumers are now sufficiently familiar with these rights. It is our position, that the most cost productive way to handle this disclosure to consumers is to disclose their rights when the account is opened. Sending a notice once a year is no more helpful than the disclosures at the opening of the account, unless the consumer happens to have errors in the particular statement to which those disclosures are attached. We believe that giving a statement of these rights at the time an open end account is opened, along with possibly a warning that the customer should hold onto those disclosures, is as beneficial as an annual reminder mailing.

Our major objection with the treatment of billing error rights is in Section 17 in the definition of "billing error." Our Association believes that two sections of the definition should be deleted. A billing error should not include a reflection on a statement of an amount for goods or services not delivered to or accepted by the obligor, and a mere inquiry for additional information or documentation should also not be considered a "billing error."

Disputes, mistakes or alleged mistakes with respect to the quantity, delivery or acceptance of goods or services should not constitute a "billing error" for purposes of the exercise of billing error rights. These types of disputes or mistakes are really not billing errors, but instead are claims and defenses which may be asserted against the merchant in such transactions. We believe problems in this area are adequately covered by Section 170 of the Truth in Lending Act which permits the obligor to assert such claims and defenses against the card issuer, if certain conditions are met.

In addition, a customer's request for additional documentation should not constitute a billing error. Although a customer's request for additional documentation may lead to the assertion of a billing error after the evidence has been provided to the customer, the mere request for such evidence should not be included within the definition.

We strongly support the deletion of the requirement that a card issuer provide the consumer with a postage-paid self-addressed envelope for use in notifying the creditor in the event the card is lost or stolen. Not only is this requirement a waste of time and money for the creditor, it is the most ineffectual way of notifying the card issuer of a lost or stolen card. The bill outlines a very acceptable alternative by requiring that the cardholder receive a description of the means by which the issuer may be notified of a loss or theft.

Our Association generally agrees with the amendments to the advertising requirements which should serve the purpose of loosening current restrictions in order to enhance creditor competition. We particularly endorse the advertising requirements in open end credit, in requiring that only any minimum or fixed fees and the annual percentage rates must be disclosed. We are concerned, however, with the authority to permit the Federal Reserve Board to add additional requirements. We also support the reduced disclosure requirements in the closed end area, but continue to question the need for the downpayment as an advertising disclosure.

The American Bankers Association continues to oppose very strongly even a pilot project to accumulate, publish, and disseminate a list of the annual percentage rates charged by creditors in certain metropolitan areas. Although we understand the committee's belief that a shoppers' guide to credit could have potential benefit, we believe that the detriment far outweighs the benefit. In our opinion, the figures which will be collected will be meaningless for most purposes and in many cases actually misleading. Because of the continuing fluctuation of interest rates and the lag time between the collection of such information and the actual dissemination of that information which is inherent in a project like this, we believe such shoppers' guides would be utterly useless and most likely misleading in the majority of circumstances. For these reasons we believe the cost benefit of such a product demands that it be eliminated from the Truth in Lending simplification bill.

In conclusion, the American Bankers Association believes that simplification of the Truth in Lending Act is a very important undertaking by this committee and an undertaking which will benefit all parties concerned. We are therefore fully supportive of this Committee's efforts. Thank you for the opportunity to present our views.

SUMMARY OF ABA POSITION ON S. 108 (TRUTH IN LENDING SIMPLIFICATION)

Support—Agricultural credit exemption.
 Support—Resolution of "multiple creditor" problem.
 Support—APR tolerance and other tolerances permitted by FRB.
 Recommend—Full Federal preemption of State laws.
 Oppose—Pilot project for dissemination of APR's.

DISCLOSURES

Recommend—For "other than open end" disclosures:
 Yes/no security interest disclosure;
 Eliminate late charge disclosure; and
 Eliminate prepayment penalty or rebate disclosures.
 Oppose—New mortgage transaction disclosures.
 Recommend—For "open end" disclosures:
 Reduction in number of disclosures; and
 Yes/no security interest disclosure.

MODEL FORMS

Support—Model Forms.
 Oppose—Segregated disclosures.
 Support—Annual forms revision.
 Recommend—9 month lead time for form revision (rather than 6 mos.).

CIVIL LIABILITY

Recommend—Reduction in violations subject to civil liability.
 Support—Class action amendment.
 Support—Expansion of "cure period" from 15 to 60 days.
 Recommend—Bonafide errors also a defense to administrative enforcement action.
 Oppose—\$100 minimum.

ADMINISTRATIVE ENFORCEMENT

Oppose—Payment to U.S. Treasury of amounts under \$1.00.
 Recommend—One year statute of limitations.
 Oppose—Any reference to compensating consumers for the "time value of money".

RESCISSION

Recommend—Reassessment of rescission in direct loan transactions.
 Support—Exemptions for:
 Vacant lots;
 Refinancings and consolidations; and
 Advances under preexisting open end credit plan.
 Recommend—30 days for creditor to return money or property to obligor (rather than 20 days).
 Recommend—Beginning of rescission right 3 day period hinge upon delivery of rescission form "and" disclosure statement, rather than delivery of rescission form "together with" disclosure statement.
 Recommend—Inclusion of "good faith" standard for material disclosures.
 Recommend—Requiring obligor to tender property to creditor as condition of right to rescind after initial 3 day period.
 Recommend—Limiting continuing right to rescind after initial 3 day period to one year and allowing 6 months after conclusion of agency investigation.
 Oppose—Imposition of civil liability after exercise of rescission right.

BILLING ERRORS

Recommend—Giving statement of billing error rights only at time open end account opened.
 Recommend—Deletion from definition of "billing error."
 Reflection of amount for goods or services not delivered to or accepted by obligor; and

Inquiry for additional information or documentation.

ADVERTISING

Support—Open end credit amendments.

Oppose—Permitting FRB to add additional requirements.

Recommend—Deletion of downpayment for "other than open end" credit.

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

Our next witness is Mr. Robert Evans.

STATEMENT OF ROBERT EVANS, NATIONAL CONSUMER FINANCE ASSOCIATION

[Complete statement follows:]

STATEMENT OF ROBERT B. EVANS VICE PRESIDENT AND GENERAL COUNSEL, NATIONAL CONSUMER FINANCE ASSOCIATION

Mr. Chairman, we are pleased to have the opportunity to appear before you and your distinguished colleagues on the Committee on Banking, Housing, and Urban Affairs to present the views of the National Consumer Finance Association, ("NCFA") a national trade association organized in 1916 to represent companies engaged in the consumer credit business, on S. 108, the Truth in Lending Simplification and Reform Act.

I am Robert B. Evans, Senior Vice President and General Counsel of NCFA. I am speaking on behalf of our nearly 800 member companies which operate more than 17,000 offices across the country. All told, the consumer finance industry made over 30 million extensions of credit in 1978 exceeding \$50 billion.

NCFA supports S. 108. We feel it goes a long way toward the much needed simplification of truth in lending practices to benefit both the consumer and the creditor. We heartily commend this committee for its extensive and continuing efforts. It's been said that this simplification is one of the most complex issues of the day. It may well be.

As you and your colleagues continue your consideration of this legislation, I urge you to keep in mind the significance to NCFA of three specific areas of concern: flexibility in disclosure, rescission rights on open-end loans, and administrative enforcement.

FLEXIBILITY IN DISCLOSURE

The purpose of Truth in Lending Simplification and Reform has, from the start, been to facilitate the "shopping" needs of the consumer by highlighting only those disclosures that are key to entering into a credit contract and not leaving it to the consumer to search them out of the lengthy set of disclosures required by the original Truth in Lending Act. We support this concept.

It is incumbent upon the creditors, many of whom we represent, to carry out the intent of this Act within the guidelines and sanctions set forth by the Federal Reserve Board. Now it would truly be a simple matter if all of our creditors, regardless of their size or area of service, used the same forms and same equipment in doing business. But, they do not. The size of a company, the State in which it operates, and many other factors result in tremendous diversity in the type of forms and telecommunications equipment used.

This is why Section 105(b) of S. 108 is so essential to any legislation which is passed. This section provides a flexibility to the Federal Reserve Board in its development of model disclosure forms and consequently to credit businesses across the country.

"* * * In devising such forms, the Board shall consider the use by creditors of data processing or similar automated equipment. Nothing in this title may be construed to require a creditor to use any such model form of clause prescribed by the Board under this section. A creditor shall be deemed in compliance with the disclosure provisions of this title with respect to other than numerical disclosures if the creditor (1) uses any appropriate model form or clause as published by the Board, or (2) uses any such model form or clause and changes it by (a) deleting any information which is not required by this title, or (b) rearranging the format, if in making such selection or rearranging the format, the creditor does not affect the substance, clarity, or meaningful sequence of the disclosure."

I have discussed this matter with a number of our member companies and experts in the field of data processing. Many are concerned with the problems they may

face when they do not elect to use a model form. For instance, questions of "meaningful sequence," which have been troublesome in the past, should largely be obviated, but Section 105(b) still requires the non-electing creditor's format to be arranged so as not to "affect the substance, clarity, or meaningful sequence of the disclosure." These are, of course, qualitative terms that defy pre-definition; therefore the Federal Reserve Board's forms will be regarded as more than models—they may well become "standards." We respectfully urge again, as before, that this Committee direct the Board to produce the broadest possible variety of model forms for public use. If this is done, we feel that many legal challenges based on "clarity" and "meaningful sequence" will be avoided.

ADMINISTRATIVE ENFORCEMENT

NCFA believes that the administrative enforcement authority granted to the Federal Trade Commission in Section 8 of S. 108 is unnecessary, unwarranted, and unfair. This provision would enable the Commission to enforce a Truth in Lending violation as if it were a violation of a Commission trade regulation rule. Nowhere in the hearing record is there a demonstration that such power is needed; the Commission has been quite successful in enforcing the Act without the benefit of such enforcement powers. They are unnecessary.

Further, such powers are unwarranted; the Truth in Lending law already contains penalties sufficiently great to deter non-compliance. Indeed, evidence of willful non-compliance is rare. On the other hand, the Congress felt that a Commission rule, to be effective, would need some "teeth" and so gave the Commission additional powers to enforce it. It does not follow, however, that the Commission is weak or helpless in enforcing Truth in Lending without such powers.

Finally, the grant of such power is unfair. No other agency would be given it; very simply, other agencies are accorded only the very same "cease and desist" powers which are deemed inadequate for the Federal Trade Commission. Nor are we aware of a better compliance record by those subject to other agency jurisdictions which would warrant different treatment; in fact the reverse seems to be true. We respectfully urge the deletion of this provision. In view of the recent action taken by the various regulatory agencies in adopting enforcement guidelines (44 Fed. Reg., 1222, 1/4/79) including restitution requirements, we believe Section 8 of S. 108 could well be eliminated in its entirety.

RESCISSION-OPEN END LOANS SECURED BY RESIDENCE

A recent amendment (43 Fed. Reg. 34111, 8/3/78) to Regulation Z would permit future advances to be made pursuant to an open-end credit agreement secured by the consumer's residence without requiring observance of the three-day rescission period for other than the initial extension or change in terms. Consumers Union, an organization which derives its support principally from selling reports ("Consumer Reports") on products which it tests and rates is challenging the regulation in Federal Court on the grounds that it destroys "important consumer rights." The group has contended in a recent letter to the Board (44 Fed. Reg. 4357, 1/16/79) that the regulation and a proposed interpretation

"* * * increase consumer vulnerability to default by encouraging lenders to extend larger lines of credit, not on the basis of increased ability to pay, but because of equity in homes. Both allow the unfair practice of taking a security interest in the home for small loans. And, both contravene the Board's recent efforts to reduce use of credit to control inflation. The abolition of consumer rescission rights encourage expansion of a form of credit that is more dangerous for consumers."

Many NCFA members make consumer loans secured by the borrower's equity in his residence. Terms are generally competitive with those of other financial institutions. Such loans are an increasingly important part of the loan portfolio, since they are problem free. Foreclosures are virtually nonexistent. More importantly, they are popular with the consumer, who—far from being dangerously over-extended—usually pays off his balance well in advance of maturity.

In our members' experience, the fears expressed by Consumers Union are without substance. We are confident that the experience of other financial institutions will warrant the same conclusion. If additional evidence in this regard is needed by your Committee, we will be glad to provide it.

We support the Federal Reserve Board Regulation and proposed interpretation. We believe that it adequately protects consumers, and expect that the Federal Reserve Board will monitor the practice closely and will react quickly if abuses do, in fact, occur.

In addition to the three major areas of concern mentioned above, we are concerned with many of the other problems with which S. 108 proposes to deal. We will

analyze and comment at length on S. 108, but prior to doing so we would first like to mention some of the problem areas in truth in lending so that the Committee will have a better idea of the state of disarray into which the Act and Regulation Z have fallen.

The "acceleration" cases

Nowhere in the Act or Regulation Z is a creditor compelled to disclose the usual contractual right to demand payment of the unpaid balance in the event of default. This right is known as "acceleration", and allows the creditor to sue once for the entire balance instead of waiting for each of the remaining payments to become past due. No one quarrels with this right; it is exercised as a last resort in any event. Nevertheless, six years ago a federal district court in *Garza v. Chicago Health Clubs, Inc.* 347 F. Supp 955 (N.D. Ill. 1972) held the mere existence of such a right constituted a "charge" which must be disclosed under Section 226.8(b)(4) of Regulation Z as a potential "charge" for late payment. From that humble beginning the "law of acceleration" has evolved to the point today where the circuit courts have three differing views and the Federal Reserve Board yet another. Thus, depending upon the jurisdiction the creditor operates in, one (or more) of the following diverse requirements might apply:

1. Acceleration is not a default charge per se. It may give rise to a default charge when the prepayment disclosure incorrectly states the rebate payable upon acceleration or lender fails to rebate in accordance with a current rebate disclosure. This is the Federal Reserve Board position. See Official Staff Interpretation FC-0054 (March 21, 1977).

2. Acceleration never involves a default charge and never requires a Section 226.8(b)(4) disclosure. Prepayment disclosure Section 226.8(b)(7) should disclose refund(s) which will be made for voluntary prepayment and for prepayment following acceleration, even if the same. *St. Germain v. Bank of Hawaii* 573 F. 2d 572 (9th Cir. 1977).

3. Acceleration is not a default charge unless contract and local law permits the accelerating creditor to recover unearned finance charges, in which event the entire unearned charge is a default charge. *McDaniel v. Fulton National Bank* 571 F. 2d 948 (5th Cir. 1978), rev'g 543 F. 2d 568 (5th Cir. 1976), an earlier holding which was in accord with *St. Germain*, supra.

4. The Third Circuit adheres to the 9th Circuit position, but has observed, without so holding, that a non-refund of unearned charges could give rise to a default charge. *Johnson v. McCrackin-Sturman Ford, Inc.* 577 F.2d 257 (3rd Cir. 1975).

5. Always a default charge, regardless of rebate—*Garza v. Chicago Health Clubs, Inc.*, supra.

For excellent summaries of this issue and the related cases see "Acceleration as Prepayment," "Consumer Credit and Truth in Lending Compliance Report," March 1978, p. 1 and "More on the Vexed Question of Acceleration," Report, Id, August 1978, p. 4. In the latter article, Professor Phillips, Editor of the Report, remarks:

"This is an especially vexed question. For one thing, the courts and the staff of the FRB disagree with one another. Thus, there are several versions of the laws, one in force in one part of the country, another in another part, and yet a third view prevails elsewhere. No court has yet adopted in full the view taken by the staff of the Federal Reserve Board (FRB). So it would take a very thick book to analyze the law in detail." (p. 4)

The creditor-assignee cases

The 5th Circuit court of Appeals in *Meyers v. Clearview Dodge Sales, Inc.* 539 F.2d 511 (5th Cir. 1976) cert. denied, 97 S. Ct. 2633 (1977) on September 27, 1976 held that a financial institution engaged in the indirect financing of consumer retail installment obligations was a "creditor" under its interpretation of the Truth in Lending Act and Regulation Z. Until that decision, most financial institutions engaged in financing arrangements similar to that in *Meyers*, had considered themselves to be subsequent assignees of retail installment sales contracts and thus liable for truth in lending violations apparent on the face of the disclosure form rather than liable for all truth in lending violations as the creditor-seller would be. Many financial institutions believed that the Court's decision in *Meyers* was contrary to the meaning of both the Act and the Regulation. Accordingly, requests have been made since that decision for clarification of the definition of a "creditor" under the Truth in Lending Act from both the Federal Reserve Board and the Congress.

The need for a clear definition arises in the indirect financing of retail installment obligations. In such situations there are three parties involved, a purchaser, a seller-creditor, and another financial institution, but there can be either one contractual relationship or two separate and distinct contractual relationships. *Meyers*

and other judicial decisions have left financial institutions uncertain about which type of relationship they are considered to be undertaking in various situations and various jurisdictions, and when and to what extent Regulation Z applies to such financing.

Financial institutions have maintained that they are not creditors at the inception of such transactions, and that they become bonafide subsequent assignees when they acquire the obligation by purchase, discount or assignment as specifically authorized by statutory law in more than 30 states and by established trade practice in all others. They maintain that section 111(b) of the Act which provides that the Act does not annul, alter, or affect, in any manner the meaning, scope, or applicability of the laws of any state, supports their traditional status of subsequent assignees. Financial institutions also maintain that Congress was aware of the trade practices of financial institutions when it passed the Act in 1968 and when it considered the 1974 amendments and on both occasions chose to limit their liability on disclosure violations to those apparent on the face of the disclosure instrument acquired.

Nevertheless, conflicting judicial opinions of the creditor-assignee issue continue to persist, making legislative guidance more necessary than ever. Testimony in 1977 before the Subcommittee on Consumer Affairs of the Senate Banking, Housing, and Urban Affairs Committee indicates that the Federal Reserve Board agrees that the issue needs clarification by Congress. (Proposed Amendments to the Truth in Lending Act: Hearings on S. 1312, S. 1501, and S. 1653, 95th Cong., 1st Sess. 20-21 [Statement of Governor Philip C. Jackson].) However, the *Meyers* decision is still the law in the six states of the 5th Circuit. In the two years since the *Meyers* decision, courts in other jurisdictions have ruled on the same question, with different results, leading to more confusion particularly for financial institutions who operate in more than one jurisdiction. These decisions are notable not only for their holdings on the question of who is a creditor, but also for the variety of theories employed to reach the varying results.

In *Price v. Franklin Investment Co., Inc.*, 574 F.2d 594 (D.C. Cir. 1978) the Circuit Court of Appeals for the District of Columbia ruled that a finance company was a "creditor" for purposes of the Truth in Lending Act because the seller of an automobile had acted merely as the "conduit" in the credit transaction. In *Whitlock v. Midwest Acceptance Corp.* No. 77-1749 (8th Cir. May 2, 1978) the Eighth Circuit held that the seller was also an "arranger" of credit and it was therefore improper to have identified it as a mere recipient of funds.

There are also a number of District Court decisions. In *Lauletta v. Valley Buick, Inc.*, 421 F. Supp. 1036 (W.D. Pa. 1976) the court held that a finance company should have been disclosed as a creditor where it determined the buyer's credit worthiness before the sale and was identified as the secured party on the title certificate. In *Cenance v. Bohn Ford, Inc.*, 430 F. Supp. 1064 (E.D. La. 1977) the seller dealt almost exclusively with one financing institution in its credit sales and such institution should therefore have been disclosed as a creditor. Similar results have been reached in several other cases, although different facts were involved in each case to find that the financing institution was really a "creditor" rather than a subsequent assignee. *Poirrier v. Charlie's Chevrolet Inc.*, 442 F. Supp. 894 (E. D. Mo. 1978) *Bird v. Goddard's Discount Furniture and General Finance Co.*, 443 F. Supp. 442 (S. D. Ill. 1978).

However, another District Court case *Sharp v. Ford Motor Credit Co.*, No. 77-1098 (S. D. Ill. June 8, 1978), avoided the question of whether the assignee-financing institution was also a "creditor" by ruling that the institution was clearly identified on the disclosure form as the assignee and its role was clear to the buyer. This emphasis of substance over form, and a concern over whether the buyer was in fact misled or deceived, contrasts sharply with another decision, *Desselles v. Mossy Motors, Inc.*, 442 F. Supp. 897 (E. D. La. 1978) where liability as a creditor was found even though the name of the assignee appeared on the reverse of the disclosure statement, and had been disclosed orally to the buyer.

Since the purpose of the TILA is meaningful disclosure of credit terms to borrowers and buyers, the Court's reasoning in *Sharp* is instructive:

"* * * [T]he act is concerned with substance, namely, the meaningful disclosure of credit terms. *Mourning v. Family Publications Service, Inc.*, 411 U.S. 356 (1973). The regulation implements that substantive purpose, with the further statement that the creditor be clearly identified. Neither recites any requirements as to the form of creditor identification. These plaintiffs were apprised of all credit terms and of the fact that the credit paper would be assigned to Ford Credit. That information was contained within the four corners of an instrument which they signed and received. To permit them to prevail upon a complaint that Ford Credit was de-

scribed as an assignee rather than as the creditor, or a creditor, would subvert the substance of the Act to form, with that form to be imposed by the fiat of this court, not by the statute or the regulation. In this court's opinion, that result would completely abort the purpose of the Act * * *. The door is wide open to litigation which would sacrifice the substance of the Act to form, and which would tend to cloud the necessary distinction between the two concepts. Perhaps the most salient example from this court's point of view, is *Bird* [Supra] * * * in which this court, in the context of that file, failed to recognize that critical distinction as a factor.

"It appears to be all too easy in the light of some reported cases for courts to abdicate the realm of reality. The required disclosures must be strictly required and enforced by the courts, but the courts should not condone or give credence to suits which attempt to subvert the Act into an instrument of harassment and oppression of the lending industry."

It has been pointed out in petition to the Federal Reserve Board asking for resolution of the question of who is a creditor and who is a subsequent assignee that continued confusion on this issue has led to costly litigation and substantial liability.

The Board however has, up till now, declined to take action, apparently because of the belief that Congress will soon enact legislation making further amendment or interpretation of Regulation Z unnecessary. Section 2 of S. 108 is the response to this problem and the result at least in part of the recommendation of the Federal Reserve Board.

That recommendation was made in testimony by former Governor Jackson as follows:

"One issue that has spawned extensive litigation is who must make the disclosures if there is more than one creditor in the transaction. The Board recommends that only one disclosure statement be required and that the obligation to disclose be placed upon the creditor to whom the obligation is made payable on its face. This provides a simple mechanical rule for creditors to follow and should insure that consumers get the required disclosures."

We urge this Committee to accept this recommendation of the Federal Reserve Board to adopt the provision in S. 108 regarding the definition of creditor.

The "prepaid finance charge" cases

Another area worthy of special mention is typified by *Community Loan & Investment Corp. of Fulton County v. Jones*, 544 F.2d 1228 (5th Cir. 1976), cert. denied, 45 U.S.L.W. 3763 (May 24, 1977) (No. 76-1362). Of all the instances of Truth in Lending gone awry, only the acceleration cases come as close in absurdity, wasteful expenditure of precious federal court resources, and, not least of all, untold thousands of dollars lost by creditors in penalties, attorneys' fees and lost principal. The issue: whether the "fee" provided in the Georgia Industrial Loan Act, in addition to interest allowed, is a "prepaid finance charge" pursuant to Section 226.8(d) and (3) of TIL. In *Grubb v. Oliver Enterprises, Inc.*, 358 F. Supp 970 (N.D. Ga. 1972), the District Court for the Northern District of Georgia said it was; an official Federal Reserve Board interpretation a year later said it wasn't and three years later upon a retrial of the same issue in three other cases, the Fifth Circuit Court of Appeal, in reversing all three, again said it was! Upon motion for rehearings, in which the Federal Reserve Board appeared by way of amicus curiae in support of its interpretation that the fee was not a "prepaid finance charge," the Fifth Circuit Court held such interpretation to be "contrary to the statutory scheme." The U.S. Supreme Court declined to review *Jones*.

Thus, the matter awaits further action today: will it be an amendment to Regulation Z by the FRB or one of a parcel of items to be "cured" legislatively by the Congress as part of Truth in Lending simplification? Maybe creditors will give up. But they can't. As one recent observer wryly remarked, since the *Jones* holding cannot be limited to Georgia facts, it is impossible "to avoid polluting the law of the rest of the nation with its deceptive disclosure requirements." Kaufman, "Bringing Chaos Out of Order: Truth in Lending in the Courts," 10 Georgia L. Rev. 937, 938 (1976). Mr. Kaufman characterizes the *Jones* decision as the result of "do-gooder" philosophy. Id., at 937. For an equally-critical review of the *Jones* doctrine, see Landers, "Determining the Finance Charge Under the Truth in Lending Act," 1976 A.B.F. Res. J. 545. "[I]t would have been much better for the court of appeals to have confessed the meaninglessness of the concept and to have directed it toward the TIL junk heap." Id., at 100.

It is impossible to estimate with any precision the havoc raised by *Grubb* and its progeny. *Grubb* was decided on November 3, 1972; the Federal District Court for the Northern District of Georgia had 59 TIL cases filed that year. For 1973, it was 237 (32 percent of all U.S. TIL cases); in 1974, the number had soared to 749, represent-

ing 45 percent of all TIL cases filed in the U.S. that year! Source: 1976 Ann. Rep. of the U.S. Cts. 106.

"Itemization of proceeds" cases

In another case decided recently, *Pollack v. General Finance Corporation*, 535 F.2d 295 (5th Cir. 1976), rehearing denied, No. 75-2017 (5th Cir. May 27, 1977), cert denied, 434 U.S. 891 (1977), the Court found that the Board's regulation (Regulation Z, Section 226.8[d][1]) either conflicted with or did not adequately implement the requirements of 15 U.S.C. § 1639(a) by failing to require itemization of loan proceeds. The Court rejected not only the Board's construction, but what the Board considered was its authority to resolve an apparent conflict in the Act. The Court said at P. 3402:

"Under § 1604, the Board's power to make 'adjustments and exceptions for any class of transactions' is limited to efforts to effectuate the purposes of [the Act], to prevent circumvention or evasion thereof, or to facilitate compliance therewith.' The Board's regulation, sought to be justified by a statutory contradiction that *appears to us not to exist*, cannot be justified under § 1604. Therefore, we reaffirm our holding that the Act requires that a creditor make a labeled disclosure of actual loan proceeds in accordance with § 1639(a)." [Emphasis supplied.]

The significance of the *Pollack* decision goes far beyond its holding. It displays the Fifth Circuit's profound disregard for the Federal Reserve Board's regulatory authority, despite an earlier admonition to the contrary by the Supreme Court in which the Court said, in reversing the Fifth Circuit:

"We have consistently held that where reasonable minds may differ as to which of several remedial measures should be chosen, courts should defer to the informed experience and judgment of the agency to whom Congress delegated appropriate authority. *Mourning v. Family Publications Service, Inc.* 411 U.S. 356, 93 S. Ct. 1652 (1973)."

The point is this: except for *Mourning*, the Supreme Court has served notice that it will not entertain Truth in Lending appeals. This leaves ten U.S. Circuit Courts of Appeals and fifty State Supreme Courts, together with a number of federal agencies, as the rule makers for Truth in Lending. In NCFAs view, this is intolerable. The *Pollack* decision alone imposed costs on our members of approximately \$500-\$1,000 per office in forms revision and replacement expense. For the 6,000 offices involved in the Fifth Circuit, this meant a cost to the industry of from \$3 Million to \$6 Million. This is an extravagant price to pay for a judicial difference of opinion (on a minor matter) between the Fifth Circuit and the Federal Reserve Board.

NCFAs believes the foregoing cases typify what has gone wrong with Truth in Lending: the Courts are simply rewriting the law. Only a new expression from Congress can stop this, one that incorporates the approach suggested by Professor Landers in the 1976 Senate hearings:

"In my view, TIL should return to its original purpose as a credit cost disclosure law, and should be radically simplified to serve this objective. By simplified, I mean both from the point of view of consumer understanding and creditor compliance. We must abandon the notion that TIL is a statute designed to disclose information which a hypothetical consumer might find helpful, or that TIL should be an omnibus litigation tool for consumer grievances. Instead, TIL disclosures should be those which are most useful to the ordinary consumer." [Senate Hearings, Supra.]

We support this view and urge full consideration of the manner in which S. 108 attempts to implement it. Our analysis follows.

Comment on S. 108

NCFAs supports S. 108. Consumers have had their say about it; so have creditors. No one group is 100% pleased with it, which is usually the hallmark of good legislation. Indeed, NCFAs feels strongly that certain aspects of the proposed "improvement" in administrative enforcement are unwarranted and unfair; we shall discuss this later. On balance however, S. 108 would overcome most of the problems we have discussed earlier and with a few technical corrections would—in our opinion—serve the public well.

The bill has four major objectives:

1. Provide the consumer with clearer credit information;
2. Make creditor compliance easier;
3. Limit creditor civil liability for statutory penalties to significant (material) violations, and
4. Strengthen the Act's administrative enforcement.

The following brief analysis will show how each of these goals is achieved and, specifically, how the ambiguities which have caused so much litigation are resolved.

A. Simplified disclosure

1. *Reduction of items to be disclosed.*—This is a primary feature of the bill; the consumer is given the “bottom line,” so to speak, of his transaction, enabling him more quickly to zero in on key cost comparisons.

Accordingly,

(a) The term “amount financed” would no longer be itemized to show such terms as “cash price,” “downpayment” and “unpaid balance of cash price.”

[Comment: this would eliminate the problem most significantly typified by the Court’s holding in *Pollack v. General Finance Corporation, supra*, which required itemization of loan proceeds, contrary to Regulation Z.]

(b) The term “finance charge” would no longer be itemized to show components such as “fee,” “service charge,” or “interest.”

[Comment: this amendment, possibly as much as any other, returns the act to its original concept, i.e., the statement of all charges for use of the credit (regardless of how the components are denominated) as a single “finance charge” which, applied actuarially (U.S. Rule) to the amount financed will yield the annual percentage rate. The vexatious questions of itemization and labelling of the finance charge components (See discussion of *Community Loan & Investment Corp. of Fulton County v. Jones, supra*) will be laid to rest.]

(c) The refund method would not have to be spelled out; it would be sufficient to provide the consumer a simple notice that a refund will be made for prepayment, if such is the case, and he may then examine his contract for specifics.

[Comment: a raging controversy exists today as to whether or not the creditor’s right to accelerate payments should be (1) not disclosed at all; (2) disclosed as a late payment charge or (3) as special prepayment/refund provision. (See discussion of acceleration problem e.g. *St. Germain v. Bank of Hawaii, supra*). This provision, together with the requirement that only the “dollar charge or percentage amount” of the late charge be disclosed, would put an end to the debate, while still conveying essential information to the consumer.]

(d) The security interest, if any, would not have to be technically described.

[Comment: Here again, numerous law suits have arisen over adequacy of description of the property given to secure the loan. This change emphasizes the fact that a security interest is taken in generally identified property, as opposed to requiring a technically narrow description. The adequacy of the description for Uniform Commercial Code purposes, and whether perfection of the security interest has actually been accomplished, may still be raised as a defense in proper cases, but as a matter of substantive law, rather than as disclosure “gamesmanship.”]

2. *Segregated disclosure.*—All required disclosures would be segregated from other contract terms and disclosures.

This would be permitted in either a: (a) Separate document or; (b) Combination document setting apart the required disclosures in a “highlighted” fashion.

[Comment: Although some NCFA members now use a separate TIL disclosure document, others, because of computer and telecommunications problems, (especially the problem of putting one more sheet of paper in the telecommunications typewriter platen), would find it extremely burdensome (costly) to use other than a combined document. NCFA supports the segregated disclosure requirement, but strongly urges retention of the alternative method of display.]

3. *Descriptive phrases.*—Explanatory phrases would be provided by the Federal Reserve Board, e.g., “amount financed,” might be explained as “the amount of credit you will receive.”

[Comment: NCFA believes that descriptive phrases can be useful and supports this new requirement. They should be kept short, however, and sufficiently flexible to fit differing types of credit.]

4. *Notices.*—A notice would be incorporated in the disclosure statement directing the consumer to read his contract for other important information.

[Comment: A good requirement, making clear to the consumer that other terms, rights and duties are set forth in the contract.]

B. Making Compliance Easier

The second major thrust of S. 108 is to facilitate creditor compliance through tightening of the definition of creditor, provision for model forms, clarification of tolerance for error, and provision for adequate lead time to comply with new law and regulations.

1. *Definition of “creditor.”*—This amendment redefines “creditor” to make certain that only the person to whom the “debt is initially payable on its face” is a creditor for disclosure purposes.

[Comment: A persistent and destructive body of case law has developed in recent years in which the courts have wrestled with the question whether the subsequent holder of a contract is the assignee, and is therefore liable under Section 115 of TILA only for violations "apparent on the face of the instrument assigned," or is a creditor *ab initio*, and therefore coterminously liable for all violations, apparent or not. (See discussion of *Meyers v. Clearview Dodge*, *supra*.)

The allocation of primary responsibility according to a definite standard should put the matter to rest. Consumer protection will not be lessened; the assignee still has the responsibility for detectable ("On the face") errors, and, pursuant to the FTC's Holder in Due Course rule, is subject to all substantive claims and defenses arising out of the transaction which the consumer may have against the assignor.

2. *Model forms*.—The Board is directed to devise and publish model forms for common transactions, use of which by creditors would be deemed compliance with the Act.

[Comment: NCFA supports this measure. It will benefit smaller creditors particularly and reduce compliance costs. Questions of "meaningful sequence" that have arisen in the past should be obviated. A note of caution however: the Board should issue the broadest possible variety of permissible forms, so as to avoid creating the impression that compliance can be achieved only within a narrow spectrum of disclosure formats. Of course, public input should be solicited by the Board.]

3. *Accuracy of annual percentage rate*.—Allows a tolerance of $\frac{1}{8}$ of 1 percent for disclosure of precise actuarial rate.

[Comment: An anomaly of the present law permits a creditor to "round" to the nearest $\frac{1}{8}$ of 1 percent (thus, 14.33 percent would round to 14.25 percent,) but if the creditor endeavors to express the exact rate, no tolerance for error is permitted. Disclosure of exact rates, e.g. 14.33 percent vs. the 14.25 percent as rounded above, is not only desirable but necessary where the APR serves also as the contract rate, and not solely as a disclosure figure. This revision will encourage exact disclosure while avoiding penalties for minor errors.]

4. *Annual compliance date*.—Allows creditors a minimum six months lead time to have forms and procedures in compliance with new amendments or interpretations. October 1st of current year would be effective date of amendments and interpretations adopted or issued more than six months prior thereto, otherwise October 1 of the following year would be the effective date.

[Comment: NCFA supports this provision. It will reduce waste, (existing supplies can be used up) permit orderly changeover of procedures and allow the Board adequate time to implement the change while receiving public comment. If an emergency action is required, Congress can always so act.]

C. Limiting Civil Liability

1. The third major thrust of S. 108 is to limit liability for civil penalties for non-disclosure or inaccurate disclosures of the following "material" items: (a) Amount Financed; (b) Finance Charge; (c) Annual Percentage Rate; (d) Number, amount, and due date of payments; (e) Security interest, if any; and (f) Right of rescission, where applicable.

[Comment: Limiting penalties to the nondisclosure or inaccurate disclosure of only those discrete items which are "central to a credit transaction" (Senate Committee Report, S. 2802, p. 16) is the heart of the bill. Without such limitations the existing morass of litigation will persist unabated as lawyers find secondary and peripheral matters to litigate such as "shouldn't the costs of any possible repossession, storing, repairing, and selling of collateral be disclosed as a late charge?" The opportunities for continuing litigation are boundless under the present rules; limiting penalties to narrowly defined central disclosures will put an end to such waste, while affording the consumer all the information he needs to make an informed "shopping" judgment. For his remaining rights, duties, and liabilities, he can—and should—refer to his contract.]

2. *Open end credit*.—requirements as to typesize, sequence of disclosures, and identification of purchases and payments would no longer be subject to penalties.

[Comment: for the same reasons outlined on the preceding comment, NCFA supports this amendment.]

3. *Class actions*.—makes clear that multiple class actions based on the "same" violation are subject, in the aggregate to maximum recovery of \$500,000 or 1 percent of the creditors net worth, whichever is the lesser amount.

[Comment: self-explanatory]

4. *Bona fide error*.—Section 130 of the TIL Act is expanded to—

(a) Make explicit the consumer's right to bring suit to enforce rescission and recover costs and attorneys' fees if successful;

(b) Expand the time from 15 to 60 days during which a creditor—upon discovering an error—may adjust the consumer's account;

(c) Clarify the bona fide error defense to provide protection for calculation and clerical errors as well as computer and programming errors (errors "clerical or mechanical in nature");

(d) Make clear that errors of legal judgment do not qualify as bona fide error defense.

[Comment: While NCUA generally endorses the amendments to § 130 it seems anomalous to deny a creditor who has made a mistake in legal judgment the right to avail himself of a bona fide error defense. It makes no difference to the consumer if he is misled by an error of law as opposed to an error in calculation. This is simply a public policy determination based on an imagined difficulty of proof, not impossibility of proof. This amendment does not change case law, but the entire doctrine needs to be restudied. Not all scholars agree with the present doctrine, first announced in *Ratner v. Chemical Bank* 309 F.Supp. 983 (S.D. N.Y. 1969) and which equates violations of TILA arising out of errors of law with criminal conduct.]

D. Administrative Enforcement

The fourth and final major thrust of S.108 would increase the powers of federal administrative agencies to enforce the Act and—for the first time—compel "restitution." Creditors under FTC jurisdiction would be subject—in addition to penalties prescribed by the Truth in Lending Act—to all the "functions and powers" available to the Federal Trade Commission under the Federal Trade Commission Act, including the power to "enforce compliance with the requirements imposed under this title in the same manner as if the violation had been a violation of a Federal Trade Commission Trade Regulation Rule."

[Comment: *Restitution*. While we doubt the efficacy of elevating disclosure requirements (for which a penalty award is already available) to the substantive level of a usury statute, experience leads us to believe that, in the main, our members will be in compliance in this area. And, of course, all creditors will be subject to the same requirement.

Additional FTC enforcement powers. We have previously stated that this provision is unwarranted and unfair. It is unwarranted because nowhere in the record is there evidence showing the need of enforcement powers of the magnitude of a trade regulation rule enforcement proceeding. It is unfair because it singles out finance companies and retailers for exceptional treatment, while leaving banks and other federally regulated financial institutions subject only to cease and desist proceedings.

The committee report accompanying S. 2802 (p. 10) considers the cease and desist order too "antiquated" and "laborious" for the FTC to bother with, yet on the very next page (p. 11) the cease and desist mechanism is referred to—for enforcement proceedings by other agencies—as providing "appropriate due process of law." If TILA is to be evenly and fairly administered, due process and equal protection would seem to require even enforcement; this will be denied our members. We object to this feature of the Act and urge its removal.]

Conclusion

There is, as this committee has recognized, a clear and present need for TILA simplification and reform. Despite the reservations we have made, we support S. 108 and again applaud this committee's efforts to resolve a vexing and complex issue with due regard to both creditor and public interests.

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

Our next witness is Mr. Sheldon Feldman.

STATEMENT OF SHELDON FELDMAN, NATIONAL RETAIL MERCHANTS ASSOCIATION

Mr. FELDMAN. NRMA welcomes this opportunity to submit its views. I will briefly summarize NRMA's statement because of the limited time available this morning.

[Complete statements of Mr. Feldman follow:]

STATEMENT OF SHELDON FELDMAN, WEIL, GOTSHAL & MANGES, ON BEHALF OF NATIONAL RETAIL MERCHANTS ASSOCIATION ON S. 108 TRUTH IN LENDING SIMPLIFICATION AND REFORM ACT

Mr. Chairman, Members of the Committee, my name is Sheldon Feldman; I am an attorney with the law firm of Weil, Gotshal & Manges, counsel to the National Retail Merchants Association (NRMA). NRMA welcomes this opportunity to submit its views on S. 108, a bill to achieve simplification of the Truth in Lending Act.

NRMA is a non-profit voluntary national trade association with over 3,500 members. These businesses range in size from small specialty shops to the nation's largest department stores, although the majority of NRMA's members are small businesses with sales of under 1 million dollars annually. NRMA's members operate more than 35,000 general merchandise retail outlets throughout the United States and these stores account for over 95 billion dollars in sales annually, at least half of which are credit sales. Virtually every member of NRMA is concerned with the implications of these hearings, because they either extend credit themselves or they accept third-party credit cards.

This statement is offered more as a general exposition of the views of retailing on our experience with the Truth in Lending Act, rather than as a detailed listing of each provision which we believe should be added to or deleted from this bill.

NRMA wishes to emphasize the basic position of retailing that the focus of any bill in this area should be on the reason why this law was enacted in the first place. We believe that the basic reason for the Senate bill, to simplify unnecessarily complex law for the benefit of consumers and creditors alike, should be the main concern of any legislative deliberations in this area. What is needed is a return to the basics—a substantial reduction in the current complexity and volume of required disclosures and compliance procedures, without reducing the essential information necessary for shopping for the best available terms of credit. How can this best be accomplished? The following discussion will review what we believe ten years of experience with this law dictates is and is not needed to achieve this goal.

WHAT IS NEEDED

1. Simplified disclosures

The most needed change in the requirements imposed by the Act and the Federal Reserve Board's implementing regulations, Regulation Z, is a reduction in the amount of information that is required to be disclosed. The Senate Report accompanying the bill passed by the Senate last year, S. 2802, concluded that:

"* * * judging from consumer tests in other areas, the typical disclosure statement utilized today by creditors is not an effective communication device. Most disclosure statements are lengthy, written in legalistic fine print, and have essential truth in lending disclosures scattered among various contractual terms. The result is a piece of paper which appears to be 'just another legal document' instead of the simple, concise disclosure form Congress intended." (Report, p. 3)

Thus, any bill finally enacted by Congress in this area must, we believe, identify those disclosures required of open end creditors, closed end creditors and lessors, and require that only those items be disclosed. The Senate bill attempts to do this and, in the closed end credit area, that effort appears to be satisfactory. In the area of open end credit, however, there is room for improvement in the bill. NRMA is convinced that the "information overload" problem recognized by the Senate last year (Report, p. 3) is as great for customers of open end creditors as it is for installment customers, but this issue has not been adequately addressed in Section 13(a) of the bill.

Since the trend in recent years has been away from the use of traditional installment credit contracts and toward the flexibility, simplicity and more favorable terms of open end credit accounts, this failure to reduce the complexity of open end credit disclosures makes the simplification efforts to date less than totally satisfactory. NRMA therefore urges this Committee to facilitate the comparison of competing open end credit plans by reducing the required disclosures essentially to information regarding the cost of open end credit (i.e., the periodic and annual percentage rates) and the creditor's method of assessing finance charges, leaving other items of information such as disclosure of any security interest, and consequences of default, to the creditor's contract which is governed by the laws of the individual states. Similarly, the provisions applicable to periodic statements should be simplified by eliminating the requirement to furnish semi-annually a statement of billing error rights. While Section 13(d) improves the present situation by reducing the frequency of the notice to once annually, we believe that this requirement should be eliminated.

2. Elimination of Technical and Harassing Civil Suits

The history of civil litigation under the Truth in Lending Act is a monument to legislative and regulatory overkill. With but few exceptions, upon enactment of this law creditors made a good faith effort to comply, only to be met with thousands of civil actions alleging technical deviations from the precise letter of an exceedingly complex morass of regulatory provisions.

Virtually every major open end creditor can attest to the fact that "open season" on creditors has not been limited to closed end creditors. Further, the impact of these suits on an open end creditor can be greater. Once a technical deviation in a merchant's periodic statement is discovered, that creditor is subject to identical suits by the same lawyer until expiration of the one year statute of limitations.

Even when an open end creditor successfully defends suits such as where, among other things, a credit card issuer was sued for using the term "monthly periodic rate" instead of "periodic rate,"¹ the very heavy cost of defending such a suit can amount to hundreds of thousands of dollars. Such costs make creditors liable for what amounts to legal blackmail; it is often far less expensive to settle a lawsuit which could have been defended successfully than to incur the large cost of successful defense.

We urge that this intolerable situation be remedied with a minimum of disruption in the current law and without impairing the basic purpose of the Truth in Lending Act—to facilitate the comparison of the cost of credit offered by competing creditors. This should be done by the direct and unambiguous method of identifying those disclosures which are deemed important enough to give rise to civil liability as well as specifying to which part of the Act those disclosures are applicable. After ten years of experience with this law, there should be no real dispute as to which items of disclosure are material to the obligor's awareness of the cost of credit. In open end credit they are:

1. The Annual Percentage Rate,
2. The periodic disclosure of the dollar amount of the finance charge,
3. The conditions under which a finance charge will be imposed, and
4. The method of determining the balance upon which a finance charge will be imposed.

In other than open end credit the material items are:

1. The Annual Percentage Rate,
2. The amount to be financed,
3. The dollar amount of the finance charge,
4. The total of payments, and
5. The number, amount, and due dates or periods of payments.

We therefore propose modification of Section 130 of the Act so that the existing elements of civil liability attach only in the event of a failure to comply with a material disclosure. Any other kind of noncompliance (except liability for actual damages, which would continue) can effectively be dealt with administratively. Section 15(b)(2) of S. 108 does not accomplish this limitation in the area of open end credit.

It is equally important that revisions in the civil liability provisions of the Act address the manner of the disclosure of these items. Thus, questions of whether a certain disclosure is made in "meaningful sequence" or more conspicuously than other required terminology should not be permitted to be raised to harass creditors. It would be unfortunate if the amended Act inadvertently permitted a continuation of this kind of law suit, which has only benefited counsel for the parties.

3. Elimination of overlapping State requirements

We believe that a bold approach to preemption is clearly warranted in areas where Congress has legislated, such as Truth in Lending. The relationship between the state and Federal credit laws varies to a limited extent depending on the provisions of each of the major Federal credit laws (*i.e.*, Truth in Lending Act, Fair Credit Reporting Act, Equal Credit Opportunity Act), but they all take basically the same approach to preemption: all state laws remain in force and are not preempted except those that are "inconsistent" with the Federal law, and then only to the extent of such inconsistency. To date it has been the decision of Congress not to disturb state laws except to the extent that the state law "requires a creditor to make disclosures or take actions different from the requirements of [the Federal law] with respect to form, content, terminology, or time of delivery."² State laws which provide some element of greater consumer protection, no matter how insig-

¹ *Bussey v. Georgia BankAmericard, et al.*, 516 F. 2d 452 (5th Cir. 1975).

² See § 226.6(b)(1) of Regulation Z, the implementing regulation of the Truth in Lending Act.

nificant, are expressly not preempted by Federal law.³ Thus, if the creditor can comply with both the state and the Federal law without violating the latter, the creditor must do so. It is only when compliance with a state law would clearly violate a provision of Federal law that the state law is deemed preempted and compliance with the state law is excused. This approach to preemption began with the Truth in Lending Act, and has been followed in the case of each additional Federal enactment in the credit area.

The "layering" process, whereby uniform Federal requirements are imposed upon creditors in addition to existing state disclosure requirements, imposes substantial burdens upon creditors in terms of increased cost, multiplicity of forms and increased exposure to violations, with no measureable benefit to the consumer. Rather than simplifying and reducing existing requirements, the Federal approach to preemption has tended to encourage the states to enact more credit disclosure legislation. Moreover, the Federal law expressly precludes the Federal Reserve Board from preempting any state law "if the Board determines that such law gives greater protection and benefit to the consumer."⁴

There are many examples of overlap between state and Federal credit disclosure laws. In fact, in virtually every area in which Congress has acted, whether it be disclosure of terms, credit discrimination, or consumer reporting, numerous states have enacted laws that are virtually identical to the Federal law, but generally with some minor deviation. Utah requires reference to its state administrator in the standard ECOA notice; and Connecticut requires disclosure of a telephone number on the periodic statement, while under the Federal law it is not only not required, its inclusion has been challenged in civil actions as illegal because it allegedly detracts attention from the Federally mandated disclosure of the address to where billing errors must be directed; the examples of needless overlap could go on almost ad infinitum.

The time has come for a change in the manner in which Federal and state laws relate to one another. The Federal government has become inextricably involved in the regulation of consumer credit and there is every reason to believe that this trend will continue. The existing standard of "inconsistency" between state and Federal laws simply is not working. The constant problem for creditors of attempting to determine whether and how to comply with Federal law plus one or more diverse state laws, and the confusion for consumers resulting from this morass of disclosures, should be addressed now. Further, the "trade-off" of keeping the status quo because the laws of some states may offer "greater protection" for the consumer simply has not materialized. The Federal consumer credit laws enacted since 1968 have produced no glaring weaknesses which have been corrected by state laws. The problems caused by such overlap far outweigh any advantages to be gained in the case of an isolated state law that improves upon the protection afforded by the Federal law.

The Federal legislative process has proven to be the best forum for the development of coherent, well-balanced requirements which apply to all of our citizens. The current approach to preemption destroys this integrated, careful legislative process. The delicate balance that is ultimately struck between the interests of business and consumers can be drastically undermined when individual states impose additional requirements without being able to devote comparable consideration to the complex issues involved.

NRMA therefore urges that the Act be amended to provide for preemption of any state law which differs from the Federal requirements on the same subject. Such a provision should make it explicit that only state or local disclosure laws which are identical to the Federal law, or which the Federal Reserve Board expressly authorizes upon petition from State authorities, shall be permitted. Section 9 of S. 108 would improve the current situation by requiring that the Federal Reserve Board make specific findings if requested to do so by a creditor or a state, but that provision does not adequately deal with the problems of inconsistent state requirements, as discussed above.

NRMA supports the proposal in Section 5 of S. 108 to amend the Act to require the Federal Reserve Board to publish model forms and clauses, the proper use of which would protect a creditor from civil, criminal and administrative liability. Many small retailers, particularly those located in communities where the legal profession is unable to specialize in consumer credit law, are without the resources to develop forms which comply in every detail with the requirements of Truth in Lending. Without the publication of model forms and clauses by the Board these

³ See § 226.6(b)(2) of Regulation Z, implementing the Fair Credit Billing Act amendments to the Truth in Lending Act.

⁴ § 186(a) of the Truth in Lending Act.

creditors will remain in a virtually impossible situation of wanting to comply with this law but being powerless to do so. Although we do not believe that the use of these model forms and clauses can or should be made mandatory, because creditors with novel credit plans or specially designed billing equipment may find it necessary to modify the models and still comply with the law, we are convinced that model forms will be of immeasurable benefit to creditors and will serve consumers as well.

WHAT IS NOT NEEDED

The area in which there is absolutely no demonstrated need of revision of the Truth in Lending Act is administrative enforcement.

Section 8 of S. 108 would make a violation of the Truth in Lending Act a violation of an FTC trade regulation rule, thereby permitting the FTC to by-pass the current procedure of enforcing the Act by bringing an administrative action against the creditor. If enacted, this amendment to section 108 of the Act would place every creditor in jeopardy of a suit for civil damages of up to \$10,000 per day per violation without benefit of an administrative hearing. NRMA opposes such harsh penalties as totally unnecessary to accomplish administrative enforcement of this Act. The existing civil liability from both individual and class actions has proven to be a strong deterrent to noncompliance. This, coupled with FTC's major resource commitment during the past ten years has brought compliance to an extremely high level. Even when the law was in its earliest stages, FTC's own survey of compliance established that by April, 1970, of the creditors surveyed who are under FTC jurisdiction, 86 percent were either in perfect or substantial compliance.⁵

This proposal would mark a serious departure from both the existing law and from the way in which banks and other financial institutions are regulated under the same law. The FTC regulates retail credit grantors, while financial institutions are regulated by other agencies. Granting only the FTC this broad power would create an inequity by exposing only certain types of creditors to increased liability.

Our concern about this liability is also predicated upon the fact that the FTC's enforcement of this Act has in the past deviated from the disclosures mandated by Regulation Z. For example, in several cases the FTC has taken the position that the law can be violated even though all required disclosures are made.⁶

NRMA wishes to take issue specifically with the FTC's purported justification for expanding its enforcement authority under the Truth in Lending Act. Chairman Pertschuk testified before the House Subcommittee on Consumer Affairs on September 6, 1978, that stronger powers were needed because when administrative action is taken currently by FTC (i.e., a consent agreement or a litigated order) "... the relief which we ultimately obtain is an order to stop the practice—hardly a significant deterrent to other would-be violators." This statement demonstrates a surprising unfamiliarity with FTC's enforcement of Truth in Lending. To state or even suggest that FTC's orders under Truth in Lending have been or must legally be limited to prospective relief cannot go unanswered. The FTC orders that have subjected creditors to retroactive relief are numerous and date back to the earliest days of that agency's enforcement program. They include relief such as ordering rescission contracts (e.g., *Charnita*⁷) cash refunds to the respondent's customers (e.g., *Providers Benefit*⁸) and placement of a specified amount of funds in an escrow account in an independent institution that is available for restitution (e.g., *Capital Builders, Inc.*⁹; *United Builders, Inc.*¹⁰).

During this same testimony, Chairman Pertschuk recounted that over 13 million dollars has been refunded in the agency's credit balance cases alone, and although those cases were brought under Section 5 of the FTC Act, Congress expressly gave FTC the same powers to enforce the Truth in Lending Act in Section 108(c) of that Act. It is thus clear that FTC currently believes that it possesses and it has used the power to order a broad range of retroactive relief where necessary to protect the public interest in the case of a violation of the Truth in Lending Act. To expand that authority to include the power to seek potentially crippling civil penalties without first affording creditors the right of an administrative hearing would be unfair and totally unsupported by any showing that such authority is needed to assure compliance with this law.

⁵ FTC Report on Survey of Creditor Compliance With The Truth in Lending Act, April 1971; see Federal Reserve Board's Annual Report to Congress for the year 1975, p. 16.

⁶ E.g., *Commercial Credit Corp.*, Docket No. C-2420, 82 FTC 1841 (1973).

⁷ 473 F.2d 1317 (5th Cir. 1973).

⁸ Docket C-2911, final order issued November 8, 1977.

⁹ Docket 9041, final order issued August 8, 1978.

¹⁰ Docket 9043, final order issued August 8, 1978.

Another provision that is not needed concerns the definition of open end credit. It is proposed in Section 4 of S. 108 that in order to qualify as an open end creditor, "repeated transactions" must be reasonably contemplated. This requirement could place a major burden upon many businesses, at a time when the costs and complexities of complying with consumer credit regulations is making it exceedingly difficult to continue to maintain an in-house credit granting capacity. A merchant has no way of knowing what is meant by "repeated." Some customers of merchants use their accounts very infrequently, particularly when the merchant is selling items such as musical instruments or major appliances. Is a purchase of such an item once a year repetitive enough?

NRMA recognizes that the purpose behind this proposed requirement is to prevent certain creditors from avoiding making the full cost of credit disclosure at the time of consummation of the transaction, by using the device of an open end account. We do not believe that this practice, if it exists at all, is of sufficient frequency or magnitude to warrant adding a vague requirement that could be used to further expose creditors to civil suits under the Truth in Lending Act.

In sum, what is needed most is a reduction in the Act's complexity, elimination of unnecessary exposure to civil liability and overlapping state requirements, and promulgation of model forms.

NRMA supports the principle of the Truth in Lending Act and we believe the Act can and should be simplified without diminishing any important benefit that is presently delivered to consumers. We appreciate the opportunity to present these general views for the consideration of this Committee.

STATEMENT OF SHELDON FELDMAN, WEIL, GOTSHAL & MANGES, ON BEHALF OF NATIONAL RETAIL MERCHANTS ASSOCIATION ON S. 37, PROPOSED AMENDMENT TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978 WITH REGARD TO THE NOTICE OF CUSTOMER RIGHTS

Mr. Chairman, Members of the Committee, my name is Sheldon Feldman, I am an attorney with the law firm of Weil, Gotshal & Manges, counsel to the National Retail Merchants Association (NRMA). NRMA welcomes this opportunity to submit its views in strong support of S. 37, a bill to amend the Right to Financial Privacy Act of 1978 to delete the notice to consumers prescribed in Section 1104(d) of that Act.

NRMA is a non-profit voluntary national trade association with over 3,500 corporate members. These businesses range in size from small specialty shops to the nation's largest department stores, although the majority of NRMA's members are small businesses with sales of under 1 million dollars annually. NRMA's members operate more than 35,000 general merchandise retail outlets throughout the United States and these stores account for over 95 billion dollars in sales annually, at least half of which are credit sales. Virtually every member of NRMA is concerned with this bill because the vast majority of them come within the definition of "financial institution" in the Act and therefore are subject to the Act's requirement that they "shall promptly notify all of their customers of their rights" under the Act (§ 1104(d)).

NRMA applauds the prompt action of the Chairman of this Committee in introducing this amendment to section 1104 of the Right to Financial Privacy Act of 1978 to delete the requirement that a notice of customer rights, as prepared by the Federal Reserve Board, be sent to all customers promptly after the Act's March 10, 1979 effective date. The amendment would eliminate the requirement that all "financial institutions", a term that includes every credit card issuer, mail a total of over 900 million notices, at a saving to credit card issuers alone of at least 80 million dollars, and possibly well in excess of 100 million dollars, with no diminution of consumer benefit. When the savings in unnecessary costs are applied to all financial institutions, it has been estimated that the amount involved could approximate one billion dollars.

THE STATUTORY REQUIREMENT

The retailing industry strongly supported proposed legislation intended to enhance consumers' right to privacy. Legislative proposals which were limited to protecting the financial records maintained by traditional financial institutions were supported by retailing only on the condition that the scope of the legislation should be broadened to protect consumers' records maintained by all types of businesses. The merit of this position was recognized and the definition of "financial institution" was ultimately expanded to cover credit card issuers. Although retailing advocated expanding the Act's application to all creditors whose records might be

accessed by government, this partial expansion was looked upon as a victory for consumers with no concomitant burden upon the institutions whose records were covered.

Throughout its support for various privacy bills, the retailing industry emphasized that any notice to consumers should be the responsibility of the party seeking access to the consumer's records. It was considered essential that, concurrent with Government's contact with the keeper of the records, Government should have the responsibility to notify the consumer of the nature of the request for access and the consumer's rights to protect those records. As finally enacted, this legislation does require service upon the consumer of the subpoena, summons, search warrant or the Government's formal written request, along with a notice to be furnished by the Government informing consumers of their right to object to the particular type of request for access that is involved (Act, §§ 1104(c), 1105(2), 1106(c), 1107(2), 1108(4) and 1112(b)).

Although the above-described protections were advocated by retailing and their enactment eagerly anticipated, one requirement was enacted that was unexpected. It is the requirement that "all financial institutions shall promptly notify all of their customers of their rights under this title" (§ 1104(d)). The Federal Reserve Board was delegated responsibility to prepare this notice, and the Board is expected to promulgate it in advance of the Act's effective date of March 10, 1979.

Passage of this Act and inclusion of the notice provision occurred under circumstances which departed significantly from normal Congressional procedure. On the Senate side, hearings were held in mid-April and mid-May 1978 on a similar bill. This legislation did not, however, include the notice provision and, as noted, it did not include credit card issuers as "financial institutions." No discussions or committee mark-up sessions were held in the Senate. The only Senate floor consideration came on a single vote to accept the Act as part of the House-passed Financial Institutions Regulatory and Interest Rate Control Act of 1978 on the final day of the Congressional session.

In the House of Representatives, the Act was extensively debated in the Financial Institutions Subcommittee, the full Banking, Finance and Urban Affairs Committee, and on the floor. The notice provision, however, was not debated and received only brief treatment in the Banking Committee report on the legislation. Finally, floor consideration was completed with much haste during the last two days of the second session of the 95th Congress in October 1978.

As explained below, this requirement is so burdensome to the businesses involved, and so without counterbalancing consumer benefit, that its modification by amendment is imperative. Further, this amendment is needed immediately upon commencement of the 1979 legislative session because, at this writing, the Federal Reserve Board believes that the Board has no option but to promulgate a lengthy consumer notice which must be delivered to every customer promptly after the Act's effective date of March 10, 1979.

COST-BENEFIT ANALYSIS OF THE 1104(d) CUSTOMER NOTICE

The cost of Government regulation has been the subject of numerous articles, essays, and editorials in virtually every newspaper and magazine published in this country. Economist Murray Weidenbaum, head of the Center for the Study of American Business at Washington University, in a long and complex study, estimated that total administrative costs (visible spending on regulatory agencies) of \$3 billion in 1976 generated compliance costs that add up to a staggering \$63 billion, equivalent to a hidden tax of \$307 on every person in the United States. Many estimates put 1979 costs of regulation at \$100 billion.¹

The issue is not whether these costs can be eliminated, as clearly some Government regulations deliver significant consumer benefits. Rather, the issue is to what extent can the cost of Government regulation be justified by the benefits delivered. In the area of consumer credit regulation, it can be argued that the costs incident to some compliance obligations may be justified, while other costs are highly questionable, and some deliver virtually no consumer benefit in relation to the cost of compliance that is involved. In the former category, for example, compliance with the disclosure obligations of the Federal Truth in Lending Act can be a burden to creditors, but some benefit may be derived from disclosing the contract terms and the cost of credit, particularly in a closed end credit transaction. In the next category, there are numerous disclosure obligations imposed upon creditors under State and Federal law which deliver very little discernable benefit to consumers. For example, the over 600-word Fair Credit Billing Act notice must be delivered when every open end credit account is opened and again to every active account on

¹ Time Essay, *The Rising Risks of Regulation*, *Time*, Nov. 27, 1978.

a semi-annual basis. The benefit of this and many other notices mandated by State and Federal law, in relation to the cost involved, is extremely difficult to measure. Finally, as explained below, the benefit of the customer notice mandated by The Right to Financial Privacy Act is virtually nonexistent in relation to the cost involved.

In 1976 it was estimated that all retailers combined maintained as many as 290 million credit card accounts; bank credit cards represented about 46 million additional credit card accounts and the total number of credit card accounts in the country ranged from 465-530 million.² A conservative estimate of the total number of credit card accounts in existence as of January 1, 1979 is in excess of 600 million, based upon a 10% annual growth rate in the number of charge accounts since 1976.

It is important to note at this point that the Act defines "customer" as "any person or authorized representative of that person who utilized or is utilizing any service of a financial institution or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name" (Act, § 1101(5)). The average credit card account reflects the participation of from 1.6 to 2 customers per account.³ Based upon an estimate of only 1.5 customers per credit card account, it can be estimated that the total number of credit card customers currently entitled to receive the Board's notice exceeds 900 million (600 million accounts $\times$ 1.5 customers).

What would it cost to mail this notice to every customer of a credit card issuer, including active and inactive accounts? One of the nation's largest retailers estimates this cost as follows, not counting the loss of revenue attributable to sales lost due to removal of one merchandise insert in a periodic statement:

Volume of active and inactive accounts:	Million
Accounts on masterfile	36.5
Active ¹	17.5
Inactive	19.0
Cost projection to mail one notice to inactive accounts:	
Envelopes at \$6.35 per 1,000 $\times$ 19,000,000	\$120,450
One notice at \$4 per 1,000 $\times$ 19,000,000	74,000
Postage at \$0.15 per mailing $\times$ 19,000,000	2,850,000
Total cost projection, inactive	3,044,450
Cost projection to mail one notice to active accounts:	
One notice at \$4 per 1,000 $\times$ 17.5 million	70,000
Total cost projection	3,114,450

¹ Number of accounts active within last 18 months.

If the above cost estimates are projected to cover the entire universe of credit card customers, it can be estimated that a one-time mailing to all customers will cost credit card issuers more than \$80 million. Unfortunately, this cost represents only a fraction of the total amount involved. When the universe of recipients is expanded to all customers of financial institutions (e.g., depositors of bank savings accounts: the cost of complying with this requirement has been estimated to be near one billion dollars.

According to a study by New York's Citibank, meeting this requirement would cost all affected institutions \$922 million. The estimate, according to Citibank, is conservative since it does not include trust accounts, stock transfers and business partnership accounts. The Citibank study estimates the mailing would have to be made for a total of 967.8 million accounts. This includes 151.9 million checking accounts, 283.5 million installment-loan accounts, and retail credit card accounts.

The idea of mailing nearly one billion notices explaining this new law, with many customers receiving as many as ten identical notices,⁴ all within a time frame of 30-60 days, at an aggregate cost of hundreds of millions of dollars, is a shocking expense to contemplate. What makes this even more incredible is the absence of consumer benefit due to the inappropriate timing of delivery of such a notice.

² Source: Payment Systems, Inc., Touche, Ross and Co., reprinted at page 28 in the *Magazine of Bank Administration*, October 1978.

³ See f.n. 2.

⁴ In 1972, it was estimated that for persons earning over \$25,000, 52 percent carried six or more credit cards and 30 percent carried 9 or more cards. "Credit Card Use In the United States," Lewis Mandel, *U of Mich.*, 1972. This figure will be considerably higher today.

Precisely how many consumers' accounts are sought to be examined by the government each year is unknown, since this information is not gathered on an industry-wide basis. However, a representative sample of the nation's major retailers was asked to estimate the number of governmental requests for access to their customer records annually. A typical response came from one major department store which maintains over 6.5 million credit card accounts. This store received less than 50 such requests in 1978. Every retailer contacted estimated that government requests for access to their customers' accounts would be less than 1/20th of one percent of their total number of accounts.

It is therefore clear that mailing as many as 900 million notices, at a cost estimated to be in the hundreds of millions of dollars, to provide information to a tiny fraction of 1% of the recipients of that notice, cannot be justified. NRMA therefore urges immediate passage of this bill.

Support for this amendment extends beyond the industries upon which it is imposed. During the December 6-7, 1978 meeting of the federal Reserve Board's Consumer Advisory Council, the Council reviewed section 1104 of the Right to Financial Privacy Act and questioned its requirement that all institutions subject to the Act send a statement of a customer's rights to all their customers promptly after the March 10, 1979, effective date. The Council doubted that sending hundreds of millions of notices to persons, who in almost all cases will not at that time have any need for that information, will have a value remotely commensurate with the expense. The Council noted the inflationary effect of such a requirement and unanimously passed a resolution that the Board review the requirements of subdivision (d) of section 1104 of the Right to Financial Privacy Act of 1978 with particular attention to whether the costs of compliance have any reasonable relation to the benefits.

The Council recommended that the Board immediately draft amendatory legislation for submission to Congress as soon as possible in view of the fact that the statute and the notice requirements become effective on March 10, 1979. The Council recommended that the Board consider a system whereby each customer receive a full statement of his rights under the Act only at the time his records are sought, rather than the notice presently required for all account holders.

On January 10, 1979, the Federal Reserve Board met to discuss this notice requirement. During this meeting the Board voted unanimously to seek an amendment that would permit financial institutions to give the customer notice at the time the customer's records are sought by the government.

While we applaud and support the Council's resolution, and the Board's decision to support that resolution, we urge immediate amendment to the Act to delete the notice requirement entirely. However, should you decide to impose this requirement with respect to those customers whose records are being sought by the government, we urge that this notice obligation be imposed upon the government, to ensure that the information is communicated to the consumer in the most timely and efficient manner.

Because of the manner in which the statutory protections are structured, delivery of this notice by the financial institution at the time access is sought, although not burdensome from a cost standpoint, may come too late. This is because the first time that the financial institution may learn of the request for access can be after expiration of the statutory 10 day or 14 day waiting period during which the institution must delay the government's access while the customer is afforded the opportunity to exercise his or her rights. The statute provides that the government authority must certify that it has complied with the applicable provisions of this title (§ 1103(b)), but, prior to that time, there is no certainty that the financial institution will receive adequate notice that a customer's records are being sought. The most effective and the most practical manner of providing an extensive notice of the rights afforded under this law would be to require that it be delivered along with the government's service upon the customer of the applicable notice and it is required to give under sections 1104(c), 1105(2), 1106(c), 1107(2), 1108(4) or 1112(b). Compliance with this requirement would be virtually without cost, since the Board's notice could easily be included with the statutory notice already imposed upon the government. Further, this manner of disclosure would guarantee that the Board's notice of customer rights would be delivered at the precise time at which the consumer first learns that his or her records are being sought.

Therefore, to ensure optimum consumer benefit of any such notice, assuming that total elimination of the notice is not accepted, it is recommended that the following amendment to the Act be adopted:

Delete the first sentence of section 1104(d) and substitute the following therefor:

"Sec. 1104(d). The Government shall provide a statement of customer rights under this title at the same time that any other notice to a customer is delivered under this title."

Substitute the words "Government authority" for "financial institution" in the third sentence of Sec. 1104(d).

The above-quoted amendment would preserve the government authority's right to omit the section 1104(d) notice to the consumer under circumstances where the government is excused from its other "notice requirements" (e.g., § 1109(a), § 1113(g)).

One technical point is worth mentioning before these comments are concluded. Section 1104(a)(5) specifies that a customer's authorization to a financial institution shall state "the customer's rights under this title." If section 1104(d) is eliminated entirely, compliance with section 1104(a)(5) may be confusing, since section 1104(d) also directs the Federal Reserve Board to prepare the notice of customer rights that is mentioned in section 1104(a)(5). This confusion can be remedied by merely deleting all of section 1104(d) and placing the second and third sentences that currently are in that subsection in section 1104(a)(5). This would eliminate the obligation to notify all customers, but would leave intact the Board's obligation to prepare the notice referred to in section 1104(a)(5).

NRMA sincerely appreciates the opportunity to present its position in full support of S. 37.

The CHAIRMAN. Thank you very much.

Mr. FELDMAN. If I may have 2 more minutes, I'd like to address FTC's enforcement authority.

The CHAIRMAN. Supposing we finish with the other witnesses and then we can come back to you.

Mr. Schober.

STATEMENT OF MILTON W. SCHOBEL, AMERICAN RETAIL FEDERATION

Mr. SCHOBEL. Thank you, Senator.

[Complete statement of Mr. Schober follows:]

STATEMENT OF MILTON W. SCHOBEL, REPRESENTING THE AMERICAN RETAIL FEDERATION ON S. 37—RIGHT TO FINANCIAL PRIVACY ACT OF 1978

Mr. Chairman, and distinguished members of the Committee on Banking, Housing, and Urban Affairs, I am Milton W. Schober, special credit counsel for the American Retail Federation (ARF), on whose behalf I am appearing today. Membership in ARF consists of 31 national retail trade associations, 50 State retail associations, the Metropolitan Washington Board of Trade, as well as corporate members. Through its members, ARF represents more than one million retail establishments.

Many of the retailers represented through ARF are card issuers as defined in section 103 of the Consumer Credit Protection Act (15 U.S.C. § 1602(n)) and are thus included within the definition of "financial institution" in the Right to Financial Privacy Act of 1978. For this reason, ARF is vitally interested in proposals to amend § 1104(d) of that Act relating to notification requirements.

ARF supports the purpose of S. 37; that is, to relieve financial institutions, including credit card issuers, of the immense financial burden placed on them by § 1104(d)—a burden which we believe to be without concomitant customer benefits. However, we recognize that repeal of that section might cause problems in implementing other provisions of the Act.

Instead of outright repeal, we recommend that § 1104(d) be amended to provide that a Government authority, whenever it is required to send a notification to a customer under other provisions of the Act, also be required to send the notice of customers' rights under the Act.

Such a requirement would impose no significant additional cost burden on the Federal Government and would have the very salutary effect of providing the statement of customers' rights at a time when it would be relevant to the customer.

The one-time notification of rights under the Act furnished "promptly" after the effective date of the Act would be of no benefit to the vast majority of customers whose financial records will never be accessed by a Government authority, and it will be of very little benefit where access is requested at a time far in the future. In these latter cases, it is quite likely—indeed, it is almost a certainty—that the

consumer will have forgotten the notice of customers' rights received many months or, perhaps, many years before access is sought.

Although ARF would be willing to support S. 37, we offer as an alternative a proposal to amend § 1104(d) of the Right to Financial Privacy Act of 1978 to read as follows:

"(d) Any Government authority required by any other provision of this title to serve upon or mail any notice to a customer shall include with such notice a statement of customers' rights under this title. The Board of Governors of the Federal Reserve System shall prepare a statement of customers' rights under this title. Any Government authority that provides to customers a statement of customers' rights prepared by the Board at the time or times required by this title for other notices shall be deemed to be in compliance with this subsection."

STATEMENT OF MILTON W. SCHOVER, REPRESENTING THE AMERICAN RETAIL
FEDERATION ON S. 108—TRUTH IN LENDING SIMPLIFICATION

Mr. Chairman, and distinguished members of the Committee on Banking, Housing, and Urban Affairs, I am Milton W. Schover, special credit counsel for the American Retail Federation (ARF), on whose behalf I am appearing today. Membership in ARF consists of 31 national retail trade associations, 50 State retail associations, the Metropolitan Washington Board of Trade, as well as corporate members. Through its members, ARF represents more than one million retail establishments.

Because the majority of retailers represented through ARF offer or extend consumer credit and are thus subject to the Truth in Lending Act, ARF is vitally interested in proposals to amend and/or simplify that Act.

The retail industry is highly competitive, and one of the bases upon which retailers compete is customer convenience and satisfaction—the essence of consumer protection. Thus, retailers support consumer protection and, in fact, were industry leaders in affording consumer protection long before "consumerism" became a "movement" a decade ago.

Against this background, it is almost redundant to say that ARF supports Truth in Lending. The retail industry supports the proposition that consumers should be able to "shop" for the best "buy," whether it be goods, services, or credit. Thus, our comments on ways to improve and simplify the Truth in Lending Act are directed in the main toward improving the use of that Act as a shopping tool for consumers.

The late Senator Paul Douglas (D-Ill.), in introducing his first consumer credit "labeling" bill in 1960 (S. 2755), stressed the need for consumers to be "informed" so that they could make rational choices in a free, competitive economy. Later, Senator William Proxmire (D-Wis.), now Chairman of this Committee, writing in the American Banker claimed that the "main thrust" of the Truth in Lending bill which he was then sponsoring (S. 5) was "to promote more effective price competition in the consumer credit industry" (December 20, 1967, p. 91). And Representative Leonor Sullivan (D-Mo.) must have had much the same idea in mind when, during 1967 hearings on the Truth in Lending bill which she was then sponsoring (H.R. 11601), she observed that "we are not going to stop people from wanting things they cannot afford, but at least when they do buy them they should know what it is going to cost them and what percentage of the cost they are going to have to pay for using somebody else's money."

ARF supports all of these objectives, but we feel that the Truth in Lending Act needs a thoroughgoing simplification in order to accomplish these goals. For example, in connection with open end credit, before the account is even used, a creditor must disclose at least 13 specific items of information about the credit plan. Then, with each periodic statement, 15 items must be disclosed.

The situation with credit other than open end is not much better. For this type of credit, a creditor must disclose 13 specific items of information about the extension of sale credit and 11 items in connection with a direct loan. And in every instance—both open end disclosures and disclosures for credit other than open end—most of the disclosures are unrelated to the "price" of the "cost" of consumer credit or the "percentage of the cost" which consumers are paying for the use of credit. Most of these disclosures are required by the Truth in Lending Act, although some few were added by the Board of Governors of the Federal Reserve System in Regulation Z.

In order that consumers be "informed" so that they can shop for credit more intelligently and "avoid the uninformed use of credit" (Truth in Lending Act, § 102(a)), the retail industry believes that they should be furnished with a clear and succinct disclosure of the elements of consumer credit costs and not be overwhelmed by a lengthy restatement of all of the terms of the consumer credit transaction. In short, ARF urges that the Congress revise the Truth in Lending Act in order to

accomplish its original goal with greater effectiveness: disclosure of the *cost* of consumer credit.

Writing recently in the Uniform Commercial Code Law Journal [Boston: Warren, Gorham & Lamont, Vol. 11, No. 1, Summer 1978], the Deputy Secretary of the Board of Governors of the Federal Reserve System offered the following observation on the Truth in Lending Act:

"* * * [The] shift from cost disclosure to credit term disclosure had a dramatic impact. Compliance was made much more difficult as disclosure departed from the basic numbers of the transaction. As the statements became viewed as a method of preserving all features of the transaction, including information only relevant to default, the pressure for more and more contractual information increased. Unmoored from the simple cost disclosures objective, litigation at times departed from analysis of the real potential use of the information and focused instead at a high level of abstraction * * *. [I]t was the requirement of term disclosures and the 'all-is-relevant' philosophy that made compliance extremely difficult and the chance of violation so high." (at page 5)

The retail industry has now had almost ten years experience in complying with the requirements of the Truth in Lending Act and Regulation Z issued by the Board of Governors of the Federal Reserve System to implement that Act. Based on this experience, the American Retail Federation offers its comments and recommendations for changes in the Truth in Lending Simplification and Reform Act (S. 108). Our comments do not address those provisions of the bill which have little or no impact on the retail industry.

One proposed amendment to the Truth in Lending Act is of such significant concern to the retailers represented through ARF that it will be discussed first. That single issue—Administrative Enforcement—far outweighs all others in terms of potential impact on the retail industry and, for that reason, deserves primary consideration.

For ease of analysis, we have arranged our comments on the other provisions of the bill in the order in which those provisions appear in the bill. Other than our discussion relating to administrative enforcement, no inference about the relative importance of the other provisions of the bill to the retail industry should be drawn from the order in which our comments on those other provisions are made.

Administrative enforcement.—ARF is vigorously opposed to the proposed amendment to § 108(c) giving the Federal Trade Commission the authority to enforce Truth in Lending as though it were an FTC trade regulation rule. Such authority carries with it the authority to seek a civil penalty of as much as \$10,000 per violation, even though the violation may have been highly technical and resulted in no actual damages to any consumer. Moreover, under the Federal Trade Commission Act, each day a practice continues is considered a separate violation. Thus, a highly technical violation which resulted in no actual injury to consumers but which had continued, for example, for one year could result in maximum civil penalties exceeding \$3.5 million.

No other enforcement agency has similar authority to impose civil penalties. Thus, this amendment carries with it the potential for upsetting the uniformity and evenhandedness with which Truth in Lending is enforced by the various federal enforcement agencies.

The authority to impose civil penalties runs counter to the whole purpose of administrative enforcement. The House Committee on Banking and Currency set out that purpose fully in its report on H.R. 11601 (Report No. 1040, 90th Congress, 1st Sess., December 13, 1967), as follows:

"These [administrative enforcement] provisions not only will protect the consumer, but will further protect the honest businessman. * * * Effective administrative enforcement will protect the honest merchant and insure that he is not penalized in the marketplace when he states the full cost of his credit in dollars and as an annual percentage rate." (at page 18)

The proposed amendment to authorize the Federal Trade Commission to impose civil penalties will have precisely the opposite result; it will jeopardize the solvency of a merchant who has an honest disagreement with the Commission about the disclosure requirements of Truth in Lending, many of which even after "simplification" will remain complex and confusing to merchants and other small businessmen trying to comply with the Act and regulation.

The report on H.R. 11601 goes on to provide that the Federal Reserve Board, because of its expertise in these matters, is to be the "central single agency for issuing all regulations on credit disclosure or on the advertising of credit to insure a single set of overall standards," (at page 19; emphasis supplied) and that the other enforcement agencies were to apply those standards. The proposed amendment, by

creating in one of the nine enforcement agencies the authority to impose civil penalties of up to \$10,000 per day, would be likely to upset the uniform enforcement standards now applicable across the board to all credit grantors.

A similar provision in the Equal Credit Opportunity Act has resulted in regulation by enforcement proceeding rather than by the regulatory process. The Federal Trade Commission has alleged violations of that Act against creditors for practices which appear to be in conformity with the Act and the regulation promulgated under it by the Federal Reserve Board. Moreover, no court has adjudicated many of the issues upon which the Federal Trade Commission has sought civil penalties under ECOA.

Where the Federal Trade Commission asserts civil penalties for a violation, a creditor is faced with the prospect of extensive (and expensive) litigation on points of law not previously settled by the courts or, in the alternative, settling the matter with the Commission on the basis of substantial civil penalties, but a lesser amount than the maximum which could be imposed—up to \$10,000 per day. Truly, this is a Hobson's choice and one, we submit, to which creditors should not be subjected. It is the rankest order of deprivation of due process, the magnitude of which being roughly measurable by the dollar amount of the exposure to which the creditor is subjected.

In addition to the existing adequate administrative enforcement authority, the Truth in Lending Act also provides civil penalties intended to make it self-enforcing. Consumers are their own attorneys general and can bring civil suit for recovery of mandatory penalties, plus costs and attorney fees, even for technical violations. Consumers have not been reticent in exercising their rights under the civil penalty provisions, with 11,363 suits having been filed in United States District Courts between July 1, 1971 and June 30, 1978 (source: Administrative Office of the United States Courts). No similar tabulation exists for the number of suits filed in state courts, but they, too, are believed to have been numerous.

In short, the proposed amendment to § 1108(c) would subject creditors subject to FTC enforcement authority to oppressive, unequal, and coercive enforcement powers for which no demonstrated need has been shown. In many cases, it would result in denial of due process to those creditors. Given the authority which would be provided elsewhere under S. 108 to order restitution for overcharges, enforcement of Truth in Lending as though it were an FTC trade regulation rule is unwarranted.

Definition of open end credit.—In general merchandise retailing, open end credit is the most prevalent form in which consumer credit is extended, and its use is growing each year. Many retailers, including a number of large, nationwide companies, have dropped instalment contract credit completely. It is not unusual for a customer to open an open end account and maintain it literally for a lifetime. Given this long-term relationship, it is not unreasonable that a creditor reverify credit information from time to time when, for example, a customer makes a large purchase, or when an account has been inactive for several years and a customer reactivates it.

Thus, ARF strongly supports the proposal to add the second sentence to § 103(i) specifically permitting creditors to reverify credit information from time to time in connection with open end accounts.

The use of open end credit is growing because competition demands it. Customers like the convenience and flexibility of open end credit, coupled with the ability to pay larger amounts and reduce finance charges or pay in full and avoid finance charges altogether, and retailers are responding to that customer demand.

With the prospect of the continued growth of open end credit, ARF vigorously opposes the provisions of the first sentence of the proposed amendment to § 103(i) which would require that, for a plan to qualify as "open end credit," the creditor "reasonably contemplates repeated transactions."

One of the difficulties with Truth in Lending during the past nine and one-half years has been the uncertainty which creditors face in making disclosures. To condition a creditor's required disclosures on a state of mind ("reasonably contemplates") would, in our view, be unconscionable. Enforcement of Truth in Lending, either by the federal enforcement authorities or through private litigation, normally occurs many months after a credit transaction is consummated. Thus, it would be nearly—if not absolutely—impossible to prove a creditor's state of mind on the basis of objective criteria after a lapse of those many months.

The committee report from the 95th Congress to accompany S. 2802 which was identical to S. 108 gave little guidance in establishing the necessary objective criteria. According to the report, this provision is intended to require "closed end" disclosures when the initial transaction is the purchase of "infrequently" purchased items, or where the credit is extended in a "distant town." Read literally, this would

mean that every open end credit application from a customer in a "distant town" would require special treatment, and that every application for open end credit to buy an "infrequently" purchased item would be suspect—even if a retailer regularly stocked such items.

The committee report indicates that this provision is not intended to affect the "normal" activities of retailers, but it does not attempt to define "normal." What is a "normal" activity for one merchant may not be "normal" for another.

And there is the problem of implementing this provision. Open end credit is so fundamentally different from other forms of credit that disclosures for credit other than open end literally cannot be made for accounts under an open end credit plan. The number of payments and the amount of the finance charge are simply not known at the time of the transaction. Surely this Committee is not "reasonably contemplating" a provision that would require a creditor which has spent literally millions of dollars converting exclusively to open end credit to revise its credit system and reinstitute instalment contract accounts for all transactions that are not "normal."

Then there is the problem of state law. Most state retail instalment sales acts define revolving or open end credit in terms of the existing federal Truth in Lending definition and fix finance charge rates and terms based on a plan's meeting those definitional requirements. For transactions which were not "normal" (whatever that means), a creditor offering only open end credit would be faced with the dilemma of complying with the open end substantive requirements of state law and the closed end disclosure requirements of federal law. He would probably end up violating both.

The mischief which this proposed amendment would cause far outweighs the alleged (but not demonstrated or quantified) abuses resulting from the use of "spurious" open end credit plans. It would do violence to the stated statutory objective of assuring a "meaningful disclosure of credit terms" (§ 102(a)). Moreover, it would build into the Act an unwarranted and unnecessary degree of uncertainty.

If there is one thing both creditors and consumers need in Truth in Lending it is certainty. The imposition of the requirement that a creditor's state of mind determine which type of disclosure is to be made would be highly counterproductive in efforts to attain that goal of certainty. Thus, the American Retail Federation urges that the phrase "under which the creditor reasonably contemplates repeated transactions" be deleted from the proposed amendment to § 103(i).

Model forms and clauses.—Many small retailers—particularly those located in small communities where the legal profession is unable to specialize in consumer credit law—are simply without resources to develop forms which comply in every detail with the requirements of Truth in Lending. They desperately want to comply with the law, and ARF believes that the publication of model forms and clauses by the Board would provide a way for them to do so.

More important, however, is the benefit which model forms and clauses would have for consumers. Although we do not believe that the use of these model forms and clauses should be made mandatory, because creditors with novel credit plans or specially designed billing equipment may find it necessary to deviate from the models and still comply with the law, we are convinced that the overall uniformity of disclosures among various credit grantors will be a valuable educational tool. Consumers will see more standardized disclosure forms across the full spectrum of credit grantors, and that will ultimately result in a better understanding of credit terms.

Thus, ARF supports the proposed addition of subsections (b) and (c) to § 105 of the Act which provide for optional model forms and clauses, the use of which will protect creditors from civil and criminal penalties.

Annual revision of disclosures. ARF enthusiastically supports the proposed amendment adding subsection (d) to § 105 of the Act which provides, generally, a once-a-year change in disclosure forms, with at least six months lead time.

Since the passage of the Fair Credit Billing Act in October 1974, creditors have been subject to repeated, continuing changes in disclosure forms. Although some of those changes resulted from amendments to the statute, a significant number resulted from amendments to Regulation Z promulgated by the Board. The expense to creditors of effecting those changes has, we believe, been far greater than the benefit to consumers. More important, however, is the fact that repeated changes in disclosure forms is likely to be confusing to consumers, thus defeating the purpose of the Act: to assure "meaningful" disclosures. We sincerely believe that a single annual effective date for disclosure revisions would go a long way toward improving consumer understanding and reducing societal costs of administering this law.

Determination of the finance charge.—A great deal of confusion has arisen out of the current definition of "finance charge" in § 106 of the Truth in Lending Act. Courts are divided on the types of fees and charges which must be separately itemized in determining the amount of the finance charge, with the majority of opinions requiring such charges as tax, license, and title fees in certain transactions to be included in the finance charge if not itemized in detail, even where those charges would be imposed in a similar cash transaction.

The proposed amendment to § 106 of the Act would correct this statutory imprecision, and ARF supports that amendment.

Annual percentage rate tolerance.—ARF supports the proposed amendment to § 107 of the Act which would permit a disclosure tolerance for the annual percentage rate. As the Act now stands, creditors may round to the nearest quarter of one percent; however, if a creditor does not elect to round, the disclosure rate must be absolutely precise. For example, if a creditor should disclose an actual rate of 12.17 percent, there is no margin for computational error, and if the actual rate were 12.18 percent, there would be a violation.

Inasmuch as rounding to the nearest quarter of one percent is permitted, ARF feels that a reasonable disclosure tolerance should also be permitted, and one-eighth of one percent more or less than the actual rate (i.e., a quarter point range) appears to be reasonable. Certainly, tolerances within such a narrow range would not mislead consumers in shopping of the best credit buy, and this provision would with equal certainty facilitate compliance with the Act.

Relation to State law.—ARF feels that the time has come for Congress to take a very strong preemptive position with respect to Truth in Lending. Once the federal government has occupied the field of consumer credit disclosure, unsolicited credit cards, consumer credit advertising, fair credit billing, and consumer leasing, that should be the Law of the Land—not subject to differing or even supplemental state requirements. Once Congress has determined which disclosures and related provisions are in the public interest, ARF believes that consumers as well as creditors are best served by those disclosures and related provisions, unadorned by supplemental state-required information which may—and often does—contradict, obscure, or detract attention from the federally required information.

Moreover, federal legislation which balances fairly the costs and duties of creditors with the benefits and rights of consumers can quickly be thrown into imbalance by supplementary state provisions. This, we submit, is highly inequitable.

Thus, ARF supports the thrust of the proposed amendment to § 111(a) which gives the Board the authority to determine whether inconsistencies exist between state and federal law and to protect creditors from liability for following the federal statute after the Board has determined that the state-required disclosure is inconsistent. However, the requirement in paragraph (2) of that amendment which would require creditors to follow the state requirement when the Board has determined that it is "substantially the same in meaning" as the federal disclosure is troublesome. It has the potential for sanctioning differences, however slight, in the form, terminology, and content of disclosure statements, and this, we submit, is counter-productive from a consumer education standpoint. Repetitive exposure to precisely the same terminology and the uniform application of disclosure requirements as required under federal law will go a long way toward promoting consumer understanding of Truth in Lending, and we oppose any provision that would permit minor differences from state to state, even where the state disclosures have substantially the same meaning as those required under federal law.

Not only would such a provision be counter-productive for consumer, it would unnecessarily complicate the compliance requirements for retailers and other creditors operating across state lines. Thus, we recommend that where the Board determined that a state-required disclosure has substantially the same meaning as a disclosure required by the Truth in Lending Act, creditors have the option of following either state or following either state or federal law without violating the law not followed.

Form of disclosure.—The proposed amendment to § 122(a) requiring that "annual percentage rate" and "finance charge" be disclosed more conspicuously than other "terms, data, or information" is unworkable because of the many and varying requirements of state law specifying type size for certain consumer credit contract terms and provisions. Thus, what would be "more conspicuous" in one state might not be in another. Moreover, for credit other than open end, this requirement is not necessary, in view of the fact that S. 108 would amend § 128(b) to require that disclosures be "conspicuously segregated" from the other terms and information.

We do not think that an amendment to the Act is necessary to require disclosure of certain terms more conspicuously than others, because Regulation Z now contains

that requirement. However, if Congress should decide to go ahead with such an amendment, we recommend that for transactions other than open end, it be limited to requiring the terms "annual percentage rate" and "finance charge" to be disclosed more conspicuously than the other information contained in the disclosures "conspicuously segregated" under the proposed amendment to § 128(b).

For open end credit, we urge the Congress to follow the existing provisions of § 226.6(a) of Regulation Z and require the terms "annual percentage rate" and "finance charge" to be disclosed more conspicuously than other "terminology" required by the Act or regulation—not more conspicuously than all other "terms, data or information."

Open end credit disclosures.—ARF supports the proposal to amend § 127(a) relating to disclosure of other charges (redesignated paragraph (5)) and security interests (redesignated paragraph (6)). Both of these changes are real simplification which have no adverse impact on consumers.

ARF also supports the proposed amendment to redesignated paragraph (7) of § 127(a) which would reduce the frequency with which the statement of billing error rights must be furnished from semiannual to annual intervals. In view of the fact that the vast majority of consumers have more than one credit card and/or open end account and would thus receive multiple statements, this amendment would result in virtually no diminution of consumer protection. It would result, however, in significant and economically measurable simplification at virtually no loss of consumer benefits, and ARF urges that it be adopted.

We are opposed, however, to the proposed amendment to § 127(b)(2) relating to the identification of transactions debited to an open end account. This proposal would continue to discourage creditors from using a descriptive billing system, forcing them, instead, in many credit plans to resort to the use of a "country club" system involving the return of sales voucher copies with each statement. Descriptive billing is infinitely less expensive in most applications than is a country club system and should not be subjected to statutory impediments.

Real simplification of the billing provisions can only be accomplished if creditors are required to disclose the amount and date of each extension of credit on the periodic statement and are permitted to furnish a "brief identification" of the transaction either on the statement or at the time of consummation.

Civil liability.—The Deputy Secretary of the Board of Governors of the Federal Reserve System has observed that litigation under the Truth in Lending Act has "focused * * * at a high level of abstraction." In that same Law Journal article, he went on to observe that between 1972 and 1975, "the number of [Truth in Lending] cases soared" and that "[c]reditor attempts to protect themselves [from litigation] encouraged the lengthening of forms" (ibid).

Thus, it is clear that the burden of litigation under Truth in Lending has generated more complexity in disclosure statements in an attempt by creditors to dot each "i" and cross each "t" on disclosure forms. ARF feels that such a result is counterproductive, because the very use of long and involved disclosure forms tends to obscure the "meaningful" information which consumers may use to "shop" for the best credit "buy." Accordingly, ARF supports the thrust of the proposed amendment to § 130(a) limiting liability to certain disclosures. However, ARF does not believe that the amendment goes far enough.

Almost from the advent of Truth in Lending in 1960, three basic disclosures have been considered essential in providing consumers with the ability to shop for credit. Those are the amount of the finance charge, the annual percentage rate, and the repayment schedule (i.e., number, amounts, and due dates of payments). ARF urges that Congress limit civil liability to violations involving disclosure of these three basic components of any consumer credit transaction. Thus, ARF recommends that civil penalties in connection with open end credit transactions apply only to failure to comply with the requirements of paragraph (1), (2), (3), or (4) of § 127(a) of paragraphs (4), (5), (6), or (9) of § 127(b).

For the same reasons, we recommend that civil liability in connection with a transaction other than open end be limited to violations involving paragraph (2), (3), (4), (5), or (6) of § 128(a). All other violations would, of course, remain subject to enforcement action by the enforcement agencies designated under the Act.

ARF supports the proposal to limit class action recoveries under § 130(a)(2)(B) in a series of actions arising out of the same violation by the same creditor. Similarly, we support the proposal to permit a creditor to avoid civil liability by correcting an error within 60 days after discovering it, whether pursuant to examination or through the creditor's own procedures. Both amendments are equitable and commercially feasible.

We oppose, however, the proposal to add a new sentence to § 130(e) providing a right of set-off beyond the one year statute of limitations. Under this provision, a counter-claim or set-off could be raised at any time, even five or ten years after consummation of the transaction. ARF feels that this is unreasonable; at some point, Truth in Lending civil liability must terminate. The effect of this amendment would be to elevate a Truth in Lending violation as a substantive defense in an action on contract under state law. Clearly, any such penalties recoverable after the one year statute of limitations should, at a maximum, be limited to the actual damages sustained and proven by the consumer under § 130(a)(1).

Cardholder Liability.—ARF applauds the proposal to amend § 133(a) to delete the current requirement that card issuers provide cardholders with a postage-paid, self-addressed envelope for use in notifying the creditor in the event the card is lost or stolen. That current provision involves a cost to creditors without a concomitant benefit to consumers, because consumers rarely mail a notice of a lost card. Almost invariably, notification is given by telephone. We believe that this proposal is another example of true simplification with a measurable cost saving to creditors and no significant loss of protection to consumers.

Credit Advertising.—ARF believes that this proposed amendment will go a long way toward encouraging the advertising of credit terms and stimulating competition in the consumer credit marketplace. The retail industry has long believed that the restrictions on advertising contained in Chapter 3 of the Truth in Lending Act unnecessarily discourage credit advertising.

Credit advertising is an essential consumer education tool; it should be encouraged so that consumers may actually shop for the best credit buy right from the comfort of their own homes, just as they do for a myriad of other goods and services. ARF supports the proposed credit advertising amendments, because we feel that they will accomplish this goal.

Conclusion.—The American Retail Federation supports the concept of Truth in Lending. However, we believe that the existing Act is in need of improvement in order that the Act accomplish its original goal—to aid consumers in shopping for the best credit buy. We have offered our comments today in general terms, and we stand ready to submit specific language to implement our recommendations.

The CHAIRMAN. Thank you very much.
Our last witness is Mr. James Smith.

STATEMENT OF JAMES L. SMITH, ON BEHALF OF CONSUMER BANKERS ASSOCIATION.

Mr. JAMES SMITH. Thank you, Mr. Chairman.

I am chairman of the Truth-in-Lending task force of the Consumers Bankers Association, and it is my understanding that our full statement will be included in the record.

The CHAIRMAN. Yes, indeed.

Mr. JAMES SMITH. In that case, let me summarize the association's views.

Simplification must accomplish three objectives. The first, of course, to reduce and simplify disclosure requirements, both in the number of items and the technical complexity, in order to provide really usable information to consumers, and to reduce the compliance difficulties for creditors.

Second, to create a reasonable balance between the remedies provided by the act and the nature of the violation, by limiting statutory damages to material violations of key credit cost disclosures and providing a defense to civil liability if the creditor can support substantial performance.

And, third, to clarify the relationship between Federal and State laws so that creditors, including those engaged in interstate credit transactions will be provided with certainty as to the exact nature of their obligations.

The first objective to simplify is obviously a greater need today than there was even when S. 2802 was being considered. The

association believes that it is time to restore Truth-in-Lending to its original purpose, that of providing comparable information regarding the cost of credit so that consumers can, in fact, shop among various credit grantors in order to find the lowest cost. The studies that indicate increased awareness do not necessarily indicate increased use of the information.

Under current law on installment credit sale disclosures, at least 20 items must be disclosed under S. 2802, now before this committee as S. 108. There are still 14 items which must be disclosed. As detailed in our testimony, we urge that the required disclosures be limited to the two most important credit cost disclosures: annual percentage rate and finance charge.

The association believes that by reducing required disclosures to these two cost items, as supported by the chairman and others during markup of S. 28 and indicated here again today, there will actually be an increase in the level of understanding and, therefore, the use of credit information by consumers.

If the committee determines to use the disclosure of additional items, at least three steps should be taken: First, all required itemization subtotals should be deleted. Technical information which simply recites the terms of the note or contract should be deleted, since it complicates the disclosure statement and is contained in the loan document given to the customer. Third, disclosures which are required should be simplified through the availability of model forms and clauses.

Our second objective would be to limit civil liability. This irresistible lure of lawyer's fees and a guaranteed minimum recovery have generated over 11,000 lawsuits under Truth-in-Lending since 1972 in the Federal courts alone. Three examples of the types of problems causing this massive amount of litigation are:

One, the description of a security interest—for instance, requiring the security interest disclosures when the creditor applies; a refund of insurance premiums to pay on the loan;

Second, the treatment of acceleration clauses under the act has been the subject of three inconsistent rules adopted by three different U.S. circuit courts of appeals, to the effect that we now have rulings that these clauses must always be included, sometimes must be included, or never be included. When disclosure is required in those, there are two different theories of how they should be disclosed.

Third, the absence of a clear definition of who is the creditor has also caused many of these suits. In direct credit sales, are both the seller and assignee creditors, so must both give complete sets of disclosure to the consumer?

Under Truth-in-Lending as it now exists, the civil liability provisions benefit consumers far less than they benefit lawyers. Of the 11,364 cases that have been filed, approximately 80 percent involve financial difficulties on the part of the borrower or product complaints which, of course, have nothing to do with the credit aspects of the transaction or the purposes of Truth-in-Lending.

Civil liability for statutory damages should be limited to failures to properly disclose the annual percentage rate on finance charges.

Another concern is the relation to State law. As a statute which comprehensively regulates consumer credit disclosures, Truth-in-

Lending in many cases creates practical inconsistencies with State law. Maryland, for example, has six additional items that must appear before the first Federal item. In Texas there are five additional items that must appear before the first Federal item.

Because of these conflicts, Congress should recognize that it has effectively preempted this area. The charts that were demonstrated this morning displayed those requirements of the Federal law. They do not include the requirements of State laws.

In summary, we feel that the obvious need is here and now, that imposing disclosures as now required are not understood or useful to the consumer. True simplification is essential, and not simply to rearrange or repackage that complexity. Congress should return the act to its original purpose, and while we had many comments about S. 2802 last year, and, given the opportunity, would have additional comments about S. 108 in our testimony, we appreciate the opportunity to testify.

Thank you very much.

[Complete statement of Mr. Smith follows:]

STATEMENT OF JAMES L. SMITH ON BEHALF OF THE CONSUMER BANKERS
ASSOCIATION

Mr. Chairman, other distinguished members of the Committee, I am James L. Smith, Senior Vice President of Security Pacific National Bank, Los Angeles, California. I serve as Chairman of the Truth in Lending Task Force of The Consumer Bankers Association.¹ The Consumer Bankers Association greatly appreciates this opportunity to present testimony concerning the immediate need for simplification and reform of the Truth in Lending Act.

In The Association's view, simplification must accomplish at least the following three objectives:

1. Reduce and simplify disclosure requirements, both in number of items and technical complexity, in order to provide usable information to consumers and reduce compliance difficulties and costs for creditors;

2. Create a reasonable balance between the remedies provided by the Act and the nature of the violation, by limiting statutory damages to material violations of key credit cost disclosures and providing a defense to civil liability for substantial performance; and

3. Clarify the relationship between federal and state laws so that creditors, including those who engage in interstate credit transactions, will be provided with certainty as to the exact nature of their obligations.

These are the issues I will address today.

I. REDUCE AND SIMPLIFY DISCLOSURES

When Truth in Lending became effective a decade ago, the original concept was to provide meaningful and comparable cost disclosures that would allow consumers to shop for credit. The required disclosure statement was contemplated to increase consumer awareness and understanding of the cost of credit by providing credit cost information clearly and conspicuously. The problem, simply stated, is that this simple and laudable concept has become weighted down by so many legislative, regulatory and judicial embellishments that it does not deliver the message in a way which is understandable, and therefore usable, to the average consumer. The result is that creditors are engaged in a continuous, expensive struggle to keep up with ever-changing disclosure requirements which, due to their complexity, are neither understood nor sought by consumers.

The complexity has resulted due to a departure from the underlying objective of Truth in Lending. The Act's disclosure emphasis has shifted from key terms relat-

¹ The Association is a nonprofit organization which was organized in October 1919 to provide a voice for the consumer banking industry. Since that time, the membership of The Association has grown to over 300 commercial banks of all sizes which are actively engaged in extending consumer credit. Combined, the members of The Association now hold over 60 percent of all consumer credit outstandings held by commercial banks. The members' consumer credit outstandings total more than \$54,750,000,000. The Association's Truth in Lending Task Force was formed to study various proposals to amend the Act, and since that time has been actively engaged in efforts to make Truth in Lending simpler and more meaningful.

ing to the cost of credit to an ever-expanding number of terms which are repeated in the underlying contract or in other loan documents. In attempting to assist creditors in complying with the Act, Regulation Z has added to the complexity of the area. As acknowledged by the Federal Reserve Board in its Annual Report to Congress issued January 3, 1979, "Regulation Z, in providing detailed guidance to creditors, has introduced its own complexity to Truth in Lending."²

Meanwhile, the courts, under the guise of interpretation, have legislated unforeseeable and subtle requirements into the Act which few anticipated. The proliferation of court cases has resulted in conflicting interpretations of the Act, often subjecting creditors who extend credit in several judicial jurisdictions to inconsistent requirements. For example, the continuing question of the proper disclosure of acceleration clauses has been the subject of at least four irreconcilable judicial interpretations. Each new interpretation instantly creates exposure to extensive liability (in some instances possibly jeopardizing the creditor's safety and soundness) in connection with the millions of consumer credit contracts outstanding at the time the decision is rendered. In many of these cases, the courts have simply ignored Congressional intent and administrative interpretations in arriving at novel and clearly inconsistent applications of the Act. The absence of a uniform judicial approach in interpreting the Act makes it impossible for creditors to foresee and comply with a continuous stream of new requirements.

In connection with closed end credit sale transactions, there are currently no fewer than 20 disclosures required by the Truth in Lending Act and Regulation Z.³ As a result, disclosure statements have become cluttered with verbiage and figures which necessarily detract from key credit terms. The recent consumer credit survey commissioned by the Board of Governors of the Federal Reserve System⁴ confirms that the sheer mass of information currently provided produces an "informational overload" with the result that most consumers pay little or no attention to any of the disclosures. Nearly two-thirds, 63.8 percent, of the consumers interviewed felt that most people do not read Truth in Lending statements carefully, and almost three-quarters, 72.6 percent, believed that disclosure statements have become too complicated. About 60 percent of those interviewed indicated that some information on Truth in Lending statements is not very useful. These facts clearly reveal that the current approach to providing credit information has reached the "overload" or "turn off" point.

The Association fully appreciates that several members of the Committee have expressed their commitment to true simplification. We also appreciate the substantial amount of time and effort which went into the preparation of S. 2802, now before the Committee as S. 108. We must note, however, that even this effort requires 14 separate credit disclosures.⁵ While that is an improvement over the requirements of the present Act, it continues to suffer from the major failing of the existing law; namely it buries consumers under an avalanche of credit information which, due to its complexity, is virtually ignored by consumers. In addition, even in the interval between Senate consideration of S. 2802 and today, new problems—not anticipated and thus not met by S. 108—have arisen under the Act which should be addressed by the bill.

The Association strongly supports your suggestion, Mr. Chairman, made during the markup of what became S. 2802, a suggestion concurred in by Senators Garn and Morgan, that mandatory disclosures be limited to the finance charge and the annual percentage rate. We respectfully urge the Committee to adopt true simplification, reducing the disclosures required under the Act to the two most critical and meaningful items relating to credit cost: finance charge and annual percentage rate.

² Annual Report to Congress on Truth in Lending For the Year 1978, page 1 (January 3, 1979).

³ These disclosures are: (1) name of creditor; (2) cash price; (3) down payment; (4) unpaid balances of cash price; (5) all other charges not included in finance charge; (6) unpaid balance; (7) prepaid finance charge and/or required deposit balance; (8) amount financed; (9) finance charge; (10) date finance charge accrues, if not transaction date; (11) total payments; (12) amount of each payment; (13) number of payments; (14) due date of each payment; (15) deferred payment price; (16) annual percentage rate; (17) default, delinquency or late charges; (18) prepayment penalty; (19) rebate of unearned finance charge, if prepaid; and (20) description or identification of security interest.

⁴ Durkin, Thomas A. and Gregory Elliehausen, "1977 Consumer Credit Survey", Board of Governors of the Federal Reserve System (1978).

⁵ These disclosures are: (1) identity of creditor; (2) amount financed; (3) finance charge; (4) annual percentage rate; (5) total of payments; (6) number of payments; (7) amount of each payment; (8) due dates of each payment; (9) total sale price; (10) statement that security interest taken; (11) late payment charge; (12) rebate or credit for prepayment; (13) prepayment penalty; and (14) a statement that the consumer shall refer to the contract for other information (e.g., nonpayment, default, acceleration).

The Association respectfully urges that Truth in Lending be returned to its original purpose as a cost of credit disclosure law and that it be simplified to serve this objective.

If the Committee determines not to limit disclosures to the two most important credit cost terms, we believe that at least the following three steps should be taken.

The first is the elimination of itemization requirements. Consumers are interested in the "bottom line" costs of credit. Disclosures of computational steps do not further this purpose, nor do subtotals which are merely components of other disclosures.

The second step is the elimination from disclosure statements of technical information concerning terms of the underlying contract, such as default and acceleration charges, late payment charges, prepayment penalties, the method for rebating unearned finance charges upon prepayment and other terms which are disclosed in the contract or in other loan documents. Since, in order to exercise these rights, the creditor must provide for them by contract, it should be sufficient to provide notices directing the consumer to read the contract for this information. On possible method of referring to contractual terms would be to require only a "—Yes —No" checkoff as to whether the contract contains provisions relating to contract terms specifically described in the Act. That brief but meaningful disclosure, combined with a statement that the consumer should examine the contract for specific rights, duties and obligations, will provide simplification and will result in a net increase in the amount of understandable information given to the consumer.

Finally, there is a need to simplify those disclosures which are retained. The Federal Reserve Board should issue model forms and clauses which use language readily understandable to the average consumer. Currently, creditors cannot utilize or attempt to devise simplified language or forms because of the danger of being sued, found guilty of some hyper-technical violation, and assessed statutory damages, costs and attorney's fees.

In short, The Association believes that Truth in Lending simplification should be genuine simplification. True simplification should unravel the complexity of credit disclosure and not simply rearrange or repackage that complexity. Only through a significant reduction in the number of credit terms described and truly simplifying those disclosures given will it be possible to provide consumers with simple and usable credit cost information.

II. LIMITING CIVIL LIABILITY

Another major cause for creditor concern involves the issue of liability provided for under the Act. Both actual and statutory damages, as well as costs and attorney's fees, are now awardable under the Act for virtually any violation, whether substantial or technical in nature. The provision making creditors civilly liable for every technical violation, regardless of the absence of any conceivable injury to the consumer, encourages frivolous lawsuits whenever consumers or their lawyers wish to avoid repayment obligations. A creditor should not be liable for a technical disclosure violation when it is not material to the consumer's awareness of the cost of credit and does not result in any possible damage to the consumer.

The Act should be amended to provide that no civil liability attaches to technical violations where the creditor can demonstrate that it substantially complied with the provisions of the Act. While S. 108 moves in the right direction, it simply does not go far enough. Civil liability should be limited only to nondisclosure or inaccurate disclosures of the key items which relate to the cost of credit. In light of their overriding importance, liability for statutory damages should be limited to the finance charge and the annual percentage rate applicable to the transaction. Other violations are adequately policed by stepped up federal regulatory consumer compliance examinations (carried out under Regulation Z Enforcement Guidelines recently adopted by the agencies) and by allowing consumers to sue for actual damages and attorney's fees commensurate with those damages.

The current system of statutory damages authorizes a \$100 minimum recovery for any violation. The availability of this recovery invites litigation largely in the form of nuisance suits which clog the courts. Litigation—even if the creditor prevails—is time-consuming and expensive, and he inevitable result is an increase in the creditor's cost of doing business which is passed through to the consumer. Recovery for technical violations is not in the interest of the general public or the creditor.

Without these changes, the current flood of litigation will continue as those very few who seek to avoid paying their legitimate debts hide behind peripheral technical matters in order to shift their debts onto the vast majority of responsible consumers who meet their obligations. The lure of attorney's fees and guaranteed minimum recovery has resulted in well over 10,000 Truth in Lending suits in

federal courts alone since 1972, and the likelihood of further litigation is undeniable.⁶ One respected commentator, Professor Jonathan M. Landers from the University of Illinois College of Law, has studied the sources of these lawsuits. Professor Landers found that approximately 8 percent of these suits were brought by persons who were simply unable to pay the debt because of financial difficulties or because of a dispute regarding the goods or services involved in the transaction.⁷ Thus, in the vast majority of cases, lawsuits are brought under the Act for reasons which have no bearing whatsoever on the credit aspects of the transaction.

The material disclosures should be designated, and a carefully balanced system of rights and remedies should be implemented in connection with these disclosures. The requirements should be enforced through the application of limited civil remedies and administrative agency enforcement which would assure substantial compliance with the Act. Congress should not condone or give credence to the practices of those who attempt to convert the Act into an instrument of harassment or of debt avoidance.

III. RELATION TO STATE LAW

Finally, I would like to address the continued confusion regarding the relation of the Truth in Lending Act to comparable state law and then attempted application of the "inconsistent" state law test now contained in the Act.

Failure to apply traditional rules of federal preemption has resulted in the creation of a two-tiered, frequently incompatible pattern of disclosure regulation. Since federal credit disclosure provisions often are at variance with requirements adopted by many states, creditors and consumers alike are confused as to whether federal laws and regulations, state laws and regulations, or combinations of both, are applicable to a specific consumer credit transaction.

A present, three separate provisions of the Act address the relations between state and federal law. The basic thrust of these provisions is that state laws are displaced only to the extent that they are "inconsistent" with the Act. Under two of these provisions, to be inconsistent, the state law must provide less protection to the consumer than the federal law. If a state law provided greater protection—although substantial confusion and uncertainty exist as to when that is the case—state law will continue to be in effect even though federal law comprehensively occupies the field of consumer credit disclosures.

The application of this "inconsistency" standard to determine preemption is unworkable. The test invites constant disputes as to the applicability of various state statutes. When attempting to determine whether state laws continue to apply, in many instances the concept of "inconsistency" provides absolutely no guidance upon which a creditor can rely with safety. Absent a final judicial interpretation, any creditor deviating from state law does so only as its peril.

The sections providing that state laws giving "greater protection" are not inconsistent similarly give no helpful guidance. It is often difficult to determine whether a state provision offers greater or less protection to a consumer. A state provision requiring detailed disclosures arguably could be more protective, but if these detailed provisions discourage the consumer from reading any disclosures, the state requirements would clearly provide less protection to the consumer. Since, according to the previously cited Federal Reserve Board survey, only 27.4 percent of consumers felt that disclosure statements are read carefully, it seems highly unlikely that consumers will give any greater attention to an even more complex disclosure statement.

Of particular concern is the increasing confusion and uncertainty created by a patchwork of state laws for multistate creditors and others who engage in interstate credit transactions. Provisions from two or more states, in addition to the federal requirements, often apply to the same credit transaction.

It should be emphasized that overlapping, multiple disclosure requirements cause virtually irresolvable difficulties for creditors. A creditor who elects to disregard state disclosures as being inconsistent runs the very real risk that a reviewing court would disagree with that conclusion. The creditor would then be guilty of violating state law and be subject to a recovery on that basis. On the other hand, a creditor who elects to include state disclosures may be exposed to liability for a failure to make disclosures clearly, conspicuously and in a meaningful sequence as required by the federal law. Moreover, multistate creditors may also violate the law of one

⁶ The total number of Truth in Lending suits filed in federal court since 1972 is 11,364. This number includes only suits filed before June 30, 1978 and does not include suits filed in state courts. 1978 Annual Report of the Director, 1975 Annual Report of the Director, Administrative Office of the United States Courts.

⁷ Landers, Jonathan M., "Some Reflections On Truth In Lending," 2 U. of Ill. L. Forum 677 (1977).

state by attempting to comply with the law of another. These requirements create problems which are not readily resolvable under the existing law.

An additional illustration of the need to clarify the relationship between state law and federal law arises from section 14(b) of S. 108, which requires that federal disclosures be "conspicuously segregated" from all other terms and information. The concept of providing segregated disclosure, highlighted either in a box or on a separate document, was intended to highlight all federal disclosures. The use of segregated disclosures, however, becomes totally unworkable so long as state laws continue to apply to these transactions. If, for example, state law requires itemization of the amount financed, while under S. 108 the federal law would prohibit it, the creditor would have to make dual disclosures.

In Maryland, for instance, creditors must provide at least six itemized disclosures before arriving at the first figure the federal law requires to be disclosed, the amount financed. (Md. Comm. Law Code Ann. § 12-606). In Texas, five specific disclosures must be given before arriving at that first federal disclosure. (Tex. Rev. Civ. Stat. Ann., art. 5069-602 (Vernon)). Creditors faced with this duplicity and practical—if not legal—inconsistency may be required to provide two complete sets of disclosures for each credit transaction. The duplication can only further confuse consumers, create needless paperwork and increase the costs ultimately borne by consumers without any corresponding benefit to them.

Both theory and practicality support the total preemption of state law by federal law in this area. Although The Association believes that all aspects of consumer credit regulation are best left to the states, we are compelled to acknowledge that in 1968 Congress determined that credit disclosures would be regulated at the federal level. The Truth in Lending Act has thoroughly occupied the consumer credit area. By failing to recognize federal preemption, the current Act, as unevenly supplemented by state laws, encourages inconsistent, redundant or confusing results. That result is of no benefit to the consumer, and it imposes great direct costs on creditors while exposing them to substantial potential liability for violations which are unforeseeable and thus unavoidable. Only through the formal recognition of the fact that federal law has preempted the field of consumer credit disclosure can order be brought to the chaos now surrounding these disclosures.

Total preemption of state laws involving consumer credit disclosures is clearly the preferable alternative. Should that not occur, however, the Act should at least be amended to provide for a clear procedure through which to determine an inconsistency. Given the comprehensive scope of the Act, there should be a rebuttable presumption that any state law which is not identical with the federal law is inconsistent. States which want to provide different requirements would seek a determination from the Federal Reserve Board as to whether the state-required disclosures are inconsistent. In considering this question, the following factors should be considered: (1) the nature of the state requirements, and specifically, whether the state disclosures would provide significantly greater protection for consumers in areas not adequately regulated by federal law; (2) the benefit to the consumer; (3) the burden and cost involved in compliance; (4) the effect of the disclosures on federally-mandated disclosures; and (5) their impact on interstate transactions. Through this device, it would be possible for creditors and consumers alike to have a clear standard to use in determining the applicable law.

The absence of clear guidance as to disclosure requirements increases the regulatory burden of Truth in Lending. State laws can only superimpose additional rules on top of the comprehensive statutory and regulatory pattern established by federal law. The states may increase the complexity of disclosures, but they have no ability to reduce or modify it. The Act should be amended to provide for the preemption of state consumer credit disclosure provisions.

IV. CONCLUSION

During the past decade, the Truth in Lending Act has been transformed from a statute designed to provide needed credit information into a complex and confusing regulatory and compliance nightmare. Despite the views of professional observers who suggest that consumers want and demand more and more information, recent studies indicate that the imposing disclosures now required are no longer useful to the ordinary consumer.

True simplification and reform of the Truth in Lending Act is essential. Congress should return the Act to its original purpose, that of providing helpful credit cost disclosures. Last year, The Association agreed in principle with the thrust of S. 2802, the predecessor of S. 108. As with any compromise, as detailed above, we are not satisfied that it will accomplish the universally accepted goal of meaningful credit cost disclosures. This bill should be amended to bring about a genuine

reduction in the number of required disclosures, clarify the relationship between state and federal laws by recognizing the fact of federal preemption, and limit civil liability to the critical credit cost disclosures. Amended in those ways, this bill would provide appropriate and greatly needed relief while retaining important credit disclosure rights and protections for the consumer.

Again, thank you for providing The Consumer Bankers Association with this opportunity to testify regarding the simplification and reform of the Truth in Lending Act. I will be pleased to answer any questions that the Committee might have.

The CHAIRMAN. Well, thank you.

I want to thank all of you gentlemen very much, and, again, I think we are very fortunate to have such an excellent panel. I mean that. You are extremely well informed and have stated your case very forcefully.

I hope we can get this bill, some kind of a bill, through. We have been through this now for 2 long years. We have been over it, over the Hill, under the Hill, through the Hill, and it seems to me that if we delay this further and try to add one amendment or another, the consumers take one view, the creditors take another view, we are going to end up with nothing.

And I think it is against the interest of you gentlemen, as it is against the consumers' interests, to continue along with the law that primarily, as I think you just said, is enriching the lawyers and not helping consumers. I can see why the lawyers might want to kill everything, but I can't see why either the consumers or creditors want to.

Now, as proposed by one witness the proposal that there is going to be some kind of a meeting between the consumer groups and the creditor groups, with the hope that they can come together with something better than we have, that would be great, marvelous.

We welcome that, but I am going to do all I can to push this bill along, because I think we ought to act on it promptly. So I hope that that meeting takes place swiftly and you can see if there is any real chance that something that could win the support and consensus among the two groups. If you can do that, great.

Mr. JAMES SMITH. It will take place, Senator. We have something of a problem going in, in recognizing who their constituency is and where they are coming from.

The CHAIRMAN. Well, of course, we wouldn't expect everybody to come along who's got some kind of an idea, who claims he has a constituency. But you have got three or four groups this morning who appeared, and they represent consumer agencies of one kind or another.

Mr. JAMES SMITH. We look at it as an excellent opportunity.

Senator GARN. Mr. Chairman, if I could interrupt before you go into your questions. You did promise Mr. Feldman an additional 2 minutes.

The CHAIRMAN. I am glad you reminded me of that. I did want Mr. Feldman to go right ahead.

Mr. FELDMAN. Thank you, Mr. Chairman.

The making of violations of the Truth-in-Lending Act, a violation of a trade regulation rule, would permit the FTC to bypass the current procedures of enforcing the act by bringing an administrative action against the creditor. If enacted, this amendment would place every creditor in jeopardy of a suit for civil penalties of up to

\$10,000 per day per violation, without benefit of an administrative hearing.

We oppose these harsh penalties as totally unnecessary to accomplish administrative enforcement of this act.

Let me just briefly summarize one of the main points, I think, that came out this morning with which we take very strong issue. We take issue specifically with FTC's purported justification for expanding its enforcement authority under the act.

Chairman Pertschuk testified before the House Subcommittee on Consumer Affairs on September 6, 1978, that stronger powers were needed because when an administrative action is taken currently by FTC, that is, a consent order or a litigated order, and I quote: "The relief which we ultimately obtain is an order to stop the practice, hardly a significant deterrent to other would-be violators."

This statement demonstrates a surprising unfamiliarity with the FTC's enforcement of Truth-in-Lending. To state or even suggest that FTC's orders under Truth-in-Lending have been or must legally be limited to prospective relief cannot go unanswered. The FTC orders that have subjected creditors to retroactive relief are numerous and date back to the earliest days of that agency's enforcement program. They include relief such as order of rescission of contracts, cash refunds to the respondent's customers, and placement of a specified amount of funds in an escrow account in an independent financial institution to be available for restitution. And these cases are cited in our testimony.

During the same testimony Chairman Pertschuk related that over \$13 million had been refunded in that agency's credit balance case alone. It is, therefore, clear that FTC currently believes that it possesses—and it has often used—the power to order a broad range of retroactive relief where necessary to protect the public interest in the case of a violation of the Truth-in-Lending Act.

To expand that authority to include the power to seek potentially crippling civil penalties without first affording creditors the right to an administrative hearing would be unfair and totally unsupported by any showing that such authority is needed.

I might add that the FTC survey of compliance with Truth-in-Lending to determine whether creditors were in compliance, taken as early as 1971, showed that 86 percent of the creditors under its jurisdiction were either in perfect or substantial compliance, and that was as long ago as 1971.

I would estimate that currently that percentage would be in the mid or high 90's. It is clear that more enforcement authority simply isn't needed.

The CHAIRMAN. Thank you very much. Those are very helpful observations.

Mr. DAVID SMITH. Mr. Chairman, I limited my original comments to S. 108. I would appreciate, if I could, time to address the subject of privacy.

The Right to Financial Privacy Act currently requires all financial institutions to notify all of their customers of their rights under the act. Strict interpretation of the act would require notifying not only current, but also closed and dormant accounts. However, even if the act were revised to cover current customers only,

many of us could expect to receive in excess of 20 separate notices of our rights from retailers, financial institutions, et cetera.

This paper inundation would cost industry several hundreds of millions of dollars, and irritate the recipients being notified. In connection with the costs, the ABA has surveyed various types of banks concerning the impact of this requirement. We would be happy to share some of the early results of this survey with you, and when tabulated the final results will be made available to the committee.

Senator, we believe that the notification to a customer of his rights concerning government access can be accommodated in a commonsense approach such as the Federal Reserve suggested in its January 29 letter to you:

The Board recommends that section 1104(d) be amended to limit applicability of the notice requirement to a particular customer at the time that such notice is most urgently needed, the point at which a federal agency seeks to have access to his or her records.

We feel that this approach coincides with the industry objective to protect our customers' records, and provides the notice at a time when it is meaningful to the customer.

However, Senator, we commend you for your swift action in this matter, as evidenced by S. 37, and would endorse this approach if our earlier recommendation is not accepted.

The CHAIRMAN. Thank you very much.

Mr. Salm, in your written statement you say you can see no particular reason why consumers should be given advance disclosure for real estate credit. Now, the Federal Reserve Board argues that without it the consumer first receives this information at the time of his closing, long after it serves any shopping purpose.

Doesn't that strike you as an advantage, from the consumer's standpoint?

Mr. SALM. Well, Senator, I think it is an advantage for all consumers to have that well in advance. The point that I think we were making was that if the Truth-in-Lending disclosure should be used for shopping purposes, then it should be used for shopping purposes whether we're talking about home loans, auto loans, or anything else. And the timing question is a thorny one, I recognize, but we would just point out that if people are going to shop with it they all need it well in advance, and the question was why not for all.

The CHAIRMAN. Well, if people advertise car loans and so forth and suggest a rate, then they have got to make disclosure at that time, before the consumer makes any decision or shops that way; isn't that right?

Mr. SALM. You mean, if they advertise for it? As I understand it, if they advertise that they offer a particular type of credit and rate or term, then they indeed have to offer that, that's true.

But I am not sure I understand the connection.

The CHAIRMAN. Mr. David Smith, your statement strongly opposes the shopper's guide for credit on the ground that it would not be helpful to the public.

Mr. DAVID SMITH. That's correct, Senator.

The CHAIRMAN. This flies in the face of the experience in Massachusetts, where the banking commissioner's monthly guides have

been quite a success. The rates have actually declined as a result of that exposure. How do you square that with your statement?

Mr. DAVID SMITH. We are of the opinion that the time required to accumulate the information, print it, and make it available to consumers, is such a long period of time that the information would, for all intents and purposes, be meaningless and even misleading.

The CHAIRMAN. Well, that has not been their experience.

Mr. DAVID SMITH. That is in Massachusetts?

The CHAIRMAN. Yes.

Mr. DAVID SMITH. I am not quite sure that we could expect the same situation on a Federal basis.

The CHAIRMAN. That was the only State that voted for George McGovern. [Laughter.]

Maybe I should put it the other way: That was the only State that didn't vote for President Nixon. [Laughter.]

Mr. DAVID SMITH. That is where our real reservation lies, Senator, in the time-lapse period and the value that the information would have to the members of the public.

The CHAIRMAN. Mr. James Smith, from the Consumer Bankers, the thrust of your statement seems to be that all Truth-in-Lending litigation is caused by the consumers who are seeking a windfall for a purely technical violation. I am concerned about that, too. I think there has been much too much of that. Yet, the Comptroller has found that 88 percent of all national banks are in violation of the act and that interest overcharges by national banks alone amount to \$30-\$100 million. Even worse, the most common error involved, the most important and fundamental disclosure of all, the annual percentage rate, is the most common error. Doesn't this indicate that much of litigation is the banking industry's fault?

Mr. JAMES SMITH. Well, Senator, as I pointed out, surveys have found that 80 percent of the litigation is, in fact, originated when the consumer goes to an attorney for some other reason, not Truth-in-Lending. Now, the ratios of lack of compliance, we acknowledge, are high, because the effort to comply is relatively new and widespread. There are many banks, though, who do not have the legal staff that, for example, Security Pacific has, or Bank of America, in which to be 100 percent certain. So, I think you will find as the agency, the regulatory agencies, step up their efforts and as more of them are uncovered, you will find a higher percent.

Mr. SCHÖBER. Senator, may I just add to that, that S. 108, I feel, would cure a very substantial proportion of the alleged violation by creditors, including those by national banks. For example, it would provide a quarter percent tolerance for disclosure of APR. Without knowing the exact figures, I would be willing to guess that a very substantial number of national banks who are in technical violation of the annual percentage rate disclosure would not be in violation of S. 108.

The CHAIRMAN. I am inclined to think you're right, and I think it was Mr. Salm who made the point that you can't be precise on this thing, and I think a quarter of a percent would provide a leeway that would change that considerably. That is, an improvement in the act, of course.

Mr. Schober, however, your statement says that a creditor should not be subject to civil liability where he fails to inform the consumer of his 3-day right of rescission.

Mr. SCHOBBER. I beg your pardon?

The CHAIRMAN. It's my understanding your statement says that a creditor should not be subject to civil liability where he fails to inform a consumer of his 3-day right of rescission.

Mr. SCHOBBER. Well, I didn't say precisely that. I did not list rescission as one of the items subject to civil penalty, simply because the consumer has a 3-year period in which to exercise that right.

The CHAIRMAN. So, you think, even though that is one of the most important protections in the act, you think that the time factor—

Mr. SCHOBBER. I think the time factor takes care of it.

I might hasten to add that was put into the testimony with full knowledge that members of the retail industry do not regularly get into rescindable transactions.

But that is our view on it.

The CHAIRMAN. Now, you made a very positive and strong statement criticizing the provision in the bill that provided for FTC enforcement, as I understand it; is that correct?

Mr. SCHOBBER. That is correct.

The CHAIRMAN. I am going to ask Mr. Taffer, who has done a lot of work on this, to follow up on this and question you on it, because he indicates to me that that was a vital trade-off in the bill. Without that, there would be absolute, total consumer opposition, and we would have no prayer of getting any of these simplifications through.

Mr. Taffer, go ahead.

Mr. TAFFER. Mr. Schober, my comment to Senator Proxmire was along these lines; namely, that the relationship which the Federal Trade Commission has is quite different from the relationship that the various bank regulatory agencies have with the banks under their jurisdiction. It is not just a question of numbers—which is 14,000 total, commercial banks—but the fact that the bank regulators have a continuing indepth relationship with the entities under their jurisdiction. That is to say, they regularly examine, and examiners will come in and spend several days going through all of their various transactions. The FTC, as you know, does not have the right and does not have the power to examine any of the creditors under their jurisdiction.

Mr. SCHOBBER. I might add, neither does the Secretary of Agriculture with respect to the Packers and Stockyards Act, and neither does the Civil Aeronautics Board with respect to regulated foreign and domestic air carriers.

Mr. TAFFER. Well, to your knowledge, does either one of those entities, in fact, enforce the Truth-in-Lending Act? Are you aware of any proceedings that have ever brought?

Mr. SCHOBBER. I have no knowledge of that. But you say the FTC does not have the authority to come in and examine, and I very quickly take issue with you there: They have.

Mr. TAFFER. Where is their right to examine?

Mr. FELDMAN. All of the powers delegated to the Federal Trade Commission in the FTC Act are available to them under the Truth-in-Lending Act. And they have the power to issue subpoenas. They regularly investigate creditors' compliance activities. And, in fact, they have never indicated any problem about getting access to information from creditors under their jurisdiction.

In fact, it is not an examination problem at all, since all FTC need to do is write to a creditor or walk into a creditor's place of business and look at its Truth-in-Lending disclosure forms.

Mr. TAFFER. I don't want to belabor my point, but I think what you are saying is, you are talking in terms of a subpoena which is issued pursuant to a specific investigation that they may make perhaps in response to complaints, perhaps in response to other data.

The difference here is that an organization like the Comptroller of the Currency is under a legal obligation to regularly, periodically, maybe every 12 or every 14 months, send a team of examiners in to each one of the institutions under his jurisdiction and conduct an in-depth investigation.

Now, I would submit to you that that is a very significant difference from the type of relationship that the Commission has, and that was the sole point that I wanted to make.

Mr. FELDMAN. If I may just add a footnote to that. A violation of Truth-in-Lending is apparent on the face of the documents involved. FTC has regularly written letters to large numbers of creditors at one time. FTC can and has written a letter to virtually every department store, consumer finance company, and has received back those creditors' forms and on its face FTC is able to tell whether the proper terminology is there and in fact whether the proper calculations are there. There is no need to examine the books and records of the creditor.

Mr. TAFFER. Well, there are—may I add a footnote to your footnote?

Mr. FELDMAN. Certainly.

Mr. TAFFER. There are many violations which are not apparent on the face of the documents, and I think you are aware of several requirements that would not be revealed on the documents. For instance, one of the requirements is that disclosures be made prior to the consummation of the transaction. There are many complaints that are made where the consumer alleges he was not given—all of the blanks were not filled in at the time of disclosure.

Mr. SCHOBBER. There is no requirement at all that blanks be filled in.

Mr. TAFFER. Well, it does require Truth-in-Lending disclosures. I am sure you are aware of many agencies where the consumer alleges that the blanks were not filled in prior to the consummation of the transaction. If they are filled in later, there is no way the FTC is going to know that, looking at the documents. They're going to have to go in-depth into the procedures that that lender uses in general and that were used in that particular instance. So, I think there are situations where you do need to go beyond the face of the document.

Mr. SCHOBBER. They can do that now. This bill would not affect their authority to go in to that creditor where they received a

complaint, go through the administrative process, and put it before an administrative law judge.

What this bill would permit is the FTC staff to come in and do it and say: "OK, we are not going to negotiate unless you agree to \$100,000 civil penalties."

The CHAIRMAN. Well, my time is up. I would like to follow up on that, perhaps, later.

Senator GARN.

Senator GARN. Thank you, Mr. Chairman.

First of all, since we are on the FTC provision, I think most people are aware it was not included in last year's bill, because I insisted that it not be. And there is a trade-off. There are people who want it in, but this bill would have a very rocky road. I have not changed my opinion one bit ever since the night of October 14. If this FTC provision stays in, we may be talking about S. 108 in the 97th Congress.

Let me get to S. 37 before I ask some questions that I would like to. I think this is another perfect example of why we should not stay in session all night the last few days of the session. When I hear that our estimates of cost of overregulation are high, I rather doubt that; I think they are rather low. Take the estimate of cost of some six lines or 60 words in Senator Proxmire's bill, it's estimated that they would cost \$1 billion. That's a wonderful consumer benefit; just \$1 billion in 60 words. Can you imagine what else we did in the last week of that session?

If there is one paragraph that we missed that cost \$1 billion, I don't even want to know. I would be too sad to think what we did on the last night last year.

In any event, I commend Chairman Proxmire for getting on this so rapidly. I wholeheartedly agree with him that that provision should immediately be revoked and should have never seen the light of day.

And I would suggest, Mr. Chairman, that it speaks for itself. We have had adequate testimony, and I would suggest that we report it out of the committee. I see no need for additional talk.

The CHAIRMAN. If the Senator would yield, I agree wholeheartedly with that, and we will certainly do that. We will see if we can get that out rapidly.

Senator GARN. Mr. Evans, prior witnesses have stated today that a lot of the complexities we've talked about are really the fault of the industry, that they have used boilerplate language and that they could do a great of simplification within the current law.

My question to you would be: How much of this is due to State laws?

Mr. EVANS. Well, certainly a lot of the boilerplate, we have to plead guilty of putting in there over the years. It has accumulated, and it was felt to be necessary. We have learned, like everyone else in the last 10 or 11 years, that much of it is not necessary, and I think the creditors themselves believe in eliminating much of it.

But you are absolutely right, when referring to State law. This is the crux of the entire problem here, stemming all the way from Mr. Peters' testimony at the beginning, right on through the testimony of the consumer groups. They confuse the substantive requirements of the contract, which are required by State law, or just

as a matter of making the contract, what should be disclosed up front and what can be of use to the consumer in determining whether or not to enter into that contract.

Let's face it: The consumer gets all the information, anyway. What they are really haggling about is how much should be subject to the penalty and when and where should it be displayed.

State law does require most of the disclosures that we make. So, to put the thing in proper perspective, let's take the example of Mrs. Teeters. She said what do you do about a dispute involving security. And actually, it was treated as a Truth-in-Lending problem. It isn't. The consumer has a security agreement which underlies the transaction. It describes the security. The consumer has rights under the Uniform Commercial Code, either to disavow that security or challenge the sufficiency of the description.

It isn't a Truth-in-Lending matter, and that is where the confusion persists in the opening remarks right on through this entire time. And what we're really talking about is what we want to get up front.

I use the analogy, if I may, just to make one more statement, Congressman Annunzio in his hearings last fall: It's like going out on a highway and observing the speed limit sign. You see a sign that says don't exceed 55 miles per hour. It doesn't even say that; it just says "55." You are not expected to understand or be told in that brief moment what is going to happen if you go 65, 75, 85, or 100, and there are increasing penalties, as you know, ranging from merely speeding tickets to reckless driving—perhaps, if you injure somebody, to a manslaughter charge.

We don't try to educate the consumer in that moment, and credit transactions maybe are not quite that fast but they are very similar to it. We have a brief instant in which we can get the consumer's attention and what must be put up front is what is going to help them the most. The rest of it, he gets.

Senator GARN. Well, my impression is that the previous witnesses were correct, strictly speaking, under the Federal Truth-in-Lending law, there could be a great deal more simplification, but that, I think, was a little unfair to totally blame the industry for State law. It is a very rare thing, in my political philosophy, where I am for preemption of State law. Normally, I am fighting for States' rights in every case.

This is one very rare instance where I think the only answer to this problem is preemption, and that is an awfully difficult conclusion for me to come to, from my basic political philosophy.

But we can change all of this and come up with a form that I would design and think was great, and we're still going to have that conflict of States. And then we will hear testimony coming back and saying, "These guys aren't simplifying like they can under the law."

Mr. EVANS. Could I make one response to that, Mr. Garn?

Senator GARN. Yes.

Mr. EVANS. The less Federal law you have, the less question of preemption you have to deal with. And so, if you only have the requirement of displaying the APR and the finance charge, your preemption problems disappear.

Senator GARN. I agree.

Mr. Feldman, what effect does the overregulation of consumer credit having on small retailers? At least, the information I have gotten is that many of them are simply abandoning their own credit plans; they can't keep up with the complexities and the administration of Truth-in-Lending and, therefore, they are turning more to Master Charge, VISA, bigger companies' handling their credit.

I wish you would comment on that, and also whether you think this is good for the consumer, that small retailers are giving up their own credit plans.

Mr. FELDMAN. Senator Garn, one of the effects of Truth-in-Lending has been to further concentrate the extension of consumer credit in the hands of large creditors. A small businessman cannot comply with this law, whether he is an open end creditor or a closed end creditor, unless he retains a relatively sophisticated lawyer. It is not possible for the small businessman; there are just too many hoops to jump through. I have seen a number of small businessmen, give up their own credit programs. Even a doctor or a dentist has to comply if he arranges for credit by agreement, in more than four installments. The law applies to credit extended by an interior decorator, for example. Anyone who wants to go in business or who is already in business is risking a substantial amount of liability because of the technical nature of the act. What happens is you end up taking third-party credit cards such as bank cards, and I am not suggesting there is anything necessarily wrong with that per se, but it does tend to concentrate who is extending credit. The act makes it virtually impossible for a small creditor in Omaha to get into and maintain his own credit plan. I don't see how that is advantageous for consumers.

Senator GARN. Well, that may have become a very small part of credit granting, but I had a lady talk to me in Salt Lake City a year or two ago. She had been trading with a small grocery store for some 35 years and just put it on the tab, no interest rates, nothing, just "pay me when you can," a rather informal agreement like would only occur in a very small store.

But they had to give up all of that and go to Master Charge and Visa, and then her problem was do I get a Master Charge or a VISA so I can continue to charge? It may be a very small part, but I think it is sad for a lot of consumers who are used to that kind of more informal credit granting where they know their customers, they've known them for years, they shop over and over again.

Mr. FELDMAN. We think the act's effect on small business is very important. We really haven't addressed that issue in this particular instance because, frankly, we have been saying this now for about 4 or 5 years. Small creditors are getting out of the credit granting business, and it is a big problem.

Senator GARN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Feldman, I am very impressed. You are a very bright fellow. It's no wonder. You used to work with the FTC, I understand.

Mr. FELDMAN. That's correct.

The CHAIRMAN. Mr. Feldman, you just made a statement that I think is one of the strongest arguments in favor of this bill. You said the law as it now stands is one with which the small business-

man has great difficulty in complying. One purpose of this bill is to achieve somewhat easier opportunity for the small businessman to comply. You do have the forms where he simply takes the Federal Reserve form and uses that. He is in compliance, and that would make it somewhat easier, I would think, than the present law; isn't that correct?

Mr. FELDMAN. Oh, yes, Mr. Chairman. I think the issuance of model forms would be very helpful.

The CHAIRMAN. So, from that standpoint, the bill does represent an improvement?

Mr. FELDMAN. I think the bill has some very good provisions in it; particularly in the closed end credit area there is some benefit for creditors, and, again, as you mentioned, some help in the Federal preemption area, although not quite what some creditors would like. There are some real benefits there, but not much help for open end creditors, I must say.

The CHAIRMAN. Well, gentlemen, I want to thank you very much. Your testimony has been most useful. You represent the people who have to live with this bill, perhaps more than anybody else. And we want to do our very best to provide legislation that will make it easier for the creditor as well as more useful for the consumer. I think your testimony this morning has made an excellent record in that direction, and I do hope that you can try to get together with your friends, the consumer groups, and work out something to improve the bill.

Thank you very much.

The committee stands adjourned.

[Whereupon, at 12:40 p.m., the hearing was adjourned.]

[Copies of the bills being considered and additional material received for the record follow in the appendix.]

APPENDIX

96TH CONGRESS
1ST SESSION

S. 108

To amend the Truth in Lending Act to facilitate compliance by simplifying the requirements imposed under that Act, to facilitate administrative enforcement of that Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 23 (legislative day, JANUARY 15), 1979

Mr. PROXMIRE (for himself and Mr. STEWART) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend the Truth in Lending Act to facilitate compliance by simplifying the requirements imposed under that Act, to facilitate administrative enforcement of that Act, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Truth in Lending Simpli-
- 4 fication and Reform Act".

II—E●

DEFINITIONS

1

2 SEC. 2. (a) Section 103(f) of the Truth in Lending Act is
3 amended—

4 (1) by striking out the first sentence and inserting
5 in lieu thereof the following: "The term 'creditor'
6 refers only to a person who both (1) regularly extends,
7 whether in connection with loans, sales of property or
8 services, or otherwise, consumer credit which is pay-
9 able by agreement in more than four installments or
10 for which the payment of a finance charge is or may be
11 required; and (2) is the person to whom the debt aris-
12 ing from the consumer credit transaction is initially
13 payable on the face of the evidence of indebtedness or,
14 if there is no such evidence of indebtedness, by agree-
15 ment. Notwithstanding the foregoing, a person who
16 regularly arranges for the extension of consumer credit,
17 which is payable in more than four installments or for
18 which the payment of a finance charge is or may be
19 required, from persons who are not creditors is a credi-
20 tor, and in the case of an open end credit plan involv-
21 ing a credit card the card issuer and any person who
22 honors the credit card and offers a discount which is a
23 finance charge are creditors."; and

24 (2) by redesignating the references to sections
25 127(a)(6), 127(a)(7), 127(a)(8), 127(b)(9), and

1 127(b)(11) in the next succeeding sentence as refer-
2 ences to sections 127(a)(5), 127(a)(6), 127(a)(7),
3 127(b)(8), and 127(b)(10), respectively.

4 (b) The first sentence of section 103(g) of the Truth in
5 Lending Act is amended to read as follows: "The term 'credit
6 sale' refers to any sale in which the seller is a creditor."

7 EXEMPTED TRANSACTIONS

8 SEC. 3. (a) Section 103(h) of the Truth in Lending Act
9 is amended by striking out "household, or agricultural" and
10 inserting in lieu thereof "or household".

11 (b) Section 103 of the Truth in Lending Act is amended
12 by redesignating subsection (s) as subsection (x), and by in-
13 serting a new subsection (s) as follows:

14 "(s) The term 'agricultural purposes' includes the pro-
15 duction, harvest, exhibition, marketing, transportation, proc-
16 essing, or manufacture of agricultural products by a natural
17 person who cultivates, plants, propagates, or nurtures those
18 agricultural products, including but not limited to the acquisi-
19 tion of farmland, real property with a farm residence, and
20 personal property and services used primarily in farming, and
21 the term 'agricultural products' includes agricultural, horti-
22 cultural, viticultural, and dairy products, livestock, wildlife,
23 poultry, bees, forest products, fish and shellfish, and any
24 products thereof, including processed and manufactured prod-

1 ucts, and any and all products raised or produced on farms
2 and any processed or manufactured products thereof.”.

3 (c) Section 104 of the Truth in Lending Act is
4 amended—

5 (1) by amending paragraph (1) to read as follows:

6 “(1) Credit transactions involving extensions of
7 credit primarily for business, commercial, or agricultur-
8 al purposes, or to government or governmental agen-
9 cies or instrumentalities, or to organizations.”;

10 (2) by amending paragraph (3) to read as follows:

11 “(3) Credit transactions, other than those in
12 which a security interest is or will be acquired in real
13 property, or in personal property used or expected to
14 be used as the principal dwelling of the consumer, in
15 which the total amount financed exceeds \$25,000.”;
16 and

17 (3) by striking out paragraph (5).

18 OPEN END CREDIT PLAN

19 SEC. 4. Section 103(i) of the Truth in Lending Act is
20 amended to read as follows:

21 “(i) The term ‘open end credit plan’ means a plan under
22 which the creditor reasonably contemplates repeated transac-
23 tions, which prescribes the terms of such transactions, and
24 which provides for a finance charge which may be computed
25 from time to time on the outstanding unpaid balance. A credit

1 plan which is an open end credit plan within the meaning of
2 the preceding sentence is an open end credit plan even if
3 credit information is verified from time to time.”.

4 MODEL FORMS

5 SEC. 5. (a) Section 105 of the Truth in Lending Act is
6 amended by inserting “(a)” before “The”, and by adding at
7 the end thereof the following:

8 “(b) The Board shall publish model disclosure forms and
9 clauses for common transactions to facilitate compliance with
10 the disclosure requirements of this title and to aid the bor-
11 rower in understanding the transaction by utilizing readily
12 understandable language to simplify the technical nature of
13 the disclosures. In devising such forms, the Board shall con-
14 sider the use by creditors of data processing or similar auto-
15 mated equipment. Nothing in this title may be construed to
16 require a creditor to use any such model form or clause pre-
17 scribed by the Board under this section. A creditor shall be
18 deemed to be in compliance with the disclosure provisions of
19 this title with respect to other than numerical disclosures if
20 the creditor (1) uses any appropriate model form or clause as
21 published by the Board, or (2) uses any such model form or
22 clause and changes it by (A) deleting any information which
23 is not required by this title, or (B) rearranging the format, if
24 in making such deletion or rearranging the format, the credi-

1 tor does not affect the substance, clarity, or meaningful se-
2 quence of the disclosure.

3 “(c) Model disclosure forms and clauses shall be adopted
4 by the Board after notice duly given in the Federal Register
5 and an opportunity for public comment in accordance with
6 section 553 of title 5, United States Code.

7 “(d) Any regulation of the Board, or any amendment or
8 interpretation thereof, requiring any disclosure different from
9 that previously required by this chapter, chapter 4, or chap-
10 ter 5, or regulation of the Board promulgated thereunder
11 shall have an effective date of that October 1 which follows
12 by at least 6 months the date of promulgation, except that
13 the Board may at its discretion take interim action by regula-
14 tion, amendment, or interpretation to lengthen the period of
15 time permitted for creditors to adjust their forms to accom-
16 modate new requirements or shorten the length of time for
17 creditors to make such adjustments when it makes a specific
18 finding that such action is necessary to comply with the find-
19 ings of a court or to prevent unfair or deceptive disclosure
20 practices. Notwithstanding the foregoing, any creditor may
21 comply with any such newly promulgated disclosure require-
22 ments prior to the effective date of the requirements.”.

23 COMPONENTS OF FINANCE CHARGE

24 SEC. 6. (a) Section 106(a) of the Truth in Lending Act
25 is amended by striking out “, including any of the following

1 types of charges which are applicable" and inserting in lieu
2 thereof the following: ". The finance charge does not include
3 charges of a type payable in a comparable cash transaction.
4 Examples of charges which are included in the finance
5 charge include any of the following types of charges which
6 are applicable".

7 (b) Section 106(d) of the Truth in Lending Act is
8 amended by striking out paragraphs (3) and (4).

9 ACCURACY OF ANNUAL PERCENTAGE RATE

10 SEC. 7. (a) Subsection (c) of section 107 of the Truth in
11 Lending Act is amended to read as follows:

12 "(c) The disclosure of an annual percentage rate is accu-
13 rate for the purpose of this title if the rate disclosed is within
14 a tolerance not greater than one-eighth of 1 per centum more
15 or less than the actual rate or rounded to the nearest one-
16 fourth of 1 per centum. The Board may allow a greater toler-
17 ance to simplify compliance where irregular payments are
18 involved."

19 (b) Subsection (e) of section 107 of the Truth in Lending
20 Act is amended by striking out "(c) or".

21 (c) Subsection (f) of section 107 of the Truth in Lending
22 Act is repealed.

23 ADMINISTRATIVE ENFORCEMENT; RESTITUTION

24 SEC. 8. (a) Subsection (c) of section 108 of the Truth in
25 Lending Act is amended to read as follows:

1 “(c) Except to the extent that enforcement of the re-
2 quirements imposed under this title is specifically committed
3 to some other Government agency under subsection (a), the
4 Federal Trade Commission shall enforce such requirements.
5 For the purpose of the exercise by the Federal Trade Com-
6 mission of its functions and powers under the Federal Trade
7 Commission Act, a violation of any requirement imposed
8 under this title by a person subject to the jurisdiction of the
9 Commission shall be deemed an unfair or deceptive act or
10 practice in violation of section 5(a)(1) of the Federal Trade
11 Commission Act. All of the functions and powers of the Fed-
12 eral Trade Commission under the Federal Trade Commission
13 Act are available to the Commission to enforce compliance
14 by any person subject to the jurisdiction of the Commission
15 with the requirements imposed under this title, irrespective of
16 whether that person is engaged in commerce or meets any
17 other jurisdictional tests in the Federal Trade Commission
18 Act, including the power to enforce compliance with the re-
19 quirements imposed under this title in the same manner as if
20 the violation had been a violation of a Federal Trade Com-
21 mission trade regulation rule.”.

22 (b) Section 108 of the Truth in Lending Act is amended
23 by adding at the end thereof the following:

24 “(e)(1) In carrying out its enforcement activities under
25 this section, each agency referred to in subsection (a) or (c),

1 in cases where an annual percentage rate or finance charge
2 was inaccurately disclosed, shall notify the creditor of such
3 disclosure error and is authorized in accordance with the pro-
4 visions of this subsection to require the creditor to make an
5 adjustment to the account of the person to whom credit was
6 extended, to assure that such person will not be required to
7 pay a finance charge in excess of the finance charge actually
8 disclosed or the dollar equivalent of the annual percentage
9 rate actually disclosed, whichever is lower.

10 “(2) Each agency shall require such an adjustment
11 when it determines that such disclosure error resulted from
12 (A) a clear and consistent pattern or practice of violations,
13 (B) gross negligence, or (C) a willful violation which was
14 intended to mislead the person to whom the credit was ex-
15 tended. In the case of other such disclosure errors, each
16 agency may require such an adjustment.

17 “(3) Notwithstanding the above paragraph (2), no ad-
18 justment shall be ordered (A) if it would have a significantly
19 adverse impact upon the safety or soundness of the creditor,
20 but in any such case, the agency may require a partial adjust-
21 ment in an amount which does not have such an impact, (B)
22 if the amount of the adjustment would be less than \$1, except
23 that if more than one year has elapsed since the date of the
24 violation, the agency may require that such amount be paid
25 into the Treasury of the United States, or (C) except where

1 such disclosure error resulted from a willfull violation which
2 was intended to mislead the person to whom credit was ex-
3 tended, in the case of an open-end credit plan, more than two
4 years after the violation, or in the case of any other extension
5 of credit, after the later of (i) the expiration of the life of the
6 credit extension, or (ii) two years after the agreement to
7 extend credit was consummated.

8 “(4)(A) Notwithstanding any other provision of this sec-
9 tion, an adjustment under this subsection may be required by
10 an agency referred to in subsection (a) or (c) only by an order
11 issued in accordance with cease and desist procedures pro-
12 vided by the provision of law referred to in such subsections.

13 “(B) In the case of an agency which is not authorized to
14 conduct cease and desist proceedings, such an order may be
15 issued after an agency hearing on the record conducted at
16 least thirty but not more than sixty days after notice of the
17 alleged violation is served on the creditor. Such a hearing
18 shall be deemed to be a hearing which is subject to the provi-
19 sions of section 8(h) of the Federal Deposit Insurance Act
20 and shall be subject to judicial review as provided therein.

21 “(5) Except as otherwise specifically provided in this
22 subsection and notwithstanding any provision of law referred
23 to in subsection (a) or (c), no agency referred to in subsection
24 (a) or (c) may require a creditor to make dollar adjustments
25 for errors in any requirements under this title.

1 “(6) A creditor shall not be subject to an order to make
2 an adjustment, if within sixty days after discovering a disclo-
3 sure error, whether pursuant to a final written examination
4 report or through the creditor’s own procedures, the creditor
5 notifies the person concerned of the error and adjusts the
6 account so as to assure that such person will not be required
7 to pay a finance charge in excess of the finance charge actu-
8 ally disclosed or the dollar equivalent of the annual percent-
9 age rate actually disclosed, whichever is lower.

10 “(7) The provisions of this subsection do not apply to
11 any loan or extension of credit consummated prior to October
12 28, 1974.”.

13

EFFECT ON OTHER LAWS

14 SEC. 9. Section 111(a) of the Truth in Lending Act is
15 amended to read as follows:

16 “(a)(1) This title does not annul, alter, or affect the laws
17 of any State relating to the disclosure of information in con-
18 nection with credit transactions, except to the extent that
19 those laws are inconsistent with the provisions of this title,
20 and then only to the extent of the inconsistency. The Board
21 shall, upon its own motion or upon the request of any credi-
22 tor, State, or other interested party, submitted in accordance
23 with procedures prescribed in regulations of the Board,
24 determine whether such inconsistencies exist. If the Board
25 determines that a State-required disclosure is inconsistent,

1 creditors located in that State may not make disclosures
2 using the inconsistent term or form, and shall incur no liability
3 ty under the law of that State for a good faith failure to use
4 such term or form, notwithstanding that such determination
5 is subsequently amended, rescinded, or determined by judicial
6 or other authority to be invalid for any reason.

7 “(2) The Board shall, upon its own motion or upon the
8 request of any creditor, State, or other interested party,
9 submitted in accordance with procedures prescribed in regu-
10 lations of the Board, determine whether any disclosure re-
11 quired under the law of any State is substantially the same in
12 meaning as a disclosure required under this title. If the Board
13 determines that a State-required disclosure is substantially
14 the same in meaning as a disclosure required by this title,
15 then creditors located in that State may make such disclosure
16 in compliance with such State law in lieu of the disclosure
17 required by this title, except that the annual percentage rate
18 and finance charge must always be disclosed as required by
19 section 122.”.

20

ANNUAL REPORTS

21 SEC. 10. (a) Section 114 of the Truth in Lending Act is
22 amended by striking out “Not later than January 3 of each
23 year after 1969” and inserting in lieu thereof “Each year”.

1 (b) Section 18(f)(5) of the Federal Trade Commission
2 Act (15 U.S.C. 58a(f)(5)) is amended by striking out "not
3 later than March 15".

4 (c) Section 707 of the Equal Credit Opportunity Act is
5 amended by striking out "Not later than February 1 of each
6 year after 1976" and inserting in lieu thereof "Each year".

7 GENERAL DISCLOSURE REQUIREMENTS

8 SEC. 11. Sections 121 and 122 of the Truth in Lending
9 Act are amended to read as follows:

10 "§ 121. General requirement of disclosure

11 "(a) Subject to subsection (b), a creditor or lessor shall
12 disclose to the person who is obligated on a consumer lease
13 or a consumer credit transaction the information required
14 under this title. In a transaction involving more than one
15 obligor, a creditor or lessor, except in a transaction under
16 section 125, need not disclose to more than one of them if the
17 one given disclosure is a primary obligor.

18 "(b) If a transaction involves one creditor as defined in
19 section 103(f), or one lessor as defined in section 181(3), that
20 creditor or lessor shall make the disclosures. If a transaction
21 involves more than one creditor or lessor, only one creditor
22 or lessor shall be required to make the disclosures. The
23 Board shall by regulation specify which creditor or lessor
24 must make the disclosures.

1 “(c) The Board may provide by regulation that any por-
2 tion of the information required to be disclosed by this title
3 may be given in the form of estimates where the provider of
4 such information is not in a position to know exact informa-
5 tion.

6 “(d) The Board shall determine whether tolerances for
7 numerical disclosures other than the annual percentage rate
8 are necessary to facilitate compliance with this title, and if it
9 determines that such tolerances are necessary to facilitate
10 compliance, it shall by regulation permit disclosures within
11 such tolerances.

12 **“§ 122. Form of disclosure; additional information**

13 “(a) Information required by this title shall be disclosed
14 clearly and conspicuously, in accordance with regulations of
15 the Board. The terms ‘annual percentage rate’ and ‘finance
16 charge’ shall be disclosed more conspicuously than other
17 terms, data, or information provided in connection with a
18 transaction, except information relating to the identity of the
19 creditor. Regulations of the Board need not require that dis-
20 closures pursuant to this title be made in the order set forth
21 in this title and, except as otherwise provided, may permit
22 the use of terminology different from that employed in this
23 title if it conveys substantially the same meaning.

24 “(b) Any creditor may supply additional information or
25 explanation with any disclosures required under chapter 4

1 and, except as provided in section 128(b)(1), under this chap-
2 ter.”.

3

RESCISSION

4 SEC. 12. (a)(1) Subsection (a) of section 125 of the
5 Truth in Lending Act is amended to read as follows:

6 “(a) Except as otherwise provided in this section, in the
7 case of any consumer credit transaction (including opening or
8 increasing the credit limit for an open end credit plan) in
9 which a security interest, including any such interest arising
10 by operation of law, is or will be retained or acquired in any
11 property which is used as the principal dwelling of the person
12 to whom credit is extended, the obligor shall have the right
13 to rescind the transaction until midnight of the third business
14 day following the consummation of the transaction or the de-
15 livery of the information and rescission forms required under
16 this section together with a statement containing the material
17 disclosures required under this title, whichever is later, by
18 notifying the creditor, in accordance with regulations of the
19 Board, of his intention to do so. The creditor shall clearly and
20 conspicuously disclose, in accordance with regulations of the
21 Board, to any obligor in a transaction subject to this section
22 the rights of the obligor under this section. The creditor shall
23 also provide, in accordance with regulations of the Board,
24 appropriate forms for the obligor to exercise his right to re-
25 scind any transaction subject to this section.”.

1 (2) Section 103 of such Act, as amended by section 3(b),
2 is amended by adding at the end thereof the following:

3 “(v) The term ‘material disclosures’ means the disclo-
4 sure, as required by this title, of the annual percentage rate,
5 the method of determining the finance charge and the balance
6 upon which a finance charge will be imposed, the amount of
7 the finance charge, the amount to be financed, the total of
8 payments, the number and amount of payments, and the due
9 dates or periods of payments scheduled to repay the indebted-
10 ness.”.

11 (3) Subsection (b) of section 125 of the Truth in Lending
12 Act is amended by striking out “ten” in the second and final
13 sentences thereof, and inserting in lieu thereof “20”.

14 (4) Subsection (b) of section 125 of the Truth in Lending
15 Act is amended by adding at the end thereof the following
16 new sentence: “The procedures prescribed by this subsection
17 shall apply except when otherwise ordered by a court.”.

18 (5) Subsection (c) of section 125 of the Truth in Lending
19 Act is amended by inserting “information, forms, and” after
20 “whom”.

21 (6) Section 125 of the Truth in Lending Act is amended
22 by striking out subsections (e) and (f) and inserting in lieu
23 thereof the following:

24 “(e) This section does not apply to (1) a residential
25 mortgage transaction as defined in section 103(u); (2) a trans-

1 action which constitutes a refinancing or consolidation (with
2 no new advances) of the principal balance then due and any
3 accrued and unpaid finance charges of an existing extension
4 of credit by the same creditor secured by an interest in the
5 same property; (3) a transaction in which an agency of a
6 State is the creditor; or (4) advances under a preexisting open
7 end credit plan if a security interest has already been re-
8 tained or acquired and such advances are in accordance with
9 a previously established credit limit for that plan.

10 “(f) An obligor’s right of rescission shall expire three
11 years after the date of consummation of the transaction or
12 upon the sale of the property, whichever occurs earlier, not-
13 withstanding the fact that the information and forms required
14 under this section or any other disclosures required under this
15 chapter have not been delivered to the obligor, except that if
16 (1) any agency empowered to enforce the provisions of this
17 title institutes a proceeding to enforce the provisions of this
18 section within three years after the date of consummation of
19 the transaction, (2) such agency finds a violation of section
20 125, and (3) the obligor’s right to rescind is based in whole or
21 in part on any matter involved in such proceeding, then the
22 obligor’s right of rescission shall expire three years after the
23 date of consummation of the transaction or upon the earlier
24 sale of the property, or upon the expiration of one year fol-
25 lowing the conclusion of the proceeding, or any judicial

1 review or period for judicial review thereof, whichever is
2 later.

3 “(g) In any action in which it is determined that a credi-
4 tor has violated this section, in addition to rescission the
5 court may award relief under section 130 for violations of
6 this title not relating to the right to rescind.”.

7 (b) Section 103 of the Truth in Lending Act is amend-
8 ed—

9 (1) by redesignating subsection (t) as subsection
10 (w); and

11 (2) by inserting after subsection (s) the following:

12 “(t) The term ‘dwelling’ means a residential structure or
13 mobile home which contains one to four family housing units,
14 or individual units of condominiums or cooperatives.

15 “(u) The term ‘residential mortgage transaction’ is one
16 in which a mortgage, deed of trust, purchase money security
17 interest arising under an installment sales contract, or equiv-
18 alent consensual security interest is created or retained
19 against the consumer’s dwelling to finance the acquisition or
20 initial construction of that dwelling.”.

21 OPEN END DISCLOSURES

22 SEC. 13. (a) Section 127(a) of the Truth in Lending Act
23 is amended—

1 (1) by adding at the end of paragraph (1) thereof
2 the following new sentence: "If no such time period is
3 provided, the creditor shall disclose that fact.";

4 (2) by striking out paragraphs (5), and redesignat-
5 ing paragraphs (6), (7), and (8) as paragraphs (5), (6),
6 and (7), respectively; and

7 (3) by amending redesignated paragraphs (5) and
8 (6) to read as follows:

9 “(5) Identification of other charges which may be
10 imposed as part of the plan, and their method of com-
11 putation, in accordance with regulations of the Board.

12 “(6) In cases where the credit is or will be se-
13 cured, a statement that a security interest has been or
14 will be taken in (A) the property purchased as part of
15 the credit transaction, or (B) property not purchased as
16 part of the credit transaction identified by item or
17 type.”.

18 (b) Section 127(b)(2) of such Act is amended to read as
19 follows:

20 “(2) The amount and date of each extension of
21 credit during the period, and a brief identification, on
22 or accompanying the statement of each extension of
23 credit in a form prescribed by the Board sufficient to
24 enable the obligor either to identify the transaction or
25 to relate it to copies of sales vouchers or similar instru-

1 ments previously furnished, except that a creditor's
2 failure to disclose such information in accordance with
3 this paragraph shall not be deemed a failure to comply
4 with this chapter or this title if (A) the creditor main-
5 tains procedures reasonably adapted to procure and
6 provide such information, and (B) the creditor responds
7 to and treats any inquiry for clarification or documen-
8 tation as a billing error and an erroneously billed
9 amount under section 161. In lieu of complying with
10 the foregoing requirements, in the case of any transac-
11 tion in which the creditor and seller are the same
12 person, as defined by the Board, and that person's
13 open end plan has fewer than 15,000 accounts, the
14 creditor may elect to provide only the amount and date
15 of each extension of credit during the period and the
16 seller's name and location where the transaction took
17 place if (A) a brief identification of the transaction has
18 been previously furnished, and (B) the creditor re-
19 sponds to and treats any inquiry for clarification or
20 documentation as a billing error and an erroneously
21 billed amount under section 161."

22 (c) Section 127(b) of the Truth in Lending Act is
23 amended by striking out paragraph (7) and by redesignating
24 paragraphs (8), (9), (10), and (11) as paragraphs (7), (8), (9),
25 and (10), respectively.

1 (d) Redesignated paragraph (7) of section 127(a) of the
2 Truth in Lending Act is amended by striking out "each of
3 two billing cycles per year, at semiannual intervals" and in-
4 serting in lieu thereof "one billing cycle per calendar year, at
5 intervals of not less than six months or more than eighteen
6 months".

7 (e) Subsection (c) of section 127 of the Truth in Lending
8 Act is repealed.

9 (f) Section 143 of the Truth in Lending Act is amended
10 by striking out "or the appropriate rate determined under
11 section 127(a)(5)".

12 (g) Section 161(a) of the Truth in Lending Act is
13 amended by redesignating the references to sections
14 127(b)(11) and 127(a)(8) as references to sections 127(b)(10)
15 and 127(a)(7), respectively.

16 OTHER THAN OPEN END DISCLOSURES

17 SEC. 14. (a) Subsection (a) of section 128 of the Truth
18 in Lending Act is amended to read as follows:

19 "(a) For each consumer credit transaction other than
20 under an open end consumer credit plan, the creditor shall
21 disclose each of the following items, to the extent applicable:

22 "(1) The identity of the creditor required to make
23 disclosure.

24 "(2) The 'amount financed', using that term,
25 which shall be the amount of credit of which the con-

1 sumer has actual use. This amount shall be computed
2 as follows, but the computations need not be disclosed
3 and shall not be disclosed with the disclosures con-
4 spicuously segregated in accordance with subsection
5 (b)(1):

6 “(A) take the principal amount of the loan or
7 the cash price less downpayment and trade-in;

8 “(B) add any charges which are not part of
9 the finance charge or of the principal amount of
10 the loan and which are financed by the consumer,
11 including the cost of any items excluded from the
12 finance charge pursuant to section 106;

13 “(C) subtract any charges which are part of
14 the finance charge but which will be paid by the
15 consumer at the time of the consummation of the
16 transaction, or have been withheld from the pro-
17 ceeds of the credit; and

18 “(D) subtract any required deposit balance,
19 in accordance with regulations of the Board.

20 “(3) The ‘finance charge’, not itemized, using that
21 term.

22 “(4) The finance charge expressed as an ‘annual
23 percentage rate’, using that term. This shall not be re-
24 quired if the amount financed does not exceed \$75 and
25 the finance charge does not exceed \$5, or if the

1 amount financed exceeds \$75 and the finance charge
2 does not exceed \$7.50.

3 “(5) The sum of the amount financed, any re-
4 quired deposit balance, and the finance charge, which
5 shall be termed the ‘total of payments’.

6 “(6) The number, amount, and due dates or
7 period of payments scheduled to repay the total of
8 payments.

9 “(7) In a sale of property or services in which the
10 seller is the creditor required to disclose pursuant to
11 section 121(b), the ‘total sale price’, using that term,
12 which shall be the total of the cash price of the prop-
13 erty or services, additional charges, and the finance
14 charge.

15 “(8) Descriptive explanations of the terms
16 ‘amount financed’, ‘finance charge’, ‘annual percentage
17 rate’, ‘total of payments’, and ‘total sale price’ as spec-
18 ified by the Board. The descriptive explanation of ‘total
19 sale price’ shall include reference to the amount of the
20 downpayment.

21 “(9) Where the credit is secured, a statement that
22 a security interest has been taken in (A) the property
23 which is purchased as part of the credit transaction, or
24 (B) property not purchased as part of the credit trans-
25 action identified by item or type.

1 “(10) Any dollar charge or percentage amount
2 which may be imposed by a creditor solely on account
3 of a late payment, other than a deferral or extension
4 charge.

5 “(11) A statement indicating whether or not the
6 consumer is entitled to a rebate or credit, or is subject
7 to a penalty, if the obligation is refinanced or prepaid
8 in full pursuant to acceleration or otherwise.

9 “(12) A statement that the consumer should refer
10 to the appropriate contract document for any informa-
11 tion it provides about nonpayment, default, the right to
12 accelerate the maturity of the debt, and prepayment
13 rebates and penalties.

14 “(13) In any residential mortgage transaction, a
15 statement whether a subsequent purchaser or assignee
16 of the consumer may assume the debt obligation on its
17 original terms and conditions.”.

18 (b) Section 128(b) of such Act is amended to read as
19 follows:

20 “(b) (1) Except as otherwise provided in this chapter,
21 the disclosures required under subsection (a) shall be made
22 before the credit is extended. Except for the disclosures re-
23 quired by subsection (a)(1) of this section, all disclosures re-
24 quired under subsection (a) and any disclosure provided for in
25 subsection (b), (c), or (d) of section 106 shall be conspicuously

1 segregated from all other terms, data, or information pro-
2 vided in connection with a transaction, including any compu-
3 tations or itemization.

4 “(2) In the case of a residential mortgage transaction,
5 as defined in section 103(u), which is also subject to the Real
6 Estate Settlement Procedures Act, good faith estimates of
7 the disclosures required under subsection (a) shall be made in
8 accordance with regulations of the Board under section
9 121(c) before the credit is extended, or shall be delivered or
10 placed in the mail not later than three business days after the
11 creditor receives the consumer’s written application, which-
12 ever is earlier. If the disclosure statement furnished within
13 three days of the written application contains an annual per-
14 centage rate which is subsequently rendered inaccurate
15 within the meaning of section 107(c), the creditor shall fur-
16 nish another statement at the time of settlement or
17 consummation.”.

18 (c) Section 128(c) of the Truth in Lending Act is
19 amended—

20 (1) by inserting “(1)” after “(c)”;

21 (2) by striking out “deferred payment price” and
22 inserting in lieu thereof “total sale price”; and

23 (3) by adding at the end thereof the following new
24 paragraph:

1 “(2) If a creditor receives a request for a loan by mail or
2 telephone without personal solicitation and the terms of fi-
3 nancing, including the annual percentage rate for representa-
4 tive amounts of credit, are set forth in the creditor’s printed
5 material distributed to the public, or in the contract of loan or
6 other printed material delivered to the obligor, then the dis-
7 closures required under subsection (a) may be made at any
8 time not later than the date the first payment is due.”.

9 (d) (1) Section 129 of the Truth in Lending Act is re-
10 pealed.

11 (2) The table of sections of chapter 2 of the Truth in
12 Lending Act is amended by striking out item 129 and insert-
13 ing in lieu thereof:

“129. [Repealed].”.

14 (e) (1) Section 126 of the Truth in Lending Act is re-
15 pealed.

16 (2) The table of sections of chapter 2 of the Truth in
17 Lending Act is amended by striking out item 126 and insert-
18 ing in lieu thereof:

“126. [Repealed].”.

19 (f) (1) The table of sections of chapter 2 of the Truth in
20 Lending Act is amended by striking out item 128 and insert-
21 ing in lieu thereof:

“128. Consumer credit not under open end credit plans.”.

1 (2) The caption of section 128 of such Act is amended
2 by striking out "Sales" and inserting in lieu thereof "Con-
3 sumer credit".

4 CIVIL LIABILITY

5 SEC. 15. (a) Section 130 of the Truth in Lending Act is
6 amended—

7 (1) by striking out "in such action" in subsection
8 (a)(2)(B) and inserting in lieu thereof "under this sub-
9 paragraph in any class action or series of class actions
10 arising out of the same failure to comply by the same
11 creditor";

12 (2) in subsection (a)(3), by inserting "or in any
13 action in which a person is determined to have a right
14 of rescission under section 125" after "liability";

15 (3) by amending subsections (b), (c), and (d) to
16 read as follows:

17 "(b) A creditor or assignee has no liability under this
18 section or section 108 or section 112 for any failure to
19 comply with any requirement imposed under this chapter or
20 chapter 5, if within sixty days after discovering an error,
21 whether pursuant to a final written examination report or
22 notice issued under section 108(e)(1) or through the creditor's
23 or assignee's own procedures, and prior to the institution of
24 an action under this section or the receipt of written notice of
25 the error from the obligor, the creditor or assignee notifies

1 the person concerned of the error and makes whatever ad-
2 justments in the appropriate account are necessary to assure
3 that the person will not be required to pay an amount in
4 excess of the charge actually disclosed, or the dollar equiva-
5 lent of the annual percentage rate actually disclosed, which-
6 ever is lower.

7 “(c) A creditor or assignee may not be held liable in any
8 action brought under this section or section 125 for a viola-
9 tion of this title if the creditor or assignee shows by a prepon-
10 derance of evidence that the violation was not intentional and
11 resulted from a bona fide error notwithstanding the mainte-
12 nance of procedures reasonably adapted to avoid any such
13 error. Examples of bona fide error include, but are not limit-
14 ed to, clerical, calculation, computer malfunction and pro-
15 graming, and printing errors, but an error of legal judgment
16 with respect to a person’s obligations under this title is not a
17 bona fide error.

18 “(d) When there are multiple obligors in a consumer
19 credit transaction or consumer lease, there shall be no more
20 than one recovery of damages under subsection (a)(2) for a
21 violation of this title.”;

22 (4) by adding at the end of subsection (e) the fol-
23 lowing new sentence: “This subsection does not bar a
24 person from asserting a violation of this title in an
25 action to collect the debt which was brought more than

1 one year from the date of the occurrence of the viola-
2 tion as a matter of defense by recoupment or set-off in
3 such action, except as otherwise provided by State
4 law.”;

5 (5) by inserting “, section 108(b), section 108(c),
6 section 108(e),” after “this section” in subsection (f);

7 (6) by adding the following new sentence at the
8 end of subsection (g): “This subsection does not bar
9 any remedy permitted by section 125.”; and

10 (7) by amending subsection (h) to read as follows:

11 “(h) A person may not take any action to offset any
12 amount for which a creditor or assignee is potentially liable
13 to such person under subsection (a)(2) against any amount
14 owing by such person, unless the amount of the creditor’s or
15 assignee’s liability under this title has been determined by
16 judgment of a court of competent jurisdiction in an action of
17 which such person was a party. This subsection does not bar
18 a consumer then in default on the obligation from asserting a
19 violation of this title as an original action, or as a defense or
20 counterclaim to an action to collect amounts owed by the
21 consumer brought by a person liable under this title.”.

22 (b) Section 130(a) of the Truth in Lending Act is
23 amended—

1 (1) by inserting “, including any requirement
2 under section 125,” immediately after “this chapter”;
3 and

4 (2) by adding at the end thereof the following: “In
5 connection with the disclosures referred to in section
6 127, a creditor shall have a liability determined under
7 paragraph (2) only for failing to comply with the re-
8 quirements of section 125 or of section 127(a) or of
9 paragraph (4), (5), (6), (7), (8), (9), or (10) of section
10 127(b) or for failing to comply with disclosure require-
11 ments under State law for any term which the Board
12 has determined to be substantially the same in meaning
13 under section 111(a)(2) as any of the terms referred to
14 in section 127(a) or any of those paragraphs of section
15 127(b). In connection with the disclosures referred to
16 in section 128, a creditor shall have a liability deter-
17 mined under paragraph (2) only for failing to comply
18 with the requirements of section 125 or of paragraph
19 (2), (3), (4), (5), (6), or (9) of section 128(a), or for fail-
20 ing to comply with disclosure requirements under State
21 law for any term which the Board has determined to
22 be substantially the same in meaning under section
23 111(a)(2) as any of the terms referred to in any of
24 those paragraphs of section 128(a). With respect to
25 any failure to make disclosures required under this

1 chapter or chapter 4 or 5 of this title, liability shall be
2 imposed only upon the creditor required to make dis-
3 closure, except as provided in section 131.”.

4 **LIABILITY OF ASSIGNEES**

5 **SEC. 16.** (a) Section 131 of the Truth in Lending Act is
6 amended to read as follows:

7 **“§ 131. Liability of assignees**

8 “(a) Except as otherwise specifically provided in this
9 title, any civil action for a violation of this title or proceeding
10 under section 108 which may be brought against a creditor
11 may be maintained against any assignee of that creditor only
12 if the violation for which such action or proceeding is brought
13 is apparent on the face of the disclosure statement, except
14 where the assignment was involuntary. For the purpose of
15 this section, violations apparent on the face of the disclosure
16 statement include, but are not limited to (1) disclosure which
17 can be determined to be incomplete or inaccurate from the
18 face of the disclosure statement or other documents assigned,
19 or (2) disclosures not made in the terminology required by
20 this title.

21 “(b) Except as provided in section 125(c), in any action
22 or proceeding by or against any subsequent assignee of the
23 original creditor without knowledge to the contrary by the
24 assignee when he acquires the obligation, written acknowl-
25 edgement of receipt by a person to whom a statement is re-

1 quired to be given pursuant to this title shall be conclusive
2 proof of the delivery thereof and, except as provided in sub-
3 section (a), of compliance with this chapter. This section does
4 not affect the rights of the obligor in any action against the
5 original creditor.

6 “(c) Any consumer who has the right to rescind a trans-
7 action under section 125 may rescind the transaction as
8 against any assignee of the obligation, regardless of whether
9 such assignee is a creditor under this title.”

10 (b) Section 115 of the Truth in Lending Act is repealed.

11 (c) (1) The table of sections of chapter 1 of the Truth in
12 Lending Act is amended by striking out item 115 and insert-
13 ing in lieu thereof:

“115. [Repealed].”

14 (2) The table of sections of chapter 2 of the Truth in
15 Lending Act is amended by striking out item 131 and insert-
16 ing in lieu thereof:

“131. Liability of assignees.”

17 **LIABILITY OF CREDIT CARDHOLDER**

18 **SEC. 17.** Section 133(a) of the Truth in Lending Act is
19 amended to read as follows:

20 “(a) A cardholder shall be liable for the unauthorized
21 use of a credit card only if the card is an accepted credit card,
22 the liability is not in excess of \$50, the card issuer gives
23 adequate notice to the cardholder of the potential liability,

1 the card issuer has provided the cardholder with a description
2 of a means by which the card issuer may be notified of loss or
3 theft of the card, which description may be provided on the
4 face or reverse side of the statement required by section
5 127(b) or on a separate notice accompanying such statement,
6 the unauthorized use occurs before the card issuer has been
7 notified that an unauthorized use of the credit card has oc-
8 curred or may occur as the result of loss, theft, or otherwise,
9 and the card issuer has provided a method whereby the user
10 of such card can be identified as the person authorized to use
11 it. For the purpose of this section, a card issuer has been
12 notified when such steps as may be reasonably required in
13 the ordinary course of business to provide the card issuer
14 with the pertinent information have been taken, whether or
15 not any particular officer, employee, or agent of the card
16 issuer does in fact receive such information.”.

17 DISSEMINATION OF ANNUAL PERCENTAGE RATES

18 SEC. 18. (a) Chapter 2 of the Truth in Lending Act is
19 amended by adding at the end thereof the following new sec-
20 tion:

21 “§ 136. Dissemination of annual percentage rates

22 “(a) The Board shall collect, publish, and disseminate to
23 the public, on a demonstration basis in a number of standard
24 metropolitan statistical areas to be determined by the Board,
25 the annual percentage rates charged for representative types

1 of nonsale credit by creditors in such areas. For the purpose
2 of this section, the Board is authorized to require creditors in
3 such areas to furnish information necessary for the Board to
4 collect, publish, and disseminate such information.

5 “(b) The Board is authorized to enter into contracts or
6 other arrangements with appropriate persons, organizations,
7 or State agencies to carry out its functions under subsection
8 (a) and to furnish financial assistance in support thereof.”.

9 (b) The analysis of such chapter is amended by adding
10 at the end thereof the following new item:

“136. Dissemination of annual percentage rates.”.

11 CREDIT ADVERTISING

12 SEC. 19. (a) Section 143 of the Truth in Lending Act is
13 amended to read as follows:

14 **“§143. Advertising of open end credit plans**

15 “No advertisement to aid, promote, or assist directly or
16 indirectly the extension of consumer credit under an open end
17 credit plan may set forth any of the specific terms of that
18 plan unless it also clearly and conspicuously sets forth all of
19 the following items:

20 “(1) Any minimum or fixed amount which could
21 be imposed.

22 “(2) Where periodic rates may be used to com-
23 pute the finance charge, the periodic rates expressed as
24 annual percentage rates.

1 “(3) Any other term that the Board may by regu-
2 lation require to be disclosed.”.

3 (b) Section 144 of the Truth in Lending Act is amended
4 by striking out paragraphs (1) through (4) of subsection (d)
5 thereof, and inserting in lieu thereof the following:

6 “(1) the downpayment, if any.

7 “(2) the terms of repayment.

8 “(3) the rate of the finance charge expressed as
9 an annual percentage rate.”.

10 CORRECTION OF BILLING ERRORS

11 SEC. 20. (a) Section 161(b) of the Truth in Lending Act
12 is amended—

13 (1) by redesignating paragraph (6) as paragraph
14 (7); and

15 (2) by inserting after paragraph (5) the following:

16 “(6) Failure to transmit the statement required
17 under section 127(b) of this Act to the last address of
18 the obligor which has been disclosed to the creditor,
19 unless that address was furnished less than twenty
20 days before the end of the billing cycle for which the
21 statement is required.”.

22 (b) Section 161(c) of such Act is amended by inserting
23 after “account” the first time it is used a comma and the
24 following: “which may include finance charges on amounts in
25 dispute,”.

1 CREDIT BALANCES

2 SEC. 21. (a) Section 165 of the Truth in Lending Act is
3 amended to read as follows:

4 **"§165. Treatment of credit balances**

5 "Whenever a credit balance in excess of \$1 is created in
6 connection with a consumer credit transaction through (1)
7 transmittal of funds to a creditor in excess of the total bal-
8 ance due on an account; (2) rebates of unearned finance
9 charges or insurance premiums; or (3) amounts otherwise
10 owed to or held for the benefit of an obligor, the creditor
11 shall:

12 "(A) credit the amount of the credit balance to
13 the consumer's account;

14 "(B) refund any part of the amount of the remain-
15 ing credit balance, upon request of the consumer; and

16 "(C) make a good faith effort to refund to the
17 consumer by cash, check, or money order any part of
18 the amount of the credit balance remaining in the ac-
19 count for more than six months, but no further action
20 is required in any case where the consumer's current
21 location is not known by the creditor and cannot be
22 traced through the consumer's last known address or
23 telephone number".

1 (b) The table of sections of chapter 4 of the Truth in
2 Lending Act is amended by striking out item 165 and insert-
3 ing in lieu thereof:

"165. Treatment of credit balances."

4 GOVERNMENT EXEMPTION

5 SEC. 22. (a) Section 113 of the Truth in Lending Act is
6 amended to read as follows:

7 "**§ 113. Effect on governmental agencies**

8 "(a) Any department or agency of the United States
9 which administers a credit program in which it extends, in-
10 sures, or guarantees consumer credit and in which it provides
11 instruments to a creditor which contain any disclosures re-
12 quired by this title shall, prior to the issuance or continued
13 use of such instruments, consult with the Board to assure
14 that such instruments comply with this title.

15 "(b) No civil or criminal penalty provided under this title
16 for any violation thereof may be imposed upon the United
17 States or any agency thereof, or upon any State or political
18 subdivision thereof, or any agency of any State or political
19 subdivision.

20 "(c) A creditor participating in a credit program admin-
21 istered, insured, or guaranteed by any department or agency
22 of the United States shall not be held liable for a civil or
23 criminal penalty under this title where the violation results

1 from the use of an instrument required by any such depart-
2 ment or agency.

3 “(d) A creditor participating in a credit program admin-
4 istered, insured, or guaranteed by any department or agency
5 of the United States shall not be held liable for a civil or
6 criminal penalty under the laws of any State (other than laws
7 determined under section 111 to be inconsistent with this
8 title) for any technical or procedural failure, such as a failure
9 to use a specific form, to make information available at a
10 specific place on an instrument, or to use a specific typeface,
11 as required by State law, which is caused by the use of an
12 instrument required to be used by such department or
13 agency.”.

14 (b) The table of sections of chapter 1 of the Truth in
15 Lending Act is amended by striking out item 113 and insert-
16 ing in lieu thereof:

“113. Effect on governmental agencies.”.

17 ORAL DISCLOSURES

18 SEC. 23. (a) Section 146 of the Truth in Lending Act is
19 amended to read as follows:

20 “§146. Use of annual percentage rate in oral disclosures

21 “In responding orally to any inquiry about the cost of
22 credit, a creditor, regardless of the method used to compute
23 finance charges, shall state rates only in terms of the annual
24 percentage rate, except that in the case of an open end credit

1 plan, the periodic rate also may be stated and, in the case of
2 an other than open end credit plan where a major component
3 of the finance charge consists of interest computed at a
4 simple annual rate, the simple annual rate also may be
5 stated. The Board may, by regulation, modify the require-
6 ments of this section or provide an exception from this sec-
7 tion for a transaction or class of transactions for which the
8 creditor cannot determine in advance the applicable annual
9 percentage rate.”.

10 (b) The table of sections of chapter 3 of the Truth in
11 Lending Act is amended by striking out item 146 and insert-
12 ing in lieu thereof:

“146. Use of annual percentage rate in oral disclosures.”.

13

EFFECTIVE DATE

14 SEC. 24. The amendments made by this Act shall take
15 effect upon the expiration of two years after the date of en-
16 actment of this Act. All regulations, forms, and clauses re-
17 quired to be prescribed under the amendments made by this
18 Act shall be promulgated at least one year prior to such ef-
19 fective date. Notwithstanding the foregoing, any creditor may
20 comply with the amendments made by this Act, in accord-
21 ance with the regulations, forms, and clauses prescribed by
22 the Board, prior to such effective date.

96TH CONGRESS
1ST SESSION

S. 37

To repeal a section of Public Law 95-630.

IN THE SENATE OF THE UNITED STATES

JANUARY 15, 1979

Mr. PROXMIRE introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To repeal a section of Public Law 95-630.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That section 1104(d) of Public Law 95-630 is repealed.

NATIONAL ASSOCIATION OF MUTUAL SAVINGS BANKS

NEW YORK, N.Y. 10017

February 2, 1979



Cable Address:
Savings, New York

WASHINGTON OFFICE
FRANKLIN L. WRIGHT, JR.
 ASSISTANT DIRECTOR—HOUSING COUNSEL
 SUITE 200
 1709 NEW YORK AVENUE, N.W.
 WASHINGTON, D.C. 20006
 TEL. 202: 785-8144

The Honorable William Proxmire
 Chairman
 Committee on Banking, Housing and Urban Affairs
 United States Senate
 Washington, D. C. 20510

Dear Mr. Chairman:

The National Association of Mutual Savings Banks, on behalf of its member institutions, would like to take this opportunity to express its support for S. 108, the "Truth in Lending Simplification and Reform Act," and we respectfully request that this letter be included in the record of the committee's hearings on this legislation. The savings bank industry endorsed S. 2802 during the 95th Congress, and we are gratified that you and Senator Stewart have introduced in this Congress legislation intended to simplify the Truth in Lending Act (TIL).

This Association was the first financial trade association to endorse TIL, but we have since become increasingly concerned that the complexity of the legislation and its implementing regulations have frustrated - rather than facilitated - informed consumer shopping. Moreover, it has become increasingly difficult for lenders to comply with the regulatory requirements. Accordingly, we are pleased that S. 108 would significantly improve the administration of TIL from the point of view of real estate lenders.

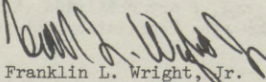
We are particularly pleased with the sections of the bill which provide for "model forms" to be issued by the Federal Reserve Board for voluntary use by creditors, the inclusion of provisions permitting the Board to establish tolerances for numerical disclosures, and retention of the "real estate" exemption presently contained in Section 106(e) of TIL. In addition, the bill's provision setting October 1 of each year as the effective date for any regulation or interpretation of the Board which requires new or different disclosures should serve to lessen the costs of compliance and revision of forms.

In expressing our general support for S. 108, we would, however, like to call to the committee's attention two areas of the bill which deserve additional scrutiny. First, we note Section 8(b) would bar restitution only in cases where the amount of adjustment is less than one dollar. Given the administrative costs that may be involved in adjusting a large number of customer accounts, a modest increase in the minimum amount certainly seems justified.

Second, we suggest the committee reexamine Section 23. This provision would require creditors making oral responses to inquiries about the cost of credit to state rates only in terms of the Annual Percentage Rate (though in certain instances, the simple annual rate could also be stated). While the bill authorizes the Federal Reserve Board to make exceptions to this requirement, we are concerned that absent the granting of an administrative exemption, the statutory requirement will cause lenders to avoid answering telephone inquiries regarding current mortgage rates. Such reluctance on the part of lenders frustrates both the consumer and the goal of TIL. Homebuyers seeking mortgage funds generally begin their shopping process on the telephone and the effect of Section 23 would materially hamper this shopping process. Just consider the plight of someone moving to a new community. Before the move, that individual must rely exclusively on the telephone to get information. We believe that the bill's provisions requiring real estate lenders to furnish a disclosure statement shortly after receipt of a written application adequately protects consumers, and we thus urge the committee to grant a specific exception from Section 23 in the case of inquiries concerning residential mortgages.

Finally, we understand the committee may, in the near future, consider S. 37, a bill to repeal a section of Public Law 95-630. This bill would repeal the section of the new financial records privacy protection law that requires financial institutions to send out notices to all customers advising them of their rights under the law. We strongly support S. 37 and urge its prompt consideration and enactment.

Sincerely yours,



Franklin L. Wright, Jr.
Assistant Director-Housing Counsel



NATIONAL ASSOCIATION OF REALTORS

Donald I. Hovde, President

Albert E. Abrahams, Senior Vice President, Government Affairs
 Gil Thurm, Vice President & Legislative Counsel, Government Affairs

Government Affairs Department
 925 15th Street, N.W., Washington, D.C. 20005
 Telephone 202 637-6800

STATEMENT OF THE NATIONAL ASSOCIATION OF REALTORS®

SUBMITTED TO THE SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

ON S. 108

A BILL TO AMEND THE TRUTH-IN-LENDING ACT

FEBRUARY 2, 1979

The NATIONAL ASSOCIATION OF REALTORS® is comprised of more than 1,700 local boards of REALTORS® located in every state of the Union, the District of Columbia, and Puerto Rico. Combined membership of these boards is over 680,000 persons actively engaged in sales, brokerage, management, counseling, and appraisal of residential, commercial, industrial, recreational and farm real estate. The activities of the Association's membership involve all aspects of the real estate industry, such as mortgage banking, home building, and commercial and residential real estate development, including development, construction and sales of condominiums. The Association has the largest membership of any association in the United States concerned with all facets of the real estate industry. Principal officers are: Donald I. Hovde, President, Madison, Wisconsin; and Ralph W. Pritchard, Vice President, Oak Brook, Illinois. Headquarters of the Association are at 430 North Michigan Avenue, Chicago, Illinois 60611. The Washington office is located at 925 15th Street N.W., Washington, D.C. 20005. Telephone 202/637-6800.

REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.

The NATIONAL ASSOCIATION OF REALTORS® appreciates the opportunity to submit the following statement regarding S. 108, a bill to amend the Truth-in-Lending ("TIL") Act. We request that this statement be included in the hearing record.

The NATIONAL ASSOCIATION OF REALTORS® is comprised of more than 1,700 local boards of REALTORS® located in every state of the Union, the District of Columbia, and Puerto Rico. Combined membership of these boards is over 680,000 persons actively engaged in sales, brokerage, management, counseling, and appraisal of residential, commercial, industrial, recreational and farm real estate. The activities of the Association's membership involve all aspects of the real estate industry, such as mortgage banking, home building, and commercial and residential real estate development, including development, construction and sales of condominiums. The Association has the largest membership of any association in the United States concerned with all facets of the real estate industry.

I. GENERAL COMMENTS

The NATIONAL ASSOCIATION OF REALTORS® applauds efforts aimed at simplifying the TIL Act, eliminating the ambiguities in the Act and in Regulation Z, and providing the consumer with useful and understandable credit information. While we are certain that the original drafters intended to attain these laudable goals, and we feel the Act has been effective in raising the public's awareness of credit costs, the shortcomings of the Act are causing innumerable problems for consumers, creditors, businessmen, the federal courts, and enforcement agencies.

The need for TIL simplification has been widely recognized. It is most important that disclosures supply the consumer with accurate credit cost information which is timely and easily understandable. When this information is available, the consumer is in a position to shop for credit and make informed decisions regarding consumer credit.

As a practical matter, however, the consumer's dilemma has not been alleviated

under the current law. It appears that TIL disclosure forms are so cluttered with non-essential information as to be unintelligible to most consumers and, therefore, of little practical value.

The principal factors contributing to the plight of consumers are the timing of the TIL disclosure and the amount and quality for credit information disclosed to the consumer. The problem commonly referred to as "information overload" appears to stem from the initial drafting of the Act when Congress shifted its emphasis from disclosure of credit costs to disclosure of credit terms. The inclusion of these credit terms in the TIL disclosure statement has generated much of the consumer's confusion and, not surprisingly, often resulted in litigation. Since credit terms do not supply cost information directly affecting the consumer's ability to shop for credit, we support simplification proposals which would limit TIL disclosures to key credit costs. This approach will provide an immediate remedy to the current "information overload" on TIL disclosure forms and will enable consumers to shop intelligently for credit costs and determine if they can afford the cost of credit. The Association supports legislative proposals designed to streamline the TIL Act which will have the attendant effect of clearly defining the responsibilities of creditors, reducing the volume of private litigation, simplifying the regulation writing procedure, and making the enforcement efforts of the regulatory agencies more efficient and productive.

II. TIL AND THE REAL ESTATE INDUSTRY

Of primary importance in any discussion of the impact TIL has had on the real estate industry, is the understanding that the need for TIL did not stem from abusive practices in first loans on real estate. First mortgage loans were then, as they are now, highly regulated by the Federal and State financial institution regulatory agencies.

In order to place in perspective the question of TIL simplification as it

affects the real estate industry, it is interesting to note that when this legislation was originally considered by Congress, it was the House that decided to include first real estate mortgage transactions under TIL. The Senate bill, however, completely excluded first mortgages. As a result, the Conference Committee considered both versions and decided to accept the House bill. Both the House and Conference Committee apparently did not realize or chose to ignore the fact that FHA and VA loans were already wholly controlled by the federal agencies as to forms, interest rates, etc. On the other hand, the Senate obviously realized that the record did not reveal abuses in first real estate mortgage transactions, the only significant abuses being in second liens.

It is further interesting to note, regarding restrictions on the advertisement of credit terms in connection with the sale of residential real estate, that Congress, in Section 144(b) of the TIL Act provided that the "credit advertising provisions" did not "apply to advertisements of residential real estate except to the extent that the Board of Governors may by regulation require." In its zeal, the Federal Reserve Board drafted Regulation Z, to include residential real estate advertising even though there was no direct Congressional mandate to do so. Therefore, by administrative fiat, REALTORS®, lenders, builders and others providing mortgage credit were required to join the rest of the merchants and creditors who must comply with the advertising provisions.

The credit advertising provisions of Regulation Z have resulted in substantial annual costs to REALTORS® for compliance. While we agree that the public does benefit from reliable credit cost disclosure through advertising, the responsible question which must be raised is whether the benefits justify the cost--especially in an area where reported abuses have been a rare occurrence. Furthermore, these costs take on an added significance when it is understood that TIL compliance costs, like any other costs of doing business, are ultimately passed along, in some degree, to the consumer.

Elimination of the Present Exemption with Respect to Finance Charge and Total of Payments

The NATIONAL ASSOCIATION OF REALTORS® strongly opposes Section 14 of S. 108 which would alter the present law by requiring the disclosure of the total finance charge and the total of payments in the sale of a dwelling. Presently, there is no such requirement to disclose these figures. These additions are directly contrary to the bill's thrust of eliminating and simplifying the required disclosures. If, in the words of Senator Proxmire, under the present law "we are requiring more information to be disclosed than the average consumer is willing or able to study," the addition of two new disclosures under S. 108 only exasperates this problem.

The significance of the total finance charge and total of payments for real estate transactions and other types of closed end credit transactions is not the same. Most significantly, relatively few real estate loans run to maturity since the average life of a real estate mortgage is between 8 and 12 years. Therefore, it would be misleading and normally premature to state the totals of the finance charge and the payments based on a hypothetical payment period of 20 or 30 years. Unlike some forms of credit, interest on a real estate loan is charged only for the period the principal is outstanding.

In addition, the investment implications of real estate transactions and the tax consequences of a mortgage are factors which weigh heavily in a consumer's decision to buy a home, but which would not be reflected in a gross figure for the finance charge or the total of payments. Thus, the impact of inflation and changing land values, and the resulting effect on the future worth of a property are factors which have a substantive impact on the significance of the total amount paid. Additionally, the most significant factor impacting on the total finance charge and not reflected in this figure would be the sizable income tax deductions on mortgage interest.

While deductions for mortgage interest would significantly alter the total effective amount of the finance charge, to disclose this factor over the life of

the loan would be highly complicated and technical to assess. Therefore, even if the loan were to run to maturity, which is highly unusual, the total dollar amount of the finance charge, while it is easily calculable, would be largely meaningless.

Since the total finance charge does not generally range widely among mortgage lenders, we suggest that this figure will not be particularly useful as a shopping tool, would be misleading, and will simply add an unnecessary new disclosure item to the TIL form for residential real estate transactions.

Consequently, we strongly urge the retention of the present exemption from the required disclosures of the finance charge and the total of payments in the sale of a dwelling. This could be accomplished by amending sections 14(a)(3) and 14(a)(5) of S. 108 by adding the phrase "Except in the case of a loan secured by a first lien on a dwelling and made to finance the purchase of that dwelling."

Possibility of Incorporation of these Requirements in Credit Advertising

A further serious concern which the NATIONAL ASSOCIATION OF REALTORS® has regarding S. 108 is the likelihood that, if passed, the Federal Reserve Board will add the new requirements to disclose the finance charge and the total payments in the sale of a dwelling, to its credit advertising provisions. Under present law, the Board is precluded from requiring the disclosure of these terms in its credit advertising regulations because these terms are not required, by statute, to be disclosed in the sale of a dwelling.

Beyond the added compliance costs, a most serious problem is that these added requirements in credit advertising will discourage, and may even prevent, credit advertising in residential real estate transactions. We believe that this would be contrary to the goal expressed in the analysis of the bill, that S. 108 intends to "loosen current restrictions on credit advertising in the hope of enhancing creditor competition." In our judgement, just the opposite will result in credit advertising in sales of residential real estate.

In practical terms, what the new advertising requirements would mandate is that a builder of a home, for example, if he also offers and advertises the availa-

bility of credit to purchase the home, would have to disclose the total of payments a purchaser would have to make over a 20 or 30 year period as opposed to the much smaller cash price. This larger figure in itself is not, as explained above, very significant since it does not take into account the tax savings and other factors. Most significantly, since the inevitable quick reading of a newspaper advertisement would adversely compare the "total payments" house against the identical "cash price" house, this requirement would have a psychologically detrimental effect on the consumer. In this circumstance, we believe that the home seller will avoid credit advertising and the consumer will receive less information than before, thus reversing the intent of these amendments.

We believe the Congress sought to distinguish credit advertising for residential real estate when it admonished in Section 144 of the TIL Act that "the provisions of this section do not apply to advertisements of residential real estate except to the extent that the Board may by regulation require." However, this Congressional distinction has been lost on the Federal Reserve Board which has mechanically applied the advertising requirements for dishwashers, appliances, automobiles and other depreciable items across the board to credit advertising for residential real estate.

Despite the arguments presented to the contrary, if the Committee adopts Section 14 and eliminates the current disclosure exemptions for residential real estate transactions, it is our sincere hope that the Committee will instruct the Board that it does not intend for the Board to extend these new requirements to credit advertising. By so instructing the Board, we believe the Committee will ensure that credit advertising is not further restricted in a manner detrimental to the consumer.

STATEMENT
OF
NATIONAL ASSOCIATION OF CREDIT MANAGEMENT

We appreciate the opportunity to present our views on the elimination of agricultural credit from the Truth-in-Lending Act as proposed in S. 108. We wholeheartedly support the exemption of agricultural credit from the provisions of the Truth-in-Lending Act.

Today's farmer, in addition to being informed and knowledgeable in agricultural production, must also be an able financial manager. Credit is a tool which farmers use as readily as any other facility in managing their farming operations. Consequently, the vast majority of farm operators has become as skilled as business persons in obtaining credit to finance production as well as increase efficiency and reduce farming costs. They understand the terms and charges for credit obtained from financial institutions and agricultural supply and equipment merchants.

As in business and commercial credit, terms and charges for credit vary depending upon the loan, product or service the farmer needs. Bank loans are granted for land, equipment, livestock, yearly production requirements and building construction. Credit for the purchases of products and services include: seed, agricultural chemicals, feed, farm equipment, machinery parts and repairs,

petroleum products, tools, etc. Multiple sources of credit provide a competitive climate, enabling the farmer to 'shop' for the best terms and charges from banks, production credit associations, and individual product and service suppliers.

However, since the enactment of the Truth-in-Lending Act in 1969, financial institutions and the agri-business supply and service industry have incurred considerable expense in revising and re-printing contracts, re-programming entire record-keeping systems, and keeping track of the changes and numerous interpretations of the Act by the Congress, the Federal Reserve Board, and the Courts. Legal costs have been significant for both large and small businesses; these increased costs are passed on to the farmer in the form of higher finance charges and prices for goods and services. They also serve to exacerbate inflationary forces in agricultural production. If agricultural credit is eliminated from the Act, the administrative and legal costs to business will be reduced and the farmer will be spared unnecessary higher finance costs and prices for goods and services employed in the agricultural production process.

The Congress, subsequent to the enactment of the Truth-in-Lending Act, has demonstrated the clear intent to exclude agricultural credit from being covered by consumer protection laws. The Fair Credit Reporting Act, the Fair Credit Billing Act, the Consumer Leasing Act and the Fair Debt Collection Practices Act do not include credit for agricultural purposes. Consistent with this treatment, the Federal Reserve Board, in promulgating Regulation 'B' to implement the Equal Credit Opportunity Act, specifically included agricultural credit as a kind of business credit. The Board has also questioned whether, "an act designed to protect consumers should include a type of credit that is related primarily to business or commercial activity." In the same document questioning the inclusion of agricultural credit in the Truth-in-Lending Act, the Board cited numerous complexities in Regulation 'Z' - the implementing regulation-- due to the inclusion of agricultural credit in the Act. Therefore, the Truth-in-Lending Act should exclude agricultural credit in conformity with these laws that demonstrate no need to protect agricultural enterprises as if they were consumers rather than producers.

We believe that S. 108 accomplishes this without in

any manner jeopardizing the rights of farmers when they obtain credit for primarily personal, family or household purposes. The farmer and his family will still be fully protected with respect to the purchase on credit of, for example, a television receiver, dryer, washing machine, family automobile, or any other item or service intended for personal, family or household use but not used in the agricultural production process.

In conclusion, we commend the authors of S. 108 and urge its enactment with the provisions exempting agricultural credit from the Truth-in-Lending Act.

Statement of the NATIONAL HOME FURNISHINGS ASSOCIATION

presented to the

Committee on Banking, Housing and Urban Affairs

The United States Senate

on amendments

To the Truth in Lending Act

This statement is submitted on behalf of the National Home Furnishings Association (NHFA) for the Committee's consideration and inclusion in the hearing record in connection with the Truth in Lending Simplification hearing conducted February 2, 1979.

NHFA is a national trade association with voluntary membership of over 13,000 independent home furnishings retail stores located in all 50 states and the District of Columbia. Members of the association are primarily family-owned, single store operations with typical sales of approximately \$400,000 per year.

Nearly all NHFA members have credit plans to assist their customers in making home furnishings purchases. Most use manual or mechanical accounting and billing systems, and only a small percentage of NHFA members have a sufficient number of accounts to justify the investment in sophisticated electronic computers or data processing equipment.

NHFA research studies indicate that, of the approximately \$13 billion of home furnishings products sold each year, over 70% of the sales volume involves some form of consumer credit.

For these reasons, NHFA has had a long-standing interest in federal consumer credit legislation. As you may know, NHFA worked quite closely with former Rep. Leonor Sullivan (D-MO) in connection with the drafting of the original Truth in Lending Act in the late 1960's.

Despite this active interest, it seems smaller retailers are the last group to be considered when it comes to any form of simplification. Contrary to 'popular belief' among consumer groups, retailers are not out to strip innocent consumers of their rights. We simply want the law to be easily understood by everyone. NHFA is submitting this statement to indicate the general areas of our concern with the present operation of the Truth in Lending Act. We hope that the Committee will keep these comments in mind when deciding what form of simplification should be passed.

In the decade that has followed Congressional enactment of the Consumer Credit Protection Act, the omnibus bill which includes the Truth in Lending Act, home furnishings retailers have been subjected to a bewildering series of legislative amendments, regulatory modifications, official staff interpretations and unofficial staff letters. Federal credit law has expanded far beyond its original concept of financial disclosures to the point that it now requires disclosures of virtually all terms and conditions surrounding a credit plan. Home furnishings retailers have hardly had time to adjust to one new federal law before the Congress has added a new set of requirements on top of the old.

NHFA therefore welcomes Congressional consideration of Truth in Lending "simplification" and hopes that the Committee will act quickly to streamline the complex and often confusing requirements of federal law and regulations. NHFA believes that meaningful simplification can take place without materially reducing the volume of disclosures now provided to consumers, and the Association believes that this type of simplification will help both home furnishings retailers and the consumers they serve.

Among the areas of simplification which NHFA suggests:

-- A statutory requirement that the Federal Reserve Board issue optional disclosure forms and contract clauses to assist home furnishings retailers in their compliance with Truth in Lending.

-- A requirement that statutory and regulatory modifications which necessitate disclosure forms changes should have a single, annual effective date.

-- Modification of civil liability provisions in Truth in Lending to provide for monetary penalties only where a home furnishings retailer has erred in making "material disclosures."

-- Revision of the advertising provisions of the law to encourage more credit advertising by home furnishings retailers.

-- Modification of areas of the statute -- for example, the provisions dealing with descriptive billing under open-end credit plans -- where the Federal Reserve Board has, by regulation, overly complicated Congressional intent -- and the definition of "cash discount."

-- The exclusion in S.108 of further Federal Trade Commission enforcement.

-- The exclusion in S.108 of the definition of "open-end" credit with regards to "reasonably contemplates repeated transactions."

In order for the Committee to more fully understand these points, NHFA would offer these explanatory comments:

Model Forms -- When the Truth in Lending Act was originally enacted, the Federal Reserve Board issued a series of sample disclosure forms as part of Regulation Z. As the regulation was subsequently changed, however, the Board failed to also modify the forms so that while they still exist in the public domain, they are virtually useless. The Board has now developed a

new series of proposed forms (examples were shown to the Committee on February 2), but the Board looks to this Committee and the Congress to provide a statutory authority for their issuance.

NHFA strongly urges the Congress to mandate the issuance of such forms, which home furnishings retailers would be free to utilize without fear of exposure to governmental regulation or private enforcement actions. The Board should be required to keep these forms up to date as statutory and regulatory changes dictate.

Model forms would eliminate many problems of non-compliance. For example, the majority of our retailers conduct their business in small towns. With the complexity of federal and state disclosures, retailers are advised to seek the assistance of a lawyer when revising or updating credit contracts. In most cases, the local lawyer is not familiar with the complexity or any new changes to Truth in Lending and is of little assistance to the honest businessman who wants to be in full compliance. Model forms would alleviate the dilemma most small businessmen face by clarifying what exactly is expected and required on their credit contracts in a manner they can understand.

The forms should not be for mandatory use by home furnishings retailers, but should be made similar to the model credit application issued in connection with the Equal Credit Opportunity Act. While creditors are encouraged to use those forms, they are not required to do so, and may make modifications to suit individual methods of operation or to further comply with state laws.

Annual Forms Revision -- Another important modification which would simplify Truth in Lending compliance is the addition to the statute of a provision which states that all future statutory and regulatory changes which necessitate changes in disclosure forms shall become effective on one

date each year. The provision should also state that regulations be issued at least six months in advance of this annual forms revision date in order to give home furnishings retailers and others adequate lead time to alter forms and change operational methods.

In this manner, retailers will be assured that they may safely order a quantity of disclosure forms without having to face a regulatory change within a few months.

Additionally, an annual forms revision date will assist the Federal Reserve Board in keeping their model documents current and will assure that distribution of such forms can be made well in advance of compliance deadlines.

Modification of Civil Liability -- As indicated, the Truth in Lending Act and Regulation Z have become so complex and confusing that many home furnishings retailers -- particularly those located in small cities with no resident consumer credit specialist -- can't possibly keep abreast of all the changes.

When retailers are forced to file suit against a delinquent customer for failure to pay his account, the retailer is often confronted with a counterclaim which alleges a Truth in Lending Act violation. Courts have no leeway to judge the severity of the retailer's infraction, and thus the twice-the-finance charge penalty must regrettably prevail. The retailer in these cases also carries the burden of paying lawyer fees. He frequently comes away bitter since his case was never tried on the merits he presented, but rather on a Truth in Lending violation.

NHFA urges the Congress to add a definition within Truth in Lending to spell out those disclosures which are "material disclosures" under the law, which definition would include those factors that control the cost of credit to the customer. Civil penalties would then be limited to failure to make

those "material disclosures" in an accurate manner.

Retailers would still be required to make other disclosures as mandated by statute and Regulation Z, but minor violations would not clog the courts with hundreds of cases over technical points.

Revision of Advertising Provisions -- Since the adoption of the Truth in Lending Act, NHFA has been keenly aware of the restrictions contained in the advertising provisions of the law. The Association believes that the long term effect of these provisions has been to decrease the volume of specific credit advertising since the law provides that virtually all terms of a credit plan must be disclosed if certain "trigger" terms are utilized. The result has been a shift away from specific credit advertising to more general credit advertising which does not facilitate consumer comparison of credit costs.

To permit retailers to advertise credit terms in a more practical manner, NHFA urges that advertising provisions be modified to (1) provide the same "trigger" terms for both open-end and closed-end credit, and (2) prohibit the Federal Reserve Board from requiring the disclosure in advertising of terms not specifically designated in the advertising sections of the statute.

Reduction of Regulatory "Overkill" -- In many sections of the Truth in Lending Act, the Federal Reserve Board is given specific authority to issue regulations to implement Congressional intent. The Board has taken this directive and, in several instances, has issued regulations which far expand the language of the Act.

For example, the Congress required open-end creditors to provide consumers with a "brief description" of the goods and services purchased as a part of the monthly statement required under Section 127 of the Act.

Regulation Z has expanded this requirement into several confusing pages of regulatory gobbledegook.

The "bottom line" of this over-regulation is that third-party creditors, such as bank credit card issuers, are allowed to make one type of "brief description," multi-department creditors (such as department stores) are permitted to make another kind of "brief description," and specialty retailers like home furnishings outlets are required to make yet another type of "brief description."

NHFA would be pleased to furnish a detailed explanation of this problem, but for purposes of this statement, let us simply say that it is the association's suggestion that a "brief description" of goods and services purchased be required only where such identification was not provided to the consumer at time of purchase. Alternatively, failure to provide such description (and the billing equipment utilized by many home furnishings retailers is incapable of providing the kind of description which the Board by regulation has imposed) should be treated as a "billing error" which triggers the response mechanism of the Fair Credit Billing Act.

Along these lines of confusion also comes the problem of cash discounts. Our understanding of Section 226.4 (i) of Regulation Z is that there must have been an oversight on the part of Congress in developing this section. As this section reads, cash discounts may only be made if the retailer carries some form of a credit card. If the retailer does not carry or offer a credit card, he cannot offer a cash discount. To alleviate this discrimination against non-card offering retailers, NHFA would like to see the Committee amend this section of T-i-L to include non-card offering retailers.

Exclusion in S.108 of further FTC Enforcement -- NHFA unequivocally opposes the proposed amendment to section 108 (c) giving the Federal Trade Commission authority to further enforce Truth in Lending as if it were a

FTC Trade Regulation Rule. The FTC has more than enough power now and we see no benefit to the consumer or the retailer to pass such an amendment. It has already been pointed out to this Committee that no other enforcement agency has similar authority to impose such civil penalties.

If such authority is given to the FTC to seek civil penalties in this manner, it will be a direct strike against small business. For example, the authority would carry a penalty of up to \$10,000 per violation per day. While such a penalty would hurt a large company, it would literally kill a smaller store. We do not believe it was the intent of Congress to put small companies out of business, and therefore strongly urge the Committee to exclude the further FTC enforcement section from the Senate bill S.108.

Reverification and the "open-end" Credit Definition -- NHFA supports the proposal to add a second sentence to section 103 (i) permitting creditors to reverify credit information from time to time regarding open-end accounts. Since many open-end accounts remain unused during portions of the year, retailers should have the right to go back and check creditworthiness. On big ticket purchases, our retailers may wish to check to make sure that payments have regularly been made to the customer's various accounts and to also make sure that the customer has no outstanding debts unpaid. Although our members are in "business" they do not want to see customers get in over-their-head with too many payments.

NHFA, however, strongly opposes the first sentence of section 103 (i) defining "open-end" credit with the wording "reasonably contemplates repeated transactions." Any businessman who wants to stay in business for any length of time contemplates repeated transactions! In actual practice retailers who offer open-end credit actively solicit their customers to use their accounts again. There has been no demonstration of need for this

proposal and NHFA urges the Committee to exclude the definition of "reasonably contemplates repeated transaction."

In summary, NHFA supports Truth in Lending Simplification, as did everyone who testified before the Committee on February 2. The question no one seems to agree on is "what is simplification?" The proposals presented in this statement do not deprive the consumer's right to receive important credit information in any way. In fact, our proposals will help consumers by making it easier for retailers to transmit credit information to the consumer in a more understandable fashion.

NHFA looks to this Committee for responsible legislation. Our views reflect those of small businessmen throughout the United States, many of whom are constituents of this Committee. Truth in Lending Simplification is needed now, even though if a bill was passed tomorrow retailers would not see any relief for two years. But even so, it is an important piece of legislation. We hope when the final decision to change the present law faces this Committee, that you put yourself in our place for a moment and consider what impact each portion of this legislation will have on small business.

National Home Furnishings Association
1025 Vermont Avenue, N.W.
Suite 1002
Washington, D.C. 20005
202/783-2622

Statement of the National Home Furnishings Association
Presented to the
Senate Committee on Banking, Housing and Urban Affairs
on
Truth in Lending Simplification and Reform Act

This statement is submitted on behalf of the National Home Furnishings Association (NHFA) for the Committee's consideration and inclusion in the hearing record in connection with the Committee's consideration of S. 37, a bill to repeal Section 1104(d) of Public Law 95-630.

NHFA is a national trade association with voluntary membership of over 13,000 independent home furnishings retail stores located in all fifty states. Members of the association are primarily family-owned, single store operations with typical sales of approximately \$400,000 per year.

Many of these stores issue their own credit cards, and thus are "financial institutions" according to the definition contained in the Right to Financial Privacy Act of 1978 (Title XI of Public Law 95-630).

Under that Act, "financial institutions" and the customers they serve are protected from unwarranted governmental intrusion into the private records kept by those institutions. The Act provides criteria under which customers are protected and under which they may authorize governmental access to their financial records.

Section 1104(d) of the Act, however, requires all financial institutions to "promptly notify all of their customers of their rights" under the Act. The Federal Reserve Board is given regulatory authority to prescribe the statement of customers' rights which must be sent, but there is no explicit regulatory authority given to the Board to define what constitutes "prompt notification".

If Section 1104(d) is read literally, it would impose tremendous cost burdens on home furnishings retailers and other "financial institutions" without a resulting benefit to customers. Shortly after the effective date of this Act (March 9, 1979), consumers would receive a flood of customers' rights statements, even though a very small percentage of them would ever have occasion to exercise those rights, and even though the time for exercising those rights, for most, would be sometime in the distant future. At the time of a governmental inquiry into their financial records, the customers would receive no notice of their rights, as Section 1104(d) is presently drafted.

S. 37 would solve this problem by repealing the notification section in its entirety. Because of the tremendous costs involved in identifying "all" customers (active as well as inactive accounts) and in preparing and mailing the customer notification, NHFA strongly supports passage of S. 37, and further urges the Committee to act promptly on its adoption, since the effective date of Section 1104(d) is perilously close.

NHFA recognizes, however, that customers need to be protected against unwarranted investigation of their records, and while the

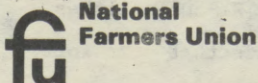
Association believes that the remainder of Title XI accomplishes this purpose, the Congress may nevertheless decide that some sort of notification to customers about their rights may, at some time, be desirable.

Therefore, if S. 37 is not to be adopted in its present form, NHFA urges that Section 1104(d) be rewritten to provide that a statement of customers' rights be provided (1) by the governmental agency seeking access to the financial records, and (2) at the time access is sought. The Federal Reserve Board could retain regulatory authority to prescribe the form of the notice.

Requiring the governmental agency seeking the records is a logical compromise since, under other provisions of Title XI, the agency is required to provide notice to the customer in the form of a copy of the administrative subpoena, judicial subpoena, search warrant or formal written request that certain records are being sought. A statement of customers' rights could easily accompany one of those required notices.

NHFA believes that prompt action on S. 37 will relieve home furnishings retailers and other "financial institutions" of a costly requirement which will not concurrently benefit customers.

National Home Furnishings Association
1025 Vermont Avenue, N.W.
Suite 1002
Washington, D.C. 20005
202/783-2622



February 6, 1979

LEGISLATIVE MESSAGE

TO: Chairman William Proxmire and Members of the
Senate Committee on Banking, Housing, and Urban Affairs

FROM: Reuben L. Johnson - Director of Legislative Services

SUBJECT: National Farmers Union Opposition to Removing
Agricultural Credit from the Truth-in-Lending Act

On behalf of the members, delegates to our most recent convention, President Tony Dechant and the National Board of Directors of National Farmers Union, we urge your opposition to any effort to remove agricultural credit from the Truth-in-Lending Act.

We understand that the record of hearing on February 2 may contain misleading information concerning the attitude of farm organizations on this matter.

Farmers Union leaders devoted much time and effort to winning approval of Congress for a Truth-in-Lending Act. During the formation of the Act, we strongly supported inclusion of agricultural credit. In spite of the continuing pressure to exempt agriculture, we continue to believe that the law should apply to agriculture. Moreover, it is not consistent, in our view, with the intent of Congress to exempt any type of credit from the provisions of the Act. Once there is a chipping away at the applicability of the Truth-in-Lending Act by removal of the agricultural credit provisions, the way is open for further exemptions as creditors would be encouraged to press for other exemptions at the expense and to the detriment of all consumers.

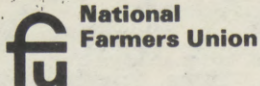
Our convention delegates "supported vigorous enforcement of consumer protection laws including the Truth-in-Lending Act."

The Board of Directors of National Farmers Union has recently reaffirmed our commitment to maintaining agricultural credit as part of the Truth-in-Lending Act. I am attaching to this statement a copy of the Board of Directors' statement relative to this issue.

We are disappointed to see the agricultural credit institutions, such as the Farm Credit Administration, supporting this exemption. This attitude will weaken the confidence of the farm community in such institutions if farm borrowers are exempted from the protection afforded other borrowers under provisions of the Truth-in-Lending law.

On the basis of our continued discussions with farmers, action by our delegate body and the Board of Directors, Farmers Union is strongly convinced that Truth-in-Lending, under present procedures, is of real benefit to farmers. Therefore, we urge you and leaders of the Senate to maintain the disclosure requirements in a fully active and effective state as they apply to agriculture.

RLJ:bg
Attachment



Statement by

NATIONAL FARMERS UNION
BOARD OF DIRECTORS

Concerning

TRUTH-IN-LENDING

National Farmers Union devoted much time to winning approval in Congress for a Truth-in-Lending Act. During the formation of the Act, we strongly supported inclusion of agricultural credit.

In spite of the continuing pressures to exempt agriculture, we continue to believe that the law should apply to agriculture regardless of the amount of loans.

Moreover, in our view, it is inconsistent with Congressional intent to exempt any type of credit from the provisions of the Act.

We urge the Senate and House Committees on Banking, Finance, and Urban Affairs to retain the disclosure requirements in a fully active and effective state as they apply to agriculture.

* * *

COMMENTS ON SENATE BILL S.2802

The purpose of the Truth in Lending Act was to enable consumers to make meaningful choices concerning shopping for credit. Since the passage of the Act, consumers have become increasingly more sophisticated in their understanding of credit terms, and the use of credit cost information. The Simplification Act being proposed by the Senate (S.2802) goes beyond simplification to such extremes as to negate the purpose of the Act.

The Senate's Simplification Act takes the "Truth" out of lending by de-emphasizing the most important disclosures of the Act concerning information necessary to compare the cost of credit. S.2802 not only de-emphasizes highly important disclosures such as itemization of the finance charge but deletes component disclosures from the requirements of the Act. In order to shop for credit, one must be aware of the credit's cost.

The Truth in Lending Act has not only been beneficial to an aid in shopping for credit, but makes the consumer aware of all obligations connected with the application for credit such as: insurance premiums, security interest, default and late charges and numerous other charges which are included

in the total amount to be paid back. An extremely good example of the necessity for the Act and the presently required disclosures is the new Small Loan Act of Missouri which finance companies are trying to have passed. At the 1977 hearings of the Missouri House of Representatives, the major finance companies in the State of Missouri and the finance industry admitted jacking up insurance for credit life insurance to the point where they received up to 2 dollars per hundred premiums on credit life insurance. They indicated that this "subterfuge" was necessitated by the alleged low interest rates in the State of Missouri for small loans. Changing Regulation Z as proposed would indeed provide finance companies an easy vehicle for hiding interest rates. Such a result is clearly contravention of the purpose proposed by the Truth in Lending Act.

The revising of the Act and Regulation Z as proposed by Congress and the Board would be disastrous to the consumer. Prior to the institution of the Act the consumer was unable to shop for credit even if they wanted to, since, there were not any requirements as to what creditors had to disclose other than numerous disjointed state statutes. Further, there were numerous methods for computation of finance charges without disclosure of the means of computation making it impossible

for the consumer to compare what he would have to pay for the same credit at different establishments.

Further, we believe any attempt to revise the Act and Regulation Z by deleting provisions such as the components of the finance charge, rebate method of computation, if there is a rebate, would only provide unscrupulous creditors with a vehicle to boost the price of credit without any explanation or relief for consumers. Also, the proposed changes would eliminate the itemization of fees. We feel this would, also, be detrimental. Regulation Z provides that official fees are not part of the finance charge; however, without itemization there isn't any way to tell what state agency the fees are being paid to, if any. We have often found that what some creditors denote as official fees is a sham and actually another vehicle for collecting an additional finance charge.

We, having some expertise in the area of consumer law and protection have several suggestions in regard to the proposed revisions of the Truth in Lending Act.

1. That a program for the education of the consumer in regard to the Truth in Lending Act be instituted by Federal Reserve Board.

2. That Section 1640(h) of 15 U.S.C.A. 1601 et seq. be clarified. Creditors have, consistently, since the passage

of § 1640(h), tried to use the section to deny the consumer the right to use the Truth in Lending Act as a defense to the creditor's actions. Further, creditors interpret § 1640(h) to mean that one must bring his Truth in Lending claim affirmatively and gain a judgment before the one year statute of limitation runs. This contention is erroneous, since, there is a common law right to recoupment since any Truth in Lending claim arises out of the original contract the consumer-debtor has a right to use Truth in Lending defensively, even after the statute of limitation has run, as long as, the creditor's cause of action lies.

3. That, if it is determined that the rebate provision will be changed, creditors should be required to disclose whether or not there will be no rebate, partial rebate, full rebate, but in any event the method of computation of said rebate should not be disposed of.

4. That if the Board promulgated forms which are in conformity to the Truth in Lending Act it should not totally immunize the creditor; however, there should be a rebuttable presumption that the creditor has complied with the Act. Before any new forms are drawn up, a cross-section of the consumer population should be able to view them. This would

determine whether or not the forms are reflecting the general consumer population's need for information in shopping for credit, and also will help give some empirical evidence to prove, or disprove the creditors' contentions that consumers do not shop for credit.

5. That all parties who extend or arrange for credit in a transaction should be disclosed, otherwise, there isn't any vehicle for consumer complaint. Further, if a dispute arises in regard to the transaction, the consumer is without a remedy, since, he is unaware of the creditor(s)' identity.

6. That the class action provision of the Truth in Lending Act should be revised to bring the dollar amount of the penalty to \$1,000,000.00 or 1% of the net worth of the corporation. This change would help to make the larger firms comply with the Act without endangering the rights and damages of the individual. As it presently states the \$500,000.00 maximum is not effecting our larger corporations; therefore, they do not have any incentive to comply with the Act.

We are aware of some of the technical defects in the Act; however, if the Act was not meeting its purpose, creditors would not be lobbying for the drastic gutting of the Statute and Regulations promulgated in regard to it. Under no circumstances, do we agree that any amendment to the Act or

change in Regulations should lessen the presently required disclosures. On behalf of our clients and the general consumer population, we strongly oppose the proposed dilution of the Act, and we ask your assistance in making our voices heard.

Comments by

Gayle C. Williams
Attorney at Law
Consumer Unit
For Legal Services of
Eastern Missouri, Inc.

NEW YORK STATE BAR ASSOCIATION

Preliminary Statement

The Committee on Federal Legislation has been following the progress of proposals to reform the Truth in Lending Act in the 95th Congress. The Committee intends to follow such proposals in the 96th Congress, and, if appropriate, to offer its views on key issues to the Congressional committees considering them.

It would be premature for this Committee to express views on Truth in Lending reform prior to studying the bills which will be introduced in the new Congress that convened on January 15, 1979. This report is limited, therefore, to a summary of the major issues under consideration and does not take any position or make any recommendations.

REPORT OF THE COMMITTEE ON
FEDERAL LEGISLATION ON PROPOSED
AMENDMENTS TO THE TRUTH IN
LENDING ACT (Pub. L. No. 90-321)*

The Truth in Lending Act ("TILA") (15 U.S.C. § 1601 et seq. (1978)) became law in May 1968, effective July 1, 1969. Among the reasons that prompted Congress to enact this first important piece of federal consumer protection legislation were the following:

- to provide meaningful disclosure regarding the terms and conditions of consumer credit;
- to enhance comparison shopping for consumer credit; and
- to preclude the uninformed use of credit by consumers.

TILA requires banks, finance companies and retailers which extend credit to set forth certain details of the elements of the cost of obtaining consumer credit, provides consumers with procedures for contesting disputed bills and establishes a consumer's right both to rescind a credit transaction under certain circumstances and to seek damages from a creditor who does not fully comply with TILA.

* This report is based on the work of the Subcommittee on the Truth in Lending Act, Bruce W. Bean, Chairman, John P. Cuddahy and Daniel Stack. Neither the Executive Committee nor the New York State Bar Association as a whole has taken any position on the matters discussed in this report.

After nearly ten years of experience with TILA, pressure for its reform has arisen from both consumer groups and creditors. During the 95th Congress the Subcommittees on Consumer Affairs of both the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs considered amendments to TILA. Among the problems which these amendments addressed were the following:

1. The difficulties which creditors face in attempting to comply with TILA. TILA is said to be a "nightmare" for creditors because of (i) the complexity of Regulation Z (12 C.F.R. Part 226), the Federal Reserve Board regulation which implements TILA, (ii) the approximately 1,500 Federal Reserve Board interpretations of Regulation Z and (iii) the many court opinions affecting TILA and Regulation Z.

2. Apparent abuses associated with credit-related insurance, including (i) the almost 100 percent selection of such insurance by consumers, despite its "voluntary" nature and its high cost and (ii) the exclusion of such insurance costs from the term "finance charge" in TILA mandated disclosures. Despite the typically high cost of this insurance, which is said to account for as much as one-third of the credit-related profit of certain creditors, these insurance premiums need not be included in the disclosed "finance charge" if the consumer signs a statement acknowledging that he has been informed that such insurance is not required by the creditor (see 12 C.F.R. § 226.4(a)(5)(1974)).

3. An "information overload" said to be suffered by consumers which is caused by both the number of required disclosure items and the complexity of such disclosures necessitated by the effort to comply with Regulation Z and its numerous interpretations. The "information overload" phenomenon, based upon the belief that consumers cannot absorb all of the credit cost elements now

disclosed pursuant to TILA, has been cited by creditors as a rationale for reducing the total number of credit-related costs which must be disclosed.

4. The very large number of federal lawsuits which have been brought based upon TILA. It has been estimated that as many as 10,000 TILA actions have been filed on behalf of consumers in the federal courts.* This is in large part because TILA provides that a successful litigant may recover costs and reasonable attorneys' fees as well as his damages (15 U.S.C. § 1640(a)(3)(1978)). Creditor groups assert that the great majority of these cases have been brought over "technical," nonsubstantive violations.** Consumer groups contend that there would be no meaningful compliance with TILA without such private actions.

In May 1978 the Senate passed S.2802 to simplify and reform TILA. Illinois Congressman Frank Annunzio, Chairman of the House Subcommittee on Consumer Affairs, successfully excluded this bill from the Financial Institutions Regulatory and Interest Rate Control Act of 1978 which was enacted late in the 95th Congress. The Committee on Federal Legislation understands that both the House and the Senate will consider new bills to revise TILA during the 96th Congress. This report outlines the principal issues which will face Congress in its consideration of TILA amendments.

* In certain jurisdictions a surprisingly large percentage of new cases filed have been TILA cases. For instance, during a 14-week period at the beginning of 1977, 24 per cent of the cases filed in federal courts in the District of Connecticut were TILA cases. In New Haven, Connecticut during this time, 61 percent of such cases were based upon TILA.

** In Powers v. Sims and Levin Realtors, 396 F. Supp. 12 (E.D. Va. 1975) aff'd on other grounds, 542 F.2d 1216 (4th Cir. 1976), use of the term "Total Finance Charges" instead of "Finance Charge" was held to be a violation of TILA.

PROPOSED AMENDMENTS TO
TILA DISCLOSURE REQUIREMENTS

Each of the bills relating to TILA which were considered by the 95th Congress included provisions which would have "simplified" the disclosure of credit terms required by TILA. These proposals included the following provisions.

Reduction in TILA Disclosures. A reduction in the number of required disclosure items has been proposed to (i) render TILA disclosures more easily understood by consumers (i.e., to cure "information overload"), (ii) reduce the cost to creditors of complying with TILA and (iii) reduce the number of items which could serve as the basis for civil suits. Consumer groups have opposed any reduction in the amount of credit information provided to consumers.

Use of TILA Forms. It has also been suggested that the Federal Reserve Board issue a series of approved forms for use by creditors in complying with TILA. One function of these forms would be to create a "safe-harbor" for creditors by providing that the proper use of the appropriate form by a creditor in a consumer credit transaction would be an absolute defense to TILA-based actions with respect to that particular extension of credit. It has been further proposed that such forms would ordinarily be changed only once

a year to incorporate new interpretations of TILA and Regulation Z. This, it is said, would reduce the costs creditors now face because they must "constantly" revise their TILA disclosure forms. Consumer groups have generally not opposed the use of such forms, although they are skeptical that appropriate forms of general applicability can be drafted.

Plain Language. There is strong pressure from consumer groups, especially in connection with the proposal to have the Federal Reserve Board prepare TILA disclosure forms, to require TILA disclosures to be presented in "plain language." New York's pioneering efforts in this area (N.Y. Gen. Oblig. Law § 5-702 (McKinney) (1978)) have been repeatedly cited favorably by supporters of this proposal.

IMPROVED COMPLIANCE WITH TILA

A number of proposed TILA amendments have been designed to enhance creditor compliance with TILA and Regulation Z.

FTC Enforcement. TILA compliance by banks is enforced by the bank regulatory agencies, each of which has pervasive regulatory powers over its respective banks. The Federal Trade Commission is charged with enforcing TILA for finance companies and retail creditors. Because the FTC does not have the continuing audit responsibilities and other supervisory powers with respect to these entities which are enjoyed by the bank regulatory agencies, it has been proposed that the FTC be given the power to enforce Regulation Z as an FTC rule. At present, a TILA enforcement action by the FTC must commence with the filing of an administrative complaint seeking a cease and desist order. The FTC maintains that this procedure, which may require from one to three years, is inappropriate to correct violations already specifically prohibited by TILA and Regulation Z. The power to enforce Regulation Z as an FTC rule would permit the FTC directly to seek civil penalties for violations of TILA just as it may now do for violations of the Equal Credit Opportunity Act and the Fair Debt Collection Practices Act.

Restitution of Overcharges. Another proposed TILA amendment would explicitly permit an enforcing agency to require restitution of overcharges made by creditors in consumer credit transactions. There is now substantial doubt that TILA, which is principally a disclosure statute, authorizes the FTC and the bank regulatory agencies to require such refunds. In testimony before the 95th Congress, both the American Bankers Association and the National Consumer Finance Association, which represents companies in the consumer credit business, supported this proposal. As passed by the Senate, S.2802 would have precluded restitution where it would have a significantly adverse impact upon the financial soundness of the creditor. Consumer groups have opposed such a limitation on the ground that it would penalize those creditors who violate TILA only slightly while rewarding those who deliberately and fraudently substantially overcharge consumers.

Civil Litigation. A third major category of proposed TILA amendments concerns private TILA litigation. Creditor groups emphasize that many of the thousands of TILA actions brought by consumers are based upon nonsubstantive disclosure violations. These actions, it is said, do not protect consumers but merely raise the cost of credit. Reducing exposure to such suits through amendment of TILA is one of the principal goals of creditor groups. Eliminating

civil liability for technical, nonsubstantive violations of TILA, however, has presented serious drafting problems. This approach may not be required if Congress decides to create the "safe-harbor" for creditors through use of the approved TILA disclosure forms discussed above.

TILA Counterclaims. Another proposal relating to civil suits brought under TILA would permit consumers who are defendants in actions brought by creditors to assert TILA-based counterclaims after the one-year statute of limitations set forth in TILA has expired. It would also permit creditors to assert state law counterclaims in TILA actions brought by consumers in federal court.

OTHER POINTS OF INTEREST

Preemption. The question of federal preemption of state law credit disclosure requirements will also be considered by the 96th Congress, as will the question of the interaction of TILA with state laws regulating other aspects of retail credit. The Committee on Federal Legislation expects to focus particular attention on this area.

Bona Fide Error. At present TILA provides a defense to violations of TILA if such "violation was not intentional and resulted from a bona fide error. . . ." (15 U.S.C. § 1640(c)(1978)) It has been proposed that the term "bona fide error" be specifically defined to exclude erroneous legal judgments.

Credit Shopping. Another area which may stimulate Congressional action arises from the fact that although TILA was originally conceived in part as a means of facilitating comparison shopping for credit, as a practical matter it has proved impossible for consumers to secure TILA disclosure statements prior to consummating a particular credit transaction. S.2802 included a provision which would have required the Federal Reserve Board to prepare, on a trial basis, shoppers' guides to financial services in particular market areas. One purpose of such guides would be to permit meaningful comparisons of available credit. Another more

direct approach to this problem would be to require creditors to provide upon request the TILA disclosures which would be applicable to a particular transaction.

The Committee intends to continue to follow the progress of TILA reform legislation closely and to report on the TILA amendments proposed in the 96th Congress.

Respectfully submitted,

Miriam Goldman Cedarbaum, Chairperson

Chester J. Wrobleski, Secretary

Lawrence R. Bailey, Jr.

Bruce W. Bean

Kenneth M. Bialo

William F. Connell

Peter A. Copeland

James W. Coupe

John P. Cuddahy

Robert N. Endries

Joel B. Harris

Robert E. Kushner

Edward J. M. Little

Charles M. Newman

Daniel Stack

Kenneth G. Standard

Alan G. Straus

James E. Tyrrell, Jr.

STATEMENT FOR THE RECORD
BY
THE CREDIT UNION NATIONAL ASSOCIATION, INC.

Mr. Chairman and members of the Subcommittee, the Credit Union National Association, Inc. (CUNA) is pleased to present its comments and views on Truth-In-Lending in general and the provision of S. 108 in specific.

CUNA is a national association with 51 member Credit Union Leagues. Through these Leagues, CUNA represents more than 22,000 state and Federally chartered credit unions in the 50 states and the District of Columbia.

CUNA has continuously supported the idea of effective credit cost disclosure since it was first proposed by Senator Douglas in the 1960s. We believe that for credit cost disclosure to be effective, the disclosures must be easy for consumers to understand, provide enough information for the consumer to know what the credit will cost before a purchase is made or a loan accepted, and the disclosures must not impose an undue compliance burden on the lender.

The reason the present law is not working well is not that the rationale for the law was wrong, but because the law has deviated substantially from its underlying principles.

The original Douglas bill would have required two basic loan disclosures: the dollar amount, and the true annual rate on unpaid balances. There was no attempt to set rates or regulate the practices surrounding lending. The only purpose was to label both the price of credit and the cost of credit used.

Under the present law the price of credit is reflected in an annualized unit price, the Annual Percentage Rate, and the cost of credit now appears as the Finance Charge.

CUNA has long recognized the need to educate consumers on the wise use of money. We have always advocated aggressive counselling of members on prudent credit practices, since extending consumer credit is the primary way credit unions use consumers' savings. For instance, CUNA publishes a quarterly magazine, "Everybody's Money" which goes to millions of credit union members. We have also developed a "Classroom Guide To Credit Unions" which is made available at no cost to school children throughout the United States. This guide explains in detail how to shop for credit and the importance of the Annual Percentage Rate in credit shopping. A copy of "The Classroom Guide" is attached to this statement.

Consumer awareness studies, especially the recently released Federal Reserve Board survey, clearly illustrate the growing importance that consumers attach to disclosure of the Annual Percentage Rate and the Finance Charge. The ten-year experience with Truth in Lending has not been negative at all. Consumer sensitivity to APR is on the rise and we are confident that they are making their credit decisions on the basis of this information.

While we are encouraged by the increased consumer awareness of the importance of APR in credit shopping, it is obvious that the Truth-in-Lending Act has not worked as well as it should have. It has taken consumers entirely too long to become familiar with the basic terms which are necessary for them to do comparison credit shopping. The first question still remains for the majority of consumers, "What's my monthly payment?" This test of affordability continues to cloud the judgment of the very borrowers who need to ask "How much is it going to cost me over the term of the loan", and "Can I get the loan more cheaply somewhere else?"

The culprit that ends up distracting the consumer from the essential elements of the cost of credit, APR and Finance Charge, is the disclosure statement itself. There is entirely too much information surrounding the two central disclosures.

We believe it is time to refocus the Truth-in-Lending law on the two basic disclosures first envisioned in Truth-in-Lending. The Subcommittee should consider using S. 108 as the basis for redrafting a completely new Truth-in-Lending law. To be effective, the new disclosure law should contain the following features:

- o primary emphasis on the disclosure of the Annual Percentage Rate and the Finance Charge
- o elimination of both inconsistent and dual disclosure requirements
- o publication of model disclosure forms which, if used, would guarantee compliance with disclosure requirements
- o restitution to consumers charged an amount in excess of the lowest figures quoted in a disclosure statement, with a reasonable time period allowed for making corrections
- o limitation on other disclosures to the four to six elements of a credit transaction which are most critical to the consumer's shopping needs
- o civil liability for material misstatement of required disclosures, with reasonable tolerances for numerical disclosures.

CONSUMER PROTECTION

This Subcommittee exercised responsible leadership in the last Congress by conducting hearings and initiating Truth-in-Lending

Simplification legislation which was overwhelmingly passed by the Senate (S. 2802). It only narrowly missed becoming part of last year's package which became P.L. 95-630.

Prospective consumer protection occurs when the consumer is given the information needed to permit him or her to reject a proposed credit contract and seek another credit source. S. 108 moves in this direction by reducing somewhat the number of required disclosures and permitting the Federal Reserve Board to issue model forms and clauses.

It is not difficult to distinguish between the disclosures which are of value to the consumer in shopping for credit and those which do not add significantly to the consumer's ability to shop for credit.

The Annual Percentage Rate (APR) is the single most important credit shopping information given in the initial loan disclosures. Therefore, the key to rationalizing the complex disclosures necessary to comply with Truth-in-Lending is in removing many of the secondary disclosures from the face of the disclosure document. We urge the Subcommittee to adopt a disclosure format in which the APR is featured and which includes all charges incident to a credit transaction which are not present in a similar cash action, except the charges voluntarily incurred by the borrowers, e.g. credit related insurance. We believe that in closed-end credit, lengthy statements about rebates, rights of assignees and security interests taken in property, clutter the disclosure statement and confuse the consumer. Open-end credit will continue to include unnecessary disclosures under S. 108 and should be pared back. For other disclosures, such as the consumer's rights on default, reference to the contract should suffice in a disclosure context. This segregation of key information is the only way that a borrower will actually be able to tell what information on the

disclosure statement is important to him or her for purposes of determining the actual cost of credit.

STATE DISCLOSURE LAWS REQUIRING INCONSISTENT OR ADDITIONAL INFORMATION

Federal consumer credit protection laws have, over the past 10 years, experimented with the number of different statutory standards for determining whether a state or federal law was more protective of the consumer. S. 108 preempts inconsistent laws to the extent of the inconsistency. The Board is given the power to determine whether or not a state law is inconsistent.

Our experience with these preemption standards indicates that federal law should set a single disclosure rule and tolerate no other potentially inconsistent information. Congress has decided that the Annual Percentage Rate and Finance Charge are the primary indices to be used by consumers in credit shopping. Additional state disclosure requirements merely tend to confuse and mislead consumers, thereby undermining the intent of Congress. It is absolutely essential that Congress exercise its authority in this area to prevent its disclosure scheme from being undone by frequently overlapping and confusing state disclosures.

RESTITUTION TO BORROWERS

The restitution provisions of S. 108 clarify the scope of a credit union's potential liability for understating an APR of Finance Charge. This serves to underscore the importance of these elements of the Federal disclosure scheme while adding "teeth" to the 1969 disclosure law. The primary effect of a restitution provision is to put lenders on notice that the borrower is not going to pay more than the "sticker

price" requires. In exchange for restitution, equity and fairness demand that an institution not be subject to civil penalties.

MODEL FORMS

The most vexatious result of the present Truth-in-Lending law has been the thousands of lawsuits brought by attorneys throughout the United States which attack non-substantive, technical violations of the disclosure portions of the Act. Allowing the Federal Reserve Board to issue model forms will eliminate these unnecessary court cases, decrease the cost of compliance, and increase the likelihood that the Act will fulfill its purposes. We are also greatly encouraged by the requirement in S. 108 that due process be accorded a lender in the event an examination uncovers suspected violations. The ability to protest in good faith an examiner's determination that a Truth-in-Lending law violation exists is fundamental to the operation of our judicial system.

ANNUAL FORM REVISION, TOLERANCE

The provisions of S. 108 which permit annual form revision and Federal Reserve Board determinations of permissible tolerances in making numerical disclosures are essential to any simplification effort.

Courts presently decide what Truth-in-Lending requires and, in practice, lenders within the reach of that particular court have tried to adapt their forms to the latest court decision. Inevitable conflict between the decisions in the various Circuits has created significant compliance burdens where one lender does business in several jurisdictions. Even with the protection offered by model forms, the judicial process seems destined to continue to intervene in the smooth operation of the disclosure law. By mandating an effective date for

changes in forms, the Senate bill will also permit rational modification of existing forms and planning for the purchase of new ones as old ones are used up.

Present law requires disclosure of the exact annual percentage rate or a number rounded to the nearest one-quarter of one percent. A technical violation results if, for instance, an error is made in the seventh decimal place of a disclosed APR. This has created a significant amount of litigation over highly technical mathematical errors which were not accompanied by any measurable actual damage to the consumer involved. It is, therefore, extremely important that the Federal Reserve Board be permitted to define permissible tolerances for numerical errors. To freeze the requirements for accuracy of APR disclosures in a statute only promises to continue the past difficulties involved in making meaningful but accurate disclosures which comply with the law and regulations.

CIVIL LIABILITY

The extraordinary penalties which attach under the civil liability sections of the Truth-in-Lending Act have made creditors more than casually aware of their exposure for errors and omissions under the Act. We believe that no clear reason exists for requiring creditors to be subjected to these large penalties where little or no actual damage has occurred to the consumer. Sufficient compliance incentive would exist if the major penalties attached only to misstatements of the Annual Percentage Rate and the Finance Charge (the key elements of the Truth-in-Lending Act's disclosure) and creditors would do their best to comply with Truth-in-Lending, without seeking Board interpretations and amendments to the Truth-in-Lending regulations for each new fact pattern

which may arise. On the contrary, however, under the present Act's penalty provisions, creditors are motivated to seek interpretations and amendments to cover every real-life situation. This situation keeps Truth-in-Lending in an intolerable state of flux.

CONCLUSION

We endorse the Senate's simplification efforts. We are confident that a workable and more effective Truth-in-Lending law can be enacted this year.



NATIONAL ASSOCIATION OF HOME BUILDERS
FIFTEENTH AND M STREETS, NORTHWEST
WASHINGTON, D.C. 20005

VONDAL S. GRAVLEE
1979 President

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RECEIVED
SENATOR GARN

FEB 9 2 13 PM '79

February 6, 1979

Honorable Jake Garn
4203 Senate Office Building
Washington, D.C. 20510

Dear Senator Garn:

On February 2, the Senate Banking, Housing and Urban Affairs Committee held hearings regarding S.108, a bill to amend the Truth-in-Lending Act. I have requested that this letter be included in the record so that the views of the National Association of Home Builders are made part of the record.

On behalf of the more than 113,000 members of NAHB, I would like to bring to your attention certain provisions contained within S.108 that may prove more harmful than helpful if the bill were enacted in its present form.

NAHB is fully supportive of your efforts to simplify the Truth-in-Lending Act in order to assist business and the public. Assuring the availability of easily understood credit information to allow the consumer to make knowledgeable decisions regarding consumer credit is a worthwhile goal.

NAHB opposes Section 14 of S.108 which would require the disclosure of the total finance charge and the total of payments in the sale of a home. Current law does not require such disclosures.

Our opposition of Section 14 is based upon the fact that these additional requirements are misleading, not particularly useful as a shopping guide and they may tend to confuse the potential homebuyer rather than aid in the decision-making process.

The total finance charge and total payments are ascertainable but they would vary according to the various fees charged, the amount of down payment, the duration of the loan, and the length of time the homeowner held the mortgage.

The actual figures arrived at may be accurate but misleading because factors such as equity build-up, appreciation, inflation, tax consequences and the fact that relatively few real estate loans reach maturity are not also considered at the same time.

Of equal concern to NAHB is the possibility that if S.108 and specifically Section 14 is passed in its present state, the Federal Reserve Board would add the new requirements to disclose the finance charge and the total payments to its credit advertising provisions.

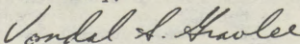
The difficulties that would arise if new advertising requirements were mandated can best be illustrated by an example. If a builder, in an advertisement, informs the potential homebuyer of credit availability the builder would then need to show the total of payments over a period of 20 to 30 years versus the much smaller cash price.

At the same time, a builder who does not offer credit availability in his advertisement for a comparable home would only need to show the actual cash price. A quick reading of the advertisements would show an unrealistic difference between the two homes. This situation would place the builder who advertises credit availability at a disadvantage and the end result would be less information to the consumer because the builder would be less likely to advertise credit availability. More information and not less information on which to base an informed decision is what S.108 is seeking.

NAHB strongly urges your Committee to retain the current disclosure exemptions for residential real estate transactions. In the alternative, if your Committee does accept Section 14 as it now stands, then NAHB would urge that the Federal Reserve Board be instructed not to extend these additional requirements to credit advertising as it affects real estate.

Thank you for your consideration of the views of the National Association of Home Builders.

Sincerely,



Vondal S. Gravlee
President

[From the Washington Star, November 13, 1978]

FED ACTION ON CREDIT DRAWS CONSUMER FIRE

(By JOHN HOLUSHA)

Consumer groups, the Federal Trade Commission and some legislators are protesting what they call a major abridgement of consumer rights by the Federal Reserve Board.

The issue involves a new form of credit that would permit a person to buy a car or boat with a credit card—but which also could endanger the title to their homes.

In a little-noticed "interpretation" of lending laws last August, the Fed effectively removed the three-day "cooling off" right for consumers in some kinds of credit transactions.

Under the Truth in Lending Act, whenever a person pledges his home as collateral for a loan, he has three days to reconsider the whole deal. The law requires that the consumer must be notified of this right each time.

The Fed, responding to requests from banks, ruled that the notification need only be given once when a bank extends an open-ended line of credit.

That is, if a bank were to make a \$20,000 or \$30,000 line of credit available to a person (as some have proposed) that could be used by means of a credit card, the only time the person would be advised of the "cooling-off period" would be when the credit was first granted.

After that, a person could run up bills against the equity in his home without any word of caution.

"That's the problem," says an aide to Sen. William Proxmire. "For the first time, people will be in the situation where they can use the equity in their house for trivial purchases. One of the reasons truth-in-lending has worked so well is the three-day recision right has acted as a dampening influence."

Proxmire and Sen. Donald Reigle, chairman of the consumer affairs subcommittee, have asked the Fed to reconsider its decision.

The Senators said the ruling's "effect may be more far-reaching than expected. . . ."

Ellen Broadman of Consumer Union said "I think it is outrageous that the Fed has taken it on itself to abolish outright consumer rights Congress has provided."

She said consumer groups feel banks will push the new credit scheme on "a lot of marginal people who are already borrowed up to the hilt. These are the very ones that the banks will want a security interest in a home from."

Broadman noted that, although using a home as collateral increases a person's capacity to borrow, there is no corresponding increase in ability to repay.

She described the ruling as "a real sleeper. The Fed does so many things and this one was so obscure that it just slipped through."

She added that the Fed had not bothered to clear the matter with its own Consumer Advisory Council.

A Fed official said the matter came before the board twice in open meetings and that there had been a public comment period. "This matter was discussed very, very thoroughly by the board," he said.

The banks had argued that affluent customers want to use the greatly increased values of their homes as security for larger lines of credit. But, they said, a requirement that each transaction be preceded by the three-day cooling-off period would make it an administrative nightmare.

In asking that the ruling be reconsidered, Lewis Goldfarb of the FTC's Bureau of Consumer Protection said: "We fear that the offering of large amounts of mortgage credit through the attractively simple mechanism of a credit card or a check will result in widespread overextensions of credit even among more sophisticated buyers."

"We believe this situation poses great risks to the economy and will drastically accelerate the rate of consumer default and ultimate foreclosure on homes."

A Fed official noted that the agency restricted the credit to three-party transactions—those where a person buys something with a third party—the bank—providing the credit.

In two-party transactions—where the seller would provide the financing—notice of the three-day cooling-off period would still have to be given.

Nevertheless, CU's Broadman said the principle involved is "too important to be decided by an interpretation. The Fed isn't playing by the rules." She said consumer groups would continue to oppose the plan.

