CONSUMER INFORMATION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CONSUMER AFFAIRS

OF THE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

HOUSE OF REPRESENTATIVES

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CONSUMER INFORMATION

TUESDAY, FEBRUARY 8, 1977

House of Representatives,
Subcommittee on Consumer Affairs of the
Committee on Banking, Finance, and Urban Affairs,
Washington, D.C.

The subcommittee met at 10:10 a.m. in room 2128 of the Rayburn House Office Building; Hon. Frank Annunzio (chairman of the subcommittee), presiding.

Present: Representatives Annunzio, Spellman, Vento, Wylie, and Fenwick.

Mr. Annunzio. The first meeting for 1977 of the 95th Congress of the Consumer Affairs Subcommittee will come to order.

I would like to welcome you here this morning to this first meeting of the newly reorganized Subcommittee on Consumer Affairs.

When the first set of "consumer information" hearings were held at the beginning of the 94th Congress, not only were some of the members new, but I was starting my first tenure as chairman of the subcommittee. Now, 2 years wiser and four pieces of significant consumer credit protection legislation later, we meet again.

Our goal here today will not be to begin consideration of any one piece of legislation, but to provide a forum where those parties most involved in consumerism can come and tell Congress what they believe are priority issues.

We have representatives from Consumer's Union, Consumer Federation, a representative of the American working man and woman, State consumer advocates, and a representative of our senior citizens. To me, all represent a good cross-section of the people of this country.

From them we will hear what is bothering American consumers at this point. Some will confine their comments strictly to consumer credit protection; others will give us an overview of other problems involving the consumer's pocketbook.

What we will do with all of this information then is to combine it with the ideas we receive from those Government officials who will appear tomorrow, and the industry officials who will appear Thursday to put together an agenda of legislative priorities for this Congress.

The Subcommittee on Consumer Affairs has many ideas of its own as to what areas deserve attention during the 95th Congress. But since we represent the interests of possibly the broadest constituency in the United States, the American consumer, I as chairman thought it would be a good idea to call in several national consumer representatives first.

There are so many areas which could be considered and we regularly have a backlog of bills which were never touched at the end of every Congress. This time around, we are going to try to get a list of the most important bills, and then all work together toward their passage and enactment.

Holding "consumer information" hearings at the beginning of the 94th Congress was a very good idea, because it served as an active orientation for those of us who were new to the subcommittee and its work. This year, many of the same faces are here, both on this side of the table, and on that side. But also, many faces are new. I am very excited about the potential of these hearings to spur interest in credit protection and other areas of consumerism both inside the House of Representatives and outside. As you go back to your respective constituencies and report what happened here, my hope is that the combination of our ideas, criticisms, and goals will come together this year to bring about legislation which is protective but fair, necessary but not burdensome, and most of all, easier to understand.

The Equal Credit Opportunity Act Amendments is a piece of legislation with which I am very proud to have been associated, but I assure you it would take the ultimate linguist to plow through its meaning as interpreted by the Federal Reserve Board in regulation B, and I am not such a linguist. Perhaps you will have some suggestions.

Therefore, I would just like to say that I appreciate your support of these hearings by your presence, and I invite your respective opinions. You may cuss or discuss anything. about the consumer and his or her pocketbook that you like.

I would also like to announce at this time that there is a meeting of the Subcommittee on Financial Institutions Supervision, Regulation and Insurance, of which Mr. St Germain is the chairman, and they are marking up H.R. 1901. That is a meeting that I attended before coming to this meeting where I introduced an amendment to increase the length of time on regulation Q to 1 year. It passed 13 to 3. And then I left the meeting and left Mr. St Germain with my proxy.

We are going to have these difficulties throughout the year, because each member of this particular full Committee on Banking, Finance and Urban Affairs, is on at least three subcommittees. So with the meetings of the subcommittees and the meeting of the full committee, that means that we are responsible for attending four meetings of this committee, and as you know, all of us have another committee which we call a minor committee, and on this committee, the minor committee, I am also a member of three subcommittees and the full committee. So I will be on call for eight different meetings, and sometimes, as you know, the way scheduling takes place in the Congress, we could have four meetings going on at the same hour. So there are many members of this subcommittee who are now in the hearing of the Subcommittee on Financial Institutions Supervision, Regulation and Insurance being held upstairs, and we will continue with our meeting.

But before I call on the witnesses, I have my good right arm here this morning who was a member of the subcommittee last year, who worked with dedication and devotion to the cause of consumerism, who supported me wholeheartedly on the four pieces of legislation that passed this committee, and I would like to officially welcome Mrs.

Spellman back to the subcommittee in a new capacity, as the ranking Democrat on this committee.

Mrs. Spellman. The longer I stay, the ranker I get. [Laughter.]

Mr. Annunzio. So you see, it doesn't take much time to convince people that the seniority system works. And until a better system comes along, we had better stay with what we have.

My first witness this morning is Kathleen F. O'Reilly of the Consumer Federation of America.

Before you speak, I would like to introduce the other witnesses.

Mark Silbergeld of the Consumers Union, who is an old friend of mine. I paid my dues into his union. From the United Steelworkers of America, John Sheehan and Kenny Kovack.

Ms. Faye Mench, and Roberta Wieloszynski.

And Ms. Wieloszynski, I want you to know that I have the personal greetings of a great Congressman who comes from Syracuse, Jim Hanley, who is at the meeting upstairs and told me you would be here this morning. So we are very happy to have you here, and I welcome you before the committee on behalf of Jim Hanley.

And Richard B. Spohn of the Department of Consumer Affairs, Sacramento, Calif.

So I thank all of you for being here.

Now, Ms. O'Reilly.

STATEMENT OF KATHLEEN F. O'REILLY, LEGISLATIVE DIRECTOR, CONSUMER FEDERATION OF AMERICA

Ms. Reilly. Good morning. It is a pleasure to be here on behalf of the Consumer Federation of America.

Before I speak about specific issues of concern to us, I would like to take the opportunity to emphasize in a very special way a broad principle which must be a recurring theme of any discussion on credit and financial institutions issues, and that is the need for vigorous enforcement.

Consumers and Members of Congress have too often experienced the frustration of having devoted their energies to the passage of strong consumer legislation only to have that law sit on the back burner of some agency or to become the victim of lax or even nonexistent enforcement. Examples are legion, but I would like to focus on one of particular annoyance to the Consumer Federation of America.

An early and ardent supporter of the Equal Credit Opportunity Act, we have been dismayed at the lackluster enforcement of that law by the Federal Reserve Board. Recognizing that the Federal Reserve Board has enforcement jurisdiction over only some 1,000 banks, the commitment they give to enforcement is minimally needed as a critical symbol of their perception of how important the law is. The track record of the Federal Reserve Board on enforcing the Equal Credit Opportunity Act is deplorable at best.

In July we described our experience to the Senate Banking Committee, and today I would like to reiterate some of those points.

Last April when the Federal Reserve Board was conducting an open hearing on how to best implement the Equal Credit Opportunity Act Amendments, we took that opportunity to scrutinize the manner in which they had enforced the original Equal Credit Opportunity Act, and surprisingly, found that they had done little. Imagine that 6 months after the Equal Credit Opportunity Act regulations had become final the Federal Reserve Board had not yet revised its bank examiners manual to reflect the new law and those regulations. Attendance at regional seminars on the law had not been compulsory for the bank examiners. No special training or checklists had been prepared, even though the Federal Reserve Board acknowledged that bank examiners have traditionally been trained and sensitized to maintaining the soundness of banks and do not have the background or strong interest in enforcing consumer protection laws.

We questioned then and we question now, why there is not a minimum number of classroom hours required of bank examiners on the consumer protection laws that they must enforce, and why are they not tested in a classroom on those laws? Why are there no systematic spotchecks of those examinations? Why hasn't the Federal Reserve Board established a specific cutoff period to prohibit a bank examiner from examining the same bank so often as to create an obvious conflict of interest?

Six months after those regulations had become finalized the Federal Reserve Board had not even established an Office of Compliance, and were very vague in their discussions with us about the background and consumer orientation of those staffers in charge of enforcement.

Six months after those regulations had become finalized the absence of any complaints or even suspected violations had not triggered within the Federal Reserve Board any concern that enforcement might have somehow gone awry. Even the procedure to be used in enforcement had not been formalized. It appeared that heavy reliance would be placed on gentle persuasion of violators, and that there would be great resistance to cease and desist orders and the like.

Any hope that we might have had that the Federal Reserve Board would improve their commitment was certainly dashed to the ground. We reviewed the Federal Reserve Board Annual Report to Congress on the Equal Credit Opportunity Act for the year 1976, dated February 1, 1977. We very much hope you share with us a dismay at the shallowness of that report. Note the absence of any record of how many complaints the Federal Reserve Board has received, what the status of those complaints has been, and what enforcement procedures if any were utilized.

They also describe in vague fashion that some Federal Reserve banks have experimented with conducting separate consumer examinations. Just how many is "some"? How was that experimental examination structured, and how do they now evaluate the effectiveness of such separate examinations?

Note, also, that a task force has been established to "consider" (not act on but only "consider") many issues which should have been implemented long ago. They are now going to consider updating the examiners manual. They are going to consider developing an examiner's checklist for use in examinations; consider developing a uniform compliance report and developing of a proper sampling technique and methods for correcting violations discovered.

This is outrageous. Lack of vigorous enforcement intensifies already deep public cynicism about Government regulation and about

Government itself, and it makes an absolute mockery of the congressional and the consumer efforts which have resulted in the passage of such laws.

CFA very much recommends that the oversight function be conducted with close scrutiny and that the financial regulatory agencies not be allowed to waffle on enforcement of consumer credit legislation. The type of generalized annual report submitted recently by the Federal Reserve Board should not be tolerated. Gaps in the report designed to conceal the unresponsiveness of the agencies should not go undetected.

A related issue deals with consumer complaints, and we take this opportunity to commend you, Chairman Annunzio and your staff for the excellent staff report, "Do Financial Regulatory Agencies Listen to Consumers?", dated in September 1976. Its contents are simultaneously enlightening and very discouraging.

We would like, however, to expand on the general recommendations contained on pages 2 and 3 of that report, and suggest that, first, the complaint-handling mechanism within each agency should be structured at a sufficiently high level within that agency so as to have some impact. If the office is buried deep in the bureaucratic substructure, or if indeed assignment to that office is actually considered among employees of the agency to be a demotion, the office will be little more than a paper shuffler.

Second, each agency should institutionalize some mechanism for assuring that the complaint-handling process deals not only with complaints against the very agency itself. There should further be a mechanism for insuring that the results of both categories of complaints are channeled into the policymaking procedures of that agency. Sheer numbers of complaints are not an accurate barometer of a violation, so the absence of a large number of complaints should not be a justification for inaction. On the other hand, large numbers of complaints should be considered as potentially the catalyst for policy changes.

Third, there should be assurances that agencies have adequate staffs for compliance, and that reliance is made on persons who by education and/or experience have a demonstrated commitment to consumer protection laws rather than relying on those predominantly oriented toward the soundness of banks.

Fourth, we urge this subcommittee to take a leadership role in cooperating with the Government Operations Committee to secure a legislative modification of the Freedom of Information Act. It is important that financial regulatory agencies not be allowed to rely on the FOIA exemptions which protect the results of bank examinations from disclosure. Logically, it is only information which relates to bank soundness which should be protected, and not information which reveals violation of consumer protection laws. A sensible supplement to consumer complaints is the disclosure of more information so that consumers will know when they have something to complain about.

As to specific legislative issues, I would like to submit for the record a copy of CFA's policy resolutions for 1976 which address a large number of issues of importance to this committee.

Mr. ANNUNZIO. Without objection, so ordered.

[The CFA policy resolutions follow Ms. O'Reilly's prepared statement.]

Ms. O'REILLY. And if the record is still open next Monday, I will at that time submit for you the policy resolutions that will be voted on by our entire membership on this Saturday at our consumer assembly.

On particular issues I just want to give a very brief overview of the priority issues the Consumer Federation will focus on in 1977. We will continue our efforts, for example, toward the creation of a National Consumer Cooperative Bank. This legislation will help consumers by promoting an important type of competitive economic activity in the United States. The creation of that bank is critical to the viability of consumer cooperatives which have so well served consumers. And it would parallel the highly successful Farm Credit System and allow consumers to form food, insurance, housing co-ops.

We at this time want to again commend you, Chairman Annunzio, for your debt collection practices bill, and to go on record as saying we will vigorously support that legislation in the House and will do everything possible to work towards passage in the Senate of that same legislation.

As to the Fair Credit Reporting Act Amendments, we strongly support passage of legislation along the lines of the legislation considered last year by the Senate Banking Committee, and I have listed in my testimony the major reasons why such legislation is important to consumers.

Once again, we will be looking carefully at financial institution reform, hoping that comprehensive legislation, not piecemeal legislation, can quickly be enacted. To be acceptable, that legislation must expand the competitive powers of thrift institutions and assure a greater availability of funds for housing, particularly low- and moderate-income housing. It must provide a full voluntary central banking facility for credit unions and a broadening of their criteria for membership, primarily to benefit low-income consumers. It must reorganize agencies that regulate financial institutions and separate the monetary policy function from the regulatory function of the Federal Reserve Board. It must provide for an annual GAO audit of the Federal Reserve and expand the membership of the Federal Reserve to include public members. It must, finally, include requirements for Truth in Savings information for consumers.

In terms of Truth-in-Lending, holder in due course, and variable rate mortgages, these are the three issues which potentially are the products of legislation, which we will oppose.

As of Truth in Lending, any indication of a severe modification of Truth-in-Lending to undercut the disclosure it requires or its strong sanctions will be vigorously opposed by CFA. There seems to be a growing popular fad which knocks the Truth in Lending law as being elitist because it is claimed that essentially Caucasian males utilize its information. There are allegations that it is not achieving its intended effect, and there are traditional arguments that its cost is far out of proportion to its benefits. We are taking a close look at such studies and hope to have a comprehensive analysis ready by the spring. To date, studies asserting such conclusions have little credibility because they assume that a vigorous competitive market exists. They give lip service at best to the need for increased consumer education, and their sampling plans are statistically inadequate. They also attribute little if any importance to the advantage of Truth in Lending information which allows consumer groups to compile, to analyze, and to compare Truth in Lending information in a handbook fashion and to then make that available at a nominal cost to individual consumers who might otherwise not utilize Truth in Lending to its full advantage.

We continue to urge that the Federal Reserve Board amend regulation Z to require the disclosure of not only the fact of a dealer or seller kickback when it exists, but also disclosure of the amount of that kickback, both in terms of the percentage and the dollar amount, and specify whether it is part of the finance charge or the purchase price. The Board's amendment should further require the separate itemization of the amount of dealer participation.

I have included in my testimony the comments we submitted to the Federal Reserve Board on this issue. Their present proposal, simply to indicate that there may be a kickback, is very unacceptable. The use of that word, "may," is really much more of a hint or a teaser of information rather than the providing of information. That information can be used in a comparative way by consumers and alert them to the practice of kickbacks which have become growing offensive in other areas, such as real estate settlement procedures, medicare, medicaid kickbacks, and so forth. It is time to educate the consumers about what is going on and to give the information to them in a fashion that allows them to do something about it.

As to holders in due course we will oppose any legislative attempt to withdraw the FTC rule abolishing that doctrine. We will also continue our vigorous opposition to any proposals to institute variable rate mortgages along the lines of the proposals that seem to resurrect on an annual basis. We continue to feel that variable rate mortgages are discriminatory against women, against the elderly, and against racial minorities who traditionally do not have the upward economic mobility to prove to underwriters not only that they have the ability to pay the present monthly payments but they can pay increased payments in the future.

We think it will be particularly important to see in August the statistics from the State of California which will tell us how variable rate mortgages have been working there. I think we will see that it has been a very stagnant index, because regulation Q is still on the books, and that if regulation Q goes off the books, the index will be a very volatile index, and one which consumers will find difficult to understand, let alone control.

We want to emphasize that, sympathetic as we are to the bust and boom situation in the thrift institutions and its devastating effect on housing, we feel there are preferable alternatives to solving that problem, and the variable rate mortgage is at least a 10th-rate solution which causes as many problems as it solves.

Thank you.

[Ms. O'Reilly's prepared statement and policy resolutions—1976 (referred to by Ms. O'Reilly in her statement) on behalf of the Consumer Federation of America follow:]

PREPARED
STATEMENT OF
KATHLEEN F. O'REILLY, LEGISLATIVE DIRECTOR
CONSUMER FEDERATION OF AMERICA

Consumer Federation of America is a federation of 220 national, state and local non-profit organizations that have joined together to espouse the consumer viewpoint. CFA and its member organizations represent over 30 million consumers throughout the United States. Among our members are Consumers Union, publisher of Consumer Reports, 17 cooperatives and credit union leagues; 45 state and local consumer organizations; 66 rural electric cooperatives; 27 national and regional organizations ranging from the National Board of the YWCA to the National Education Association; and 16 national labor organizations.

Enforcement

Before we speak to specific issues, CFA wishes to address itself to a broad principle which must be a recurring theme of any discussion of credit and financial institutions issues--the need for vigorous enforcement. Consumers have all too often experienced the frustration of having devoted their energies to the passage of strong consumer legislation only to have the law sit on the back burner of some agency and become the victim of lax or non-existent enforcement.

Examples are legion but I would like to focus on one of particular annoyance to CFA. An early and ardent supporter of the Equal Credit Opportunity Act, we have been dismayed at the lackluster enforcement of that law by the Federal Reserve Board. Recognizing that the Federal Reserve Board has enforcement jurisdiction over only some 1000 banks, the commitment they give to enforcement is minimally needed as a critical symbol of their perception of how important the law is.

The track record of the Federal Reserve Board on enforcing the Equal Credit Opportunity Act is deplorable. In July we described our experience to the Senate Banking Committee. Last April the Federal Reserve Board conducted an open hearing on how to best implement the Equal Credit Opportunity Act. We took that opportunity to scrutinize the manner in which they had enforced the original Equal Credit Opportunity Act. Unsurprisingly, they had done little. Imagine that six months after the Equal Credit Opportunity Act regulations had become final, the Federal Reserve Board had not yet revised its bank examiners manual to reflect the new law and regulations. Attendance at regional seminars on the law had not been compulsory for bank examiners. No special training or checklists had been prepared even though the Federal Reserve Board acknowledged that bank examiners have traditionally been trained and sensitized to maintaining the soundness of banks and do not have the background or strong interest in enforcing consumer protection laws.

We questioned then and we question now why there is not a minimum number of classroom hours required of bank examiners on the consumer protection laws they must enforce and why they are not tested. Why are there no systematic spotchecks of those examinations? Why hasn't the Federal Reserve Board established a specific cut-off period to prohibit a bank examiner from examining the same bank so often as to create an obvious conflict of interests?

Six months after the regulations had been finalized the Federal Reserve Board had not even established an Office of Compliance and were vague about the background and consumer orientation of those staffers in charge of enforcement.

Six months after the regulations had been finalized the absence of any complaints <u>or</u> suspected violations had not triggered any concern at the Federal Reserve Board that enforcement might have somehow gone awry. Even the procedure to be used in enforcement had not been formulated. It appeared that heavy reliance would be placed on gentle persuasion of violators and that there would be great resistance to cease and desist orders, etc.

Any hope that the Federal Reserve Board would improve their commitment to enforcement was dashed when we reviewed the Federal Reserve Board Annual Report to Congress on the Equal Credit Opportunity Act for the Year 1976 dated February 1, 1977.

We hope that you share our dismay at the shallowness of that report. Note the absence of any record of how many complaints the Federal Reserve Board received, what the status of those complaints has been, and what enforcement procedures (if any) were utilized.

They also describe in vague fashion that "some" Reserve banks experimented with conducting separate consumer examinations. How many is "some", how was that experimental examination structured and how do they now evaluate the effectiveness of such separate examinations?

Note also that a task force has been established to "consider" issues which should have been implemented long ago, e.g. updating the examiners manuals, developing an examiner's checklist for use in examinations, developing a uniform compliance report, and developing proper sampling techniques and methods for correcting violations discovered.

Lack of vigorous enforcement intensifies already deep public cynicism about government regulation and makes a mockery of the Congressional and consumer efforts which resulted in the passage of such laws.

CFA recommends that the oversight function be conducted with close scrutiny and that the financial regulatory agencies not be allowed to waffle on enforcement of consumer credit legislation. The type of generalized Annual Report submitted by the Federal Reserve Board should not be tolerated. Gaps in the reports designed to conceal the unresponsiveness of the agencies should not go undetected.

Consumer Complaints

CFA takes this opportunity to commend you, Chairman Annunzio and your staff for the excellent Staff Report "Do Financed Regulatory Agencies Listen to Consumers?" dated September 1976. Its contents are simultaneously enlightening and discouraging.

We would like, however, to expand on the general recommendations it contains on pages 2 and 3.

1. The complaint handling mechanism within each agency should be structured at a sufficiently high level within that agency so as to have some impact. If the office is buried deep in the bureaucratic substructure or if indeed assignment to that office is internally viewed as a demotion, the office will be little more than a paper shuffler.

2. Each agency should institutionalize some mechanism for assuring that its complaint handling process deals not only with complaints against regulated parties but also with complaints against the very agency itself. There should further be a mechanism for insuring that the results of both categories of complaints are channeled into the policy-making procedures of the agency. Sheer numbers of complaints are not an accurate barometer of a violation, so the absence of large numbers of complaints should not be a justification for inaction. On the other hand large numbers of complaints should be considered as potentially the catalyst for policy changes.

3. There should be assurances that agencies have adequate staffs for compliance and that reliance is made on persons who by education and/or experience have a demonstrated commitment to consumer protection laws rather than relying on those predominantly oriented toward bank soundness.

4. We urge this Subcommittee to take a leadership role in cooperating with the Government Operations Committee to secure a legislative modification of the Freedom of Information Act. It is important that financial regulatory agencies not be allowed to rely on the FOA exemption which protects the results of bank examinations from disclosure. Logically it is only information which relates to bank soundness which should be protected and not information which reveals violation of consumer protection laws. A sensible supplement to consumer complaints is the disclosure of such information so that more

consumers will know when they have something to complain about.

As to specific legislative issues we wish to highlight the following:

National Consumer Cooperative Bank

We will vigorously fight for the National Consumer Cooperative Bank bill. This legislation will help consumers by promoting an important alternative type of economic activity in the United States. The creation of the Cooperative Bank is critical to the viability of consumer cooperatives which have so well served consumers. Consumer cooperatives can plan an important role in providing lower prices, consumer control of marketing methods and increased competition in various markets today. The high degree of success of the Farm Credit System, after which the Cooperative Bank is modelled, demonstrates the feasibility of and potential benefits which can be delivered by the Cooperative Bank.

Debt Collection Practices

CFA commends you, Chairman Annunzio, for the active and effective leadership you exercised in securing House passage of Debt Collection Practices legislation. We shared your frustration when the Senate failed to take up the issue but pledge our organization's efforts to ensure that the legislation is passed in both Houses during the 95th Congress.

Fair Credit Reporting Act Amendments

We strongly support passage of legislation to amend the Fair Credit Reporting Act along the lines of the bill considered by the Senate Banking Committee in 1976. We take this opportunity to put opponents (including the insurance industry) on notice that CFA will assume a major role in establishing a strong coalition to support the measure.

As we indicated in our remarks to the Senate:

>.though CFA does not have a consumer complaint handling mechanism, we ›ceive numerous letters and telephone calls on a wide range of consumer issues. ›ong the most frequently heard complaints are those involving credit reports. ›ny consumers are intensely frustrated when they become aware that detailed ›t often incomplete or out-dated information has been compiled by investiga-.ve reporting companies without the consumer's authorization. Intensifying ›at frustration is the fact that the consumers do not even have the right to ›view a written copy of that credit report in a leisurely fashion within the ›ivacy of their homes. ..

One example may be particularly graphic. Last spring a man called our offices to seek advice on the dilemma which then faced him. The processing of his application for a mortgage was being delayed because a credit report indicated that some six months before he was delinquent on the payment of a bill for expenses incurred at a major retailer. The credit reporting company acknowledged to me by phone that their correspondence from the retailer indicated that the account had not only been brought current but also that the gentleman was two months ahead in his payments. They claimed they 'haven't the time' to update their official records and were not even willing to communicate their current information by phone to the mortgage lender. Because of the press of time, the consumer's mortgage application was in jeopardy because he could not afford to wait for the long-overdue paperwork update.

The consumer advantages of the legislation include the fact that it:

1. Insures that investigative reports will not be prepared unless the consumer has authorized it in writing after having been informed of the nature, methods and scope of that investigation;

2. Will require consumer reporting agencies to adopt reasonable procedures to assure the relevancy, completeness, and accuracy of the information collected;

3. Entitles the consumer to a personal inspection of his or her file and to a copy of any item of information in the file;

4. Assures consumers that they will learn the facts, identity of the agency and of his or her right to learn the contents of a credit report when adverse information on that report has resulted in adverse action being taken on the credit application;

5. Prohibits the use of coded forms which effectively eliminate the opportunity of a consumer to read a credit report intelligently, and even more importantly to detect erroneous information;

6. Provides that before medical information is collected, the consumer must be told of, and must specifically authorize its collection and dissemination to third parties, including any third party consumer reporting agencies;

7. Specifies that willful violations will result in a minimal punitive damages fine of $1,000; and

8. Establishes that if information is reinvestigated and not deleted, and then proved false, negligence will be presumed.

In terms of state law we hope that the Congress will make it absolutely clear by the legislation's language and the legislative history to the FTC that a state law will be considered inconsistent not if it is different from the Federal law <u>but if</u> it does not meet or exceed the Federal law.

Financial Institutions Reform

CFA will once again push for legislation which provides comprehensive reform of the nation's financial institutions. The legislation minimally must: (1) Expand the competitive powers of thrift institutions; (2) Assure a greater availability of funding for housing, particularly low and moderate income housing; (3) Provide a full voluntary central banking facility for credit unions and a broadening of their criteria for membership, primarily to benefit low-income consumers; (4) Reorganize agencies that regulate financial institutions and separate the monetary policy function from the regulatory function of the Federal Reserve Board; (5) Provide for an annual GAO audit of the Federal Reserve; (6) Expand the membership of the Federal Reserve to include public members; (7) Include requirements for Truth-in-Savings information for consumers.

Truth In Lending/Holder In Due Course/Variable Rate Mortgages

In terms of potential legislation that CFA will oppose, two issues are particularly important:

1. A major legislative revision of Truth In Lending (T-I-L) so as to essentially require only minimal disclosure or to undercut strong sanctions for serious violations T-I-L will be vigorously opposed by CFA. There seems to be a growingly popular fad which knocks the T-I-L law as being elitist because it is claimed that essentially Caucasion males utilize its information. Allegations are th it is not achieving its intended effect, and traditional arguments that it costs far too much in proportion to its benefits. CFA is taking a close look at such studies and hopes to have a comprehensive analysis ready by spring. To date, studies asserting such conclusions have little credibility because they assume that a vigorous competitive market exists, they give lip service at best to the need for increased consumer education, their sampling plans are statistically inadequate and/or they attribute little if any importance to the advantage of T-I-L infor-

mation which allows consumer groups to compile, analyze and compare T-I-L information in a handbook and make it available at a nominal cost to individual consumers who might otherwise not utilize T-I-L to its full advantage.

We continue to urge that the Federal Reserve Board to amend Regulation Z to require the disclosure of not only the fact of a dealer or seller kickback when it exists but also the disclosure of the amount of that kickback both in terms of percentage and dollar amount, specifying whether it is part of the finance charge or the purchase price. The Board's amendment should further require the separate itemization of the amount of dealer participation.

1. Confusion

Simply notifying that a dealer "may" get a kickback is senseless and inefficient. It leads to time-consuming questions which frustrate all parties involved in the transaction and is at odds with the spirit and substance of the Truth-In-Lending Act. The vagueness permitted by this proposed amendment is totally inconsistent with the intent of the law to promote openness and a clear understanding of the terms of the transaction by means of disclosure. The "may" approach is little more than a hint at disclosure and is actually a meaningless teaser.

2. Deception

The very inclusion of an undisclosed dealer kickback in the finance charge or purchase price is inherently deceptive. Consumers are thus led to assume that the entire price paid is for either the product itself or for the extension of credit. With the growing prohibition against kickbacks (e.g. in the real estate settlement procedures, clinical laboratory kickbacks, medicaid-medicare kickbacks, etc.) the FRB should minimally be moving in the direction of disclosure which enhances consumer awareness of this practice.

3. Enforcement

It cannot be overemphasized that consumer protection legislation is nearly worthless if it is not enforced. Adequate information is indispensible for enforcement. Comprehensive disclosure requirements are needed to help state and federal examiners evaluate compliance or non-compliance with the law.

4. Psychological Deterrent

An even more direct advantage of the disclosure requirement would be its effect as a psychological deterrent to the imposition of excessive kickback charges. The mere fact that the amount of such charges is exposed will inevitably discourage the use of unreasonably high kickbacks because dealers and creditors will be hard-pressed to defend such a practice.

5. The Cost of Disclosure will not be excessive

It is not surprising that dealers agree that disclosure requirements are costly. That is their traditional battle-cry for every regulation. However, as sensitive as we are to the need for minimizing cost is the contention that the itemization of dealer participation imposes an undue burden on the dealer defies common sense. The information we are suggesting be disclosed is information which is already known and recorded by dealers in connection with their agreement with the creditor. Consumers are asking for no additional calculations, but simply the printing of one more line of pertinent information already available to the dealer in the financial disclosure statement. The "burden" imposed by this requirement is no-where near as great as the obvious benefit it would bestow on the consumer, through enhancement of his ability to do comparative shopping and through the advantage of a more competitive market-place condition which would flow from the availability of more information and comparative shopping made possible by increased consumer awareness.

6. Competition

It is apparent that the real reason for industry objection to the disclosure is the fear that the added awareness brought about by such disclosures will strip them of the protection they now enjoy against vigorous competition and the resulting lower prices disclosure would bring.

CFA will also oppose any potential legislation aimed at revoking or under-cutting the FTC trade regulation abolishing the doctrine of holder-in-due course. Early allegations that the rule would restrict credit or drive up its costs are not supported by the evidence.

Finally, CFA will continue its efforts to oppose any legislative or agency efforts to authorize Variable Rage Mortgages along the lines proposed in years past. This issue seems to rear its head on an almost annual basis and in the event that it is resurrected at the national level we will once again attack the VRM because:

1. it shifts the risk from the lender to the borrower
2. it can be used to discriminate against women, the elderly and racial minorities who traditionally do not have the upward economic mobility to prove to loan officers that they can not only meet current monthly payments but also future increases
3. there are preferable methods for dealing with the cyclical boom and bust patterns which plague the thrift institution and in turn, the housing market.

POLICY RESOLUTIONS 1976

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POLICY RESOLUTIONS

Consumer Federation of America

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We live in a crowded, complex and highly technological society. Both corporate and government decisionmaking affects our health, safety and economic wellbeing. Yet most of us are far removed from those who shape our roles in the marketplace and too often we are remote from those who shape public policy. *It is imperative that both corporations and government* be made more responsible to consumer needs.

Where the marketplace can be kept competitive and where competition may provide the best products and services, the marketplace should be allowed to function. Where the marketplace is not competitive or will not protect consumer health, safety and economic wellbeing, government must do so.

In 1962 President John F. Kennedy spoke of four basic consumer rights. These were the right to be informed, the right to safety, the right to choose and the right to be heard. Today there must be a new set of consumer rights. Consumers have the right to a government that is competent, that is responsive, that has integrity, that deals fairly with its citizens. Consumers have a right to a government that will stimulate corporate accountability and marketplace competition. Consumers have *a right to a government that will protect us from corporate* abuse.

Consumer Federation of America's policy resolutions are an action plan for securing these consumer rights.

AGENCY FOR CONSUMER PROTECTION

The creation of an Independent Agency for Consumer Protection (ACP) is CFA's number-one priority. The ACP must be capable of representing consumers before government agencies and the courts. The ACP must have the full powers of a party to the proceeding including investigation, full powers of discovery, subpoena power and power to intervene in formal and informal proceedings. The ACP must have full access to judicial review and maximum independence from the executive branch.

ANTITRUST

Anticompetitive actions which constitute antitrust violations cost consumers billions of dollars annually, contribute significantly to high rates of unemployment, inflation, inefficiency, underutilization of economies and productive capacity, a reduction in exports, and adversely affect the balance of payments. Furthermore, they blunt the effectiveness of monetary and fiscal policies. Immediate measures must be taken to equip federal and state governments, public interest groups, and individuals, with sufficient resources and expanded legal rights to enforce strong antitrust laws.

FEDERAL ACTION

Numerous studies have documented the failure of regulation to adequately protect consumers.

1. Many federal agency actions have significant adverse impacts on the extent of competition in the American economy. We urge enactment of legislation that would:
   (a) require all federal departments and agencies to publish in the Federal Register a "competitive impact statement" with respect to all proposals for legislation.
   (b) require agencies to weigh the anticompetitive effects of proposed action against the agency's statutory mandates and overall public interest of other action. Anticompetitive action should be allowed only:
      (i) as is specifically authorized by statute
      (ii) as is necessary to accomplish the overriding objectives of the regulatory statutes
      (iii) as it has demonstrable benefits clearly outweighing anticompetitive costs
      (iv) as it comprises the least anticompetitive alternative that is efficacious
   (c) require a hearing on such proposed action on request of the Attorney General or the Federal Trade Commission.
   (d) allow judicial review of an agency's failure to comply with the bill's requirements, and
   (e) require periodic review of the state of competition in the economy generally and in regulated industries in particular.

2. There is substantial evidence that in various industries oligopolistic concentrations of market power result in ineffective price and quality competition. Increased concentration of market power in the hands of a relatively small percentage of industry is contrary to the public interest. Accordingly, consumers are no longer well served by the judicially recognized principle that possession of economic power in and of itself is not sufficient reason to diminish it. We support the Industrial Reorganization Act which would outlaw monopoly or oligopoly power and establish an Industrial Reorganization Committee and Court to restructure companies having such powers except in very limited circumstances. Such restructuring would (1) be subject to the approval of the Court, (2) occur over a reasonable period of time and (3) involve company participants in the development of the plan.
We urge that the legislation be amended so as to include all stages of the food industry as target areas for restructuring or dissolution where monopoly or oligopoly power is found to exist unless such action would result in a loss of substantial economies.

3. We support legislation that would require giant corporations to give the Antitrust Division of the Justice Department and Federal Trade Commission 60 days notice of any significant merger or acquisition, and would delay the effectiveness of the merger or acquisition if the Government filed an antitrust action pending a court determination of its legality on the merits.

4. We support legislation that significantly increases the present $100/day fine for violating Federal Trade Commission special orders or subpoenas.

5. We support legislation that allows the Antitrust Division of the Justice Department to issue civil investigative demands to individuals as well as companies, to issue them in advance of a merger and to investigate antitrust violations through the taking of depositions and written interrogatories.

6. We support legislation that substantially increases the funding authorization for federal antitrust activities and enforcement, to gain access to documents for actual or potential violations of the antitrust laws, including such discovery from third parties.

7. Despite a recent Supreme Court decision limiting the extent to which parties are exempt from the antitrust laws, bar associations, medical associations, and other professional groups continue to engage in price-fixing or other anti-competitive actions. Legislation should be enacted repealing existing or claimed to exist immunities from the antitrust laws enjoyed by private parties acting pursuant to state-conferred power.

8. Consumers are paying exorbitant prices for energy products due to the lack of competition in this industry. Congress should restore competition by enacting legislation which eliminates vertical and horizontal integration for the major oil companies and eliminates the control of dominant oil companies over alternative energy sources such as solar, geothermal, fusion, tidal and wind power. Additionally, legislation should be enacted which reduces vertical integration in the investor owned segment of the electric utility industry. Such integration aggravates problems of market power and unduly complicates regulation by federal and state agencies.

9. The antitrust exemptions contained in the following statutes should be repealed or modified: The McCarran-Ferguson Act (insurance) & the Webb-Pomerene Act (exporting companies)

10. Section 2 of the Sherman Act should be amended to deal specifically with the problem of oligopoly as well as monopoly power.

11. The immunity from antitrust laws conferred upon farmers by the Capper-Volstead Act was intended and should be limited to those activities which do not violate antitrust laws. We believe the Congress should re-examine, in the light of today's and tomorrow's economics and marketing mechanisms, the adequacy of the Capper-Volstead Act to protect and regulate agricultural marketing cooperatives and to determine what changes, if any, may be required to achieve the basic objectives of fair prices of food and fibre to consumers, and a fair return to farmers and ranchers for their capital, labor and management.

12. Legislation authorizing agricultural marketing orders and marketing agreements should be reviewed by Congress, revised to assure an effective consumer role in decision-making and to assure that these orders are administered so as to avoid anti-competitive and other adverse effects upon consumers.

13. One of the forces which should be at work in the economy to keep consumer prices down is hard bargaining by material suppliers, manufacturers, distributors and retailers to acquire materials, products and services at the lowest possible prices. Such competition is either discouraged or actually made illegal by the Robinson-Patman Act, which requires that in many situations a manufacturer or wholesaler must offer materials, foods or services to all consumers at the same price, regardless of the ability of the customer otherwise to bargain for a lower price. This law, enacted in the great Depression in the belief that it would prevent chain retailers from taking market shares

away from small businesses threatened by then-current economic conditions, prevents the cost efficiencies which would result from the process of hard bargaining and has not prevented the decline of small retailers. There is also substantial evidence that the Robinson-Patman Act's uniform price requirements facilitate overt price-fixing or tacit parallel pricing between competing sellers. Consumers pay the costs of inefficiency, price-fixing and parallel pricing.

We urge Congress to hold hearings to determine whether there is sound basis to repeal or appropriate modification of the Robinson-Patman Act so that business firms are not prevented from realizing the greatest possible cost efficiencies through hard bargaining with their suppliers in order to obtain the lowest possible prices.

14. Legislation should be enacted which makes it easier to apply the antitrust laws to foreign corporations doing business in the United States.

15. Legislation should be enacted which permits the courts to use special masters and economic and other experts to assist in handling major antitrust cases.

STATE AND LOCAL

16. Price-fixing conspiracies and other antitrust violations increase the price of bread, milk, gasoline and numerous other consumer items. Existing remedies such as consumer class actions are insufficient because the courts have insisted on strict and expensive notice requirements and have demanded that the amount of each individual's damages be proven in courts. Accordingly, we urge enactment of legislation which would allow state government to sue antitrust violators on behalf of all citizens (parens patriae). The right for public actions should be preserved for some violation without allowing for double recovery. The majority of states do not have the economic capacity or expert staff to prosecute antitrust violators, therefore such legislation should assure state attorneys general with maximum flexibility including the option to hire qualified private attorneys to bring such suits on a contingency fee basis, such fees to be subject to court approval.

17. The federal government should establish a three-year program to help states improve their antitrust enforcement efforts.

PRIVATE ACTION

18. Many corporations plead nolo contendere (no contest) to criminal antitrust charges to avoid litigating the issues, and this deprives private plaintiffs of the assistance in proving their cases. The Clayton Act should be amended to make the entry by a defendant of a plea of nolo contendere in a criminal antitrust prosecution prima facie evidence against such defendant in any action or proceeding brought by any party against such defendant under the antitrust laws.

COMMUNICATIONS

The consumer has the right to choose from a variety of high quality communication services at a reasonable cost. The consumer is likewise dependent upon the media for accurate and fair reporting and treatment of the many diverse and complex issues in today's society.

1. PUBLIC BROADCASTING. A strong, viable public broadcasting system is essential to serve the cultural, educational and informational needs of all Americans. This cannot be achieved without respect by both the executive and legislative branches of government for the independence of the public broadcasting system.

We believe that public broadcasting must provide a fully competitive alternate service to commercial broadcasting and that it must seek out diverse audiences from all segments of the population. In this regard, the Station Program Cooperative needs to give attention to audiences with special program needs—e.g., racial and ethnic minorities, women, youth and the elderly.

We support application of ascertainment of community needs requirements to public broadcasting stations. We also support full application of all equal employment opportunity laws and regulations to federal grants for public broadcasting, whether made directly to stations or indirectly through the Corporation for Public Broadcasting.

We believe that public television stations serving a single market area should not broadcast identical programming simultaneously.

Nominations to the board of directors of the Corporation for Public Broadcasting should be based on the candidate's demonstrated interest in addressing the full spectrum of public needs through public broadcasting.

2. CABLE TELEVISION. CATV must not be allowed to develop primarily as an extension of the existing commercial system of broadcasting but rather must present a truly alternative and unique system.

We favor a national policy of expanding broadband services to all communities—urban, suburban and rural—and all sections of any community regardless of income level. Where necessary to achieve service for low-income users, direct subsidy programs should be developed.

We urge development of experimental public programs of loans/loan guarantees to municipal, private and cooperative CATV systems to insure wide and early availability of broadband services, and to stimulate competition between CATV programming and over-the-air broadcasting. Publicly aided systems should be clearly subject to a regulated rate of return on investment, a principle that we believe is generally appropriate for mature CATV systems. In all cases, a percentage of the profits should go back into the cable system to improve its capability to deliver more services to more people within the community.

The potential of CATV lies in providing a broad spectrum of informational and social services to serve the diverse needs, including education, of the communities served.

Private non-profit, cooperative, local and minority group ownerships of CATV systems are to be encouraged. Municipal ownership likewise should be considered seriously in terms of its profitability to the community.

All operator-owned origination facilities should be available to lessees, as well as to the operators, on equal and non-discriminatory terms. The operators should have no control over lessees' programs. Ultimately, owners should be divorced from all programming. The originators of the programs should be clearly identified to the viewer.

We also support the principle of controlled expansion of any cable as a means of increasing entertainment program availability and diversification.

Production facilities should be provided free by the owner for persons using the public access channels. These facilities should be available to citizens on a first-come, first-served, non-discriminatory basis. In addition to the required one channel for education, one channel for public access and one channel for government use, citizens councils should seek to develop plans for use of so-called "origination" channel(s) and allocation of additional channels to serve other community needs. One such need is to convey consumer information.

We oppose any dilution of the public's access services from those embodied in the 1972 Federal Communication Commission Cable Rules, and oppose the Federal Communication Commission's rollback of the 1977 deadline for compliance with those Rules.

We believe all CATV systems must have interconnection capability.

While CATV systems are presently required to install two-way capability for future expansion, we urge that this capability be developed in a manner so as not to exploit consumers commercially but rather to meet their informational and social needs. Effective safeguards against invasion of privacy must be considered paramount.

3. PUBLIC PARTICIPATION IN FEDERAL COMMUNICATIONS COMMISSION PROCEEDINGS. We support the principle that all administrative agencies should take aggres-

sive steps to educate the public about and involve them in their proceedings. As the first agency in which direct consumer standing was recognized as critical to its findings (in 1966) the Federal Communications Commission should take the leadership in this area. In fact, however, it has lagged behind other agencies such as the Federal Trade Commission and the Interstate Commerce Commission.

We support current proposals that the Federal Communications Commission take an active role in making the public aware of proceedings involving communications policy issues that affect them directly as consumers of television and radio programming and advertising, and provide for their participation. The Federal Communications Commission should, as a first step, institute a consumers' information and assistance office. This office should provide comprehensive, regular information about pending rulemakings, and assist consumers with inquiries about how to participate in them. It should arrange for meetings held in Washington and in various regions of the country between the Federal Communications Commision and the public, and otherwise facilitate public participation at all levels of Federal Communications Commission decision-making.

In addition, we urge Federal Communications Commission reimbursement of consumer group costs of preparing testimony, travel to Washington and other expenses, including reasonable attorney's fees, and of participation designed to provide the Federal Communications Commission with a complete and adequate record upon which to make a valid public interest finding.

The Communications Act of 1934, as amended, should be further amended to include a provision that parallels the provision of the Magnuson-Moss Warranty/Federal Trade Commission Improvement Act of 1975 which states that compensation shall be designated for participation expenses incurred by those who would not otherwise be adequately represented in such proceedings, where such representation is necessary, and where they would otherwise be unable to effectively participate.

4. BROADCAST LICENSE RENEWAL. We oppose any legislation amending the Federal Communications Act that would give preference in license renewal proceedings to incumbent holders of broadcast licenses. We further oppose legislation that would extend the broadcast license renewal period beyond the current three years, that would preclude the Federal Communications Commission from establishing guidelines to evaluate the licensees' performance in the public interest, or that would limit the ability of community groups to participate in the license renewal process.

The Federal Communications Commission should foster media ownership diversification, both in license renewal proceedings and in rulemaking, so as to encourage economic competition and diversity of views. We oppose legislation that would restrict or prohibit the Federal Communications Commission or Justice Department from breaking up concentration of control in the mass media.

We support a Commission policy requiring licensees to ascertain the needs and interests of their service area as a basis for their programming to the community. We oppose any relaxation of Federal Communications Commission regulation of radio stations inconsistent with the public interest. We urge the Commission to implement its announced policy of taking into consideration in determining license renewal the conduct of licensees running commercials about which serious questions have been raised through formal challenge by the Federal Trade Commission or other regulatory agency.

5. ASCERTAINMENT OF COMMUNITY NEEDS AND INTERESTS. We believe that regular and thorough ascertainment of community needs and interests by all broadcasters is essential to the American system of broadcasting, which is based on the assumption that the airwaves belong to the public and that they are primarily a medium for local self-expression. Ascertainment should be the basis for specific program proposals made in license renewal applications. CFA opposes the Federal Communications Commission's plan to ease ascertainment requirements for all broadcasters and to exempt entirely stations in markets with populations of less than 10,000.

6. RADIO & TV STATION — CITIZEN AGREEMENTS. We believe that agreements between citizen groups and broadcasters are an essential means of insuring that broadcasters are responsive to community needs and interests while avoiding litigation that is costly for citizen groups, broadcasters and taxpayers. We deplore the Federal Communications Commission's decision to disallow agreements that commit the broadcasters to specific programming and employment practices.

7. BROADCAST EQUAL EMPLOYMENT OPPORTUNITY. We strongly believe that all persons should be afforded equal opportunity for employment regardless of race, color, creed, national origin or sex, and stand unequivocally opposed to the Federal Communications Commission's proposal to excuse approximately 79 percent of all broadcasters from filing affirmative action plans with license renewal applications. We believe that these written records are absolutely necessary in order for citizen groups and the Federal Communications Commission to hold broadcasters accountable for their employment practices and to insure that they comply with the letter of the law. We further believe that all broadcasters should be required to list annually their employee profile by specific job title and salary range, and should, with each renewal application, be required to conduct a more detailed utilization analysis, by race and sex, of their own work force, and set goals and timetables to achieve parity with the presence of each group in the local work force.

8. SECTION 315 OF THE COMMUNICATIONS ACT. We deplore the Federal Communications Commission's recent decision to exclude news conferences and political debates between major candidates at all levels of government below the Presidential level from the equal-time provisions of Section 315 believing that this exclusion opens the way for use of the airwaves to serve narrow, partisan interests rather than broad, public interests.

9. FAIRNESS DOCTRINE AND ACCESS TO THE BROADCAST MEDIA. We are unwavering in our support of the Supreme Court Red Lion decision affirming that the rights of viewers and listeners are paramount. It therefore follows that for a licensee to operate in the public interest it must devote ample time to discussion of controversial issues to afford citizens the opportunity to hear all significant viewpoints.

The public must have access to the broadcast media to present counter arguments when commercial advertising raises controversial issues such as matters of environmental protection or nutritional habits, makes claims based on scientific premises currently subject to debate within the scientific community, or is silent on negative aspects of the advertised product or service.

We oppose the recent Federal Communications Commission decision which excludes product advertising from the Fairness Doctrine and its failure to develop a position for at least limited guaranteed access for announcements containing editorial viewpoints. We oppose proposals to exclude radio stations in large markets from the requirements of the Fairness Doctrine.

10. TELEVISION PRIME TIME ACCESS RULE. We support the continuation of the prime time access rule and call on the Federal Communications Commission to stipulate that the access period be used primarily for local news and public affairs programs, programs that develop and use local talent and allow for local self-expression and programs that serve the needs and interests of minorities, women and children. We believe that the Federal Communications Commission has granted an excessive number of waivers to the rule and urges it to adopt a more restrictive waiver policy.

11. DIVERSIVICATION OF PROGRAMMING AND CONTROL. We support the rulemaking petition of the Office of Communication of the United Church of Christ seeking

modification of Federal Communiations Commission technical standards to allow additional VHF television stations in many underserved markets. We support the concept that preference be given to public television and minority applicants.

12. BROADCAST FORMAT CHANGES. We are distressed by the recent efforts of some radio broadcasters to change their program formats without public or Federal Communications Commission consent even when the format change would result in the loss of a unique service in a particular community. We believe that all significant community groups have a right to programming that meets their needs and interests and condemn those broadcasters who place increased profits before their responsibilities to the communities they serve.

13. PUBLIC AFFAIRS PROGRAMMING. We support the proposal of the National Citizens Committee for Broadcasting that each television station provide at least one hour per week of regularly scheduled, prime-time (6 to 11 p.m. EST), locally originated public-affairs programming; that each of the three networks provide one hour per week of regularly scheduled, prime-time programming, and that each network affiliate that does not carry the network offering provide a second hour of prime-time, locally originated or syndicated public-affairs programming.

14. PUBLIC SERVICE ANNOUNCEMENTS. We call on broadcasters to present at least one PSA per hour throughout the broadcast day and to provide facilities and production assistance to local public interest organizations that do not have the resources to produce their own PSA's.

15. FAMILY VIEWING HOURS. We deplore the television industry policy mandating "family viewing hours" because it was developed by the industry in discussion with the Federal Communications Commission and instituted without the involvement or consent of the public. We believe that policies affecting overall programming, as distinct from day to day programming decisions, should not be implemented without an opportunity for public comment.

16. CHILDREN'S PROGRAMMING. We believe the Commission should develop rules specifying the amount of programming that shall be directed to children and the times that such programming shall be presented, and should propose adequate enforcement procedures.

17. STEREOTYPE IMAGES IN ADVERTISING. In keeping with its goal of promoting human dignity, we oppose the media's use of negative and stereotyped images of women and ethnic and racial minorities.

Such portrayals are not only degrading, but encourage and reinforce prejudicial attitudes.

Both sexes and all racial and ethnic groups should be portrayed in a variety of roles as informed, logical and intelligent consumers. Portrayal of either sex as excessively preoccupied with domestic duties, physical appearance or the human process of aging should be avoided, as should the depiction of either men or women as sex objects. Capitalizing on the women's rights movement, or otherwise downgrading its serious goals and accomplishments, should also be avoided.

18. CHILDREN'S ADVERTISING. We abhor the exploitation of children as merchandising vehicles through the proliferation of commercial advertising in broadcasting periods during which children constitute a substantial part of the audience.

The recent Federal Communications Commission Report and Policy Statement, issued after almost four years of inquiry and an unprecedented number of public complaints, represents a regulatory agency cop-out deferential to the industry the Federal Communications Commission is charged to regulate. We deplore the Federal Communications Commission's failure after all these years to issue enforceable rules limiting the amount and frequency of commercials directed to children, and its willingness to sanction revised industry code time standards that treat children's commercials no differently than those directed to adults.

We believe more stringent standards are necessary for children's television advertising on such matters as premiums, host selling, testimonials, vitamins, product warnings, sucrose in products, and commercial time. We believe that the advertisement of over-the-counter drugs should be prohibited during children's viewing times. We further deplore the Federal Trade Commission and Federal Communications Commission's delegation of responsibility for moderating children's TV advertising to the Council of Better Business Bureaus/National Advertising Division and the National Association of Broadcasters' Code Authority (see Self-Regulation below).

We urge the Federal Government to support and encourage research, unaffiliated with industry, to determine the effects of television advertising on children. We believe that maintaining the status quo until "definitive research" is gathered is contrary to the public interest. A decision to adopt only cosmetic changes until research is completed is, in fact, a decision not to act. Those responsible for advertising directed to children must carry the burden of showing that the advertising does not have harmful effects.

We note that a large percentage of the children's audience is pre-literate and not readily susceptible to advertisements other than those on television. The special place of television in a preschooler's world cannot be disregarded by public officials or the broadcast industry in its charge to operate in the public interest.

We urge the Federal Trade Commission to act promptly to prohibit television advertisement of premium offers directed to children.

We believe that advertising directed to children five years of age or under should be prohibited.

19. OVER-COMMERCIALIZATION OF RADIO AND TELEVISION. We deplore the repeated interruptions in broadcast programs for commercials as an unnecessary irritant to listeners and viewers. The industry's Radio and Television Codes' (see also section 20 below) commercial time standards contribute to this over-commercialization. Commercials should be grouped within the broadcast schedule so as to substantially reduce the number of interruptions in the broadcast hour.

CFA calls on the Federal Communications Commission to develop enforceable standards controlling the sound levels of broadcast commercials so as not to exceed that of the surrounding program.

20. SELF REGULATION-ADVERTISING AND BROADCASTING. Establishment of the National Advertising Division (NAD) of the Council of Better Business Bureaus has not resulted in a significant impact on the wide array of misleading and deceptive advertising. We believe at least three fundamental steps must be taken: the industry needs to consult consumer and public interest groups in appointing public representatives to the National Advertising Review Board (NARB); the percentage of public representatives needs to be at least doubled; substantiation and other materials submitted to the NAD and NARB by advertisers in support of advertising representatives must not be treated confidentially and must be open to public inspection.

The Radio and Television Codes should be separate from the industry trade association—the National Association of Broadcasters. Code Board membership should be drawn equally from the private and public sectors. Priority should be given to revising the standards, sanctions and by-laws of the Codes to meet public criticisms and needs. As with NAD and NARB, confidentiality in Code proceedings should be abolished.

21. INFORMATIONAL ADVERTISING. Persuasion, rather than objective information, has been preponderant in American advertising for many years. This continues to result in the selection of products by many consumers on the basis of seller-created product image instead of seller-created product quality and economy. We believe that objective product information is of interest to consumers and can be presented in interesting, attractive commercials without fulfilling the fear of many advertisers that audiences will be lost. We challenge the advertisers of America to develop such commercials and to

emphasize in their advertising objective product quality and economy instead of subjective product image.

We strongly urge the Federal Trade Commission to adopt final trade regulation rules requiring the meaningful disclosure of product and service information where such information is necessary to assist consumers in making rational choices in the marketplace. Failure of advertisers to disclose this information should be held to constitute failure to reveal material facts, which is an unfair and deceptive practice under section 5 of the Federal Trade Commission Act. Recently initiated rulemakings such as those concerning nutritional information in food advertising, room air conditioner performance, characteristic labeling and funeral services practices exemplify areas in which the Federal Trade Commission commendably has initiated steps to assure that such information will become available.

We support the principles contained in legislation, as proposed by Senators Magnuson and Moss, for product testing information and dissemination as a means of achieving the objectives of affirmative disclosure in advertising.

We heartily commend the Federal Trade Commission and the Department of Justice for instituting legal proceedings to remove barriers to price information advertising by professional pharmacists. We urge these two agencies, as well as state governments, to take additional steps to assure that anti-competitive restrictions on the advertising of prices and other characteristics of goods and services provided by professionals, including opticians, physicians and lawyers, be removed so that consumers can include price as a consideration when shopping for such goods as services.

22. RESEARCH ON MARKETING PRACTICES. We endorse the need for research as called for in the proposed National Institute of Marketing Science legislation introduced by Senator Moss. The role of motivational research in the development of advertising and the potential for this research to be used to create deceptive advertising appeals needs to be fully understood and combated.

23. TRUTH-IN-ADVERTISING. We support the principle of requiring advertisers to make public documentation of claims about product performance, safety and price comparisons.

24. CONSUMER FRAUD. We support the principles contained in the Consumer Fraud Act passed in the Senate of imposing criminal penalties for certain serious acts of consumer fraud.

25. THE POSTAL SERVICE. Postal rates must not be used to inhibit the free flow of information. We are concerned about the continuing general postal rate increases that impede the flow of communication among citizens, citizen organizations and enterprises of limited means. We believe that efforts to reduce the postal service's operating deficit must not be permitted to further reduce the opportunity for citizens and organizations to communicate by mail.

We oppose any increase in the rates for newspapers and periodicals, or for bulk mailing by noncommercial organizations, as such an increase would have a severe economic effect on those publications and mailers and, concommitantly, would restrict citizens' right to the free flow of information and to the freedom of association.

We urge establishment of U.S. Postal Service Procedures whereby citizens may remove their names from junk mailing lists offering merchandise or services from profit-making organizations as defined by the Postal Service. We also encourage consumers to avail themselves of the industry's Direct Mail Advertising Association mail removal form affecting unwanted mail sent by its members.

26. TELEPHONE COMPANY REGULATION. The telephone industry, by virtue of its special position as a regulated industry, has special responsibilities to the consumers it serves. Telephone service cannot be regarded as a luxury today. Telephone companies cannot be allowed to set rates without taking these concerns into consideration. Therefore, we urge that every telephone consumer have a basic service package available at a reasonable charge. Many consumers, particularly elderly and invalid consumers, depend on telephone service for communication with the outside world. The telephone industry cannot be allowed to cut this link by raising the price of basic phone service or by imposing measured call limits that do not realistically reflect the needs of all residential users.

We also urge that any directory service charge be imposed on only those people who use the information service unnecessarily. We do not support any directory service charge that reduces the use of the service by penalizing consumers who cannot see the written directories or those who inquire about numbers not in directories provided.

We condemn the nationwide efforts by American Telephone and Telegraph to raise local pay phone charges, particularly in those instances that penalize the poor.

We commend state and local governments that have defended ratepayers' interest in regulatory proceedings. We favor separation of purchase or rental of terminal equipment from providers of interconnecting facilities.

We urge Congress to make available all necessary funds for a Federal Communications Commission probe of the American Telephone and Telegraph Co. commensurate with the scope of the task and the enormity of the consumer's interest.

CFA commends the Department of Justice for its action seeking to require American Telephone and Telegraph Co. to divest itself of ownership of Western Electric Co. Common ownership of communications services and of the manufacturer of the communications equipment and supplies used to provide the services has substantially foreclosed competition in the sale of such equipment and supplies. The primary effect of this lack of competition is to increase costs (and profits) to the company, for which consumers must pay higher telephone service and installation rates. We believe that healthy competition in the sale of communications equipment and supplies to the telephone system will reduce or minimize increases in the cost of telephone services, and urge the Justice Department to press this case to the speediest possible conclusion.

Nonprofit groups should not be required to pay the business monthly rate for telephone service. We support legislation whereby citizens may prevent their names and telephone numbers from being involved in commercial telephone solicitations.

27. CONSUMER REPORTING AND PROGRAMMING. We commend the growing number of broadcasters and publishers who have significantly increased consumer reporting and broadcasting, including accurate reporting of the activities of consumer organizations. We call on additional news media to establish stronger, more effective consumer programs.

We support those who have withstood economic intimidation, condemn those who have submitted to it, and strongly support those responsible journalists who are fighting to upgrade, fair consumer reporting and programming within their media. We applaud efforts of a few newspapers to determine the accuracy of claims in local and national advertising by putting the product claims to an impartial test and publishing the results.

28. FREEDOM OF THE PRESS. We vigorously affirm the rights of print and broadcast journalists to protect the confidentiality of their sources as a keystone of investigative reporting.

29. COMMUNICATIONS SATELLITES. Because communications satellite technology has developed at public expense, CFA believes that, as satellite frequencies are allocated, the needs and interests of non-commercial, public-interest organizations, and of those potential users who would most benefit by small and inexpensive technological methods, must be protected through legislation and regulatory policies.

We urge the Federal Communications Commission to initiate a full-scale study of the use of satellites to transmit programs directly to home television sets. Direct satellite-to-home transmission would increase programming diversity by allowing consumers to receive many more channels than the average three or four now being received, and by fostering the development of additional networks. Since the technological capability to provide these consumer benefits will exist shortly, the Federal Communications Commission should immediately proceed to encourage realization of such benefits.

CONSUMER EDUCATION

Not only the welfare of the family but the very continuance of a market economy in the United States depend upon the ability of consumers to effectively vote their dollars in their own best interest. Consumer illiteracy drains the family budget and the public treasury. It contributes to inflation, waste and malfunction in the economy.

The difficult and everchanging skills necessary to transform earnings through a multiplicity of choices into a fulfilling way of life can and must be taught. In our urbanized, highly complex economy, a person who has not been taught these skills cannot be considered educated.

That we have developed the most productive labor force in the world is due in large part to our public commitment to basic knowledge and skill training in our elementary and secondary schools. We call upon the federal and state governments to make an equally massive public education commitment to developing an efficient and effective consumer force in our economy. Wiping out consumer illiteracy will require a massive and sustained social and financial commitment.

THE FEDERAL COMMITMENT

We applaud Congress's recognition of consumer education needs in the Educational Amendments of 1974 (Public Law 9B-380) but in this year of 1976 deplore the limited funding for the Office of Consumer Education and the discretionary grant and contract program. This funding is far from adequate to meet the Federal Government's responsibility for consumer education. With sufficient funds and a well defined mission, the Office of Consumer Education can begin to enable consumers to recognize and organize around their common interest. To starve the newly created education office in a period of inflation and declining real income is false economy of the most patent sort. We believe that in order to carry out its broad mandate of bringing consumer education to the public by funding local and community programs, the Office of Consumer Education must maintain high visibility and independence.

HIGHER EDUCATION

Almost totally absent from our higher education system today are faculty and researchers brought together to devote their professional lives to study of the consumer interest. Industry is continually refreshed and refueled by the infusion of Masters of Business Administration from our most prestigious universities. With consumer spending accounting for two-thirds of the nation's gross national product and with our economy reeling perilously between inflation and recession, we should lose no time in committing some of our higher education resources to the education of consumer interested professionals able and available to research social, economic and political problems in the consumer's behalf.

Again, our institutions of higher education have well developed departments of industrial relations and schools for workers where union leaders and technical staff are trained and kept abreast of new research throughout their professional careers. Higher education available to union leaders has contributed to the responsibility and effectiveness of that leadership and to greater harmony in labor management relations. Almost nothing comparable exists for consumer group leaders and their technical staff. It should. In addition, funds should be provided for teacher education in service training programs appropraite to the promotion of consumer education.

We call attention to the professional school's responsibility to instill in its students an awareness and recognition of their clientele's rights as consumers of services. Each curriculum should provide for education in the consumer interest in order that the practice of the profession will enhance instead of erode the mutual respect that should characterize the professional-client relationship.

In our technological marketplace, consumers who were well educated when they left school, evolve all too soon into consumers needful of information, counsel and skill training. Sophisticated and relevant consumer courses must be available from the community colleges as well as the four year colleges.

Consumer concerns will continue to change, as witness in the last few years the greatly diminished supply and increased cost of energy for transportation and home heating. There is as yet no delivery system for informing consumers and consumer organizations about their options so that they can make their policy decisions in light of known facts. We call for a federal, state and county Extension Office whose research and technology delivered at the grass roots level would solve the problems and guide the decisions of today's and tomorrow's urbanized consumers in an increasingly complex economy.

COMMUNITY EDUCATION

Formal education is only the starting point. Consumers should have easy access to relevant, complete information at the time they need it. Consumer professionals and consumers alike should be able to obtain training in the many areas that impact on today's marketplace. Often this information exists within the community itself, but is unknown or unavailable because the programs necessary to do the job do not exist or do not have the necessary funding.

We call upon the Office of Education and the state departments of public instruction to make this information and training available 1) to consumers, with special emphasis on providing information at the point of need when consumers are mostly likely to make use of the information, 2) to consumer professionals and consumers active in community organizations, with special emphasis on providing training for consumer leaders, and 3) to the community as a whole through the use of the mass media, with special emphasis on precise and timely buying information.

We call upon the government to make use of existing expertise in the consumer movement to achieve the goals enumerated above by using the informed members of consumer organizations in educational programs, by funding consumer organizations to provide independent programs, by stressing training of consumer leaders so that members of consumer organizations and consumers in general profit thgough having consumer expertise available locally, and by helping independent organizations develop and disseminate their own information beneficial to consumers.

AREAS OF SPECIAL CONCERN

Services provided by federal, state and local governments are having more and more of an impact on people. We all need to realize that we are consumers of these services as well as of services provided by the private sector. Consumers need adequate information to wisely evaluate these often crucial services provided by government. We call upon government and private organizations alike to realize that consumers need information to evaluate government services and to begin to stress education in this area.

Finally, a much neglected consumer is the consumer of education itself. Education is rapidly becoming one of the highest priced services a consumer purchases. We call upon the various public and private organizations engaged in education to reevaluate their responsibilities from the viewpoint of the consumers of the service. We call upon law enforcement and consumer agencies to enforce the rights consumers have in the education industry no less assidiously than they are enforced in other industries.

CREDIT AND THE FINANCIAL SYSTEM

Consumer Federation of America has fought from its beginning for equitable consumer credit legislation that establishes consumer rights in all phases of credit transactions. Consumers throughout the country are reexamining existing state legislation as well as proposals for new statutory schemes offered in the name of consumer protection. In order to give assistance to consumers and local consumer organizations, we now set forth these standards which all legislation, existing or proposed, federal or state, must meet if equity for the consumer is to be achieved. Toward this end, some states have contributed innovative statutes and regulatory mechanisms. Each state's contribution must be recognized rather than sacrificed to arbitrary concepts of uniformity.

We set forth the following standards to establish our principles in the major areas of consumer credit activity. Every piece of credit legislation must be tested against these consumer standards. Wherever such legislation falls short of any of these standards, it must be rejected. Existing legislation must be reevaluated against these standards. Where it falls short it must be revised; where it meets or exceeds these standards it must be preserved.

1. FORMATION OF CONSUMER CONTRACTS. Every consumer transaction must be based on full disclosure of all information essential to the consumer's uncoerced decision. Any promotional practice that is deceptive or misleading taints the whole transaction. Every consumer shall be entitled to legal redress for violation of these principles.

Documents in consumer transactions shall be intelligible to the average consumer, shall be complete before signing by the consumer, and copies of such documents shall be provided to the consumer immediately upon their execution.

(a) False or Misleading Advertising. False or misleading advertising of any kind, including terms of credit, must be prohibited. This prohibition includes advertising statements which mislead by omission or essential facts. Legislation must require that all credit advertising disclose affirmatively the annual percentage rate applicable; no other rate shall be advertised, disclosed or used.

(b) Affirmative Disclosures. Consumers are entitled to affirmative disclosure of all essential facts of any transaction in the language utilized by the merchant or credit lender in inducing the transaction. This disclosure must be made sufficiently in advance of the execution of the transaction to be meaningful to consumers.

(c) Deceptive Practices and Misrepresentations. False or misleading statements, oral or written, or practices of any kind, including terms of credit, must be prohibited. Statements and practices of any kind, including terms of credit, which mislead by omission of essential facts, are similarly deceptive and must be prohibited.

(d) Unconscionability. The enforceability of every consumer transaction should be conditioned upon its freedom from unconscionability in its inducement, terms, and performance. Every transaction should, in good conscience, be just and reasonable.

(e) Cancellation of Contracts. Every door-to-door sales contract shall permit the consumer a reasonable "cooling off" period in which to cancel the contract without fee or penalty. The seller must notify the consumer in writing of the right to cancel without fee or penalty and must provide the consumer simple and comprehensible forms for the exercise of this right to cancel.

In all consumer transactions, the consumer must have an opportunity, without fee or penalty, to return faulty goods within a period of time sufficient for him or her to fully inspect the goods. The seller must notify the consumer in writing of this right to return faulty goods.

2. RATES OF CREDIT COST. Interest rates have a direct impact upon the pocketbook of every consumer in the country. They are of vital concern to every purchaser of a home, a refrigerator or a car. There are no easy formulas for setting interest rates or for determining the "true cost" of using money. The great diversity of state interest rate ceilings reflects the widespread refusal to accept uniform rates for every segment of the country as well as the strong desire of state legislatures to set rates based on local credit conditions. The following general principles are the guidelines by which to measure all proposals purporting to solve the interest rate problem.

(a) Existing maximum rates shall not be increased without convincing evidence that existing rate ceilings are so low consumers are not being reasonably served. Whenever feasible, rate ceilings should be lowered to the minimum level necessary to keep the more efficient competitors in the market.

(b) Rate ceilings, and criteria for determining them, should not be subject to change without legislative action; there shall be no automatic escalation of rates; rate ceilings are dependent upon local credit conditions and can only be set by legislative bodies after analysis of all such conditions.

(c) All costs of credit including so-called "additional charges" must be included in "interest" for the purposes of setting interest rate ceilings.

(d) Multiple (2-step or 3-step) add-on and discount rates should be replaced by periodic percentage rate (and annual percentage rate) equivalent, computed on the outstanding unpaid balance.

(e) Interest shall not be charged for credit after it is repaid or before it is first used.

(f) Credit insurance shall be prohibited unless its terms are clearly stated in clear understandable language. Charges for credit insurance shall be included in the finance charge and the annual percentage rate unless the lender can demonstrate its purchase is independent of the granting of credit.

(g) There shall be no penalties for prepayment.

(h) Purchase of any insurance or producer service of any kind from the creditor should be an actual or implied condition of the granting of credit.

3. PRESERVATION OF CONSUMER DEFENSES. There is a direct relationship between the quality of consumer goods and services or the seller's basic performance of the contract, and the consumer's obligation to pay. If the consumer does not receive promised goods or adequate service, then he or she should not be forced to pay for it. Consumer credit legislation must translate this obvious principle into reality.

Current consumer credit practices frustrate this basic consumer right. These practices and devices include the negotiable note and its so-called holder-in-due-course notion, waiver of defenses clauses, and other three-party transactions such as the lender credit card. The first two devices must be abolished. As to the third, its use must be subject to the basic principle of preservation of consumer defenses. Any institution which extends credit to permit the purchase of consumer goods, including those who purchase consumer contracts, banks and credit card companies who authorize sellers to accept credit cards and direct lenders, must be subject to consumer claims and defenses.

4. THE COLLECTION PROCESS. For many years, laws governing default in consumer credit transactions have unfairly favored creditors' rights and abandoned consumer rights. Whatever validity this orientation may have had in an earlier cash economy, a different attitude is required by the present economic climate.

Non-payment of consumer debt, for example, frequently results from legitimate consumer dissatisfaction with the quality of goods. It may result from legitimate family financial emergencies. Excessive consumer debt is also incurred because of over-merchandising of consumer credit. The credit industry has unfairly relied upon inaccurate stereotypes of "dead beats" to justify unreasonable and socially harmful collection practices. Consumer credit law must now consider not only the interest of the creditor and of the individual consumer, but also the interests of society in maintaining the family as an independent, self-supporting stable unit.

A credit collection system which recognizes these principles must have the following characteristics:

(1) Repossession must be subject to the following minimum conditions:

(a) The consumer must be afforded reasonable notice prior to repossession;

(b) Entry into a home is permissible only after a fair hearing in which the consumer is provided notice, counsel, and an opportunity to be heard;

(c) An appropriate public agency must supervise the qualifications and conduct of repossessors;

(d) The debtor must be afforded a right to cure all defaults, as well as a reasonable right to redeem without penalty (and this right of redemption should be no less extensive than provided in Article IX of the Uniform Commercial Code).

(2) Creditors should be required to choose between repossession and suit on the unpaid obligation. Deficiency judgments should be prohibited.

(3) All consumer property, including income, shall be exempt from seizure prior to judgment. Confessed judgment, wage assignments, and all pre-judgment attachments must be prohibited.

(4) Wages, the home, and other property essential to the maintenance of the household shall not be subject to garnishment execution or any other form of judicial process.

(5) The consumer being sued must receive proper service giving him or her notice of any pending litigation. Suits against consumers shall be in the judicial district in which the consumer resides.

(6) Fraudulent and abusive collection practices must be effectively prohibited. There must not be any telephone or written communication to the consumer's employer except as directed by a court of competent jurisdiction. The use of documents or any other device purporting to maintain the color of law which are not issued or authorized by statute or a court of competent jurisdiction must be prohibited and penalized. Oral and written threats of legal action that the credit collector cannot legally perform shall be prohibited and penalized.

(7) Charges and fees related to delinquency or default by borrowers should only be the minimum necessary to recover the costs of the creditor's actions.

(8) Borrowers or consumers will not be barred from bringing any cause of action available to them prior to a creditor's entry of a default judgment if such action is brought within one year of the entry of such judgment.

(9) Collectors shall not represent or imply that they practice law.

5. We urge passage of legislation that would prohibit credit discrimination based on an applicant's geographical location, sex, marital status, race, color, age, national origin, religion or receipt of public assistance. The legislation should:

(a) require a mandatory written statement of reasons for the denial of credit in order to 1) make meaningful enforcement of the law possible; 2) serve as a deterrent against discrimination; 3) place the burden of explaining a credit rejection on the creditors rather than requiring consumers to request the reasons; 4) reduce the difficulty of proving discrimination in a court of law.

(b) be applicable both to personal loans and business loans.

(c) not allow to be included in point scoring systems, the fact of membership in above-described groups as a point to be considered.

(d) not abandon the judicial "discriminatory effects" test. Under this rule, a person who can show a disparity in the percentage of a creditor's loans to the above groups of persons and the percentage of such persons in the local population can establish a rebuttable presumption of discrimination.

(e) not allow the age of a credit applicant to be in and of itself the basis for a credit rejection unless it affects the applicant's legal capacity to contract.

(f) permit substantial economic penalties in credit discrimination cases.

6. IMPLEMENTATION AND ENFORCEMENT. Acceptable consumer credit legislation is meaningless without effective means of enforcement through both private remedies and public control of prescribed practices. Under prevailing law we are faced with creditor-devised remedies in either the private or public sphere. Effective consumer credit legislation must meet the following criteria:

(a) Consumer class actions must be allowed and made feasible as consumer remedies against creditors violating consumer credit laws. Reasonable attorneys' fees and court costs must be allowed to the successful consumer.

(b) Minimum penalties must be provided for violation of consumer credit laws in order to make it worthwhile for consumers to go to court. Again, the successful consumer must be assured reasonable attorneys' fees and court costs. Punitive damages for willful or repetitive damages must also be provided in both public and private remedies.

(c) Any supervisory or regulatory body or unit established to police consumer credit laws must be independent, must be assured of adequate financing, and must be sufficiently visible to the consumer so as not to be lost in the lower echelons of state or local bureaucracy.

(d) The supervisory body must have powers of continuing review over those it is to supervise. There must be an annual report to the legislature stating in detail the scope of regulatory activities, the need for new legislation, and the state of consumer credit.

7. We urge prohibition of the use of the rule of 78 and urge instead use of simple interest calculations on the prepayment or acceleration of loans for retail loan transactions.

8. We urge the extension of authorities of all federal and state financial institution examiners to include supervision of and enforcement of state and federal laws pertaining to consumer credit granted by the supervised institutions.

9. We urge passage of legislation that would prohibit direct consumer surcharges on credit card purchases, but would allow and encourage cash discounts to cash customers.

10. We recommend the redefinition of FINANCE CHARGE under Truth-in-Lending Act to include all charges incident to the extension of credit including, but not limited to, insurance premiums.

11. We urge passage of legislation that would require disclosure of types of insurance with a description of the coverage and cost of each coverage included in such insurance sold or procured by the creditor in connection with a loan for retail transactions.

CREDIT COUNSELING

We endorse use of nonprofit consumer credit counseling to prevent and treat problems of consumers whose financial circumstances are difficult but whose problems can be resolved without legal remedies. We urge that:

1. Counseling agencies should have a majority of consumers on their boards.
2. Counseling services should be provided by social agencies, settlement houses, and others who serve low-income families.
3. Counselling services should be added by bankruptcy referees.

TRUTH-IN-SAVINGS

We endorse TRUTH-IN-SAVINGS legislation which would:

1. require full disclosure to consumers of all types of savings contracts essential terms and conditions of the contract

prior to and when they open an account, before any changes are made in the savings contract, and when earnings are paid;
2. prohibit the proliferation of ambiguous words, and provide for mandatory use of simply defined words requisite for efficient communication about savings;
3. establish as a standard for regulations issued by regulatory agencies that of intelligibility by the average savings consumer;
4. be included as a central feature for financial institutions reform legislation;
5. require that all financial institutions compute interest due on savings accounts on the basis of the average daily balance in the account from the date of deposit to the date of withdrawal.

ELECTRONIC FUNDS TRANSFER

Recognizing that EFT systems have the potential to increase the efficiency and convenience of financial transactions while significantly reducing costs, we nonetheless urge the prohibition of further expansion of EFT until the following consumers concerns have been resolved:

1. Adequate safeguards must be developed for the confidentiality of consumers' personal financial affairs. Unauthorized use of the detailed economic profiles of an individual (information made more easily available because of EFT) should be outlawed, with strict civil penalties for violations. Technological means should be developed to minimize "computer fraud", and "computer theft" of the date stored in a computer system.

2. Consumers must receive a committment that all or an equitable proportion of the cost savings which result from EFT will be passed on to them, since they have paid the enormously high cost of EFT research, development, and technology.

3. A highly sophisticated EFT dominated society in which the use of cash and personal checks has been largely replaced by point-of-sale computer terminals could result in discrimination against low-income consumers if high incomes and/or asset levels are required to participate in EFT. EFT cannot be permitted to restrict the purchasing power of low-income consumers, nor should any consumer ever be prevented from using cash or from obtaining written confirmation of a transaction.

4. The system should be developed so that even consumers with little or no formal education can readily use and understand it. Implementation of EFT must be accompanied by massive consumer education programs.

5. An adequate system of terminal ownership and availability must be developed so as to assure that EFT does not adversely effect competition among financial institutions and among retailers.

6. Because consumer complaint handling mechanisms are inadequate at best, consumers must retain to the fullest extent possible the ability to stop or withhold payment if merchandise or services are unsatisfactory.

7. There must be a strict procedure of accountability so that consumers will be assured that any errors that occur in the system will be promptly resolved.

8. Laws, including but not limited to The Fair Credit Act, The Uniform Commercial Code, and the Bank Secrecy Act, which currently afford rights, defenses, and other protections to check users must be appropriately modified so as to accommodate EFT.

9. Serious concerns about the impact of EFT on our nation's economy, monetary policies and the Federal Reserve operations and monetary policies must be further analysed and resolved.

10. Interstate electronic terminal systems should be banned until the final report of the EFT Commission has been received and analyzed.

11. State and federal laws which insulate part or all of a consumer's wages from garnishment should be modified where necessary to assure that automatic deposit of wages in the consumer's account by the consumer's employer, or the preauthorized payment of bills, does not jeopardize the consumer's wage garnishment protection.

FINANCIAL INSTITUTIONS

We support comprehensive, not piecemeal, reform of financial institutions through a Financial Institutions Act for the purposes of improving the efficiency, price, quality, and fairness of customer services while increasing the strength of the competitive system. To accomplish the objective, we favor:

1. Removal of restrictions against Savings and Loan Associations, Mutual Savings Banks, and Credit Unions to enable them to provide:
(a) Checking type accounts and all savings instruments permitted commercial banks.
(b) NOW accounts or interest bearing checking type accounts.
(c) A wider range and amount of direct consumer loans, especially unsecured and installment loans, but not at the expense of reducing funds available to housing.
(d) Interest bearing accounts for small consumer savers, which, if subject to government interest ceilings will be available to pay rates equal to those of large depositors for the same type of accounts. Regulation Q restricts only small savers as larger savers have other instruments available to obtain high returns on their funds.
(e) Away-from-home deposits and withdrawals.
(f) Nationwide mortgage lending at nonusurious rates for moderate cost farms and residences.

2. Provision of a full voluntary central banking facility for credit unions, and a broadening of their criteria for membership primarily to benefit low-income consumers.

3. Reorganization of agencies that regulate federal financial institutions other than those regulating credit unions into a Federal Financial Institutions Agency (FFIA) or Federal Bank Commission with wider access and control by state officials, non-financial and general consumer interests. Regulation of banking must include restoration of responsible bank management practices to prevent further erosion of public confidence.

4. Appointment of consumer members to the Board of Governors of the Federal Reserve System and to Boards of Governors of the twelve regional banks under authority already existent. An independent office of the Consumer Counsel should be established in all Federal agencies that regulate financial institutions to inform and represent the general public.

5. The Federal Reserve System should control the nation's money supply and be lender of last resort to banks. It should not have regulatory powers.

6. Federal Reserve Board operations are funded from the interest on more than $90 billion in the U.S. Treasury notes and bonds it holds. Neither the amount nor the allocation of those operational funds is subject to Congressional approval. Substantial evidence indicates that an appalling amount of those monies is spent on such items as inappropriate membership dues, outrageously high moving expenses of its employees, and hundreds of thousands of dollars on entertainment and recreational expenses. Although the FRB is statutorily directed to administer various consumer, anti-discriminatory, and banking regulation laws as they apply to the operations of financial institutions under the FRB's jurisdiction, there is no procedure whereby the nature and extent of that enforcement is examined by Congress. Consumers rightfully expect all government agencies, including the FRB, to be held accountable to the public through their elected representatives for the agency's expenses and action. We, therefore, urge enactment of legislation that would require the FRB to submit to an annual General Accounting Office audit without sacrificing the FRB's independent fiscal policy-formulating function.

7. Prohibition of further acquisitions of existing non-banking financial institutions by bank holding companies, and divestiture of existing holdings.

8. Increased incentives for mortgages for moderately priced housing of all types.

9. Credit allocation where it can be shown that credit market aberrations have seriously affected housing financing disproportionately to other credit.

10. Allowing commercial banks to pay interest on checking accounts.

11. Increased antitrust actions against banks and bank holding companies with excessive market power with special attention to interlocking directorates among financial institutions and between financial and non-financial institutions. In order to prevent monopolization of banking, as a goal, we believe that no bank or bank-holding company should control more than 20% of the deposits in a state or large metropolitan area.

12. Increased member control over mutual type institutions and until member control is achieved, charter changes from mutual to stock organization forms.

13. Prohibit the institution of variable interest rate and variable term mortgages. This practice shifts the risk from lender to borrower. If there are interest rate ceilings on savings to depositors, VRM's are particularly exploitative.

14. Voluntary federal charters for mutual savings banks in all the states.

15. Mandatory federal charters for all interstate consumer and sales finance companies, and voluntary federal charters for intrastate companies.

16. As a means of making it possible for consumers to take meaningful steps on their own behalf through cooperative action, we urge action to set up a national consumer cooperative bank to serve consumer cooperatives and mutual endeavors. This system would provide much needed, adequate, sound financing and specialized technical assistance to enable groups of consumers to provide goods, facilities and services. Financing, counseling, and training would give consumers a real chance to build their own business organizations. Such a bank should be provided starting seed capital by the federal government with a provision for the co-ops that use the bank to gradually replace government capital, and would raise loan funds by the sale of bonds in the financial markets in a manner similar to the highly successful farm credit system. Consumer-producer food cooperatives should qualify for loans from the bank, where such cooperatives are designed to serve the mutual interest of consumers and producers and do not qualify for credit from existing cooperative bank arrangements.

17. Repeal of section 23 of the National Bank Act, venue provision, so that venue provisions of each state would be controlling. This would allow consumer suits wherever a national bank does business.

18. Congress should require Savings and Loans and other home loan institutions to pay a fair rate of interest to purchasers on their home loan reserve and tax escrow accounts.

19. New forms of mortgage financing should be encouraged. Low-start or graduated payment mortgages would permit lower payments in the first few years when borrowing power is lower for the home buyer.

20. More innovative municipally owned or state owned financial institutions should be encouraged to finance housing and other socially desirable programs not fulfilled by the private banking system.

SECURITIES

We recognize the increasingly inseparable distinction between securities and other financial transactions by millions of consumers and urge:

1. Appointment of a recognized consumer or public interest advocate as a member of the Securities and Exchange Commission.

2. Increased action by securities agencies against a wide range of abuses which occur in securities and near-securities often sold as investments to unsophisticated consumers. This would include transactions in gold and precious metals, pyramid marketing schemes, small business franchises, coins and stamp collections, antiques, among others.

3. Promulgation of strict regulations, licensing requirements, and disclosure statements by sellers of gold, gold coins, gold futures, and related instruments, in the event public interest in gold is rekindled in the future.

4. Competitive pricing of security brokerage and commission fees subject to federal ceiling limits, for small investors unable to negotiate with brokers.

ENERGY AND NATURAL RESOURCES

High prices for fuels and energy are making a heavy impact on consumer budgets and potential energy shortages threaten jobs. Protection of consumers and workers calls for greater attention to conservation, for regulation which prevents profiteering, and for development of domestic resources and new technologies. Programs designed to deal with these price and production problems must:

- Provide equitable treatment to all consumers.
- Avoid inflationary and discriminatory rationing of energy by price.
- Aid citizens in their dual capacity as consumers and workers in phasing in new energy approaches.
- Maintain basic public policy decisionmaking functions in the hands of government, not corporations.
- Aim at development of alternate and long term answers so that present sacrifices do not result in single shot solutions which turn out to be undesirable or infeasible.

These specifics could help consumers:

Fuels. Escalating fuel charges have been a major factor in forcing up the cost of living. To fight this inflationary trend, we should:

- Insure that conservation of energy is given the highest priority. Congress and the Executive Branch should develop policies requiring individual, institutional and industrial restraint in the use of energy. The Federal government should develop a program of utilizing the best practicable measures for the conservation of energy in all buildings financed with Federal funds. Congress and the Executive Branch should initiate programs which would provide incentives to the private sector to do likewise.
- Consider use of quotas on imports, coupled with a secret bidding system by producers designed to foster price competition among crude oil producers.
- Step up federal investigation of fuel leases held by private parties without production, and compel leaseholders to bring their product to market.
- Reject deregulation of natural gas, and extend regulation of this natural resource to the intrastate market. In particular we support cost-based pricing of natural gas at the wellhead.
- Require oil, gas, and electric companies to divest themselves of holdings in other potentially competing fuels, break up the market power of vertically integrated firms by requiring separation of the production, refining, transportation and marketing functions, and prohibit joint ventures where they restrict competition.
- Alter tax laws to eliminate incentives and inducements for U.S. petroleum companies to use their resources to look for oil and gas in foreign countries rather than concentrate their efforts at home.
- Speed up the Federal Trade Commission case against eight major oil companies charged with monopolizing refining of crude oil and maintaining a non-competitive market structure.
- Monitor the Federal Energy Administration's implementation of the recently enacted Energy Policy and Conservation Act which continues controls on petroleum, with special emphasis on any actions by President Ford to increase prices that have not been justified under the provisions of the new statute that can be rejected by either House of Congress.

- Carry out independent government investigations and inventories to determine domestic fuel reserves. Further investigations should be undertaken to determine whether natural gas producers are withholding gas from the market to drive up the price.
- Increase leasing of federal coal lands and the outer continental shelf with proper protection of the environment. Improve mineral leasing practices designed to insure production, guard against monopoly and provide fair return to the public. A policy of public disclosure of the information, data, and analytical materials dealing with oil and gas deposits on the OCS should precede any decision to move into "new frontier areas", such as the Atlantic OCS; there should be no delay in reaching a public decision on whether to exploit various OCS areas, but the public is entitled to receive and must have all pertinent information regarding the estimated reserves, as well as the environmental protection steps that will be employed.
- Use existing government oil reserves and lease royalties "in kind" to help build a petroleum reserve and aid in market price regulation.
- Support legislative, regulatory and administrative measures which will maximize the use of those alternative domestic fuel and energy resources we have and can utilize now in an environmentally sound manner so that we increase the supply of energy and reduce our dependency on foreign fuels.
- Prevent large corporate giants from dominating development of solar, geothermal, wind, tidal, fusion and other energy sources by positive encouragement of small business, aggressive antitrust activities, special incentives for public and cooperative organizations, and wide dissemination of new technology by government agencies.

Federal lands owned by the citizens of this country account for approximately 50% of our remaining oil and gas, 50% of our coal and uranium, 80% for our oil shale, and 60% of our geothermal resources.

Congress should establish a federal energy corporation to help meet the energy needs of the nation by development of resources owned by the people and held in trust by the government, by aiding in advancement of technology, by assisting in determining costs of production, by supplying an economic and environmental competitive influence, and by developing reserves to meet national fuel crises.

Consumer Aid. Hard hit by inflation, consumers need a program of low-interest loans and grants to finance insulation, storm windows, and other methods of increasing the thermal efficiency of dwellings.

Consideration also should be given to developing a system of aiding low income families in meeting soaring prices of fuel and electricity. Operation of more energy efficient automobiles should be encouraged. Care should be taken to ensure that the requirements of the newly enacted Energy Policy and Conservation Act, dealing with gasoline mileage of new automobiles and appliance performance standards and guidelines, are properly implemented. Mass transit should be encouraged. Public counsels should be established to represent citizens in energy proceedings. Promotional utility rates should be prohibited and peak-load pricing pushed.

Solar Energy

Solar energy is nonpolluting, inexhaustible and is potentially inexpensive. And solar technology has developed to the point where commercial application is not only practical but economically desirable. However, the full potential of solar energy will not be realized until the cost of solar hardware is reduced through mass manufacturing. To increase consumer benefits from solar energy a program of federal assistance is necessary. This assistance should include but not be limited to income tax credits for homebuyers and builders who purchase and install solar equipment, low interest loans to homeowners and builders who purchase and install solar equipment as well as low interest loans to consumer cooperatives established to purchase and distribute solar equipment, the use of solar equipment in buildings financed with federal funds, federal insurance of solar equipped buildings, direct subsidies to assist in the purchase of solar equipment, and federal grants and contracts to the research community and manufacturers for the development of solar technologies.

Congress should enact legislation requiring that at least 50 percent of all ERDA grants be made to small businesses for solar research and demonstration projects. Additionally, the Justice Department should be required to review all grants made by ERDA to major energy corporations to assure that those grants do not restrain trade or violate conflict of interest laws and regulations. ERDA should cooperate with the federal power marketing agencies in demonstration of commercial solar facilities to achieve the economies of integrating solar generating plants with hydroelectric facilities and federal water projects.

Utilities. Inflationary rises in the price of electric power demand rigorous regulatory review. Regulatory agencies should strictly enforce requirements for just, reasonable, and non-discriminatory rates and compel private power companies to fulfill their public utility responsibilities to serve, both at the retail and the wholesale level. It is not in the consumer interest to adopt speculative future test years, to include all construction work in progress in rate bases, to put proposed rates in effect prior to reasonable review, to permit automatic pass-throughs that are not subject to periodic reviews, or to prohibit consumers from benefitting directly from utility tax subsidies. Identification with consumer interests should be a prerequisite of appointees to regulatory agencies. Communities should be encouraged and aided in exploring the potential savings of public or consumer-ownership of their utility.

We support legislation that would:

1. Require the major utilities to prepare plans for rate reform and load management techniques to encourage maximum utilization of our existing facilities and to encourage conservation.
2. Allow the Federal Power Commission to regulate electric transmission facilities in a manner similar to common carriers, in the form of a strenghtened power grid.
3. Instruct the Federal Power Commission to find ways to increase competition. Methods of increasing competition could include: ordering an interconnection, compelling one utility to transmit electric power over its lines on behalf of another utility, requiring a certified electric utility to expand transmission facilities, and insisting that transmission lines be available to other utilities.

Organizations. New organizations must be formed, perfected, and financed to carry out public responsibilities in the energy field. Many of the wasteful, conflicting bureaucratic activities of agencies such as the Federal Energy Administration, Energy Research and Development Administration, Nuclear Regulatory Commission, Federal Power Commission, Department of the Interior and other agencies in the field of energy policy should be restructured into a Department of Energy and Natural Resources. Special energy committees, with jurisdiction over all energy matters, should be established in the U.S. House of Representatives and Senate, to aid in coordinating a comprehensive attack on present and future problems. In addition, the Congress and the Executive Branch should:

- Develop policies providing a more rational and streamlined system for location of electric generating stations and routing of transmission lines.
- Provide for creation of a nationwide power grid and formation of regional bulk power supply facilities.
- Promote use of waste heat from industrial plants.
- Provide use of present and potential hydroelectric resources in the public interest, including recapture of federally licensed hydroelectric sites when needed in order to obtain full public benefits.
- Require correction and prevention of strip mining abuses.
- Encourage adoption of manufacturing processes and building designs that require a lower expenditure of energy.

R&D. Research, development, and demonstration efforts are needed to clean up and improve the efficiency of existing energy technologies and to bring on advanced techniques which can improve environmental and economic performance. The Energy Research and Development Administration and other federal agencies operating in this field should be given funding adequate to tackle this task in the most effective manner. Emphasis should be given to employment of renewable resources, maximum net energy gains, and consumer needs. All electric utilities should be encouraged to participate in and finance research aimed at improving agencies of generation, transmission, distribution and utilization of electricity.

Additional emphasis should be given to research that offers near term benefits in energy conservation and currently applicable technologies rather than concentrating all efforts in advanced technologies whose benefits will not be realized for a decade or more.

ENVIRONMENT

We live on a planet with limited resources which are being used up at an accelerated rate. Pollution of our land, air and waters continues. This often results from production of more and better consumer goods for an ever increasing world population. Consumers must begin to realize that the necessity for conservation may mean the curtailment of certain consumer wants. A good environment may sometimes require more expensive production techniques. Environmental damage is one of the hidden costs of production that society has been paying because of its historic unawareness and reluctant recognition of these unexpected consequences. The health and safety of all citizens will be improved by measures that reduce environmental damage, but each proposal must be carefully evaluated to make certain that the sum of such benefits to individuals is not outweighed by the increased costs of the necessities of life. We specifically urge that:

1. Federal air emissions standards be implemented with vigor and that the states be encouraged to set up stricter primary and secondary standards than the federal guidelines where necessary to achieve the purposes of the Act;
2. Federal land use legislation be passed.
3. No compromise be made with the safety of nuclear power plants and that the states be given the power to set their own safety standards at least as strict as federal standards;
4. Consideration must be given to the environmental impact of power plant sittings. The uniqueness of the region must be taken into consideration.
5. Restrictions on log exports be imposed; more wilderness areas be set aside for future generations; and that more intermediate recreation areas be set up;
6. Laws requiring deposits on bottles and cans be enacted throughout the country;
7. Legislation for an immediate ban of the use of flurocarbon propellants in aerosols be passed. We also urge exploration of alternatives to flurocarbon in refrigerants and other uses;
8. Recycling centers be set up by local governments in cities;
9. Economic protection of environmentally displaced workers be strengthened.

FOOD AND MARKETING

GENERAL

1. We urge the appointment of a majority of qualified consumer representatives to all boards and advisory committees related to the food industry, to state and federal agricultural programs, and to land grant college advisory boards.
2. We urge that land grant college research and extension programs be refocused so that the special attention of those tax expenditures will be on the needs of independent farmers and the nutritional and economic needs of consumers.
3. We urge the enactment of rigorous additional disclosure requirements to assure adequate public information on corporations involved in the food economy.
4. We urge additional federal programs to combat hunger and malnutrition in this country and abroad, and strongly support improvements in the food stamp, school lunch and other existing feeding programs. Misinformation on the nature and usage of food stamps is being widely generated in a calculated attempt to discredit a sound and much-needed program. U.S. Department of Agriculture statistics confirm that only an insignificant fraction of food stamp payments are fraudulent. Particularly in this period of economic crisis including massive unemployment, it is imperative that the food stamp program not be reduced. The elderly, unemployed and low-income consumer as well as striking workers, including teachers and other public employees, deserve an application, processing and payment system which is equitable and not unreasonably burdensome and that sets payment levels which will realistically allow all consumers to purchase food for a nutritionally adequate diet.

In spite of CFA's success in defeating the 1974 Ford proposal to increase the price of food stamps, the President has continued his efforts to seriously weaken the food stamp program. The present administration bill would reduce or terminate food stamp benefits for over 11-million Americans, or more than 60 percent of those receiving them. We oppose this bill, as well as the equally abhorrent Buckley-Michel bill on food stamps. We do support the proposal, made in the Dole-McGovern bill to remove the "purchase requirement" for stamps, and endorse also the proposal to substitute an adequate standard deduction in place of the present itemized list.

We urge reform and extension of the food stamp, school lunch and breakfast programs and an end to the onerous and discriminatory food stamp work requirement and mandatory operations of these programs in all counties and cities. Among changes we seek, in addition to the provision of free stamps, are lunches and breakfasts to all persons with incomes below the poverty line as determined by the U.S. Bureau of Labor Statistics.

5. We urge the establishment of U.S. Department of Agriculture beef standards for foreign beef imports that are as stringent as the standards for American produced beef.

Domestic Food Policy

Consumers are appalled at the spiralling cost of food at a time when profits of the major food chains and the food processing industry are rising at record-breaking rates. Studies on the cost of food by the Federal Trade Commission and the Council on Wage and Price Stability were inadequate and misleading. The study, which attempted to prove an absence of profiteering in four basic food lines, did not even include conglomerate-owned food processors. Because there is an absence of a coordinated national food policy and because there is inadequate competition in the food economy which works against the best interests of both family farmers and consumers, we urge the following steps to restore and maintain competition in all stages of the food industry:

a) We urge enactment of legislation that would outlaw monopoly and shared monopoly power in all stages of the food industry and mandate a restructuring or dissolution where monopoly power is found to exist unless such action would result in the loss of substantial economies.

b) We urge the establishment of a National Commission on Food Marketing charged with the responsibility to investigate and report to Congress with recommendations on marketing toward a national food policy. In conjunction, annual reports and indices on the state of competition in the food industry must be made to Congress by the Federal Trade Commission, the Department of Justice and the U.S. Department of Agriculture. A majority of the public members of the Commission should be representatives of bona-fide consumer organizations. The Commission would have broad investigatory authority, including subpoena power, the authority to hold public and private hearings, and the authority to administer oaths, require sworn testimony and prosecute for perjury.

c) We support legislation that would require the Federal Trade Commission as well as the Department of Agriculture and the Department of Justice to take new action to secure and report annually on information regarding the structure and performance of the food industry. These three agencies should be required to 1) make an annual report on the food industry; 2) publish an index of the state of competition in the food industry; and together with this index, 3) publish their specific recommendations to promote competition in the food industry.

d) Call on Congress to appropriate for the FTC Bureau of Competition a special $10 million fund to investigate the degree and nature of corporate concentration within the food industry including the non-competitive impact of advertising, vertical integration, conglomeration and its effects on the American consumer and to vigorously prosecute those industries found to be in violation of antitrust laws.

e) Encourage the Federal Trade Commission to issue regulations to provide for consumer representation in consent decree proceedings.

f) Request that Congress enact legislation requiring the Federal Trade Commission to report annually on the competitive condition of the food economy.

g) Urge Congress to enact legislation to authorize a special "line-of-business" program for the food industry.

h) Support state and national efforts to end those features of marketing order programs which artifically reduce supply or inflate food prices to the consumer.

Because of a combination of economic conditions, media irresponsibility and lack of consumer education the nutritional quality of food has deteriorated. We call upon Congress, the Federal Trade Commission, and the Food and Drug Administration to take the following steps:

(1) Implementation of nutritional labeling, percentage ingredient labeling, and grade labeling.
(2) Free public service ads for consumer groups to promote nutritional foods.
(3) Mandatory affirmative disclosure of nutrition in advertising.
(4) Increased nutritional education in schools at all levels.

We urge a program of Truth-in-Food-Marketing including:

(1) Uniform open dating of all products
(2) Clearly marked prices on all packaged items
(3) Unit pricing
(4) Drained weight labeling
(5) Urging supermarkets to stock bulk food supplies of certain commodities at prices lower than those of similar packaged items
(6) Profit margin and return on investment disclosure at customer request.

i) The immunity from antitrust laws conferred upon farmers by the Capper-Volstead Act was intended and should be limited to those activities which do not violate antitrust laws. We believe the Congress should re-examine, in the light of today's and tomorrow's economics and marketing mechanisms, the adequacy of the Capper-Volstead Act to protect and regulate agricultural marketing cooperatives and to determine what changes, if any, may be required to achieve the basic objectives of fair prices of food and fiber to consumers, and a fair return to farmers and ranchers for their capital, labor and management.

j) Legislation authorizing agricultural marketing orders and marketing agreements should be reviewed by Congress, revised to assure an effective consumer role in decisionmaking and to assure that these orders are administered so as to avoid anticompetitive and other adverse effects upon consumers.

k) We call on Congress to consider limiting the deductibility of food advertising expenses by national advertisers (food manufacturers) from corporate taxable income.

l) We call on Congress to eliminate the favored tax treatment which provides an incentive for American corporations to move abroad.

m) Federal government food purchases should give priority consideration to bids from small and regional food manufacturing firms and cooperatives when this can be done with greater efficiency.

n) We call on Congress to enact the Family Farm Act which prohibits ownership and control of farm products by non-farm corporations of more than $3 million in assets. CFA supports collective bargaining legislation enabling family farmers to have a fair position with food middlemen.

o) There is a diminishing availability of fresh and locally produced food items, particularly in the inner cities. Efforts must be made to foster a closer working relationship between farmers and consumers which would give all consumers the opportunity to purchase fresh, locally-grown food items at reduced costs and which would give farmers a more equitable percentage of the food dollar. Government regulations (e.g., size and cosmetic restrictions) which restrict direct farmer-to-consumer protection should be abolished. To encourage these goals, we urge the establishment of Farmer-to-Consumer Direct Markets.

p) Commodity and promotion boards which are in any way sponsored, administered, or supported by the government should not be allowed. By promoting certain commodities at the expense of other commodities, these boards violate basic principles of fairness, represent an inappropriate involvement of government officials and taxpayer revenues in private industry gimmickry, and ultimately result in an increased consumer cost of the commodities promoted. The absence of at least 50% bona-fide consumer representatives on such commodity boards further belies the suggestion that they are aimed at furthering the consumer interest.

SAFE AND WHOLESOME FOODS

Consumers deserve safe and wholesome food with food labelling that includes easily understood yet comprehensive information.

We urge enactment of legislation that would:

1) Upgrade the nation's food safety and sanitation standards and protect consumers from adulterated food and from harmful additives.
2) Outlaw the use of unsafe food additives. Food processors should have the strict burden of demonstrating the safety and efficacy of any food additive used. Exemptions as to additives currently used, should be extremely limited, if in fact they are allowed at all.
3) Mandate the development and promulgation of safety assurance systems by the Secretary of Health, Education and Welfare acting through the Food and Drug Administration. Reliance on the voluntary development of such safety assurance systems by food processors is inadequate except as a temporary measure because:
   - on issues directly affecting health and safety, consumers depend on government protection;
   - voluntary standards cannot be enforced by citizen suits;
   - voluntary standards do not encourage the government to use strict enforcement powers;
   - government standards developed after public hearings would have highly desirable citizen input. Voluntary industry standards would not.
   - government developed standards assure greater uniformity and are consequently more easily understood by the public.

4) Allow citizen suits for any violation of the statute which the Secretary fails or refuses to enforce.

5) Authorize payment of attorneys' fees and other reasonable costs of participation including expert witness fees for qualified public interest representatives or private citizens who initiate or intervene in any agency proceeding or judicial review of violations of the statute.

6) Provide citizens with access to industry information to the fullest extent allowed by the Freedom of Information Act for the effective litigation of their rights under the statute.

7) Require processors to register with the Secretary of Health, Education and Welfare and to submit to annual

inspections which shall be conducted by the Secretary of Health, Education and Welfare.

8) Extend the Food & Drug Administration's inspection authority to include examination of records of food processors and to require that certain records be maintained.

9) Authorize and direct the Secretary of Food and Drug Administration to promptly establish by regulation a uniform system of food product identification which permits the consumer to easily and quickly determine:

(1) the identity and plant location of each food manufacturer and packer,
(2) the identity of each individual food;
(3) the lot or batch number of the food, and
(4) the date packed.

Such identification regulations are necessary for the prompt and certain determination of whether the consumer has purchased food found to be adulterated. Complex and hard to understand coding systems are unacceptable.

INTERNATIONAL FOOD POLICY

An estimated 460 million persons, almost half of them young children, suffer from acute malnutrition because they lack even the calories to sustain normal human life. Those who get enough calories but are seriously deficient of proteins or other essential nutrients may include half of the human race. The President through his Secretary of State, proclaimed at the World Food Conference a bold objective for this nation in collaboration with other nations: "that within a decade no child will go to bed hungry, that no family will fear for its next day's bread, and that no human being's future and capacities will be stunted by malnutrition". That objective was adopted by all the Governments at the World Food conference.

Because hunger in our interdependent world represents a threat to peace, we support the principles that:

1) Every person in this country and throughout the world has the right to a nutritionally adequate diet and that this right is henceforth to be recognized as a cornerstone of U.S. policy,

2) this right become a fundamental point of reference in the formation of legislation and administrative decisions in areas such as trade, assistance, monetary reform, military spending and all other matters that bear on hunger; and

3) concerning hunger in the United States we seek to enroll on food assistance programs all who are in need, to improve those programs to insure that recipients receive an adequate diet, and to attain full employment and a floor of economic decency for everyone; and

4) concerning global hunger this country increase its assistance for self-help development among the world's poorest people, especially in countries most seriously affected by hunger, with particular emphasis on increasing food purchasing power and food production among the rural poor; and that development assistance and food assistance, including assistance given through private, voluntary agencies, increase over a period of years until such assistance has reached the target of one percent of our total national production (GNP).

HEALTH, DRUGS AND MEDICAL

Health, a state of physical, social and mental well-being is a basic human right; government at all levels must act to insure that health care services are provided for all citizens. As a matter of public policy the government's role in health care must not be limited to the reimbursement to health care practitioners and facilities for the treatment of the diseased; rather, government must assume its responsibility to further the total "health" of consumers, including the quality of their environment, their nutritional needs, occupational safety, and right to comprehensive preventive medicine. There is a critical need for integrated systems to deliver health care services that are accessible and acceptable to all people without regard to age, sex, race, social or economic condition, or demographic area of residence. Toward that end, we adopt the following resolutions:

1. We fully endorse the concept of health care as a universal right, most closely embodied in S.3 and H.R.21, the Health Security Program. This legislation eliminates barriers to coverage such as co-insurance and deductibles and encourages preventive health care. However, the Health Security Program falls short of our objectives in its failure to cover all routine health care such as adult dental work. The Health Security Program also fails in its coverage of prescription drugs, psychiatric care and long-term nursing home care.

We urge Congress to recognize that catastrophic coverage is no substitute for universal health coverage.

We encourage CFA members to actively participate individually and with coalitions, such as the National and State Health Action Coalition, to achieve passage of the Kennedy/Corman National Health Security bill.

2. We urge, in response to the critical shortage of physicians and other health personnel, substantially increased federal assistance to medical, public health and allied professional schools and to economically disadvantaged students. Legislation should also include appropriate inducements to graduates to locate in areas currently denied adequate medical care.

3. As an interim measure pending passage of a comprehensive health program designed to provide these services to all citizens, we urge enactment of legislation to eliminate the co-insurance and deductible provisions of Medicare and to extend Medicare coverage to outpatient drugs, eye care and the cost of eyeglasses, dental care and the cost of dentures, and the cost of hearing aids.

4. We insist that the same nursing home standards be provided under Medicare and Medicaid as were intended by the 1965 amendments to the Social Security Act, which established those programs. We urge that inspections of nursing homes be unannounced to protect elderly consumers against deplorable conditions.

5. We urge CFA members to support development of and affiliation with nonprofit consumer-controlled prepaid group practice and group health plans.

6. We urge CFA affiliates to insure that all comprehensive health planning commissions meet the requirements of the law regarding majority consumer representation. We further urge consumers groups to provide responsible consumers to serve on these commissions. We call upon the Administration to provide funds necessary to make training available to consumer representatives serving on comprehensive health planning commissions.

7. We urge the Secretary of Health, Education and Welfare to press for immediate promulgation of and continued implementation of regulations directing the states to survey the unmet medical needs of indigent children, as required in Section 1905(a)(4)(B) of the Social Security Act as amended in 1967. Action to protect the health of the nation's children is long overdue.

8. We resolve to support toxic substances control legislation, the purpose of which is to require pre-market testing of chemical substances to assess potential hazards to consumers and users that the substances may generate throughout their lifetime, including hazards to consumers in the home, and to regulate the manufacture, use or disposal of the substances where necessary so as to avoid and minimize such hazards.

9. We urge that, before any cosmetic may be offered for sale or distribution, the Food and Drug Administration must be satisfied as to its safety and utility and approve its label, which should disclose fully the composition of the cosmetic.

10. We urge licensing of drugs and medicines by generic name and that such name be included in all prescriptions.

11. We urge immediate enactment of long-delayed legislation establishing a drug compendium.

12. We are distressed by studies documenting price variation of up to 1200% for prescriptions of the same drug in the same area. CFA believes this is due to a host of restrictions and prohibitions placed upon free competition in the advertising and sale of prescription drugs by registered pharmacies including:

a. prohibitions against the advertising of drug prices, against discounts for older people, and against posting of drug prices in stores;
b. artificial barriers to the entry of discount and chain drug stores into new markets;
c. restrictions on ownership of pharmacies;
d. prohibitions against pharmacies in supermarkets and general merchandise stores; and
e. many other devices having no relevance to the public health.

CFA calls for affiliates to work for all such laws and regulations. Recognizing further that restrictions against price competition for prescription drugs originate with state boards of pharmacy and that most such boards are dominated by druggists, CFA recommends inclusion of stronger consumer representation on state pharmacy boards.

Further, CFA urges affiliates to become "friends of the court" in suits challenging the constitutionality or validity of laws and regulations which inhibit drug price competition.

13. We urge enactment of legislation forbidding tie-in between hospitals, nursing homes and other health care providers and pharmacies. We also believe it is unethical for physicians to own stock in drug manufacturing companies, drug marketing and packaging companies and pharmacies.

14. We urge government purchase of drugs by generic name only and amendment of state laws to permit dispensing of drugs by generic name at the option of the consumer.

15. We urge that written information understandable to the consumer be required to be given to recipients of all prescriptions. Such information would include uses, directions, precautions and side effects, as well as the possible hazards of mixing the prescribed medication with other drugs or foods.

16. We recommend that a clear, prominent, expiration date for the effectiveness of all drugs, both prescription and over-the-counter, be required on the label.

17. The name and place of business of the manufacturer should be required on the labels of all drug products.

18. The quantities of all active ingredients should be required on labels of all drug products.

19. We support efforts by consumer groups to work for legislation permitting the practice of optometry in commercial settings, and we urge CFA affiliates to become "friends of the court" in suits challenging the constitutionality or validity of such laws which act to inhibit competition in the profession and the accessibility of people to eye care service.

20. Studies of chiropractices have not produced scientific evidence of its validity in theory or practice. Chiropractors are not trained to diagnose possible malignancies, diabetes, acute heart conditions, or similar systemic diseases that frequently underlie their patient's symptomatic complaints. The aged and needy are most vulnerable to patient management techniques and frequently less capable of judging the efficiency of treatment they receive.

CFA is therefore gravely concerned that Medicare coverage of chiropractic services will needlessly expose beneficiaries treated by such practitioners to delay or avoid seeking proper medical care. Inclusion of chiropractic services not only would add substantially to the cost of Medicare but would increase the health hazards to beneficiaries.

21. The one million Americans in nursing homes financed under Medicare, Medicaid and other programs should receive the highest standards of health care. Yet deeply distressing evidence mounts that many nursing homes neglect their patients, treat them with indignity, and provide minimal health care. Many state and federal agencies, including the Department of Health, Education and Welfare and state health and welfare departments, have failed to secure the appropriations required or to exercise the aggressive leadership needed to enforce standards of safety, health and general welfare for nursing home patients. The result is that too many elderly persons have been neglected and payments for their care misused. This failure of governmental authorities to enforce standards has induced commercial operators looking for quick returns on their investments, to invade the nursing home field by establishing what amounts to chains of motels insufficiently concerned with the health and welfare of residents in their charge and to convert nursing programs into housing programs, imposing on the elderly a "buyer must beware" philosophy.

We urge a substantial increase in direct grants and loans to non-profit and government-operated nursing homes, with an immediate, short-term goal of their providing half the nation's nursing home services. We also urge substantial funds for alternative methods of care—foster homes, sheltered low-cost supervised housing and daycare centers, homemaker and home health aid services. We also encourage state and community organizations affiliated with CFA to develop citizen review teams to visit and inspect nursing homes periodically.

22. We urge vigorous regulatory action by the FTC on advertising of over-the-counter drugs containing misleading efficacy claims, promoting insignificant product differentials, and offering drugs for the treatment of every day interpersonal and human problems. We condemn all drug advertising which encourages, through themes of saturation advertising campaigns, pill popping as a way of life.

23. *Clinical Laboratory Testing*—Consumers have a two-fold interest in establishing standards for clinical laboratory testing: health and cost. Of primary concern is the assurance of strict health and safety standards through reliable clinical testing results.

Consumers are alarmed at the evidence which demonstrates that laboratories including those regulated by Federal law have shocking error rates of most tests ranging from 20 percent to 50 percent. In addition to the human suffering resulting from inadequate clinical laboratory testing, the consumer is to bear the high cost of multiple and frequently unnecessary testing. Consumers pay $8 billion annually for laboratory testing. There are often appalling price differences among laboratories for identical tests.

Accordingly, we urge legislation that would:

a) Require licensing of all interstate and intrastate clinical laboratories, including independent hospitals and doctor office laboratories with collection including blood banks. Periodic quality spot checking should be required.
b) Permit states to apply more stringent standards within allocated federal enforcement functions.
c) Require disclosure by clinical laboratories of any contractual relationships with physicians, together with a posting of all fees for laboratory testing within local health planning units; and a mandatory itemization of costs on the physicians statement he or she bills for services performed.
d) Require periodic examination of *all* operating personnel. HEW should be required to set up a coordinating unit for that purpose.
e) Outlaw kickbacks.
f) Require that advisory committees include an equitable number of bona fide consumer representatives.
g) Require the establishment of standards of safe and efficacious methodology so that physicians in clinical laboratories have scientifically recognized evaluations of what tests should be conducted and under what circumstances. Accordingly, tests with marginal or no value should be eliminated.
h) Encourage medical schools to offer comprehensive courses in clinical laboratory testing.

24. CFA supports citizen/government action to ban smoking in public places. CFA further supports a ban on all cigarette promotion, the elimination of tobacco subsidies and on-going government supported anti-smoking advertising campaigns particularly those designed to reach beginning smokers. CFA also opposes any government program subsidizing the promotion and distribution of cigarettes.

HOUSING

The national commitment to a "decent home and suitable living environment for every American family" made in 1949 has never been met. The expectations raised by the 1968 Housing Act have never been realized. The failure to meet even minimum national housing goals has been seriously aggravated by the decline in housing and community development construction activities during the last three years.

Recognizing that inflation has increased both the cost of housing, and the cost of financing housing, far beyond the means of most average-income families, we call upon Congress to expand programs of interest and rent subsidies.

For low-income families and for senior citizens we strongly urge the Administration to approve new public housing (with innovative designs and concepts) which is integrated into its host neighborhood, to re-activate the urban home-ownership assistance program, and to provide long term financing for senior citizen housing.

We urge Congress to appropriate the full amount of authorized funds for the Community Development Block Grant Program.

We support legislation requiring advance disclosure of settlement costs and uniform settlement statements. We recommend stricter enforcement of statutory provisions which prohibit officers of lending institutions from speculation profit and we recommend abolition of "redlining."

We urge the elimination of restrictive zoning practices which perpetuate segregated housing and neighborhoods.

INSURANCE

We call upon state and federal authorities and legislatures to require a reasonable minimum cost/benefit relationship in all types of insurance.

1. NO FAULT AUTO INSURANCE. A crucial issue before the insurance consumer today is the automobile insurance system. We endorse and urge prompt enactment of the National Standards No-fault Motor Vehicle Insurance Act sponsored by Senators Warren Magnuson (D.-Wash.) and Phillip Hart (D. Mich.), or the companion House bill that embodies its principles.

2. TRUTH-IN-INSURANCE. Regulatory action is needed to reduce the unnecessarily ambiguous language and terminology of almost all insurance policies sold to consumers. At the same time, we urge full disclosure of all relevant information.

We support federal "Truth-in-Insurance" legislation which would establish standards and set forms describing the language permissible in all insurance policies. (Federal Trade Commission regulations on advertising establish criteria that may be useful in drafting these standards.)

Where policies have features and clauses that needlessly limit the rights and benefits affecting consumers, they should be removed. Unnecessary proliferation of policy types should be stopped and policies should be standardized to allow better understanding and comparison of policies being sold.

3. LIFE INSURANCE. We support required disclosure of the comparative costs of life insurance policies through a standardized method, such as the interest-adjusted or other similar method at the time of sale. We support standardized and mandatory disclosures of important buyer information, as embodied in the Consumer Insurance Information and Fairness Act.

4. MUTUAL INSURANCE COMPANIES. We urge that policyholders of mutual type companies be restored their due rights to control and direct the affairs of their own companies. We urge consumer voting control of Blue Cross and Blue Shield and other health and medical insurance plans.

5. FEDERAL REVIEW OF STATE INSURANCE REGULATION. We urge that Congress initiate an investigation of its responsibilities to insurance consumers. Re-consideration of its position favoring state regulation, as spelled out under the 1945 McCarran-Ferguson Act, is long overdue in the face of growing revelations of failures in state regulation of insurance.

6. MAIL ORDER INSURANCE. We urge Federal Trade Commission and state action to reduce deceptive practices and high costs of mail order companies, particularly in the health field, and recommend counter-advertising as a deterrent.

7. COOLING OFF PERIOD. We favor extension of the concept of the cooling off period to all forms of insurance. As many forms of insurance involve extended and even life long periodic payments, consumers must be notified of their rights to reject the policies at no cost. In the case of life insurance, consumers need 30 days to rescind the policy.

8. GROUP AUTO INSURANCE. State laws prohibiting group auto insurance should be eliminated. We encourage the development of such cooperative auto insurance plans as a means of curbing escalating premiums.

9. DISCRIMINATION. Unfair and inequitable discrimination in the availability, issuance, rating, administration, and cancellation of insurance on the basis of age, sex, race, marital status, or sexual preference must be prohibited.

10. We recommend that Congress, CFA and other appropriate groups, study the broadening of the no-fault concept in insurance to include areas other than automobiles.

11. MATERNITY COVERAGE. We recommend that maternity needs be treated the same as other health and disability needs in group health, sick leave, and disability benefit programs.

12. INDIVIDUAL RETIREMENT ACCOUNTS. We find that many small investors have been actually and potentially harmed by seller failures to disclose important cost and penalty aspects of the plans. We deplore the failure of the Internal Revenue Service to require adequate disclosure by sellers of Individual Retirement Accounts. We call for strong government disclosure regulations to include standardized rate of return measures, sales commission and overhead disclosures, and prominent warnings as to risks and penalties.

13. We support Consumers Union in its suit in U.S. District Court for the Southern District of New York to remove anti-consumer and anti-competitive restrictions on purchase of savings bank life insurance.

14. We call on the National Association of Insurance Commissioners and the individual state commissioners to adopt strict rules on conflicts of interest, to balance industry domination of regulatory meetings and regulatory proceedings by sponsoring and encouraging informed public participation, and by diligent efforts to educate consumers on their needs for public support and financial assistance in substantive efforts to reform virtually all sectors of this $500 billion industry.

15. TITLE INSURANCE. We recommend major reform in the sales practices and rate structures of title insurance.

THE LOW INCOME CONSUMER

In its effort to promote the rights of all consumers in harmony with the general welfare, we encourage member organizations to include active participation of low-income people. If we are to develop full potential we must not overlook the masses of poor people discriminated against in the market place. The low income consumer may be a retiree living on fixed income, an aid-to-dependent-children mother trying to find shelter for her children, an unskilled worker with a credit problem, a Spanish speaking migrant who is the victim of language barriers, a student, or a young adult. These people need assistance, and we need their support. We must join forces.

1. Many low income consumers are denied easy access to competitively priced goods and services because of lack of outlets and available credit sources in low income communities, forcing many poor consumers to trade at high-priced stores. This subjects them to the evils of "easy" credit and door-to-door abuses. We urge local businesses and business organizations to secure establishment of low-priced, competi-

tive businesses in low income areas. In addition to private efforts, federal and state housing, small business and model cities programs should be required to consider inclusion of such facilities in their plans affecting low-income areas.

2. Low income consumers have special problems and directly suffer when their problems are not considered by consumer groups and consumer protection councils. They have special economic problems and special health and nutritional needs. We urge all consumer groups to solicit membership among the poor and to develop programs to alleviate their problems. We also urge all public agencies involved in consumer protection and services to insure meaningful participation of low income consumers in policy and program development and to include representatives of the poor on all citizen advisory groups. We further urge that low income consumers be involved in CFA efforts to expand consumer organizations and that special funds be made available by CFA affiliates—particularly labor, credit unions and cooperatives—to organize low income consumers.

3. We urge immediate elimination of discriminatory utility practices of publicly, privately, and cooperatively owned utilities including deposit requirements. Customers should be given sufficient notice and opportunity for response at public hearings before service can be terminated.

4. We urge enactment of legislation guaranteeing all consumers adequate insurance coverage at reasonable rates regardless of location. Government subsidies should be available if necessary. We urge that state insurance commissions be responsible for plans assuring low income consumers equitable protection.

5. We urge initiation, both on the national and state levels, of a review of banking and credit transaction practices, specifically as they relate to low income people. Financial institutions should be required to make readily available to the consumer information on the manner in which checking, savings, and credit plans are computed and charges made. We urge that there be truthful disclosures of banking and financial institution service practices. We urge a review of state banking and credit union commission practices with regard to establishment of minority and low income financial institutions, and ask that those regulatory agencies affected affirmatively assist low income and minority groups in establishing financial institutions.

6. We urge investigation and correction of discriminatory practices against the poor, including differential mail order catalogs, door-to-door sale frauds, inadequate services and stores with shoddy merchandise.

7. In spite of our success in defeating the 1974 Ford proposal to increase the price of food stamps, he has continued his efforts to seriously weaken the food stamp program. The present administration bill would reduce or terminate food stamp benefits for over 11 million Americans, or more than 60 percent of those receiving them. We oppose this bill, as well as the equally abhorrent Buckley-Michel bill on food stamps. We do support the proposal, made in the Dole-McGovern bill to remove the "purchase requirement" for stamps, and endorse also the proposal to substitute an adequate standard deduction in place of the present itemized list.

We urge reform and extension of the food stamp, school lunches and breakfast programs and an end to the onerous and discriminatory food stamp work requirement and support the mandatory operation of these programs in all counties and cities. Among changes we seek, in addition to the provision of free stamps, are lunches and breakfasts to all persons with incomes below the poverty line as determined by the U.S. Bureau of Labor Statistics.

8. We urge federal support for innovative community programs to provide low cost food and homemaker home health aide services for shut-ins, the elderly, and others who have special needs.

9. We urge establishment of preventive health methods to insure good nutrition in all foods, including snack foods which should be nutritionally fortified and so labeled.

10. We urge establishment of locally-controlled and locally-run consumer organizations in low income areas. These organizations should handle consumer complaints of members, and when appropriate, engage in direct action, including picketing for redresses of consumer grievances.

11. We urge enactment of federal legislation in support of a guaranteed annual income equal to the modest but adequate family income budget, and adjusted to changes in the consumer price index of the Bureau of Labor Statistics.

12. We recommend that rural and urban legal assistance programs be expanded to make legal assistance available throughout the United States to people with incomes below the poverty level as defined by the U.S. Bureau of Labor Statistics.

13. We condemn the use of tax funds for surveillance programs directed at welfare recipients or encouragement of unidentifiable complaints against welfare recipients over how their welfare benefits are used.

14. We urge continuation of the Hill-Burton Act allowing at least minimum provision of hospital care to low income people.

REGULATORY REFORM

Present government regulation in areas of health, safety and equality is inadequate. Congress must study whether and which economic regulations by such agencies as the Interstate Commerce Commission, the Civil Aeronautics Board and the Federal Maritime Commission cost consumers billions of dollars and have outlived their usefulness. We urge immediate and comprehensive regulatory reform which includes the following:

1. The creation of an agency for consumer protection which would assure consumers that their viewpoint will be advanced by an independent, non-regulatory agency with the right to participate with the status of a party to the proceeding before federal agency proceedings and the Courts.

2. A requirement that at Senate confirmation hearings the President must comply with a strict burden of demonstrating that a person nominated to serve in a federal agency is highly qualified to serve in that capacity. The burden should not be on the Senate to demonstrate a candidate's unfitness.

3. A significant increase in the budgets and staffs of agencies responsible for the enforcement of antitrust laws, together with an expansion of antitrust authority to prohibit the existence of oligopolies.

4. Provisions for increased consumer participation in the regulatory process including the authorization of the payment of participation expenses including attorney's fees and expert witness fees for citizen action groups and public interest attorneys which participate in rule-making, licensing or adjudicatory proceedings conducted by any administrative agencies or in actions to secure judicial review of agency actions. Participation expenses should also be paid for persons, citizen action groups or public interest organizations which act as private attorneys general to enforce the law or significantly advance the public interest.

5. A directive to make regulations easier to read and understand and to increase their availability.

6. An improvement of the legislative authority and procedures for congressional oversight of the regulatory process.

7. Authorization for state attorneys general to bring antitrust actions on behalf of the citizens of their states.

8. A provision that any citizen has legal standing to challenge government action which is in violation of the law, and a recognition of the right of any taxpayer (subject to minimum constitutional standards) to challenge any expenditure of tax funds in violation of the law. Unreasonable restrictions on the financial ability of consumers to initiate class actions severely erodes this important method of seeking redress and, accordingly, should be eliminated.

9. A requirement that all agencies abide by broad "sunshine" rules which make their proceedings and day-to-day operations open to close public scrutiny.

QUALIFICATIONS FOR REGULATORY COMMISSION MEMBERS

The President has been highly critical of the functioning of the regulatory process. In other sections of our resolutions, CFA addresses specific actions to improve the efficiency, effectiveness and fairness of regulation. An essential element of effective regulation is the appointment and confirmation of highly qualified personnel. It is the responsibility of the President to appoint only highly qualified individuals and the responsibility of the Senate to confirm only those who meet this standard.

Highly qualified must include demonstrated sensitivity to the public interest, independence of action, dedication to the furtherance of the role of the agency as well as knowledge of the subject field.

There are several existing regulatory vacancies. We insist that the President appoint only highly qualified individuals to those positions. We will not support any who are not qualified.

COST JUSTIFICATION MADE IN CONNECTION WITH FEDERAL REGULATORY REQUIREMENTS

When increasing the cost of a product industry often cites health, safety, environmental or similarly socially desirable government regulation as the cause. We believe that such price increases are often inflated due to industry's self-serving efforts to use federal regulations in order to distract attention from deeper economic problems or managerial shortcomings. Inflated cost increases are also a deplorable attempt to encourage consumer hostility to such measures. Public support would be forthcoming, if the public were aware that inflated cost estimates were corporate propaganda, and an indication of unwillingness to devise methods of efficiently complying with such regulations.

We urge enactment of legislation that would require corporations to file reports to the Federal Trade Commission explaining in detail any increase in cost resulting from a regulation. When it is claimed that a cost increase is necessary because of compliance with a regulation, that cost increase should specifically reflect the actual cost of compliance. If it does not, either the price should be reduced to reflect the actual cost of compliance or the public should be informed as to what percentage of the cost increase reflects the actual cost of compliance.

TAXATION

Consumers demand a progressive and equitable tax structure. The present system which forces low and middle income consumers to subsidize corporations and wealthy individuals is intolerable. Since low and middle income consumers, unlike the wealthy, cannot avail themselves of devices designed to effectively reduce their taxable income, the progressive nature of the system is severely eroded. Legislation should be enacted which comprehensively corrects the abuses of the present system by eliminating wasteful, expensive, and unfair tax preferences. This will insure that adequate tax revenues will be available for future government needs and that those revenues will be contributed fairly by all citizens according to their ability to pay.

We support legislation which initiates such reform by eliminating the preferential treatment accorded certain business and wealthy individuals at the expense of other taxpayers. Specifically:

1. Capital gains, the largest single loophole, should be treated as ordinary income. This includes capital gains transferred by gift or bequest that presently escape income taxation completely.

2. Business must not be allowed generous tax advantages including accelerated depreciation, depletion allowances and other artificial tax write-offs that distort free economic decisions and severely erode corporate tax revenues.

3. Tax shelters should be totally eliminated as unfair, wasteful, and economically disruptive.

4. There should be a substantial increase in the present under-taxation of foreign income in order to remove lucrative economic incentives for American industry to invest and manufacture abroad. Widespread international ventures by American industry usually exploit foreign labor markets, result in the alienation of foreign governments, and severely weaken domestic labor markets. Specifically, there should be an end to the unlimited deferral of taxes by U.S. corporate subsidiaries and an end to the abuses of the foreign tax credit.

5. The DISC (Domestic International Sales Corporation) subsidies should be repealed. It is a wasteful subsidy that does little to encourage exports of U.S. goods while subsidizing foreign consumers at U.S. taxpayer expense.

6. Middle and low income consumers should not be forced to pay higher taxes on current income so the wealthy can pay less in estate and gift taxes. Estate and gift taxes should be reformed so that the very wealthy individuals contribute a fair share of that wealth toward federal revenues.
local governments together with the U.S. Treasury billions of

7. State and local bonds should no longer provide commercial banks and the wealthy with tax-free income. State and local bonds should be made taxable and a direct federal subsidy for a portion of the interest on these bonds should be paid directly to the states. This proposal would save state and local governments together with the U.S. Treasury, billions of dollars a year.

8. The erosion of the personal income tax base must end. Tax credits rather than exemptions and personal expense deductions would help distribute more fairly the excessive tax burden now placed on low and middle income families. Limits should be placed on mortgage interest and property tax payments. These unlimited deductions presently give enormous advantage to wealthy property owners, little benefit to average homeowners, and no benefit at all to renters. The fifty percent (50%) maximum tax ceiling, benefitting only extremely wealthy taxpayers, should be removed.

9. Reform of the regressive Social Security Tax System must be accomplished through partial funding of the SSS from general revenues and the consequent reduction of the present high tax rate.

10. Elimination of sales taxes is essential to provide fairness and progressiveness to tax systems affecting all consumers.

11. Congress should investigate reports that citizens who seek advice from Internal Revenue Service offices often receive inaccurate advice or conflicting advice from different agents, resulting in subsequent IRS demands for payment of additional taxes due. If the results of the Congressional investigations so justify, appropriate legislative or other steps should be taken to assure that citizens can obtain accurate tax advice from IRS.

TRANSPORTATION

GENERAL PRINCIPLES. We support a balanced transportation system based upon the community design concept embodying land-use studies, housing developments, community facilities, work opportunities, and all other relevant aspects of planning. Although more than nine-tenths of the U.S. Interstate highway program is completed, the transportation crisis grows. A major reallocation of financial resources is indicated. A different set of values must be endorsed to achieve a balanced transportation concept. As an immediate goal, we urge application of federal-state resources to create the required balanced system. For support of mass transportation, we suggest utilization of a proportion of Highway Trust Funds reflective of the proportion of the funds paid in by areas which would benefit from the transportation facilities so funded.

SURFACE TRANSPORTATION. We favor measures to make regulated intercity surface transportation of freight more competitive and more efficient, in order to increase the availability and reduce the costs of consumer goods and services. Such measures include:

(a) decreasing substantially the scope of carrier agreements on prices and services;

(b) cutting back on federal limitations on motor carrier service offerings; and

(c) when markets are adequately competitive, allowing carriers greater freedom in their individual pricing decisions.

We call upon Congressional Committes to cut through the tangled threads of special interest which have held up needed, pro-competitive changes in regulatory legislation, in the interest of the consumer. Prompt legislative action in accordance with the policy we recommend is a precondition for effective relief in this area.

2. PUBLIC TRANSPORT. We support the state transit authority concept with broad powers to move effectively in using available financial resources. Public transportation should become a national objective with the highest possible priority, producing a convenient, economical, and ecologically safe and sound system of moving people within cities and in rural areas as well as between cities. Public transportation is a public necessity. As a consequence, it can no longer be assumed that passengers alone should absorb the cost of the transportation system. A public corporation, subsidized by the state and/or political subdivision with access to state funds including highway user funds must be established. The public transit authority should be as flexible and imaginative as each separate set of transportation facts demands. While rapid rail service might be most appropriate in the crowded Northeast corridor, other sections of the nation may have different needs requiring different solutions.

3. AUTO AND HIGHWAY SAFETY. We again call for undiminished efforts to improve safety in design of streets, highways and cars using these facilities. More than 100-million cars now registered cause an annual death toll of over 50,000. An additional 5-million Americans sustain injuries. The economic loss is estimated at more than $16 billion. Automobiles can be built safer. Better restraint systems, protective padding, and safe interior design can do much to reduce loss of life and suffering. Exteriors of automobiles can and should be designed to eliminate spear and cleaver protrusions that aggravate injuries in car-pedestrian accidents. Maximum level safety standards for new and used cars should be supported and developed under stringent federal leadership. Insurance carriers must be encouraged to provide lower premiums for vehicles which, because of their design, reduce the incidence of injury and lower repair costs.

4. CHARTER FLIGHTS. Consumers need access to all forms of transportation and the right to spend travel dollars as they choose. Many CFA member-organizations participate in low-cost educational, cultural, and recreational air charter programs. These groups, and all consumers, resent the anticompetitive roadblocks placed on such travel by restrictive and complex rules of the Civil Aeronautics Board, some foreign governments, and the International Air Transport Association. The CAB has now responded in part to the CFA position by loosening the restrictions on package trips that include hotel and other ground accommodations. These new One-Stop Tour Charter (OTC) rules still require lengthy and unnecessary advance purchase requirements, which should be liberalized. In addition, we are encouraged to learn that the CAB has promised Congress and the flying public that it will also authorize Advance Booking Charters (ABC), which would make air transportation available on charter flights, without the necessity of purchasing ground accomodations at the same time. Many consumers want to be free to arrange their own travel intineraries and housing, once they arrive at their destination. Thousands of Europeans come to the United States on ABC flights, but Americans are denied the same privilege. We urge the CAB to move quickly in eliminating this discriminatory and anticompetitive practice. We further urge the State Department to secure agreements with foreign governments that will assure charter travelers the same landing and uplift rights guaranteed to those travelers utilizing the more expensive scheduled services.

We urge consumer groups to call on local airport authorities and the Federal Aviation Agency to take immediate action to establish strict safety regulations for the handling of hazardous cargoes on all aircraft in order to protect passengers, ground crews and flight personnel.

5. BARGE TRANSPORTATION. In keeping with CFA's advocacy of a balanced transportation system vis a vis air, highway and rail, we also support barge transportation for the movement of bulk products where practical. The low cost inland waterway transportation system particularly for bulk commodities has been one of the few deterrents to runaway food and energy costs. Accordingly, it is vitally important that the inland waterway system along with other transportation modes, be properly maintained so that optimum cost benefits can flow through to the ultimate consumer.

As an example, at the present time, there exists a major bottleneck on one of the nation's largest river highways—the Locks and Dam 26 at Alton, Illinois, the facility immediately below the confluence of the Mississippi and Illinois Rivers. Additionally, the existing facility being nearly 40 years old, obsolete in terms of today's traffic, in a sad state of disrepair, and located on a faulty foundation is in danger of total collapse.

Should the structure fail, river traffic on the entire upper Mississippi and Illinois Rivers will not be possible. As a result, the upper midwest area (7 states) will be adversely affected economically due to the higher cost of alternate forms of transportation, through shortages due to the inadequacy of those alternate forms and in job losses brought about by those shortages.

As a substantial margin of U.S. grain products are also dependent on barge traffic on the upper Mississippi, the nation's entire cost and supply of grain and grain dependent products are seriously threatened.

It has been proposed to replace the facility at an alternate nearby location on a firm foundation which could be done with little or no interruption to river traffic.

We support the proposal to avert a catastrophic shutdown of this highly travelled and vitally needed river transport system.

GENERAL RESOLUTIONS

Citizen Participation in Public Proceedings

Consumers commend the recent judicial recognition of the necessity of direct and meaningful public participation in federal agency action. Unfortunately that recognition alone is insufficient because few consumer groups and few individual consumers have the economic resources to sustain the enormously high legal costs involved in such participation.

We urge enactment of legislation that authorizes the payment of legal fees and other costs of participation including expert witness fees to qualified public and private intervenors acting on behalf of the public before rule-making, licensing or adjudicatory proceedings conducted by any federal administrative agencies in actions to secure judicial review of agency decisions as well as to persons or groups acting as private attorneys general to enforce federal law.

We urge enactment of legislation establishing the general powers of the courts to award attorneys fees to plaintiffs and intervenors in appropriate cases where the bringing of the lawsuit or the intervention results in vindication of a substantial public right which otherwise would not have been vindicated.

Prepaid Legal Service and Group Legal Service Insurance Plans

We support further development of prepaid legal service and group legal service insurance plans.

Check Off

Many important facets of everyday life that are important consumer interests have become so complex and involved that the volunteer consumer organization has difficulty grappling with the underlying issues adequately. In the last few years, a potential means of funding volunteer groups has proven itself. The voluntary check off provides the opportunity for members to fund necessary professional services.

The check off is a funding system in which consumers voluntarily add a donation on to the amount paid to a vendor with which the organization is concerned and the vendor collects all of the donations and forwards them to the consumers thus organized.

The newest, and potentially one of the most useful of these proposed organizations, is the Residential Utility Consumer Action Group (RUCAG). By the means of a membership check-off, RUCAG's give consumers the necessary expertise and organization to mount effective expression of the members consumer interest. We endorse this concept in organization and urge state legislatures and regulatory commissions to pass the necessary enabling legislation so that the use of the check off concept can be initiated in vital areas of consumer concern.

Mr. ANNUNZIO. Ms. O'Reilly, I commend you for a very excellent statement. Your many worthwhile suggestions are in that statement, and they will be carefully noted by the chairman of this subcommittee as well as by the members of this subcommittee.

I understand that the Consumer Federation is having its annual meeting and you are chairing the meeting. If you would like to be excused, I shall do so at this time, with the understanding that the members of the subcommittee have your statement and that we will submit questions to you for answering. We will keep this record open so that we will give you ample time in which to answer the questions.

Ms. O'REILLY. Thank you. I appreciate that.

Mr. ANNUNZIO. Mrs. Fenwick?

Mrs. FENWICK. Before Ms. O'Reilly goes, don't forget what you promised to give me.

Ms. O'REILLY. Curiously, the Federal Home Loan Bank Board is not interested in telling us where Mr. Bomar is.

Mrs. FENWICK. I want to get that information about the variable rate mortgage.

Ms. O'REILLY. They say he is somewhere in Florida, and they are trying to find him, too. As soon as we have an address we will forward it to you.

Mrs. SPELLMAN. I wanted to make one comment. One of the real frustrations I have been finding here is seeing some really fine laws passed and no enforcement of those laws, the carrying out of them. So, the comments that you make here are so right.

I want to make one other point. When I was chief executive of our county, I put someone right in my own office to handle complaints. People called the office, and things started moving for a change. So, you are absolutely right. It has to be on a high level, if it is going to mean anything at all.

Ms. O'REILLY. Thank you.

Mr. ANNUNZIO. Thank you.

We have a number of other witnesses. We want to hear from all of you this morning. So I am going to ask unanimous consent that your statements be inserted in the record and that you make your remarks. I hope you can be concise wherever possible, but I want to assure you that your entire statement will be made part of the record so that we can have time for questions before 12 noon today.

Our next witness is Mark Silbergeld of the Consumers Union.

STATEMENT OF MARK SILBERGELD, ATTORNEY, CONSUMERS UNION

Mr. SILBERGELD. Thank you, Mr. Chairman. I will try to summarize my statement and simply endorse your opening remarks about the usefulness of these hearings every 2 years. We find it a very useful opportunity to discuss legislation without having to get down to the nitty-gritty of the individual sections in specific pieces of legislation.

One thing we wanted to call to the subcommittee's attention, which was inadvertently omitted from my prepared testimony and which I would like to start with, is that we believe it is time to look at improvements for the Fair Credit Reporting Act.

There were excellent hearings held on the Senate side in 1975, and the testimony of Assistant Bureau Director Christian S. White, of the Federal Trade Commission, provides a very useful specific laundry list. I would say that two of the areas in which we have substantial concern are, first, the need to provide people who have files in their names at credit reporting agencies with more direct access to those files, replacing the present system of having a reporting agency's prepared summary read to the person so that they neither know whether the summary reports all of the information in that record nor do they know if the summary language has been so glossed over that in fact it may cover over items of information that they might wish to challenge.

Second, the need—and we get calls about this subject from irate consumers very frequently at our office—the need to have more specific information on which information obtained by a creditor to whom application has been made from a reporting agency is the specific reason, or one of the specific reasons, for turndown when the applicant is denied credit or insurance or high rating for loan rates or insurance rates.

We believe that the hearings to be held on those would produce a long list of necessary corrections to that act which would greatly improve its usefulness.

Later this month the National Commission on Electronic Funds Transfer will submit a preliminary report to the Congress on electronic funds transfer systems, including debit cards.

This is an extremely serious issue. It involves issues of personal privacy, and it involves issues of changes in technology which will directly affect the marketplace.

For instance, we have already found—and I'm not even sure that anybody other than perhaps the Commission and the lawyers involved know it yet, that employees who are on an electronic funds transfer type automated payroll deposit system, if First National Bank of Arizona against Usery holds up, are going to be second-class citizens with regard to the application of the wage garnishment provisions of the Consumer Credit Protection Act, as compared with those who have their paychecks made out as paychecks and handed to them manually.

These are the kind of things that are hiding below the surface, that in many cases have not even come to the attention of many people who are considering the broad effects of electronic funds transfer systems.

Because of the fact that what we may see at present, even with the Commission's anticipated report, is only the tip of the iceberg, we would strongly recommend that, when that report from the National Commission is available, after an appropriate period of time which permits Members of Congress and concerned consumers as well as the industry and others involved to carefully study that report, a set of informational hearings be held at which consumers and all other interested segments of the economy can make known their views on that report, on what the report recommends to be enacted into protective legislation, and on where the report may fall short, if in fact it does in some areas.

We believe that these kinds of informational hearings, prior to the actual consideration of any kind of legislation, would be extremely useful both to you and to us.

Truth in Lending, as Kathleen O'Reilly has already told you, is apparently in for a round of truth in lending simplification bills. I will tell the members of this subcommittee that I have already been asked to review some of the drafts of proposed simplification, and some of those are, to say the least and to be most polite, half-baked. For instance, some of them have tried to limit civil liability by reducing the number of disclosures, which, if not made or if made inaccurately, would be the basis for civil action. They have focused on disclosures which are primarily relevant to closed-end activity, and then they have in the draft legislation sought to apply those limitations also to open-end credit, even though the fact that different disclosures apply to open-end credit has not even been considered by the members or staff who are circulating some of these drafts.

I would suggest to you that a very long, serious look at simplification proposals will be necessary, simply because much of the pressure to simplify is being pushed by those who are not sympathetic to the basic purposes of truth in lending.

For instance, one of the drafts I have seen proposes in open-end credit accounts to permit the creditor to omit the identification of the individual charges which appear on the monthly statement, and then let the person who wants to know what amounts are being charged call or write to the creditor under the provisions of the Fair Credit Billing Acts' billing error provisions, and to treat it as a billing error inquiry. Every month you would get a statement, if the creditor—and I know no reason why a credit would adopt this but I also know no reason why if they are going to adopt this somebody would want to introduce such an amendment—every month you would get a billing statement. You would be required to go through the billing error procedure simply to find out what items you are being charged for. With these kinds of simplification drafts floating around, I would strongly urge a very long, slow, careful look at simplification proposals.

Also, in the area of credit disclosures, I'm quite sure that truth in savings is going to come up, and I must admit that, having told you 2 years ago that we supported it, we would like to take a long look at that again.

First of all, we don't think that truth in savings provisions should be passed which are any more complicated than what Truth in Lending's simplification turns out to produce, because if there is an agreement reached—and I think there may be some agreement reached—that at least some simplification of Truth in Lending may be in order, there is no point in rushing out truth in savings disclosure requirements which are more complicated than that, and which in 2 years somebody will be putting in bills to simplify again.

I think that the degree of complexity and the tradeoffs between providing full information and providing only so much information as consumers can comprehend should be similar in both areas.

Second, there is no point in truth in savings if we are only going to measure such pittances as the effect of compounding on yield. The kinds of things that have been focused on, such as compounding, have a negligible impact on yield. For instance, the difference between no compounding and so-called continuous compounding is something like one-tenth of 1 percent of yield. That is not a tenth of an interest point; that is one-tenth of 1 percent of dollar yield.

While more complex considerations such as the method for determining the balance on which interest is computed and charges made against the account balance for keeping low balances for repeated withdrawal and deposit activity and so forth can very seriously affect the amount of yield, up to 10's of percents of the total yield, and those are the areas where it is most difficult to find a single consumer saving pattern to assume in a hypothetical rate calculation, so that a yield figure can give accurate advice to people with all kinds of savings patterns.

It is very doubtful that truth in savings can proceed unless some method can be worked out in which simple yet accurate and complete information can be calculated and disclosed.

Debt collection practices undoubtedly will again come before the subcommittee, and while the subcommittee I know is not of a mood to do so, last year we again urged you to strongly consider covering both independent and in-house collection activities.

Finally, we call your attenton to something that I don't even think is within the jurisdiction of the subcommittee, but certainly is within the jurisdiction of the committee, and that is the need for you and everybody else concerned to call HUD Secretary Harris' attention to the fact that her predecessors have not implemented the provisions of section 13 of RESPA, which would provide for a test project to measure the cost and benefits of a modernized real estate title registration system.

Now, they are due to report back to the Congress on the cost and benefits demonstrated by that project, no later than 1979, according to the law.

The benefits that occur from implementation of such legislation, or at least the claimed benefits, do not take place with the initial registration; they take place with the first change of title and subsequent changes after the initial registration under the new system.

Even if the contract to conduct that test project is let right now, it is highly doubtful that a statistically valid and representative sample of properties in this sample jurisdiction are going to change hands twice so that we can measure those costs and benefits. The longer we delay, the more likely it is that the Secretary is going to have to come back to the committee and ask for an extension of the act; and the longer the delay is, the later into the next decade that extension is going to run.

We strongly urge the members of the committee to call this matter to the new Secretary's attention.

Thank you, Mr. Chairman. I am sure there are other items we could have included on our agenda and that will come up in this Congress, and we will address them as they arise and as we are again invited back before the subcommittee.

[The prepared statement of Mr. Silbergeld on behalf of the Consumers Union follows:]

PREPARED
STATEMENT OF MARK SILBERGELD
ATTORNEY, CONSUMERS UNION
WASHINGTON OFFICE

Mr. Chairman and members of the Subcommittee, Consumers Union* appreciates your invitation to appear here today to present our views on a prospective agenda for the Subcommittee in the 95th Congress. I was pleased to have appeared before you at similar hearings at the beginning of the last Congress. This kind of proceeding every two years is a very useful way for Subcommittee members and staff and consumers to exchange views on priorities before consideration of specific legislative provisions.

Our consumer credit priorities, however, go beyond specific legislative recommendations. They include the need to oversee federal agency implementation of existing laws and the need to conduct inquiries to determine whether legislation is needed where none has yet been considered for introduction. Some of these priorities may fall within the purview of other Banking and Currency subcommittees. Nevertheless, because they affect the availability, cost or use of consumer credit, we feel it important to call them to your attention as members of the full committee.

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* Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide information, education, and counsel about consumer goods and services and the management of the family income. Consumers Union's income is derived solely from the sale of Consumer Reports, other publications and films. Expenses of occasional public service efforts may be met, in part, by nonrestrictive, noncommercial grants and fees. In addition to reports on Consumers Union's own product testing, Consumer Reports, with its almost 1.8 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.

Later this month, the National Commission on Electronic Funds Transfer will submit a preliminary report to the Congress on electronic funds transfer systems, including debit cards. Implementation of these systems raises serious questions of citizen privacy and numerous changes in the marketplace balance of power between buyer and seller in individual transactions. Some issues which may be raised have not yet fully surfaced--for instance, the unsolicited distribution of debit cards; and the ability of employees to receive the same protection under the federal wage garnishment law provisions of the Consumer Credit Protection Act when their employer uses an automated payroll deposit system as when paychecks are printed and distributed manually. We recommend that when the Commission's report is received, after a period of time necessary to permit careful study of its findings, hearings be held at which consumer representatives can present their views, comments and recommendations based on the report.

Already, some members of Congress have taken an active interest in Truth in Lending simplification. And already, from some of the communications we have received and draft legislative proposals we have been asked to review, it is apparent that great care will be needed in simplifying Truth in Lending disclosures if revised requirements are to leave consumer credit cost information disclosure in an improved, rather than worsened, state. For instance, one draft proposal, which I have reviewed upon request, would base disclosure simplifications solely upon considerations applicable to closed end credit, yet the simplification provisions would in substantial part apply to open end credit as well. And the result of that proposal, I feel, would reduce the rights of open end credit plan customers significantly, unnecessarily, and with no demonstrated basis for doing so. Therefore, we urge the Subcommittee to take its own initiatives to assure that Truth in Lending simplification becomes just that, and not Truth in Lending demolition.

Also in the area of credit disclosures, we anticipate that Truth in Savings proposals may again be introduced. We have two words of caution on these. First, it may be useful before actually proceeding to determine the final shape of such legislation, to see the form which Truth in Lending simplification takes. Truth in Savings, if it is adopted, should strike a balance between completeness and complexity similar to simplified Truth in Lending legislation. There is no point to forging ahead with savings disclosure requirements which would be out of touch with such judgments on borrowing disclosures. Second, there is no point to a savings disclosure requirement unless it can be designed to deal with those variables which most affect the depositor's yield and, at the same time, can be representative of most consumer's savings patterns. While attention has been focused on such variables as compounding, other variables such as the method of computing interest, grace period practices, and charges imposed on the account balance for frequent withdrawals and failure to maintain high minimum balances, have much more effect on savings account yield. See Consumer Reports, February, 1975, page 90. Truth in Savings will not be of great utility to the consumer unless yield information is based on these variables. We have considered drafting a proposed Truth in Savings rule as a rulemaking petition to the Federal Reserve Board and have not yet determined how yield disclosure information can best be calculated.

Debt collection practices legislation which was considered in the last Congress will again come before this Subcommittee. We urge that the proposed requirements be applicable to both independent and creditor-operated debt collection activities.

Finally, we call your attention to the failure of the Department of Housing and Urban Development to implement the provisions of Section 13 of the Real Estate Settlement Procedures Act (RESPA), which requires HUD to institute a demonstration project to assess modern real estate title registration procedures. If the procedures yield the benefits claimed for them, consumers would pay less in home purchase settlement costs. To date, HUD has not let the contracts needed to implement the demonstration project. HUD is required by Section 18 to report to the Congress no later than 1979 on the results of the project. Every day of delay in implementing the project makes compliance with this deadline seem more unlikely, however. For the benefits claimed for modern registration procedures result not with the initial registration but with transfers of title after initial registration. HUD's delay makes it increasingly unlikely that by 1979 a sufficient and statistically representative number of properties in the jurisdiction where the project is undertaken will change ownership twice, so that actual benefits can be measured.

Mr. Chairman, undoubtedly other issues will come before this Subcommittee during the next two years, and we will attempt to address them as they arise, should you invite us to do so. Based on present expectations, however, we would give the highest priority to the consumer credit issues which I have discussed here today. Again, we thank you and the Subcommittee for your invitation to testify.

Mr. ANNUNZIO. Mr. Silbergeld, we have a number of questions which we will withhold until we hear all of the witnesses. We want to thank you for your very fine constructive statement, and to let you know we are aware of the suggestions in your statement.

Our next witness is John Sheehan, legislative representative of the United Steelworkers of America, who this morning will tell us what the election results will be tonight in his great union that represents 1.4 million people. Are you prepared to tell us what the results will be tonight in the election in your union?

Mr. SHEEHAN. They will be very favorable.

Mr. ANNUNZIO. In other words, the ins will win and the outs will be out, Mr. Sheehan?

STATEMENT OF JOHN J. SHEEHAN, DIRECTOR, LEGISLATIVE DEPARTMENT, UNITED STEELWORKERS OF AMERICA, ACCOMPANIED BY KENNETH KOVACK

Mr. SHEEHAN. Thank you, Mr. Chairman, for giving us an opportunity to appear before you today, and again, remarks are in order to congratulate you for conducting these kinds of hearings as you did 2 years ago to try and take a look at the total field of consumer protection legislation.

Two years ago the focus of the hearings was in the area of trying to identify new legislative initiatives that the subcommittee might take in the course of the last Congress to move in with legislative thrusts.

It seems to me that this year the focus may be changing to the extent that you may be trying to identify the gaps in the enforcement of the laws, which we have now over the last number of years been enacting, and these are gaps in enforcement that are due both to the fact that you have a very dispersed enforcement system between the Federal and State governments and you also within the Federal Government have these various consumer acts spread all throughout across the horizon. There is required an effort to try to get a handle on what is actually happening with regard to the good intentions of both the Congress and many labor and consumer groups that advocated the passage of the laws. It would certainly throw more light on whether we should be going further with the legislation in the consumer field.

To that extent, one of our recommendations to the committee is that there be established a national commission on Federal and State consumer laws and activities. We recommend that this commission could provide invaluable information with regard to what is actually going on in the States and in the Federal Government, not only with regard to the laws that are on the book but the new areas where citizens' complaints, consumer complaints, are accumulating.

We found that, for instance, when a similar commission was established to study the workmen's compensation field that that commission did provide very useful information to the congressional committees that were legislating in that area.

So we do recommend that the subcommittee take a look at establishing a national commission.

Another aspect of that, which is item No. 2 in our prepared text, is that this subcommittee itself should conduct oversight hearings. It has come to our attention that approximately 70 percent of all consumers who complain to Federal regulatory agencies are unsatisfied with the treatment that they have received.

Of course, this information comes from a study of your own staff, and I must say we were rather surprised to realize that there is such a fallout between the Government agency that is implementing the act and the dissatisfaction on the part of the consumer for whom the act has been enacted.

I certainly think those of you in the Congress are well aware of the casework that is lining up on your own desks and in your own offices. Many congressional offices are turned into ombudsman offices. Actually the enactment of these laws was to make the Federal agency the ombudsman and take some of the load off the congressional offices.

So, I think you can, even more adequately than I, evaluate the consumer dissatisfaction with the implementation of these laws since perhaps they end up more on your desk than anybody else's seeking some satisfaction to their questions.

Again, this clearly indicates the need for a consumer protection agency within the Federal Government, but in the absence of that agency which would be able to represent the consumer interests in the various Government agencies, legislative oversight hearings are an essential responsibility of the Congress.

We again note that in the staff report of this committee some astonishing statements, for instance, with regard to the Federal Reserve Board, which handles someplace in the neighborhood of about eight consumer laws. The report says that,

> None of the consumer affairs offices—or Washington offices of those agencies without consumer affairs offices—become involved in the actual investigation of the consumer complaints which they receive; the method of investigation of consumer complaints is to request details from the financial institution complained about . . .

So they go actually to the institution for information rather than investigate it themselves.

> . . . thereby relying on the financial institutions' version of the problem; no agency routinely checks records of financial institutions to determine the accuracy of the information provided by the financial institution to the agency in connection with the consumer complaint.

Now, these findings give credence to the notion often held by the consumer that the Government agencies are captives of the organizations which by law they are required to regulate.

A third item that we mention in our statement is the whole question of homeownership. We are aware that the construction industry is in a high degree of depression and that construction of homes is not proceeding at the rate both to create jobs for people in this country and also to provide homes for them. And it is within that context that we were very much dismayed that there may be, and there are evolving gimmicks that would further frighten, perhaps, the consumer and threaten them so that they may not move into the homeownership market.

The National Association of Home Builders indicated that a typical family buying a new home will pay between $40,000 and $45,000, a figure that has doubled in the last 8 years.

In another report on the Senate side, Senator Brooke indicated that this figure is closer to $50,000. Figures from the Labor Department indicated for the average family of four, the weekly take-home pay ended up around $92 a week, or $368 per month. When you compare the monthly wages of $368 with the fact that the average monthly payment on the mortgage for homes in that area is around $352, I think it dramatizes the fact that homeownership is not something that is going to be accessible to many. It is within that context that we are concerned about the gimmicks that are evolving. We make reference to the balloon mortgage in our statement, and, also as previous witnesses did, to the variable rate mortgage, against which incidentally we testified in the last Congress. Our statement in this area speaks for itself.

But, again, there is a great deal of apprehension on the part of many that the pressure will again mount for the variable rate mortgage.

In No. 4 in our statement, we make reference to something that Mr. Silbergeld made some comments on; namely, the need for a truth in savings type of legislation. While I would agree with him that that type of legislation should not be complex and that there is a need to simplify the method of calculating the interest rate, nevertheless the consumer should have that information available to him in a simplified form. We call this to your attention.

On page 8 of our statement, we make reference to the fact that there are practices both with regard to service contracts and delivery dates where there is a time gap in the delivery of the service itself.

For instance, many service contracts are offered to the consumer who purchases appliances. For these service contracts, if the consumer does not purchase the contract at the date of the purchase of the appliance but does so a couple of months later the consumer nevertheless is charged back to the date of the purchase of the appliance during which time he did not receive the protection that the service contract would be providing. So we feel here that it is a practice that needs the attention of this subcommittee to either proscribe or at least indicate that it should not continue.

Also, there are problems with regard to delivery delays. If purchases are made through a credit card, the consumer certainly pays his bill when the credit card bill arrives, but the product may not yet have come to his home. Certainly, he should not be charged for a product which he has not yet received.

Finally, Mr. Chairman, we make reference to the wage garnishment section of the truth in lending bill. I think it would be most inappropriate for me at this time not to make mention of the fact that when you were first in Congress and when that truth in lending bill was finally making its way through the Congress as a result of all the efforts of Senator Paul Douglas and Mrs. Leonor Sullivan, that you on the House side attached to that bill a section on wage garnishment. You may remember that President Abel came before this committee and testified about the need to prohibit the garnishment of workers' wages. The committee, however, did not go that far. It ended up with a ceiling on the amount of the garnishment. It is a percentage of the minimum wage, and also ended up with a prohibition that there shall be no discharge on the first garnishment.

Now, we appear before you today to ask you to take another look at that section of the act, either in terms of a straight out, antigarnishment provision, or at least a straight out antidischarge provision.

Certainly the prohibition against discharge on the first garnishment has helped a great deal of people. Certainly also where the union movement has organized in many shops and plants, we do have a method, through the grievance procedure, of perhaps insulating workers from arbitrary discharge after the first garnishment.

But I do think there is a vast majority of people unorganized in this country where discharge can continue. We do think that now it is time to take a look at that section and perhaps to have a straight antidischarge provision in the garnishment section of the act.

Thank you.

[The prepared statement of Mr. Sheehan, presented on behalf of the United Steelworkers of America, follows:]

STATEMENT OF

JOHN J. SHEEHAN, DIRECTOR

LEGISLATIVE DEPARTMENT

UNITED STEELWORKERS OF AMERICA

Mr. Chairman, and members of the Committee, my name is John J. Sheehan. I am the Director of the Legislative Department of the United Steelworkers of America. We represent 1.4 million members through collective bargaining agreements in over 5,500 local unions in the United States. Our members and their families represent a considerable consumer constituency. We appear here today to protect the gains made at the collective bargaining table from being ripped off at the bargain counter.

Mr. Chairman, your idea of holding consumer information hearings so as to surface the legislative priorities of consumers, is a good idea. I am only hopeful that the committee, after hearing all the witnesses, does not become overburdened in its task to select priorities. We will confine our remarks to consumer issues which fall within the jurisdiction of this committee.

1. A National Commission on Federal and State Consumer Laws and Activities

High on our list of consumer concerns is a suggestion not for consumer law, at this point and time, but for investigation of consumer issues. We would encourage this committee to provide the legislative authority to establish for a limited period of time, a National Commission on Federal and State Consumer Protection Laws and Activities. The commission would have the responsibility to examine national and state consumer laws, and their implementation in the various states of our nation. Interested parties in every state would be invited to testify before the commission in field hearings so as to allow for the broadest base of participation. We believe it is in the national interest to compile, in one report, the strengths and faults of governmental consumer programs at the state and national level. We believe the appropriate committees of the House and Senate would benefit substantially from the findings and recommendations of the commission. The revelations of how some states can serve their population better, and why they are able to do so, may help other states upgrade their consumer programs, and help the Congress in its tasks to assure national uniformity at the highest possible level for the various consumer programs.

2. Oversight Hearings

The handling of consumer complaints leaves much to be desired. The indications are that approximately 70% of all consumers who complain to financial regulatory agencies are not satisfied with the treatment received. Staff studies by this committee and the office of the Special Assistant on Consumer Affairs to the President have indicated that many of the financial regulatory agencies have not responded to consumer complaints. Congressional offices have taken on an omnibus responsibility -- much heavier than necessary if the agencies were properly responsive to consumer complaints.

Failure by government agencies to adequately represent the consumer interest is also shown by a well documented GAO study and by testimony presented before the Senate Banking Committee last spring.

This clearly demonstrates the need for a Consumer Protection Agency within the federal government. But in the absence of that agency which would be able to represent consumer interest in the various agencies of government, oversight hearings are an essential responsibility of the Congress to assure that the various agencies of government implement the letter and spirit of the law. For instance, the committee could investigate the effectiveness of the Federal Reserve Board's Regulation AA, which is supposed to reduce, and hopefully resolve, consumer complaint problems.

In the report issued by this committee last September, to which I referred earlier, it was found that:

> "None of the consumer affairs offices (or Washington offices of those agencies without consumer affairs offices) become involved in the actual investigation of the consumer complaints which they receive; the method of investigation of consumer complaints is to request details from the financial institution complained about, thereby relying on the financial institution's version of the problem; no agency routinely checks records of financial institutions to determine the accuracy of the information provided by the financial institution to the agency in connection with the consumer complaint."

These findings give credence to the notion often held by the consumer that the government agencies are captives of the organizations they are, by law, required to regulate.

Recommendations made in the report do not necessarily require new legislation. They do, however, require commitment by the agencies to:

- investigate complaints thoroughly;
- spot check consumer complaint records by the staff on the occasion of regular examination;
- designate consumer affairs specialists in regional offices;
- implement toll free consumer hotlines;
- make available a simple information guide on how to file a complaint;
- cooperate with consumer organizations.

Congressional oversight of laws enacted by the Congress is an affirmative action. Oversight hearings, we believe, help the agencies do a better job.

3. Financing of Home Ownership

Home construction and ownership is dependent upon stable home loan interest rates. However, the combination of nearly eight years of recession, inflation, the highest levels of unemployment since the depression, and high interest rates means that the present generation of young families can expect little hope of participating in the American dream of home ownership as achieved by their parents.

The home building industry continues to be in a state of depression. High interest rates continue. Prices for new and existing housing have inflated to new highs which are out of proportion to their real worth. According to the National Association of Home Builders, the typical family buying a new home will pay between $40,000 and $45,000 -- a figure that has doubled in the last eight years. In another report by Senator Brooke, last year, the figure is $50,000.

In this price range, the principal, interest, taxes and insurance add up to an average monthly payment of $352. This should be compared with Department of Labor figures for November 1976, which show that workers with four dependents averaged $92 weekly in real spendable earnings, or about $368 per month.

On January 27, 1977, economist Walter Heller told the National Association of Home Builders Convention that housing will be the star of the economic show in 1977. Certainly this would benefit all of us, partly because home building contributes to a vast array of products and services that go into a new home.

However, at the prices stated earlier, only the affluent will be able to afford the purchase price of a new home. High prices and interest rates will force many potential buyers out of the home buying market and may, in fact, reduce the predicted role of the star in our economic recovery to a third place ribbon award.

In this setting, the lending institutions are developing gimmicks designed to attract more consumers into the housing market, and at the same time increase their profit return on home loans. FHA and VA loans have restrictions on gimmicks by requiring an even payment schedule. Other type loans are open to a variety of gimmicks such as the so-called balloon mortgage. Lenders are interested in increasing the time span over which mortgages are payable. Forty-year duration loans are conceivable. If, or when, such long-term home loans come to pass, you can be sure that the fine print will stipulate that after a given number of years, say 20 or 25, refinancing of the balance will be required, and no doubt, at a higher rate of interest, thus ballooning the payment.

Another gimmick is the "variable rate mortgage." Action taken by the House Banking Committee in 1975, which was strongly supported by our union, helped to block a proposal by the Federal Home Loan Bank Board which would have allowed federally-chartered institutions to use the VRM. Nonetheless, some states are allowing state-chartered lenders to vary their interest rates. For example, a bank chartered in the State of Washington offers the following formula: interest rate of 7½% per year charged during the first two years of the loan; 8½% in the third and fourth years; 9% in the fifth and sixth years; and 9 3/4% thereafter. Other Washington lenders are expected to cash in on the program. HUD also is experimenting with this method of financing because payments on the loan would be easier for the buyer to handle in the first few years.

These mortgage gimmicks might attract home buyers. But if they are to be used, assurances must be made that there will be full and complete disclosure as to the terms of the loan agreement including, but not limited to, an amortization schedule over the full course of the loan. This and other information can help the marginal home buyer determine his ability to meet the obligation of a long-term loan. It will help insure against the risk of forfeiture of the loan and the loss of down payment and equity.

Unnecessarily high interest rates and the variety of gimmicks that are surfacing to attract home buyers as recovery expectations rise, can only harm the consumer. The banking industry must be put on notice, now, that any avoidance of full disclosure will result in the full application of the law upon the violator.

We urge the committee to evaluate by all ways available to it, including field hearings if necessary, whether financial disclosure is being abused. Any findings of abuse should be reported to the agency responsible. And if the findings confirm that new legislation is necessary, we would support the committee in its effort to protect the public interest. Home buying is among the most costly expenditure for a consumer.

Home buyers must be protected from the ever-growing list of gimmicks that are devised to separate consumers from their dollars. A deliberate effort must be made to locate patterns of misconduct in the financial institutions on a more organized and concentrated basis.

4. <u>Consumer Savings Disclosure - Interest Rates</u>

Disclosure of varying practices in the consumer lending industry indicated the need for a national law for uniform disclosure of the annual rates of interest being paid. Similar confusion over what is the rate of interest exists for the consomer who deposits his funds in a savings account.

Comparative shopping has always been the method of finding the best product at the best price. But in the area of savings accounts, one needs a mechanical brain or computer to determine which savings institution offers the highest return. A strong and fair consumer savings disclosure act should be a legislative priority of this committee and the 95th Congress. It should be noted that appropriations needs for this type of statute would be minimal.

5. Time Sequences - Credit Card Purchases

We urge the committee to investigate two areas where time operates against the consumer:

(a) Service Contracts:

Chain stores usually try to sell a service contract with the purchase of an appliance. If a salesperson does not sell a one or two year service contract along with an appliance, the customer will usually receive a letter in 30 to 60 days offering the customer a second opportunity to purchase a service contract. The catch is that the customer, upon delayed purchase of the service contract, is not always aware that the service contract is dated from the date of purchase of the products, not from the date of purchase of the service contract. The consequence is that one or two months may have passed for which payment is made without opportunity for service should the need have occurred. Stated another way, the customer pays for a 12-month service contract which entitles him to only 10 or 11 months of use.

(b) Delivery Delays:

This is a situation which arises when an item is ordered but payment is made with a credit card. The billing process follows on schedule whether or not the item is delivered. The businessman receives his money. The credit card company receives payment during the waiting period. Many times the product is paid for well in advance of delivery. The financial community has the benefit of the consumer's funds while the consumer does not have the service of the product being paid for by regular installments or in full.

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This abuse of credit transactions could be relieved if only the merchant would refrain from processing the credit transaction until delivery of the product was certain.

Why should the consumer be held to a disadvantage in these examples that occur regularly in the marketplace? We urge that the committee investigate these areas.

6. Wage Garnishment

In 1967, United Steelworkers President I. W. Abel testified before this committee in support of the Truth-in-Lending bill. On the occasion of that testimony, President Abel stated, "a federal anti-garnishment law is long overdue." We state here today that our union has not retreated from that position as stated ten years ago. The same arguments that were expressed in support of a federal law then are valid today. The Truth-in-Lending law that was enacted did provide some protection against garnishment, i.e., it provides minimum protection for workers from discharge when the first garnishment is processed, and that a large percentage of a worker's take home pay is protected from deductions for payment. However, the wage garnishment provision did not go far enough.

The fact remains that many employers will often discharge an employee the first opportunity that occurs after the initial garnishment has been processed. Employers do not want to administer the deductions. Discharge offers an easy remedy -- the path of least resistance. Therefore, while there may be support for anti-garnishment legislation among employers so that paper work requirements might be reduced, we certainly maintain that there should be an anti-discharge provision regardless of the number of garnishments. It would be better to limit garnishments than penalize the worker through discharge.

Workers, fearing discharge because of garnishments, will seek other loans to cover previous credit, some of which can only be found among the nation's loan sharks.

The minimal uniformity of job protection in the Truth-in-Lending Act is in need of repair. An upgrading is necessary to the full extent of an anti-discharge or anti-garnishment provision that would then be uniformly applied nationwide. Ten years have passed since passage of the Act. Only two states are in full compliance. In 48 states, garnishment protection provisions are most dispersed. Investigations of wage garnishment discharges are not automatic. The Labor Standards Wage and Hour Division informed us that they can only investigate a discharge when a complaint is filed. They inform us that the larger companies tend to respect the minimal provisions of the Act. It is the smaller operations and the unorganized plants which lack contractual grievance procedures to protect against discharge that are the biggest offenders. Nearly three-fourths of the nation's workforce is in this category. These workers are more vulnerable to money lenders, repossession, loss of job and at the end of the line, loan sharks, bankruptcy and welfare.

In sum, Mr. Chairman, maximum uniformity nationwide is achievable with the passage of an anti-discharge or anti-garnishment amendment to the Truth-in-Lending Act.

In conclusion, Mr. Chairman, we are pleased to have been invited to these consumer information hearings. We look forward to an unprecedented degree of cooperation with the committee in its deliberations on consumer legislation in the 95th Congress.

Mr. ANNUNZIO. I thank you, John Sheehan, for your very informative statement. I am sure the other members of the panel have taken full note of the suggestions that you have made in your statement.

Our next witness this morning is Ms. Faye L. Mench, of the National Association of Retired Persons.

STATEMENT OF FAYE L. MENCH, LEGAL REPRESENTATIVE, NATIONAL RETIRED TEACHERS ASSOCIATION AND THE AMERICAN ASSOCIATION OF RETIRED PERSONS

Ms. MENCH. Thank you, Mr. Chairman.

On behalf of the two associations, the National Retired Teachers Association and the American Association of Retired Persons, I am happy to be here this morning to bring to you some concerns of a rather large segment of the consuming public, that being older Americans. This age group is the most rapidly growing segment in American society.

Presently in this country, we have over 30 million people who are 60 years of age or older. If we are to pay attention to what sociologists and demographers are telling us about this population, then we know they are contributing a great deal to different marketing trends in this country. We, therefore, have to pay more attention to their problems and needs.

Our associations have a longstanding concern and involvement with the problems of the older consumer. Some of the issues which were of major concern to older Americans when Dr. Andrus first founded our associations, we find we are still grappling with today nearly 20 years later. Why, we ask, do we need all of this time to deal with the problem.

One of the reasons that, we feel, contributes to this is a lack of central focus for consumer interests and representation. A solution which we have supported as a remedy for this problem is the creation of an independent agency for consumer advocacy. We feel that should such an agency be developed, more appropriate balance of representation between consumer interests and business interests would be established in the decisionmaking processes of government.

A second issue which I would like to discuss just briefly this morning is the issue of credit discrimination against older persons.

We are grateful to the Congress and especially to you, Mr. Chairman, and the subcommittee for your fine efforts in the last Congress in amending the Equal Credit Opportunity Act to extend that act's protection to the elderly. Unfortunately, we feel there are at least two concerns which require close monitoring, and I would like to bring those to your attention.

One concerns the definition of elderly applicant at age 62. While selection of any age as the cutoff point for definition purposes is arbitrary at best, we can appreciate the Federal Reserve Board's rationale in establishing age 62 as that point at which an older person may begin drawing social security retirement benefits. And just as age 62 may be appropriate, what about the widow who, if she qualifies, can draw benefits at age 60? For every age suggested, there are a number of reasons why another age would be just as appropriate. In many ways, leaving elderly applicant undefined, as was originally proposed by the Board, would provide a greater incentive, we believe, for lenders to consider the more meaningful factors that are necessary in determining creditworthiness, such as your credit history, your assets, and your level of income.

As the case was presented to us, age needed to be defined primarily for purposes related to credit scoring systems. The rationale here was to prevent elderly applicants from losing points in credit scoring systems which were shown generally to favor older persons with points relating to age.

Unfortunately, we feel that the regulation may fail because of a lack of interpretation, or misinterpretation. We do not understand the regulation to say that a person's points would be lowered after age 62 to equal the best score assigned to nonelderly groups. And yet informally we have had one lender, a local lender, contact our organization and suggest that they were going to do exactly that for fear of being in violation of the Equal Credit Opportunity Act.

We would ask this subcommittee, in performing its oversight functions, to look at this one aspect of the act.

Of further concern with ECOA is an amendment involving the denial of credit to older persons because of the nonavailability of credit-related insurance. Although the act and the implementing regulations expressly forbid this, we believe this aspect of the law will also need to be monitored closely.

With the credit provisions protecting the elderly only 1 short month away from their effective date, we are still receiving letters from our members complaining about credit discrimination based on age. We pledge our continued support of this subcomittee's efforts to assure that older Americans are not discriminated against solely because they have reached a certain chronological age.

Another issue which I would like to briefly mention is the practice of item pricing in the universal product code.

We do not believe that the removal of prices marked on packages of consumer items is in the best interest of consumers, particularly for the elderly. We find that shelf pricing may present extreme hardships for the elderly in performing their shopping duties. They are not alway able to bend down to see the lower shelves, and everything they need is not always at eye level. We believe strongly that item pricing should be continued under the UPC.

I would like to join with the preceding witnesses in lending our support to a concept that we call truth in savings legislation, because we feel, from the standpoint of the elderly, that this is a vitally needed measure. The elderly are small savers, basically. They try to put away as much as possible to cover themselves against unexpected medical emergencies, for example, or to provide for burial expenses. We believe that full disclosure of interest computations for these accounts will assist the elderly in being more prudent savers.

A situation which is unique to the elderly and serves to compound their problems as consumers is the pervasive attitude in this society towards aging. Somehow, we have grown to equate advancing age with decreasing productivity and worth as human resources. Our associations are very concerned with this negative stereotyping and have declared an all-out effort to change these unfortunate attitudes. We are encouraged by the interest of this subcommittee in dealing with age discrimination in the area of credit, and we would hope that the members of this subcommittee would use their understanding and appreciation of the problems of the elderly in working with their colleagues in the House to attack even larger problems dealing with age discrimination, such as those in the area of mandatory retirement.

In closing, I would like to extend to the subcommittee our continued cooperation in working out solutions to the consumer problems of older Americans. And I might add, just in closing, in answer to a comment that Mr. Silbergeld made dealing with electronic banking, we have had some concerns on this coming through to us from our members. Most recently, Sylvia Porter published an article dealing with the checkless society. We have just now begun receiving a substantial amount of letters from our members. These have not been analyzed to know what our members are saying. When this has been done, this information maybe of interest also to the subcommittee.

Thank you.

[The prepared statement of Ms. Mench, presented on behalf of the National Retired Teachers Association and the American Association of Retired Persons, follows:]

PREPARED STATEMENT

OF

FAYE L. MENCH
LEGISLATIVE REPRESENTATIVE

FOR THE

NATIONAL RETIRED TEACHERS ASSOCIATION
AMERICAN ASSOCIATION OF RETIRED PERSONS

Mr. Chairman:

The National Retired Teachers Association and the American Association of Retired Persons appreciate this opportunity to discuss with the committee a few consumer issues which are of concern to this nation's older citizens. Our organizations which serve older Americans, as well as provide them with opportunities to serve, represent over 10 million members nationwide.

Older Americans constitute a large segment of this nation's consuming public; 30 million Americans are age 60 or older. While older persons may account for only 14 percent of the total population, this age group is the most rapidly growing segment in American society. Their expenditure patterns and potential as consumers have been little noted outside of a few sociologists, such as Peter Drucker, who believe that older people are emerging as a new and dominant market force.

If we accept Drucker's theory and balance this against the rapid growth in the elderly population, the necessity for increased attention to the problems and needs of the elderly as consumers becomes apparent.

Our Associations have a long standing concern and involvement with the problems of the older consumer. Some issues which were of major concern to older persons when Dr. Andrus first founded NRTA-AARP, such as the high cost of prescription medicines, are still problems which we are working to resolve today.

Here we must ask, Why, after more than 20 years, are we still grappling with the same problems? I'm sure there are a number of reasons which could be offered in answer to this question. A major reason, as far as NRTA-AARP is concerned, is the lack of a central focus for consumer interests and representation.

A solution which we support as a remedy for this situation is the creation of an independent agency for consumer advocacy. This agency should be established within the Executive Branch and have full authority to represent and advocate consumer interests before other federal agencies, Congress and the courts. The establishment of an agency for consumer advocacy would, we believe, more appropriately balance representation of consumer interests with those of industry in the decision-making processes of government.

NRTA-AARP have supported legislation to create such an agency for the last six years and we hope that this Congress will be successful in finally enacting a bill which provides for an Agency for Consumer Advocacy..

A second issue which our organizations have been deeply involved with concerns credit discrimination against older persons. We are grateful to the Congress, and especially this subcommittee, for legislating an end to this discriminatory practice through enactment of P.L. 94-239. However, a few concerns remain which we would like to share with this committee to assure that Congressional intent is not overlooked in the implementation of the law.

One concern involves the definition of elderly applicant as anyone age 62 or older. While selection of any age as the cutoff for definition purposes is arbitrary at best, we can appreciate the Federal Reserve Board's rationale that age 62 is the earliest age at which an older person may begin drawing Social Security retirement benefits. What about the widow who may begin drawing benefits at age 60? In many ways, leaving the elderly applicant undefined, as was originally proposed by the Board of Governors in the earlier stages of the regulation process, would provide greater incentive for lenders to consider the more meaningful factors in determining credit worthiness of older persons such as credit history, assets and level of income.

As the case was presented to us, age needed to be defined primarily for purposes related to credit scoring systems. The rationale here was to prevent elderly applicants from losing points in credit scoring systems which were shown generally to favor older persons with points related to age. Unfortunately, we fear that the regulation may fail because of interpretation. We do not understand the regulation to require a lowering of points to persons age 62 and older to equal the best score assigned to any non-elderly group. Yet one lender who has been in contact with our Associations has proposed doing just that for fear of violating the intent of the Act.

We do not believe that Congress intended for the elderly to lose any advantages they may have earned before the ECOA was amended. Therefore, we would ask this subcommittee to exercise its oversight function in monitoring this aspect of the Equal Credit Opportunity Act.

A further concern with ECOA as amended involves denial of credit because of the nonavailability of credit-related insurance. Although the Act and implementing regulations expressly forbid this in those situations where such insurance is not available because of an applicant's age, we believe this aspect will also require close monitoring.

With the credit provisions protecting the elderly only one month from their effective date, we are still receiving letters from our members complaining of credit discrimination based on age. We pledge our continued support of this subcommittee's efforts to assure that older Americans are not discriminated against solely because they have reached a certain chronological age.

A third issue which we believe needs attention is the practice of item pricing in the new system known as the Universal Product Code. Our Associations can appreciate the interests of retailers who believe that use of the UPC system will achieve greater efficiency in the operation and management of their businesses. However, we do not believe that the removal of prices marked on packaged consumer items is in the best interest of consumers. We firmly support the consumer's basic right to know and their basic right to choose and we do not believe that listing prices for items on shelves instead of on the items themselves is an appropriate mechanism to protect these rights. As a Michigan State University study on the use of the UPC system pointed out, elimination of item price marking would reduce the consumer's awareness of food costs and price rises and would remove an educational tool on which consumer could rely.

For the elderly, shelf pricing presents other difficulties because not all shelves are at eye level. For those who have difficulty bending or stooping or who have poor eyesight, shelf pricing would become a shopping barrier.

A final issue which has been supported by our members is the enactment of Truth-in-Savings legislation. Since the elderly tend to have small savings, for an unexpected medical emergency or to provide for burial expenses, full disclosure of interest computation for savings accounts in clearly defined terms would greatly enhance an older person's understanding of savings programs and allow him to be a more prudent saver.

A situation which is unique to the elderly and serves to compound their problems as consumers is the pervasive attitude toward aging which permeates our society. Somehow, we have grown to equate advancing age with decreased productivity and worth as human resources. Our Associations are very concerned with this negative stereotyping and have declared an all out effort to change these unfortunate attitudes. We are encouraged by the interest of this subcommittee in dealing with age discrimination in the credit area. We are hopeful that you will share your understanding of the aging's problems with your colleagues in the Congress and will join in other attempts to clarify views on aging -- such as efforts to eliminate mandatory retirement policies.

In closing, I would like to extend to the subcommittee our continued cooperation in working out solutions to the consumer problems of older Americans.

Mr. ANNUNZIO. I thank you for your very fine statement. And I would like to point out that this subcommittee, for the first time in the history of this country, included the category of aging in the Equal Credit Opportunity Act, and when we went to conference, as you know, I was one of those that was opposed to the scoring, but I lost. But I'm well aware of the fact that something must be done. And I'm delighted that you noted that in your statement, because the chairman is deeply interested in that problem.

As you pointed out, by the year 2000 half of the population of the United States is going to be over 65. We had better start dealing with that problem now, because we are only about 20 years away.

So I thank you very much for your contribution this morning.

And our next witness, from Syracuse, N.Y., is Ms. Wieloszynski.

And you are from the consumer affairs unit of your city?

Ms. WIELOSZYNSKI. Right. I'm the director of the Syracuse Consumer Affairs Office.

Mr. ANNUNZIO. Thank you very much. Proceed in your own fashion.

STATEMENT OF ROBERTA B. WIELOSZYNSKI, DIRECTOR, CONSUMER AFFAIRS OFFICE, SYRACUSE, N.Y.

Ms. WIELOSZYNSKI. Thank you for inviting my office to participate in these hearings. It has been our experience that beyond our contacts with specific Syracuse area representatives, the long distance between Syracuse and Washington, on the one hand, and our small size, on the other, have tended to leave us without a direct voice in national developments. That defficiency can only be made up in part by our association with larger and more prominent organizations, and our specific voice can tend to get lost in the process. So your effort to reach out to us is greatly appreciated.

I have submitted a package of reports and testimony which spells out in some detail the issues which have been of concern to the Syracuse Consumer Affairs Office. They include finance charge computation systems, savings account interest computation and crediting methods, credit card use fees, and other issues.

But of paramount interest to us is the very broad range of issues associated with the developments now taking place in Syracuse and in other communities around the country in electronic banking technology.

We believe that these developments, generally encompassed by the phrase, "electronic funds transfer systems," represent something fundamentally different in the relationship between a bank and its customers. The difference may be reflected ultimately in a less-check, less-cash society, rather than the checkless, cashless society some critics of EFTS suggest is on the way. But that doesn't make the change any less significant, nor our concerns any less worthy of attention.

At the risk of renewing the criticism that we are attempting to stop the invention of the wheel, when we are really only trying to keep people from being run over by one, I'd like to now outline our concerns about EFTS.

Our explorations of a point-of-sale terminal banking system and a computerized telephone bill-paying system, both of which are presently operating in Syracuse, first led to our basic conclusion that the systems were being promoted without an adequate regard for their implications.

Next, our contacts with bankers who were involved in the development of these and other systems, as well as our contacts with bankers who were merely feeling the competitive pressure to do so, led to our conclusion that the bankers, themselves, would take no action to deal with the implications of EFTS.

Finally, our experiences led us to develop a comprehensive description of EFTS problems, actual and potential, and to formally recommend legislative action in testimony before the National Commission on EFT last October.

I have included a copy of that presentation in the material we have supplied the subcommittee.

Our broad concern, briefly, is that to the extent EFTS replaces conventional financial alternatives—principally cash and checks—it does so beyond the scope of consumer protection legislation covering those alternatives. We think it also aggravates some problems that haven't been covered by legislation, while introducing some new problems.

The bankers I have talked with about EFTS are aware of these concerns. But they tend to either discount their significance or to assert that they can be handled by internal policy decisions. They aren't insensitive; rather, they are unresponsive to suggestions for formal action.

Over the last year or so, a potentially productive debate has developed, but it is only a potentially productive debate, because the climate is one in which critics raise questions about EFTS only to be ridiculed as people with overactive imaginations.

Well, I don't think so. In fact, I think that there is a basic conflict involved here between the need to confront and deal with EFTS issues and the need to sell EFTS services to a skeptical public. And that conflict is one in which the participants are the designers of legislative campaigns on one side versus the designers of promotional campaigns on the other.

In the January 18th edition of "American Banker" the two sides were joined in a confrontation of opinion involving Sylvia Porter, a noted financial affairs columnist, and John F. Fisher, vice president of First Bank Group of Ohio, Inc., a bank that's actively engaged in the application of EFTS technology.

Given the limitations connected with a newspaper column intended for mass distribution, Ms. Porter's presentation of EFTS issues was simplified and brief. But I don't intend to offer a defense for her. She doesn't need it. I do intend to take issue with Mr. Fisher's assertions, since his opinion is fairly representative of those who are actively supporting EFTS.

The first issue Mr. Fisher outlines is that it is not fact nor practical to suggest that a computer will handle any funds transfer transaction and that such a service is not only imminent but will be widespread. Further, that a key number not a signature, will open up the vaults of the world. If we may excuse and eliminate the hyperbole, on both sides, in Syracuse today a simple telephone call will get your bills paid for you or have money withdrawn from your savings account.

And in Syracuse today a key number, not a signature, will open up a participant's account to deposits, withdrawals, and purchases, the payment for which is made electronically and instantaneously. In Syracuse today computerized systems are permitting the preauthorized and automatic payment of the costs of any number of goods and services, and once some conflict in State and Federal law is resolved, the automatic deposit of entire payrolls will be possible, as the automatic deposit of social security and retirement income is now possible.

The bankers in Syracuse who are engaged in a major campaign to sell a point-of-sale terminal banking system would be interested to know that their effort is a "limited restricted experimental project," Mr. Fisher's description. In fact, the last time we looked, there were 40 banks operating the regular point-of-sale system, and there are 45 electronic terminals now. And I also have a report that just came out by the New York State Banking Association, and they say there are 4 million bank credit cards being used in New York State and 3 million check guarantee or debit cards, and that in the next year or so, that the debit cards and check guarantee cards will exceed credit cards. So I don't think it is an experiment. They own and operate a major computer center and are negotiating with other banks in the State to arrange to provide piggyback services.

About the bill-paying service that is operating in Syracuse. I can only describe the bank's reaction to its success as unmitigated joy. This is no experiment.

There are limitations on transactions in the point-of-sale system, as Mr. Fisher suggests there are in most system, $500 a day or three transactions a day. But the limitations are solely dependent on bank policy, and that can change. But more important, if these systems are as secure as we are told they are, why have any such limitations at all? The number of checks we can write is not limited, although they can be stolen. The number of credit card transactions we can make is not limited, although the cards can be stolen. The limitations can't be intended to make people feel more secure. In Syracuse the bank involved refuses to tell people either about the limitations or about their liability, the bank's liability.

I can't answer the question. But I can suggest that bank officials are not as certain about the security of these systems as public statements would indicate. And I can suggest that the limitations are designed to protect the banks and their customers until the range of possible security problems is fully identified or eliminated by experience.

Perhaps EFTS is the first development that would permit a bank to set limitations on transactions, but instead of denying a security problem, this would tend to indicate to me that there has been one all along, and only now are the banks able to do something about it, principally by restraining consumers.

These systems are sold as sources of convenience for consumers, when, in fact, they may be aimed more at the convenience of banks and merchants.

If a bank can eliminate paper transactions, especially those associated with checks and credit cards, and establish consumer limitations in the use of the alternative, EFTS facilities, paper costs can be reduced, the misuse of checks and credit cards can be reduced, merchant costs and risks can be reduced.

As long as checks and credit cards continue to exist as alternatives, consumers, themselves, may gain something, rather than lose something. But statements by the bankers who are developing and marketing the alternative to checks and credit cards, and perhaps other common economic symbols, are a poor source of confidence in the continued prominence of the alternatives, if not their continued survival.

There is presently nothing to stop a bank from providing free EFTS services to customers while charging fees for alternative services which are high enough to dissuade their use, and perhaps high enough to underwrite those EFTS services. And in fact, with the pay-by-phone system it costs 10 cents to the consumer per transaction, but it costs the bank more than that per transaction. So other consumers are subsidizing the cost of the pay-by-phone system. And it also, of course, encourages the use of the pay-by-phone system rather than a checking system.

The same thing goes with the point-of-sale system. At the time that the point-of-sale system was introduced in Syracuse a service charge was tacked on to people who use checks, and it was supposed to have no relation to the introduction of a point-of-sale system, but all of a sudden there is a $3 charge with using checking accounts.

Mr. Fisher undercuts the issue of liability by suggesting that checking and credit card protection applies to EFTS. But if that is true, it is only because bankers are choosing to apply this protection to EFTS transactions. That is an action I support. But I believe that formal action is still required to translate this protection-by-choice into protection-by-law.

This is important because the protection provided to users of checks and credit cards is designed to protect their assets from unauthorized access. In the case of EFTS and its instantaneous transfer function, the protection would have to be designed to restore funds already taken.

Mr. Fisher suggests that the industry is "bales away" from a no-paper system. That is true. But it does not mitigate a need to confront the prospects of such a system before we are called upon to deal with problems which could have been avoided.

Mr. Fisher says a customer's ability to get an up-to-date balance from EFTS terminals is an important service. It could be. But right now in Syracuse, with an EFTS terminal operation functioning alongside a checking system, with the same pool of funds applying to both, a customer at a terminal can get a transaction approved on the basis of a balance which is inaccurate. The computer can only react to checks which have cleared the bank. Yet in selling the system, the bank told people that they didn't have to carry their checkbooks with them anymore. Of course, if they didn't and relied solely upon the terminal systems approval of a transaction, a previously written check could bounce.

For instance, if you wrote your rent check out yesterday and then go into a department store and have an instantaneous transfer of funds, that is authorizing that you have the money available. Then when your rent check clears, you may not have sufficient funds available, and it could bounce.

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I brought along one of their promotional publications, and it has a list of advantages to the customer and advantages to the merchant. And one of the ones to the customer is that it eliminates carrying the checkbook. They also say that the convenience of ready cash without writing checks. But with this EFTS system you have to write out something different. It's not called a check, but you have to put your signature on it and write in the amount and the date and the whole bit.

In responding to the issue of computer records vanishing, Mr. Fisher asserts that the "electronic future will continue to be based on an audit trail of computer records and paper files," which goes precisely to my point about consumer records being maintained in a ready-to-be-abused form.

I am frankly concerned about the conjunction of records that detail consumer purchase and expenditure records with the recent Supreme Court ruling which says such records are neither the property of the bank nor the property of the consumer. Perhaps such records are not being misused by private agencies now, but there is no law that presently stops the unauthorized transfer of these records. And the Internal Revenue Service can be expected to be among the Government agencies interested in these records.

It isn't that all local, State, and Federal Government investigations are little more than fishing expeditions. It's that they can be. To fish, you need a lake. And EFTS provides a suitable computerized version.

Government should have a legitimate right to records. But the people those records represent should have a right to oppose Government access. Right now there is no reason that EFTS customers would even be informed that access to their records has been requested. In fact, given the technical ease with which computers can be interfaced, and the resources available to Government in general, there is no reason to believe that banks now maintaining EFTS records would even know that access has been gained.

Of course, the presence of third-party hardware and software providers just serves to complicate the process.

That third-party may be a bank, a consortium of banks, or an independent company, but its presence is disguised; perhaps unseen would be more appropriate. In any case, people who have been accustomed to dealing with a bank are likely instead to be dealing first with a store clerk or some other nonbank employee, and then with an obscure service company. Both a bank and its customers become customers of a new business.

Mr. Fisher's point about float is well taken, except that, as I have pointed out, a debit card service operated from the same pool of funds as a checking service can create an artificial float. This artificial float is the appearance of a specific remaining balance sufficient to cover terminal point transactions. It's true, a consumer must be careless. But the system itself makes the error possible, an error that would not have otherwise been possible.

And in the Syracuse system, the terminals in use will automatically access a customer's line of credit authority so that a consumer may unknowingly make what amounts to a credit transaction. Most people aren't bankers. It's easy for them to lose track of their account. I know; it happens to me often enough.

Mr. Fisher's final point is that "the financial transaction networks that will eventually stitch our Nation together will be as beneficial to our society as today's highway and air transportation systems.

That is an interesting conclusion for someone who, at the beginning, asserted that the financial industry is not proposing or able to provide a "call the computer, give your number, presto, money world."

Whether it is defined by jingoistic funny-words, as in Mr. Fisher's paraphasing of Ms. Porter's projection, or in straightforward language, as in his own projection, EFTS is what the world is coming to.

My primary recommendation is that we take some action that will make sure that when the world gets there, it is where we want to be. I am sure that there are those who will be quick to point out that my statement of problems doesn't necessarily mean they will materialize. But that works the other way around, as well, with statements that it is all going to be as beneficial as highways or air travel, both of which have presented us with problems we wish we would have known about before we started.

I think most of our recommendations for action are inherent in the comments I have already made, and my report accompanying this testimony goes into them in some detail, so I won't go into them now. But I will try to answer any question you may have.

Thank you.

[The prepared statement of Ms. Wieloszynski on behalf of the Consumer Affairs Office of Syracuse, N.Y., follows:]

PREPARED STATEMENT OF ROBERTA WIELOSZYNSKI

My name is Roberta Wieloszynski. I'm the director of the Consumer Affairs Office for the City of Syracuse, New York.

I'd like to begin by thanking Congressman Annunzio and the subcommittee for inviting my Office to participate in this series of hearings. It's been our experience that, beyond our contacts with specific Syracuse area representatives, the long distance between Syracuse and Washington, on the one hand, and our small size, on the other, have tended to leave us without a direct voice in national developments. That deficiency can only be made up in part by our association with larger and more prominent organizations. And our specific voice can tend to get lost in the process.

So your effort to reach out to us is greatly appreciated.

I've submitted a package of reports and testimony which spells out in some detail the issues which have been of concern to the Syracuse Consumer Affairs Office. They include finance charge computation systems, savings account interest computation and crediting methods, credit card use-fees, and other issues.

But of paramount interest to us is the very broad range of issues associated with the developments now taking place in Syracuse and in other communities around the country in electronic banking technology.

We believe that these developments, generally encompassed by the phrase, "electronic funds transfer systems," represent something fundamentally different in the relationship between a bank and its customers. The difference may be reflected ultimately in a less-check, less-cash society, rather than the checkless-cashless society some critics of EFTS suggest is on the way. But that doesn't make the change any less significant, nor our concerns any less worthy of attention.

At the risk of renewing the criticism that we are attempting to stop the invention of the wheel, when we are really only trying to keep people from being run over by one, I'd like to now outline our concerns about EFTS.

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Next, our contacts with bankers who were involved in the development of these and other systems, as well as our contacts with bankers who were merely feeling the competetive pressure to do so, led to our conclusion that the bankers, themselves, would take no action to deal with the implications of EFTS.

Finally, our experiences led us to develop a comprehensive description of EFTS problems, actual and potential, and to formally recommend legislative action in testimony before the National Commission on EFT last October.

I've included a copy of that presentation in the material we've supplied the sub-committee.

Our broad concern, briefly, is that to the extent EFTS replaces conventional financial alternatives... principally cash and checks... it does so beyond the scope of consumer protection legislation covering those alternatives. We think it also aggravates some problems that haven't been covered by legislation, while introducing some new problems.

The bankers I've talked with about EFTS are aware of these concerns. But they tend to either discount their significance or to assert that they can be handled by internal policy decisions. They aren't insensitive; rather, they are unresponsive to requests for formal action.

Over the last year or so, a potentially productive debate has developed... but it is only a potentially productive debate, because the climate is one in which critics raise questions about EFTS only to be ridiculed as people with over-active imaginations.

Well, I don't think so. In fact, I think that there's a basic conflict involved here between the need to confront and deal with EFTS issues and the need to sell EFTS services to a skeptical public. And that conflict is one in which the participants are the designers of legislative campaigns on one side vs. the designers of promotional campaigns on the other.

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And in Syracuse today, a key number, not a signature, will open up a participant's account to deposits, withdrawals and purchases, the payment for which is made electronically and instantaneously. In Syracuse today, computerized systems are permitting the pre-authorized and automatic payment of the costs of any number of goods and services... and, once some conflict in state and federal law is resolved, the automatic deposit of entire payrolls will be possible, as the automatic deposit of social security and retirement income is now possible.

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I can't answer the question. But I can suggest that bank officials are not as certain about the security of these systems as public statements would indicate. And I can suggest that the limitations are designed to protect the banks and their customers until the range of possible security problems is fully identified or eliminated by experience.

Perhaps EFTS is the first development that would permit a bank to set limitations on transactions... but instead of denying a security problem, this would tend to indicate to me that there has been one all along, and only now are the banks able to do something about it.. principally by restraining consumers.

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This is important because the protection provided to users of checks and credit cards is designed to protect their assets from unauthorized access. In the case of EFTS, and its instantaneous transfer function, the protection would have to be designed to restore funds already taken.

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Of course the presence of third-party hardware and software providers just serves to complicate the process.

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Mr. Fisher's point about float is well-taken. Except that, as I've pointed out, a debit-card service operated from the same pool of funds as a checking service can create an artifical float.

This artificial float is the appearance of a specific remaining balance sufficient to cover terminal point transactions. It's true, a consumer must be careless. But the system itself makes the error possible, an error that wouldn't have otherwise been possible.

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I think most of our recommendations for action are inherent in the comments I've already made, and my report accompanying this testimony goes into them in some detail, so I won't go into them now. But I will try to answer any questions you may have... Thank you.

Mr. ANNUNZIO. Thank you for your excellent statement. And I assure you that the subcommittee is aware of these problems, and you have probably read our announcement that sometime in April we will be looking into many of these problems that are suggested in your excellent testimony this morning.

Our next witness is Mr. Richard B. Spohn, director, California State Department of Consumer Affairs, Sacramento, Calif.

STATEMENT OF RICHARD B. SPOHN, DIRECTOR, CALIFORNIA STATE DEPARTMENT OF CONSUMER AFFAIRS, SACRAMENTO, CALIF.

Mr. SPOHN. Thank you, Mr. Chairman and members of the subcommittee.

It's good to be here from California, where we are in the worst drought in our history. We don't get water on the tables in California anymore.

I would like to touch briefly on several items which fall under your subcommittee's influence and jurisdiction. Only one of them does not. However, I am sure that it is subject to your influence. It would seem that the top priority for this Congress would be finally to establish a Federal Consumer Protection Agency, or whatever it eventually will be called.

In the debates that have raged about the propriety and efficacy of such an agency, I think many objections are rapidly disproven if you go to States and to some of the municipalities around the country that have already established similar agencies and that are already doing many of the things that a Federal agency could do and are disproving many of the charges that are laid against the consumer agency.

Probably fewer State administrations are as fiscally tight as Governor Brown's; we don't start new programs without eliminating old ones. But, nevertheless, we have established in California in the last year and a half I think an aggressive consumer agency that might serve as a model reference as you consider the Federal agency. We have all the powers proposed for the Federal agency, and then some. We do not have some of the substantive restrictions that were amended into it during the last session. Indeed, some of our most creative work on behalf of consumers was done in the area of agriculture. Working with consumer groups and with other portions of the executive and legislative branches in California, this year we were able to secure the elimination of retail price controls on milk, which might have a \$50- to \$100-million annual payoff to consumers. We have been able to do a good deal of work in the area of farmers' markets and other alternative food delivery systems for consumers.

This is not paternalism; it's not big brotherism. Our dominant philosophy is to try to foster the development of independent private consumer structures.

We think that caveat emptor in this latter day has an awful lot to it. In the final analysis, consumers organizing together can do a better job to influence public policy and protect themselves than they can if they were relying simply on business or government to do it for them.

In my prepared remarks, which you indicate will be included in the record, I detail some of the things that have been done to try to foster private structures.

One of the most significant things we're doing is systematically seeking legislation that will mandate a majority of consumer representation on official State boards. We recently knocked off 38 boards and bureaus that license over a million people in California, putting a majority of consumers on those boards and bureaus.

That seems to be a worthwhile consumer advocacy function, and it puts the power and influence where we think it should belong, namely with the consumers.

We have advocated before legislative, regulatory, and judicial bodies on behalf of the consumer. The State has not fallen into the sea, and indeed we think that the consumer has gotten a better shake because of the number of types of cases and bills that we have pushed and regulations we have advocated. And some of those are detailed in my prepared comments.

I understand, Mr. Chairman, that you will be again considering debt collection agency practices. I would like to refer you to some regulations that we implemented at the first of this year that we think are the strictest in the Nation. Our department regulates debt collection agencies in California. We have probably many of the same types of horror stories that you have received in your past considerations—the midnight telephone calls, the impersonation of Government agencies, the intimidation, intimation that the agent is from the FBI, the threat of physical harm.

We found one case where a debt counselor, trying to help the consumer out of a debt problem she had, first suggested that she give up her son for adoption, and if that didn't work, to get out of her house, and if that didn't work, she should go on welfare. And finally, the ultimate solution was that if she couldn't then pay the debt, she ought to kill herself.

Well, that is obviously an aberration, and the majority of collection agencies are not engaged in quite so sharp practices, but, nevertheless, after extensive hearings that went on for over a year, we have established a set of very strict regulations that prohibit some of the more egregious abuses, and I would be glad to leave with your staff a set of those regulations for your consideration.

They have portions of the industry somewhat up in arms, but they were hammered out after extensive hearings, and perhaps they might be worthy of some reflection on your part.

Another issue which I know you're going to be looking at and which has already been addressed today is the question of truth in savings.

A bill passed in California last year—the citation on it is chapter 1279 of the Statutes of 1976—is essentially a notice statute; it doesn't cover advertising, which is something that I think will be considered probably this year in California. But at least it puts the consumer on notice at the time a savings account is opened, regarding some of the marvelous devices that are used to either benefit the consumer or benefit the consumer in the other way.

We did a survey last year in California and systematically studied several hundred banks. We found that the employees of the banks had precious little knowledge of the actual benefit or harm to consumers stemming from the various interest computation methods used by their banks. Indeed, in many, many instances, they were totally ignorant of them. When we were able to get the official information from the bank rather than the clerk on the phone or the teller in the bank—which is obviously the first line of contact the consumer has—we were able to get the official statement of the bank and do the arithmetic, and we found that, unbeknownest to the consumer, the range of benefits could go in either direction about 200 percent.

So, we think that is a very important problem for consumers and I would hope you will take it up again, and I certainly concur in Mark Silbergeld's caution that it not be so esoteric that it is not helpful to the consumer.

Another item—obviously everybody's talked about it today and I hope you will be grappling with it—and that is the question of electronic funds transfer systems.

We have been somewhat impatient with the pace with which the national Commission has been proceeding, so we established our own executive task force in California with the Department of Consumer Affairs, the Department of Corporations, the Department of Savings and Loans and other agencies. We are in the thick of the thing. Southern California is being used as an experimental ground in EFTS. We are getting a lot of inquiries from consumers. A lot of bankers are concerned that they are not getting in on the action. We have, as you know, some rather large banks in California.

Perhaps the only positive effect of having this technological imperative work its usual way, without adequate public policy decisions, is that the old adage may once again be proven true, and that is that you take a great risk when you let the donkey taste the carrot that you dangle in front of his nose because you may find out that he prefers broccoli.

We are finding a lot of consumers are beginning to have second thoughts about this thing—and thankfully before it takes over—regarding the way that we relate to money in this country.

I think EFTS represents a radical departure in how individuals relate to private institutions and to government.

One other item which has not come up today and which does not come up too often but is something which in California we are very enthusiastic about is self-help housing. As consumer affairs advocates on your larger committee, I would urge you to take a look at the potential for solving the very serious consumer problem of housing with self-help housing techniques.

Research has been done on this over the years, and in the private sector HUD contracted for a major study 5 or 6 years ago. They paid a lot of money for it. It was an excellent study. They came up with some fine, sound policy recommendations, and as often happens with such Government studies, it is now collecting dust over at HUD.

I have some knowledgeability in this area and am firmly convinced that there is a substantial potential for increasing the housing stock that lies precisely in the citizens of the country, and that refers both to housing renovation and rehabilitation as well as to owner-building of homes themselves.

Perhaps our benign climate in California makes us somewhat more aware of this, but research that has been done in this—and it goes all the way from Alaska to Maine to Arizona and Florida, crisscrossing the entire continent, all of the 48 States—there is a marvelous potential there, Mr. Chairman.

A couple of other items that I would urge on you that aren't in my prepared remarks. Obviously the Consumer Cooperative Bank is something we are deeply interested in and support wholeheartedly. We have a number of consumer cooperatives in California. The Berkeley Cooperative in the San Francisco Bay area is probably the largest consumer co-op in the country. We are 100-percent behind this. It is in line with our philosophy to try to foster private self-help, self-determination consumer mechanisms, and I would urge that you look once again into this piece of legislation as it is introduced again this year.

One of the other witnesses brought up the question of fair credit reporting legislation. Once again, at the risk of appearing chauvinistic, I would point out to you the fact that California has a strict Fair Credit Reporting Act, and it goes far beyond what the Federal legislation provides in terms of consumer protection and consumer access to the files, consumer opportunity to dispute controversies, and also to register their side of the story in the files.

Again, something I think is important to consumers. We passed some strong legislation regarding redlining last year in California; it went into effect this year, and I refer it to your consideration. Redlining is of terrible importance to low-income consumers. We recently passed the strongest regulations in the country on this issue, and I would think this is an issue that the Consumer Affairs Subcommittee would want to bring up. It's terribly important to low-income consumers in this country to get housing, and it is a serious abuse that ought to be corrected and ought to be corrected nationally.

Finally, Mr. Chairman, we are recognizing an unfortunate development where credit card companies are trying to slap service charges on consumers no matter when they pay, and we are looking at legislation in California this year that you may want to look at nationally, and that is at least to give the consumer a 30-day opportunity to pay the bill before service charges are slapped on him. It is the old snooker, once again. You get people addicted to something at a low-rate gimmick, and then you get them addicted and then you jack it up. And we think this is what has gone on. With credit cards they've gotten the consumer addicted to credit cards; they try to get him addicted to EFTS and we think that we don't need perhaps another prohibition binge, but at least with that experience behind us we can put in some prophylactic measures that would protect consumers from the downsides of some of their addictions.

Thank you very much, Mr. Chairman. It is a pleasure to be back here in Washington.

[The prepared statement of Mr. Spohn, presented on behalf of the California State Department of Consumer Affairs, along with an attached division program guide, follows:]

CONTINUED

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STATE OF CALIFORNIA—AGRICULTURE AND SERVICES AGENCY

DEPARTMENT OF Consumer Affairs

SACRAMENTO, CALIFORNIA

PREPARED STATEMENT
OF RICHARD B. SPOHN, DIRECTOR
CALIFORNIA STATE DEPARTMENT OF CONSUMER AFFAIRS

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to share with you some thoughts and suggestions that emanate from our experiences in that far-flung and rambunctious province, the Golden State of California.

I would like to address five areas in which your subcommittee could be expected to make significant contributions to consumer equity and affairs. All but the first fall directly under your jurisdiction.

A top priority for this Congressional session must be the establishment of a federal Consumer Protection Agency (or whatever it is eventually dubbed!). I trust that veteran consumer champions as yourselves will be in the forefront of this final push. Recurrent themes in the CPA debates of the last several years include the propriety of such a governmental function, its potential effectiveness, the proliferation of bureaucracy, new fiscal outlays, and so forth. I am a member of a state administration in which these are keen concerns, where our programs are initiated only by eliminating old ones, and which has for three years avoided general tax increases.

And yet in the last year we have forged in the California Department of Consumer Affairs a set of capabilities that have won successful consumer victories on a variety of fronts and in a variety of forums. I would immodestly offer it as a fair example of what a federal consumer agency might be expected to accomplish, on a grander scale, of course.

We have the power to initiate litigation and to intervene in all courts with our own attorneys, to appear in administrative and regulatory proceedings on all levels of government, to do research, to handle consumer complaints, to engage in consumer education, to recommend legislation and to lobby for consumers in legislative and regulation-adoption proceedings, to give technical assistance to consumer groups and local consumer agencies. We have the power of subpoena and the power to hold public hearings. We have the responsibility and mandate to investigate and evaluate the consumer responsiveness and impact of other state agencies, and to report our findings to the Legislature. Governor Brown has just given us twelve new positions to carry out this latter responsibility, and he has been completely supportive when other agencies have been aroused by our discharge of this duty.

This is not to suggest that The New Age has arrived. However, I believe we have made some real contributions toward achieving greater consumer equity and protection. Our fundamental conviction is that caveat emptor should be brought into a matured perspective: neither business nor government can or will fully "protect" the consumer, the best line of defense being action by consumers themselves, action made more effective by the pooling of individual resources into collective efforts.

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We are firmly convinced that a strong private consumer force will best ensure and secure the better shakes and deals we are all seeking. There are certain roles a government agency can play: most significantly, do those things that are because of opportunity costs beyond the capability of individual private consumer groups.

We seek to foster the development of private structures of consumer self-protection and self-determination. For example, we are sponsoring legislation to establish a Residential Utility Consumer Action Group; providing help to consumers setting up alternative consumer food delivery systems; servicing consumer representatives on health planning bodies around the state; seeking the introduction of legislation to foster self-help housing techniques.

Perhaps most significant, we successfully sponsored and won passage of landmark legislation that has provided for a majority of consumers on our Department's occupational and professional licensing boards (one-third on the so-called "healing arts" boards, a disappointing political casualty). These boards license over one million people, from doctors to barbers to employment agencies to guide dogs. No one in the state can avoid contact with these licensees; regulating them is a massive exercise in consumer protection, now controlled by the consumer rather than the provider. It is a major shift to consumer control and accountability. At the swearing in of the new "public members" Governor Brown urged them to become "lobbyists for the people". In his extemporaneous remarks, he told them: "Too often, in the onrush of progress and the division of labor in the name of expertise and specialization and professionalism, a great deal of privilege and restriction and monopoly has grown up. It is up to you to break down barriers, to separate privilege from professionalism, to separate quality from restriction and to ensure that the first order of every profession and every occupation which you have responsibility for is service to the people."

The Department of Consumer Affairs is pushing for similar increases of consumer representation and control on other official bodies in California, surely an apt consumer advocacy function.

We have stressed the development of tools for consumer self-help. Our "consumer education" unit has created some very well received films and publications. I will leave for your edification copies of several pieces relevant to your subcommittee's pursuits. (Please do not feel compelled to reprint them in the hearing transcript!) Our Compleat California Consumer Catalogue has been a virtual runaway best seller. It provides a lot of information about many consumer issues and concerns, and is replete with suggestions for recourses and self-help. Our "Guide to Consumer Credit Laws" has also received accolades. It is aimed at a relatively sophisticated audience, those who counsel and handle consumer inquiries and complaints. In contrast, the "Credit for Women" brochure has been given away by the tens of thousands to interested consumers.

We have just completed educational films on consumer action techniques and on alternative food delivery mechanisms. They are creative, non-bureaucratic films. We have done other pamphlets, public service announcements and the like.

We have advocated consumer perspectives in numerous regulatory, legislative, and judicial proceedings, limited only by the size of our staff. Appended to these remarks you will find an overview of the division of our department that carries out these duties. (In July we will expand from four to six attorneys, and from five to seven legislative analysts/ lobbyists, with our current roster of consumer researchers, educators, complaint-handlers and others remaining at present levels.)

The New Age is still on its way, but the presence of an aggressive consumer agency - fostering consumer self-protection and self-help, and supplementing private action when necessary - has been good for the consumers of California. Such an agency works, and such an agency at the federal level would be a boon for us all. I would urge you to put your considerable collective influence behind this year's effort to establish it.

I understand your subcommittee will soon be examining the practices of collection agencies. Our Department's Bureau of Collection and Investigative Services has, after extensive public hearings, recently promulgated regulations to curb some of the more egregious consumer abuses perpetrated by collection agencies. Among the strictures we have established are a prohibition against dunning the debtor in the middle of the night; limitations on the extent to which the debtor can be harrassed by harrassing the debtor's employer, a requirement that pertinent forms used by collection agencies contain a notice that complaints will be handled by us; prohibiting collection agencies from impersonating governmental agencies; requiring the collection agency to honor a debtor's request not to be called at work; requiring any written communication with the debtor at work to be contained in a plain envelope marked "personal and confidential"; and prohibiting the collection agency from making threats it has no intention of carrying out - in short, a prohibition against lying! We instituted these regulations because our complaints were soaring and because it was clear that the collection industry contained operators who were engaging in abusive practices. I would suspect that the problem is not endemic to California alone, and would urge you to make a formal inquiry. From what we can tell, our California regulations are the strictest in the country, and so I would commend them to your consideration.

Truth in Savings is another key issue you might soon address. Just as a consumer borrower is in need of information about the cost of credit, the terms of repayment, security interests, delinquency charges, prepayment penalties, and so on, so the consumer placing his or her funds on deposit in a savings institution is in need of certain cold, hard facts.

Unfortunately, existing law does not require banks and savings and loan associations to inform the holder of an account of the interest rate, annual yield, method used in computing and paying interest, frequency of the computing and crediting of interest, imposition of offsetting charges, and circumstances when interest is simply not paid. Nor does existing law provide uniform methods of advertising such information.

Since information about savings account yields is obviously a necessary ingredient in "wise saving", that information ought to be routinely provided at the time an account is opened. And, when banks and savings and loan associations choose to advertise payment of specific rates, information from competing institutions ought to be subject to comparison by borrowers for the purpose of placing funds in those institutions that offer the greatest yield. For that purpose, advertisers ought to employ the same methods of computing the advertised information.

This is not to suggest that there are not factors other than yield that many consumer depositors will want to consider in choosing among competing depositories. Some institutions will choose to compete on the basis of factors other than mere yield. Yet, when institutions purport to compete on the basis of yield, said competition ought to be conducted in conformance with the same ground rules. Now, there is little or no uniformity in methods of computation or terminology in this important area, and appropriate remedial action is needed.

In the last legislative session in California, a bill passed and became law. The new legislation (Statutes of 1976, Chapter 1279) provides after July 1, 1977, for the disclosure of information by banks, savings and loan associations, credit unions and industrial loan companies regarding their interest rates and service charges. Specifically, the legislation requires these financial institutions to:

(1) Maintain a current written schedule of the amounts of each routine service charge (or the method of determining each charge), the rate of interest, the annual yield and the method used in computing and paying interest, and any provisions for nonpayment of interest on deposits made after the beginning of an interest period or deposits withdrawn before the end of the period. This schedule is to be displayed in an area of the institution that is open to the public.

(2) Provide customers with a written statement detailing the information in No. 1 above, at the time of accepting an initial deposit. If the customer is not physically present at the time the initial deposit is accepted and the written statement has not been previously furnished, the institution is required to deliver or mail the statement to the customer at the address shown on the institution's records within 10 days of the initial deposit.

(3) Prior to increasing any charges disclosed in the statement or imposing any new charges to deliver or mail to the customer a written statement disclosing the increases or

new charges at least fifteen days prior to the effective date of the changes.

(4) Prior to making a change in the interest rate or the method of computing the rate so that the annual yield will be less favorable to the customer to deliver or mail a written statement to the customer disclosing the change at least fifteen days prior to its effective date unless such change is required by law.

Financial institutions which fail to satisfy the requirements of 1 through 4 would be liable to their customers for the amount of the increased charges and the amount of interest that would have been earned under the higher interest rate. However, a financial institution would not be liable for failing to send the required disclosure statement if it could demonstrate that the violation was unintentional and resulted from a bona fide error and that the institution maintains a reasonable procedure to avoid such error. The institution would be required to correct the error by sending the written statement within 30 days of the violation and crediting the customer's account.

Electronic Funds Transfer System (EFTS) is another major issue with which this subcommittee must soon grapple. EFTS represents a radical departure from the ways in which people have related to each other and to their public and private institutions. I realize that there is a national commission addressing this issue, but that does not excuse you from having to grapple with it. At the behest of our Department, a top-level team of experts from all relevant California agencies has been formed to make our own assessment in timely fashion. Southern California is being especially used as an experimental market. EFTS is proceeding in true technological imperative fashion, without adequate safeguards for consumers. I trust you are familiar with the pertinent consumer issues--they are profound points that must be addressed before we become captives of a system on which we have yet to get serious public policy decisions.

As Consumer Affairs specialists, I would urge you to bring to the attention of your housing colleagues the great potential that lies in self-help housing techniques. A significant percentage of housing consumers are contributing to the housing stock by rehabilitating existing structures and by building new ones for themselves. There is virtually no federal program to stimulate and facilitate this sort of activity, and yet there could be a major pay-off for housing consumers with minimal programmatic assistance. HUD several years ago contracted for a study of self-help housing, and the reports contain serious and promising proposals for such assistance. I would urge you to review these materials and launch your own pursuit.

DIVISION OF CONSUMER SERVICES
PROGRAM GUIDE

FOREWORD

In 1970, a statutory reorganization plan (the Consumer Affairs Act) restructured the Department of Professional and Vocational Standards and formed the existing Department of Consumer Affairs. As part of that reorganization plan, the Division of Consumer Services was established for the purpose of handling consumer protection activities. Administrative changes combined with Governor Brown's doubling of the Division's budget in 1975, has enabled the Division to operate aggressavely on behalf of consumers. The Division has expanded from five units in 1975 to twelve units in 1977.

This program guide is a comprehensive statement of the functions, the criteria for program selection, and the projects of the Division of Consumer Services for the current fiscal year. Generally, the guide is meant to serve as a reference point to facilitate clarification, coordination, and evaluation of the Division's program. The guide is divided into three parts. The first section describes the functions of each of the twelve units within the Division. These units are: Research and Development; Regulatory Review; Legislation; Advertising Substantiation; Legal Services; Information; Education; Complaint Mediation; Complaint Data System; Local Liaison; Assistant to the Director and Tax Preparer Program. The second section outlines the Division's list of general criteria for selection of projects while the final section describes each unit's projects.

Reference to a specific list of projects will give definite structure to the Division's program efforts. This structure will aid each person within the Division in defining his or her role in the evolving program. It will thus be possible to pursue project objectives with a clear understanding of the total program involved.

This guide should be helpful in coordinating and integrating projects that are related and are being pursued by different units. If each unit head is aware of the current projects of other units, he or she would be able to encourage the completion of related projects within his or her unit. This awareness will facilitate the coordinated involvement of two or more units in key program areas.

Although this guide is primarily meant to aid Division personnel, it may be relevant to interested persons outside the Division. It is a standard by which non-Division persons within the Department, other government agencies, and private consumer groups may better understand the Division's program and may better coordinate their activities with this program.

The Division has tried to anticipate its future projects as accurately as possible, but it should be remembered that changes can occur as a result of additional commitments, redefinition of existing projects, or other unexpected events which may occur throughout the year. Time restraints, limited staff and resources may not always permit the Division to probe each subject area in an in-depth manner. Therefore, this guide should furnish a basis for assessing current program commitments and limiting involvement in non-program areas.

FUNCTIONS OF DIVISION UNITS OR POSITIONS

The functions of the twelve units or positions within the Division of Consumer Services are briefly summarized below.

A. RESEARCH AND DEVELOPMENT

The Research and Development Unit primarily analyzes issues in the major areas of food, health, water and energy, and determines specific areas within these broader concernson which the Department may take positions. In addition to these areas, the Unit responds to specific program requests from the Chief and the Director. The Unit also provides the other units within the Division with information on the major areas in which the unit is involved. Whenever feasible, the unit is responsive to other units' requests which fall outside their major areas of concern and discusses research questions including data needs and data resources. The unit works closely with the Legislative Unit on long term legislative projects which require significant research.

B. REGULATORY REVIEW

The Regulatory Review Unit reviews the operations and impact of Boards and Bureaus. The Unit's evaluation is made in the context of national deliberations which question basic assumptions underlying the licensing and regulation of professions and occupations. Special attention is paid to education and information efforts; protection against deceptive, negligent, or incompetent practices; complaint handling; and effects of licensing, advertising, or unreasonable restrictions on competition.

C. LEGISLATIVE

The Legislative Unit handles all aspects of the Department's legislation including analyzing bills, recommending positions, researching information related to bills, and preparing proposed legislation to protect consumers. The Unit advocates consumer interest to legislators, their staff, governmental agencies, and consumer and industry representatives. Members of the Unit may testify or prepare testimony for Department witnesses before legislative committees, interim hearings, executive commissions and regulatory hearings. The Unit also comments on proposed legislation of other agencies, and recommends to the Governor's Office the signing or vetoing of bills passed by the Legislature.

D. ADVERTISING SUBSTANTIATION

The Advertising Substantiation Unit investigates misleading and fraudulent advertising, and requests substantiation of claims when it feels it is warranted. If necessary, the Unit documents evidence of misleading and fraudulent claims, and attempts to terminate these claims either through informal action or by referring cases to the proper prosecuting or law enforcement authorities. The Unit also assists in developing educational materials related to advertising.

E. LEGAL SERVICES

The Legal Services Unit is made up of litigating attorneys and their support staff and has a judicial and administrative advocacy function. Generally, the Unit acts as a law reform group by initiating litigation, filing amicus curiae briefs, and intervening in appropriate lawsuits. A primary function of the Unit is to represent the Director in any proceeding: federal or state, judicial or administrative. The Unit may hold public hearings, subpoena witnesses and documents, and call upon other state agencies for information. When necessary, the Unit consults with non-Department counsel and conducts legal research. The Unit may on occasion act as a legal advisor to the other units within the Division.

F. CONSUMER INFORMATION

The Information Unit prepares and distributes news releases, public service announcements, notices of meetings and disciplinary actions by Boards and Bureaus. The Unit also prepares and distributes departmental and intradepartmental newsletters and the annual report. It assists the Boards and Bureaus in their information functions. The Unit responds to requests for information from the media and general public and arranges press conferences and public appearances. In addition, the Unit maintains the departmental mailing list and serves as information liaison with consumer groups which includes communicating with news groups.

G. CONSUMER EDUCATION

The Consumer Education Unit develops and implements consumer programs and publications, and assists the Boards and Bureaus in their educational efforts.

The Unit initiates and participates in consumer conferences and seminars, and coordinates consumer education activities with local and state entities. The Unit also assists in establishing and maintaining a consumer library and bibliography.

H. COMPLAINT MEDIATION

The Complaint Mediation Unit mediates consumer complaints which are not within the jurisdiction of any state regulatory agency or local government consumer protection agency and which do not involve criminal violations. Information on the outcome of these disputes is kept on file in the Unit. All other complaints are referred to the proper agencies. The Unit also coordinates the response to complaints referred by the Governor's or Legislative Offices. In addition, the Unit advises and assists other government agencies, consumer groups, and organizations in complaint handling. Information and referral services including the processing of Board and Bureau complaints and inquiries are also performed by the Division's San Francisco and Los Angeles offices.

I. COMPLAINT DATA SYSTEM UNIT

The Complaint Data System Unit has been established as a result of a grant to develop and implement a cooperative statewide consumer complaint data system. The objective of the Unit is to eliminate fraudulent business practices and deceptive activities, i.e., white collar crime, by providing early warnings to consumers before crimes are committed. This objective will be accomplished through trend analyses; by gathering and analyzing data which will identify and support consumer legislation; by providing users of the system with timely complaint information to assist state and local governments in criminal and disciplinary proceedings; and by eliminating duplication of investigation and research efforts.

J. LOCAL LIAISON

The Local Liaison Unit maintains close relationships with various community and consumer interest groups by informing them of the Department's activities and identifying issues demanding their attention. The Unit also advises the Chief and Division staff on issues and developments in the area of consumer advocacy. The Unit works with governmental units and private consumer groups to see that litigation and other projects affecting consumers are coordinated, including developing more local consumer protection offices. Finally, the Unit assists in arranging hearings to provide instruction on consumer issues.

K. ASSISTANT TO THE DIRECTOR

The Assistant to the Director administers operation of the Los Angeles office including supervision of Board and Bureau personnel. This person supervises the Department consumer information and referral service in Los Angeles. The Assistant to the Director advises the Director through the Chief on various policy issues including those issues affecting Boards and Bureaus and consumers at large. This person assists the Division's local liaison officer in activities with community groups, government agencies and elected public officials within the Southern California area. In addition, the Assistant to the Director promotes support for the Consumer Advisory Council.

L. TAX PREPARER PROGRAM

The Tax Preparer Program Unit provides for the registration, bonding, and regulation of persons who commercially engage in the business of income or franchise tax preparation for others. This Unit identifies and investigates various forms of deceptive and unethical practices of persons engaging in commercial tax preparation.

CRITERIA FOR SELECTION OF DIVISION PROJECTS

Unfortunately, the Division cannot attempt to tackle every consumer issue which comes to its attention. Therefore, pursuant to legislative mandate, the following factors have been developed as criteria for involvement. Since these factors vary from unit to unit, the Division's projects are a blend of the following criteria:

1. The number of consumers affected.
2. The significance of impact on consumers in terms of money, time, and/or loss of civil liberty.
3. The types of people affected -- with an emphasis on minorities, low income individuals, and the elderly.
4. Whether the issue affects consumers' basic needs such as food and health.
5. Whether the Division has the necessary expertise and resources.
6. Whether the efforts do not duplicate efforts already adequately undertaken by other consumer groups or governmental agencies.
7. Whether the issue constitutes basic reform rather than merely "tinkering".
8. Whether the changes can be implemented in a relatively short period of time.

PROJECTS OF EACH UNIT

A. RESEARCH AND DEVELOPMENT

1. Health and Health Related

Recently formed health task force has developed a policy and issue paper recommending seven basic policy positions that the Department may assume on health matters affecting consumers. Pursuant to those recommendations, the following projects will be the foci of efforts during the months ahead:

a. Advocating consumer participation in health planning by analysis of local health planning agencies, DOH advisory bodies and other regulatory bodies. Analyzing state legislation and regulations implementing national health planning legislation.

b. Advocating preventive health care through an investigation of preventive health services covered by private insurance and public programs; following the Child Health and Disability Prevention Program - a key preventive health program.

c. Investigation of the California blood distribution system.

d. Developing prototypes of consumer health care guides for publication by other groups.

e. Advocating for redistribution of health personnel through support of measures such as AB 2450, The Rural Health Bill.

2. Food and Agriculture

a. Develop innovative techniques in food marketing and coordinate these efforts with the Department of Food and Agriculture (pilot program with California Rehabilitation Center, terminating Feb. 15, 1977).

b. Provide assistance to consumer food cooperatives by informing the public of the locations of food cooperatives or how to start cooperatives. Dev-

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elop a California Food Cooperative Directory and compile information to assist groups starting or expanding food cooperatives.

c. Explore reasons for increases in food prices and such mechanisms as the Universal Product Code checkout system.

d. Study, as mandated by the Legislature, whether alternative delivery systems are possible.

3. Water

Pursuant to the Department's report which challenges the basic assumption underlying water quality and service in California, the Department's research unit in conjunction with the legal services unit has challenged rate increases for Citizen's Utilities Company before the Public Utilities Commission. Seven CUC owned water companies are seeking rate increases from the PUC.

a. The most recent hearings in this matter were held at Inverness, Marin County on January 18-20, 1977 and in San Francisco on January 21, 1977. At the Inverness hearing, the Department was able to present significant evidence that there is a great deal of consumer discontent with the water company's operation, and that such discontent is justified.

b. Riverside Water Quality (Stringfellow Dump Site). The Division is working with Senator Presley's staff, consumers and counsel regarding water quality and service in the Riverside area.

4. Energy

a. Promote, recommend and advocate the diversification of energy sources and supply, in an effort to provide safer, cheaper, and more reliable energy sources. The goal should be to promote quality energy services at the lowest possible cost to the consumer.

b. Examine ways to promote the market penetration of alternative energy systems.

1) Setting uniform standards for solar equipment to encourage contractors to use solar technology in residential and commercial developments.

2) Setting threshold efficiency standards and safety standards for consumer protection.

3) Examining bank and savings and loan policies, determining the measures necessary to remove capital constraints to alternative technology development.

4) Promoting low interest loans to consumers retrofitting their homes and businesses with alternative energy equipment.

5) Assisting community use of alternative energy sources.

6) Examining ways to reduce the dependence on fossil fuels in agriculture in an attempt to reduce the impact of rising fuel prices on the cost of food.

B. REGULATORY REVIEW

The Regulatory Review Unit has prepared a Regulatory Review Project Design which includes a comprehensive theoretical discussion of government regulation of professions and occupations as well as a practical guide for studying Boards and Bureaus. The study is being funded by a grant obtained under Title II of the Public Works Employment Act. Work in the field is scheduled to begin on Feb. 1, 1977 with the entire project terminating on Dec. 31, 1977.

C. LEGISLATION

1. Among proposals developed by the Department and submitted to the Governor for approval are:

a. Health Care Cost Disclosure--repeal the prohibitions against the disclosure of health care costs by health care providers who are prohibited from disclosing the cost of their services in advertisements; prohibits false or misleading advertising.

b. Residential Utilities Consumer Action Group--establish a non-profit membership corporation with the necessary power and responsibilities to represent consumer interests before utility regulatory agencies and courts.

2. The following proposals by the Department are awaiting introduction or reintroduction:

a. Executive Officer Bill (AB 3136-'75)

b. Bill authorizing transfer of smog control related programs from Bureau of Automotive Repair to Air Resources Board.

D. AD SUBSTANTIATION

1. Monitor advertising, request substantiation, and refer cases for prosecution when necessary for advertisements in the following areas:

a. Short Term Projects

1) Tretorn tennis balls--studying questionable claim that these tennis balls last until they are thrown away.

2) Public Employees Service Association--Negotiating with the Association for further changes in disclosure procedure regarding payment of group membership fees.

3) Dollar-Rent-A-Car--Advertised prices and mileages which were only available at 7 out of 117 airport locations. Considering filing suit or referral to prosecutor.

4) Tune Up Masters--Corresponding with "Masters" regarding misleading advertising.

5) Mr. Chlorine--Requested substantiation regarding claim that "Mr. Chlorine solves chlorine problems forever", received technical chemical data, and are in the process of analyzing the data.

b. Long Term Projects

1) Vocational schools--monitor ads for misleading claims such as false employment and earning potential.

2) Health and credit disability insurance--review ads, compare them with policies and determine whether a problem exists.

3) Stores with continuous sales--monitor ads of stores advertising continuous sales and conduct a shopping survey with the help of interns.

4) Complaints and information response--review of advertising complaints and inquiries including those to Boards and Bureaus.

5) Selection of topics--continued review of media and other advertising for selection of pertinent issues.

6) Truth In Lending--Becoming familiar with federal and state regulations regarding truth in lending. Will monitor advertisements to determine whether or not lenders are in compliance with regulations.

E. LEGAL SERVICES

1. Represent the Department before administrative agencies including the Public Utilities Commission on:

a. Trucking Regulations--evaluate standards used in establishing minimum rates for the trucking industry.

b. Household Movers--Evaluate minimum rates and quality control standards for household movers.

c. Water Quality--Examine water regulations and participate in commission proceedings evaluating water quality and service of the Citizen's Utilities Company.

d. Utility Deposits--Investigate discriminatory deposit practice by major gas and electric utilities and the telephone company.

2. Participation in the following judicial proceedings already on file:

a. Spohn v. California Optometric Association, et al. An antitrust action initiated by the Director when Sacramento optometrists failed to respond to a price survey conducted by the California Citizen Action Group.

b. Consumer Union et al. v. California Milk Advisory Board et. al. The Director appeared as a friend of the court in this suit filed in the San Francisco Superior Court. The suit challenges a Fair Political Practices Commission regulation exempting regulatory boards from the conflict of interest provisions of the Fair Political Practices Act.

c. King v. Central Bank. The Director appeared as a friend of the court in this suit before the California Supreme Court involving disclosures by banks in credit related sales. Court held in favor of King (consumers).

3. In addition to the above actions, the Division is investigating and proposing action on the following cases:

a. Bates v. Arizona State Court. The Director has submitted to the United States Supreme Court:

(1) A motion to file a brief as amicus curiae, in support of the appellants. Appellants and the Director are arguing that the Bar's disciplinary rule against attorney advertising is void as violative of the First Amendment and the Supremacy Clause.

b. A suit is being prepared for filing in which the Director would seek an injunction prohibiting sellers and creditors who arrange credit insurance from receiving commissions for arranging such insurance.

c. Spohn v. Law Printing Company et al. In this suit now being prepared for filing, the Director would seek to enjoin a company that merchandises printed legal forms used in used car sale transactions from including terms that are either unfair or deceptive, or otherwise violative of California or federal law.

d. People v. San Francisco Board of Supervisors. Director has filed a motion to intervene as a party plaintiff in this action which seeks equitable relief and statutory penalties for defendants (1) fixing charges that taxicabs must charge, and (2) giving Yellow Cab an exclusive right to cab service at the San Francisco Airport. Staff will prepare testimony and information for Federal Trade Commission use, Motor Vehicle use, motor vehicle rule making proceeding which is set for March 28, 1977 in San Francisco.

e. A potential suit is being investigated which relates to California blood distribution. The suit involves the American National Red Cross' withdrawal from the American Association of Blood Banks' Blood Distribution Clearinghouse alleging that the Clearinghouse is a major consumer rip-off because of the $30.00 "non-replacement penalty fee" charged to persons who are not registered donors with a voluntary blood bank.

f. Legal services staff are working with the Research and Development and Legislative units in carrying out the Department's program in the consumer health area.

4. In addition to the above-mentioned activities, the unit has advised various individuals including legislators and their staffs in consumer law areas. For example, there has been legal consultation on written warranties on products sold in California, on comprehensive auto liability insurance programs, on statutory awards of attorneys' fees, in cases affecting the public interest, and on various other consumer related matters.

F. INFORMATION

1. Prepare and distribute news releases.
2. Publish departmental newsletter.
3. Answer requests for information and publications from the public and media.
4. Publish notices of meetings and disciplinary actions by the Boards and Bureaus, and assist them with other information functions.
5. Maintain the Department mailing list.
6. Publish Consumer Notes to be distributed to the California press.
7. Arrange press conferences, and radio and television participation by departmental personnel.
8. Expand distribution channels to include ethnic press and publications for the elderly.

9. Develop public service announcements.

10. Provide clipping service.

G. EDUCATION

1. Distribute and publicize materials.

   a. A Guide to Consumer Credit Laws

   b. "Credit for Women"

   c. The Compleat California Consumer Catalogue

   d. "Landlord Tenant"--English and Spanish versions

2. Oversee production, distribution and publicity of films on food marketing and consumer action produced by Cine Manifest.

3. Produce, distribute and publicize teacher guides and learning kits on food marketing and consumer action to accompany films.

4. Publicize and distribute bibliography, and annotate individual sections.

5. Oversee production, distribution and publicity of public service television announcements.

   a. Generic drugs

   b. Bait and switch

   c. Savings accounts

   d. Credit discrimination

6. Investigate the possibility of producing Spanish language public service announcements for television.

7. Write and distribute publications.

   a. Sales tactics

   b. Mobile homes

   c. Generic drugs

   d. Savings accounts

8. Write Education Update--a two page insert of the Department's newsletter to be used as a resource in consumer education classes.

9. Participate in committees, seminars, and conferences on consumer education.

10. Assist in curriculum planning in consumer education.

H. COMPLAINT MEDIATION

1. Process complaints sent to the Department.

2. Refer complaints to other agencies when appropriate agencies exist.

3. Respond to public inquiries.

4. Respond to Governor's Office and Legislator's inquiries.

5. Set-up workshop with local agencies and Boards and Bureaus on handling and following-up complaints.

6. Set-up complaint handling seminars at individual local agencies.

I. COMPLAINT DATA SYSTEM (funded through the Office of of Criminal Justice Planning)

1. Gather information from other agencies which have studied complaint data systems.

2. Participate in a Department of General Service study which will incorporate a complaint data gathering system used by the Wisconsin Department of Justice.

3. Establish a planning committee of prospective users.

4. Modify and test the Wisconsin system to meet California's needs and legal requirements.

5. Correct problems in the program and prepare for pilot input.

6. Establish a pilot program of six to nine users made up of a cross-section of state and local government agencies.

7. Evaluate pilot program.

J. LOCAL LIAISON

1. Contact and assist local consumer groups throughout California.

2. Review legislation for update of Legislative Newsletter and inform groups of this information.

3. Develop a referral process for local government agencies and Boards and Bureaus to monitor complaint handling.

4. Assist the Medical Quality Assurance Board with proposed seminar on acupuncture.

K. ASSISTANT TO THE DIRECTOR

1. Upgrade the Department's consumer information and referral service in Los Angeles.

2. Attend Southern California Board and Bureau functions.

3. Recruit candidates for Board appointments.

4. Assist the Division's local liaison officer in activities with Southern California community groups, government agencies, and elected public officials.

5. Promote support for the Consumer Advisory Council and local agency projects in Southern California.

6. Provide the Director and Chief with suggested public appearances, conferences, and meetings to attend.

7. Promote the policies of the Division where appropriate as directed by the Chief.

8. Advise the Director through the Chief on various policy issues including those issues affecting Boards and Bureaus and consumers at large.

L. TAX PREPARER PROGRAM

1. Investigate tax preparers to determine that they are registered and complying with the law.

2. Pursuant to a report prepared for the Department on tax preparers, submit data to enable departmental decision making in the following areas:

   a. Tax preparers' compliance with the law.

   b. Consumer education to avoid use of unqualified tax preparers.

   c. Necessity for tax preparer reform legislation.

Mr. ANNUNZIO. Thank you, Mr. Spohn, for your many, many suggestions.

At the opening of the hearings, I did express my appreciation to all of you for your presence. I introduced the members that were present at the 94th Congress, and I would like to introduce a new face from Minnesota, Mr. Vento. We are happy to have you on the subcommittee. And Mrs. Fenwick is here, and I wanted to publicly thank her again for her hard work. It was really her efforts to encourage the committee to move ahead on the debt collection practices bill. She has been a good member of this committee, and we are delighted that she is back with us.

Before we ask any questions, I'm going to ask Mr. Wylie, of Ohio, the ranking Republican on the committee, to make a statement, and I want to thank him again for all of his cooperation and effort.

This subcommittee is operated in a manner where each member has participated in its deliberations, and we work hard toward the best efforts on behalf of the consumers.

We have had little Democratic politics or Republican politics. We have reached agreement on most all of the issues before us, and that is the reason we were so successful in passing four bills that opened many doors, and that is why we would like to see a continuance of this cooperation. I want to publicly state that Mr. Wylie was responsible for that great effort, and the subcommittee will attempt to do likewise in the 95th Congress.

Mr. Wylie?

Mr. WYLIE. Thank you very much, Mr. Chairman, for those very complimentary remarks, and I do sincerely appreciate them. At the same time, I want to compliment you, Mr. Chairman, for having these hearings early in the session. We have had an excellent working relationship, and I think this will benefit the consumers as well as the country at large. And I know that our excellent working relationship will continue in the 95th Congress so that we may pass meaningful consumer legislation.

I appreciate the chance to make a statement now. I'm sorry to be late, but we were in a markup session, the Financial Institutions Subcommittee, of which I am the second ranking Republican. We have those conflicts, and they will come fast and furious now, but we were working on what you might call consumer legislation because we extended regulation Q for a year by our amendments, and we passed a section which would allow the credit unions to extend mortgage lending authority to its membership. I know that some of you have supported that concept. We were also working on other things in that legislation which would benefit the consumer.

But I wanted to have the opportunity to welcome you here this morning, knowing that you are experts in the field of consumerism, if I may use that word.

Our legislative calendar has many consumer proposals that will have a direct impact on more consumers than any other committee in Congress, I think. And it is for this reason that we will look to you for guidance and advice in the most objective way. We can't afford to make a mistake, because it's going to cost the consumer millions of dollars that they don't have, and we must also look beyond the surface of the problems that we hope to correct here at the same time.

So thoughtful deliberation of any bill includes the secondary effect of the proposal, and I find that all of the legislative proposals by the chairman and by members of this subcommittee have great merit as far as that's concerned. Consumers are susceptible to con men and ripoff artists, and I think we need to do something about it. We may have in some cases reached a point of diminishing returns. So we must not overregulate. The laws that we pass, as I see it, must have specific reference to a problem and no more, and that's a real challenge to us.

And as I say, Mr. Chairman, I thank you for your complimentary remarks. I think you are to be complimented for conducting these hearings early in the session.

And we appreciate the expertise which you witnesses bring to this problem.

Thank you very much.

Mr. ANNUNZIO. Thank you.

Mrs. Spellman?

Mrs. SPELLMAN. There was so much good information given to us here today, it's too bad that many Members of Congress did not have the opportunity to sit here and listen to what you have had to say.

Over and over again I have been impressed with the fact that we are really talking in many cases not so much of the need for new legislation but for enforcement of the rules that are already there. Somehow we have got to exercise the oversight responsibility that is our true responsibility.

I was talking with some Members who were at the White House earlier today and found they were somewhat shocked that there were people in the administration who did not understand that there were responsibilities that the Congress had. So we will have to be working a lot harder to make sure that the laws that we passed are really enforced; otherwise, they are pretty hollow. You could come here time and time again, year after year, and we would still be where we are today if we do not have enforcement.

I especially was interested—and commented to my colleague from Minnesota that we have come an awfully long way on the EFTS implementation, and at the same time we are supposed to be taking a look at it. I wonder what is going to happen when millions and millions of dollars have gone down into the investment here, and the pressures that will have been built up to keep us from really taking a good look and making decisions that need to be made.

I was again impressed with the fact that so many of you touched upon just this particular problem.

Some of us went to meet a group of bankers. And, Mr. Prins, didn't you have the impression that they were as scared of us as we were of them?

The impression that I was getting was that they were being forced into moving along and really sort of being catapulted into that direction. I could not help thinking of those local situations where you have a beautiful street and then a sign is put up by one of the businesses. The fellow next door says to him, that nobody is going to notice my place now that that big sign is there, so he puts up one that's just a little more garish. We then go on and on, until everyone who didn't even want a sign in the first place has been forced into putting up one.

I found your statements very, very impressive. I appreciate hearing from you. I have lots of questions I might ask, but I think I am going to defer at the moment, Mr. Chairman, to allow some of the others to ask questions if they care to, and then if there is time, I will ask additional ones.

Mr. ANNUNZIO. I thank you, Mrs. Spellman. And on your questions, if there is time, you will be given the opportunity. If not, I want to inform the members of the panel that we will submit those questions to you for the record to be answered.

Mr. Vento?

Mr. VENTO. Mr. Chairman and colleagues, I'm sorry I was late, but we had some other business, and I wasn't here to benefit from the wisdom of some of the witnesses that testified today. But I intend to look over those statements. The quality of those who did testify was most impressive. I think they will be most helpful, especially for a new member such as myself, who is looking at the parameters and responsibilities that we have. They are very significant.

Because of the interest and the history of this subcommittee, I am optimistic at our ability to deal with many of the problems that confront our constituencies.

I do have just a couple of questions in general of the witnesses that were here, and let me just start out. I think that the electronic funds transfer issue is a very important one, and I think it speaks well of Congress and the way that we are getting involved and the way that this country is getting involved in that question so far as there are a number of the experimental programs going on. I am not so certain that the conclusions are clear. I suppose it depends upon who draws the conclusions from these individual experiences.

But we have the consumer advocate, Ms. Wieloszynski from Syracuse, here where one of these is apparently taking place, and my question is, you commented about the fact that most of the electronic funds transfer costs is being borne by other types of banking services. So in other words, it is being subsidized.

Now, we frankly get into using credit cards and still use credit cards somewhat on that basis, whereas there is a discussion of a cash discount for the nonuse of credit cards in businesses that use credit cards. So I'm just wondering if you have any solutions to that. How can we as a subcommittee—in other words, what kind of steps can we take to deal with that realistically?

Obviously, any bank, anyone that is involved in electronic funds transfer has to back up the capital investment, and that can't be borne solely by the users of the system. So how can we resolve that problem in a way that is equitable, do you think?

Ms. WIELOSZYNSKI. I would like to comment on the law of that, the cash discount law, and the loophole in that one is that it permits the company to offer cash discounts and, in Mrs. Spellman's terminology, nobody has put up a sign yet. Unfortunately, that law is not working. The competition is not working.

My focus in my statement and our concerns after looking at the developments in Syracuse is to immediately apply existing protections that a consumer has for credit cards and checks and, of course, cash to electronic funds transfer. I am sorry to say that I am here not necessarily providing all the answers but sitting here and raising some more questions for you. I don't think you can put a ceiling on how much someone can charge or not charge on EFTS. Right now, of course, the banks are merchandising it, and they are encouraging consumers to use it and steering them away from some of the alternatives. My main concern, in 25 words or less, is that those alternatives be kept, that we don't have choices eliminated. I don't want to restrict consumers from having the choice of electronic funds transfer nor do I want them to be restricted from eventually having credit cards to use or in-store credit cards or cash or checks.

So my focus is to take the credit card laws that we have—for instance, not sending out debit cards unsolicited—I think 35,000 of them were sent out unsolicited in Syracuse, because they are using the word "debit card" rather than "credit card." Of course, if you take an EFTS debit card with a line of credit, it works exactly as a credit card, and it looks and feels and probably tastes like a credit card, as well. And with credit cards, you have a $50 liability limitation on them if it is lost or stolen. That protection does not apply in the use of a debit card, and potentially a consumer who loses their card and somebody gains unauthorized access to it, you may have your savings wiped out as well as your credit, and the burden of proof is on you to get that money back, because it happens electronically.

I would also like to say that 2 years ago I didn't know anything about EFTS. I heard about it at a conference that I went to and took the whole mess of materials and filed it under science fiction and forgot about it, and then turned around 6 months later and one system is being promoted in Syracuse and then another one, the pay-by-phone system. It is happening, as technology does at an accelerated pace. It is developing very quickly and the State banking laws——

Mr. Vento. Excuse me, let me interrupt at that point. I think you implied in your statement that there really is not an experiment in the sense that there is a considerable investment and the scope of it in Syracuse and throughout the State is significant.

I am told that in southern California, another population center, the bankers are processing and getting ready to convert to that particular type of system.

You do not feel that it is an experimental type of model but something that is going to be fully implemented?

The justification, I guess, is—but it's maybe better for somebody else to answer that question. But when does the experiment conclude? What is the time frame in Syracuse?

And maybe Mr. Spohn would like to comment about that in southern California, the time frame for that experiment. If you have any better parameters on it than what they have in Syracuse, I would like to hear briefly your comments on that.

Ms. Wieloszynski [continuing]. One of the statements that I made is from this electronic delivery of financial services to consumers in New York State booklet that was just put out by the New York State Bankers Association. They are saying that there are 4 million bank credit cards and that there are 3 million check guarantee and debit cards, and that there will be more debit cards and more check guarantee cards, and that this will exceed credit cards in the next year or two.

I was quoting Mr. Fisher, the banking authority who had an article in the "American Banker" saying that this is an experiment.

I spoke to the New York State Bankers Association in October. I was the consumer input to that. And this group of people who were from banks from all over New York State were having—well, they were bankers. It was a very quiet, orderly, stately collection of people. And during my workshop it kind of broke loose where they were arguing amongst themselves, and no, that's never going to happen because of bank policy, and others were saying, well, it is going to happen or it can happen potentially. And these are questions that do need to be raised. The bankers themselves were arguing amongst themselves.

And I see so much confusion in talking to different bankers, some who feel dragged along by the developments, forced by competition, that they are going to have to get into it whether they like it or not; others who were involved in it and were very defensive of it and don't want to—are supportive of legislation that will reduce their capital requirements and reduce their application fees for electronic terminals but not supportive of outlining and defining the consumer's rights in the use of electronic funds.

Mr. ANNUNZIO. Mr. Wylie?

Mr. WYLIE. Thank you, Mr. Chairman.

I wanted to follow up on that question. Do you think that the fears of the consumers would be reduced if losses were limited on a debit card such as they are on credit cards, to say $50?

Ms. WEILOSZINSKI. Consumers that I've spoken to at meetings are dismayed that they are making the assumption that they are protected when they use their debit card because it looks like a credit card. They are not making the distinction, and they assume that the laws that apply—the long-fought-for consumer legislation that operates when a consumer uses a check, which is legal proof of payment, or uses a credit card.

Mr. WYLIE. I understand that, that it doesn't apply to the debit card. What I'm suggesting is, what if we apply the same rule or law to a debit card that we have in the case of a credit card?

Ms. WIELOSZYNSKI. I think they should apply, and the consumers that I have spoken with assume that it applies.

Mr. WYLIE. Do you think that would alleviate their fears if we could tell them that's what's going to happen?

Ms. WIELOSZYNSKI. That would alleviate one of the concerns. With the pay-by-phone system, I did not mention this in my statement, the bank president, when I asked him who pays the finance charge, if I authorize payment to a department store and you say that I did not authorize payment and I have a finance charge, who is liable for that, because I don't have a piece of paper that proves that I made payment. And he said, well, we would eat that loss. That is what they would do now. But there's no law that defines that they are liable. I asked him in the case of an insurance company, a more dramatic or theatrical example, but if I authorize payment to an insurance company and you say that I didn't and my premium lapses and my house burns down, who is responsible for that, and he said, well, we are excluding the insurance companies from participating in the system right now, but if they wanted them to participate, they could, and the question of liability, it all falls back on the consumer's shoulders, the burden of proof is on them.

Mr. WYLIE. Did you want to comment on that, Mr. Spohn?

Mr. SPOHN. Well, I think the various comments in your question are correct, Mr. Wylie. I would like to add, for Mr. Vento, that the question of when does the experiment become a reality, I think most of you are probably aware of the fact that nuclear powerplants are still considered officially experimental.

Our experience has been that the word experiment is just a smokescreen, and that one day the veil will be released and they'll say, "Voila"; here's the reality, the experiment is declared the reality.

It's hard to believe that with the capital investment required for this system, that the experiment won't work.

Mr. WYLIE. Are you opposed to debit cards per se?

Mr. SPOHN. No, sir. I'm just saying we should be realistic as we characterize the phenomenon which is now being dubbed an experiment as really being the first wave of what will become the reality.

I think it is an exercise in nominalism to try to find out if this is really an experiment.

Mr. WYLIE. Mr. Silbergeld, I wanted to get your comment on that. If EFTS is developed on a widespread basis, do you think that consumers ought to have the choice to continue paying by paper checks or traditional credit cards?

Mr. SILBERGELD. Well, I would certainly hope that they would, and that the market will support it. What I'm afraid of is, the capital investment costs may be so substantial, and the total operating cost savings to the creditors may be such that they do not begin to realize economies of scale in operation unless they get most or all of their accounts onto EFTS, so that this system has been designed on such a grand scale that the cost effectiveness of EFTS and the future existence of checks and credit cards may be designed without consumers ever having a say as to how the system would be designed.

Mr. WYLIE. I would like to have your comments. You've touched on something there I was going to ask you about.

On the ways in which card issuers are raising revenues, such as service charges, annual charges, and variations in annual interest rate——

Mr. SILBERGELD. Are you talking about the unfair practices mentioned?

Mr. WYLIE. No; I would just like to have you comment on them.

Mr. SILBERGELD. One of the things we're lacking right now, Mr. Wylie, is some real hard information. I don't think the subcommittee staff has the resources to do it. I am not sure it's the kind of thing you can get from a GAO report. Maybe the National Science Foundation can put some of the money they have to study consumer issues into it. But I would like to see some good hard information on who is subsidizing and who is cross-subsidizing whom in the entire area of payment methods.

For instance, we have, as you know, been active in the area of cash discounts. We are frankly, I would say, quite uncertain as to what cross-subsidies the users of credit cards may be making to those who pay by check or cash in terms of increasing the size of operations to

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the point where retailers, for instance, have economies of scale that they can then pass onto customers who pay by cash or check. We don't have that information, and it would take a massive study to find it out.

Mr. WYLIE. That was the thrust of my question, and I do appreciate your comment on it. That's the way I see it, too.

Mr. Sheehan, on page 2 of your statement you say that the handling of consumer complaints leaves much to be desired, and approximately 70 percent of all consumers who complain are not satisfied. That is a very high number. How responsive have the regulatory agencies been, as far as your own members are concerned, in handling consumer complaints? Do you have any evidence to show that 70 percent of all the consumers who complain to regulatory agencies are dissatisfied in how they are received or handled?

Mr. SHEENHAN. Well, actually, Mr. Chairman, this is a figure we took from the report of the subcommittee itself. The staff report, "Do Financial Regulatory Agencies Listen to Consumers?" And I guess we were as equally shocked as you were when we say that figure, and we repeated it here.

Mr. WYLIE. What has been the experience in your own organization?

Mr. SHEEHAN. We are not in a position, as the Steelworkers Union itself, to come to those kinds of net observations, Mr. Chairman, or Mr. Wylie. We do, through some of our community activities, become aware of complaints coming in sporadically but we're not in a position to accumulate that.

The work of this subcommittee and that report, I think, is one that has caused us some concern. We certainly, in coming here today, wanted to encourage greater oversight activity on the part of the subcommittee to bring this out, because we are not in a position to do that.

Mr. WYLIE. Well, if you have any showing or any indication or any evidence as to whether such complaints, say within your own organization, are meritorious or frivolous, we would like to have that kind of information, of course. I receive many complaints over the weekend when I go home from people on matters with which I have no direct relationship—and may not be resolvable as far as that is concerned. And that is what I was getting at.

Are they—I guess we will have to get into that, but if you have any indication or evidence, Ms. Mench, and the rest of you, too, along those lines, we will be glad to have it.

Mr. SHEEHAN. I must say that upon occasions, we get complaints into our organization. However, a union may not be a logical sounding board for membership complaint on consumer issues.

Where they do occur can be at the local union level, and there is an effort, through our community services activities, to try to respond to them. If it comes in through the international union, we go to a number of the congressional offices and ask them to help us out with the complaints.

I do think that if there is a concerted effort to try to plumb the degree of this problem—organizations like those seated at this table will be able to cooperate with you and try to get a fix on it at a point in time.

Mr. WYLIE. Yes. I think we need to find out what part of the 70 percent of the complaints are meritorious. Were you going to comment on that, Ms. Mench?

Ms. MENCH. If I might, just for a moment. Because we do have a national membership of older persons, we have a complaint processing center, and this is one of their complaints. When the consumer assistance center tries to follow up on a consumer complaint, they find very little support from the regulatory agencies in backing up individual complaints.

I don't know whether it's a matter of sharing resources or making the best use of limited resources or what the excuse or reason is, but this is a problem.

I think this is largely one of the reasons why we don't hear from consumers more about their problems, also. The NRTA–AARP Andrus Foundation funded a project that was done at North Texas State University dealing with why older people don't report. In this specific instance, the reporting dealt with crime, but I think the findings in that area could be generalized to other areas.

Mr. WYLIE. You know what I tell people in my district when I hear comments like that; I tell them to write to their Congressmen, and by golly, they do. We receive about 125 or 130 letters everyday, not all complaints, of course, but it has been a good thing.

I suppose if every Member of the House and Senate did that, the system would sort of break down, but anyway, it's worked very well for me.

Do elderly consumers encounter much difficulty in getting credit cards?

Ms. MENCH. I think that keeping them would be a better statement. Most of the evidence that we collected at the time hearings were held 2 years ago on the problem with credit discrimination based on age showed that once cards were obtained they were taken away once you reached a certain age, 65, 62; and it was virtually impossible at that age to receive a card for much the same reason that it was taken away. One of the problems here was that in order to cash a check, one was frequently asked for proof of identification, and the obvious proof that was requested was a credit card.

Mr. WYLIE. That gets me into another area, and I am not really sure how to phrase this question. But young people use credit cards easily, and they know how to use them and they know what they are used for. And I think it's because they have sort of grown up in this credit card age. I think the same thing might be true of the debit card, which comes a little later on, and the electronic funds transfer.

Do you think there is some apprehension or fear by elderly people when they handle a credit card or debit card, and should there be some sort of an educational process, and is there an educational process ongoing? I have sensed this, let's say, in my own experience, that elderly people in most cases are more likely to use a check because they are familiar with a check, and they are less likely to use a debit card if they get one. And part of it is the fear of knowing what the consequence might be on the other end. Would you care to comment on that?

Ms. MENCH. I think in general. Mr. Wylie, you're probably accurate in your statement, that there is more familiarity with the check-writing system, therefore older persons would normally rely on that. However, as was brought to our attention at the time of the hearings, credit cards are as convenient to the elderly as they are to a younger person, and in many cases offer more security and protection to them. I am not saying that there probably should not be some kind of an educating process, and I would say that definitely that would be needed if EFTS were to become more universal and more commonly used.

Mr. WYLIE. I think that might be the source of some of the complaints that we have as far as some of the consumers with the regulatory agencies and so forth, and Mr. Sheehan, I just wondered if that isn't the source, and my time is up and I've really taken too much time.

Mr. Chairman, you've been very generous.

Mr. ANNUNZIO. Again, I want to express my deep appreciation to all of you who have traveled from the west coast and from the east coast for your fine contribution this morning.

This is the first of a series of 3-day informational hearings, and I would say that the first day has turned out—if I were scoring, I would give you a grade of excellent. You have made many wonderful suggestions to the subcommittee in reviewing the work that is ahead for the 95th Congress.

I thank you again for your presence and the subcommittee will remain in recess until 10 a.m. tomorrow morning.

[The following are written questions submitted by Chairman Annunzio to Ms. O'Reilly, along with Ms. O'Reilly's answers:]

Question 1. Do you think an annual GAO audit of agencies enforcing consumer credit laws would improve their enforcement efforts?

Answer. Yes—See attached testimony as to Federal Reserve Board.

PREPARED STATEMENT OF KATHLEEN F. O'REILLY, LEGISLATIVE DIRECTOR, CONSUMER FEDERATION OF AMERICA, BEFORE THE SUBCOMMITTEE ON DOMESTIC MONETARY POLICY, COMMITTEE ON BANKING, CURRENCY AND HOUSING, U.S. HOUSE OF REPRESENTATIVES, APRIL 23, 1975

Consumer Federation of America is the nation's largest consumer organization. It is composed of over 200 national, state and local nonprofit organizations that have joined together to espouse the consumer viewpoint. CFA and its member organizations represent over 30 million consumers throughout the United States. Among our members are: Consumers Union, publishers of Consumer Reports; 17 cooperatives and credit union leagues; 45 state and local consumer organizations; 66 rural electric cooperatives; 27 national and regional organizations ranging from Nationwide Insurance to the National Board of the Y.W.C.A. to the National Education Association; and 16 national labor organizations.

Mr. Chairman, I appreciate having the opportunity to appear today in support of an audit of the Federal Reserve System by the General Accounting Office. Our country is experiencing the worst recession in recent memory. In the opinion of many it has already reached depression proportions. Every increase in the unemployment rate, every consumer purchase in the marketplace and every consumer attempt to secure a loan brings with it a continuing erosion of consumer confidence in the Federal Reserve System. Obviously the monetary policy of the Federal Reserve Board is one of the most critical factors determining the direction of our nation's economy. Accordingly, the present economic crisis is viewed by many as evidence that the Federal Reserve structure is not adaptable to the U.S. economy and is unresponsive to its longrun interests.

The Federal Reserve banks deal with the most basic of commodities, money—public money. The sheer enormity of the billions of dollars passing through the system each year requires a thorough, competent control and audit scheme. Yet Congress, the only public body directed to oversee the Federal Reserve System, has not been empowered to require that an external audit of the system be undertaken by its auditing arm, the General Accounting Office. Consumers earnestly hope that Congress is becoming more committed to its very serious oversight obligations. It follows, however, that Congress must have at its disposal the information this type of audit would elicit if Congress is to adequately determine whether the programs and financial transactions are being carried out in accordance with applicable legal requirements and whether a more economical and efficient administration is feasible.

Sensitive to the independent nature of the Federal Reserve System, CFA nonetheless feels that this independence would not be threatened by a GAO audit, especially because the GAO has a well-known reputation for competency and integrity. It has been stated that the Federal Reserve banks and branches increased their expenses 210 per cent between 1964 and 1972. It is the nature of these expenses which is even more appalling to the consumer than the amount. It is absolutely incredible that memberships, dues or contributions were made to organizations such as the Miami Association of Industrial Nurses, the National Association of Power Engineers, and the Institute of Sanitation Management. Images of Federal Reserve Board elitism are not dispelled by reports of expenditures for athletic equipment, the International Design Conference in Aspen, Halloween parties, baseball games, boat cruises, and an annual card party. These and many more items of a similar nature are reminiscent of a fraternity club budget. They are outrageously inappropriate when subsidized by taxpayers who are struggling with an ever decreasing budget just to make ends meet. It is clearly improper for any government entity to be isolated from external review. The shield of "independence" relied upon by the Federal Reserve System has been exploited for too long. It is time to pierce the secrecy which such independence has created.

Question 2. Do you feel the Board's Truth in Lending simplification recommendations may lessen the law's protection for consumers?

Answer. Yes—See, for example, CFA remarks. Re: dealer kickback which are part of my formal statement.

[The following are written questions submitted by Congresswoman Spellman to Ms. O'Reilly, along with Ms. O'Reilly's answers:]

Question 1. Do you think federal enforcement agencies should be required to inform consumers when the agencies detect violations of the consumer credit laws?

Answer. Yes, otherwise consumers all too often are unaware that they have a cause of action for legal redress.

Question 2. What do you feel would be the major consumer benefits of Truth in Savings legislation?

Answer:

(a) Deterrent as to inequitable methods of calculating interest, etc.

(b) increases consumer price consciousness

(c) helps consumers to make more intelligent marketplace decisions

(d) should logically have a pro-competitive effect—the availability of such information

(e) allows consumer groups to compile and compare such information and disseminate it at a reasonable cost in a guidebook or handbook format

[The following are written questions submitted by Chairman Annunzio to Mr. Silbergeld, along with Mr. Silbergeld's answers:]

Question 1. Do you have any evidence that consumers are demanding a change from today's payment systems—that they want the development of EFTS?

Answer. No. To the contrary, some studies have shown that consumers are satisfied with the use of checks as a means of payment and would regard as a loss of control over their personal finances a payment method which does not permit them to authorize in writing the transfer of funds. See Brand, Gruber, Stander and Company, Attitudes Towards the Payments Systems: A Depth Study for the American Bankers Association (August, 1970), p. 15; Booz-Allen and Hamilton and National Analysts, Market Update: Insights Into Two Payment Systems Products (October, 1973); Virginia's EFTS Study, The Southern Banker, August, 1974. This does not necessarily mean that consumers would not accept EFT systems which are carefully designed to assure personal privacy and to retain those consumer protections which are available under present payment systems. However, we do not believe that consumers will accept EFT systems except under this circumstance.

Question 2. Do you think creditors are likely to comply with Truth in Lending if the deterrent of civil liability suit is for all practical purposes removed as the Board recommends?

Answer. No. While some amendment to section 130 of the Truth in Lending Act is appropriate to eliminate suits where the violations are merely technical and trivial, the reduction in civil liability must be based on a careful review of each disclosure requirement which might be excluded from the list of disclosures on which liability might be based. Further, careful attention must be paid to the differences between closed end and open end credit disclosures. However, it is predictable that compliance will fall off regarding those disclosures which are not subject to civil penalty suit if made incorrectly or if not made at all.

[The following are written questions submitted by Congresswoman Spellman to Mr. Silbergeld, along with Mr. Silbergeld's answers:]

Question 1. The National Retail Merchants Association has adopted an official policy on debit cards opposing "stop payments". Would you comment on the potential harm this may cause consumers.

Answer. This will put the burden on consumers, rather than sellers, to recover the amount of payment in certain circumstances where stop payment orders are fully justified and can be made by consumers. A prime example is the door-to-door sale subject to a cooling-off period, where the consumer either promptly decides not to go through with the transaction, or never intended to do so, but found it necessary to sign the agreement to get rid of a particularly stubborn and intrusive door-to-door vendor. If stop payment orders cannot be exercised, the burden is on the consumer to obtain a reverse payment from the seller, and if the reverse payment is not made promptly by the seller, the consumer will suffer both loss of use of the money involved and the opportunity costs of obtaining the reverse payment order. Sellers can better afford these costs than individual consumers.

Question 2. Would you discuss the issues involved in Consumers Union's Freedom of Information suit to gain access to a recent Comptroller of the Currency Survey?

Answer. The survey includes information identifying specific National Banks which, the Comptroller has reason to believe on the basis of the survey, have engaged in significant violations of the Truth in Lending Act. The issue is whether the names of the banks involved can be kept from the public on the grounds of various exemptions to the general disclosure requirements of the Freedom of Information Act (FOIA). The Comptroller contends, and Consumers Union disagrees, that each of these survey documents is protected from disclosure by one or more of the various exemptions of the FOIA, including the exemptions regarding intra-agency communications, bank examination documents, files collected for law enforcement purposes, financial information obtained confidentially, and information otherwise proscribed by law from disclosure.

[The following are written questions submitted by Congressman Vento to Mr. Silbergeld, along with Mr. Silbergeld's answers:]

Question 1. Could you elaborate on what you think are the unresolved consumer protection issues with respect to the development of Electronic Funds Transfer Systems?

Answer. The consumer protection issues involve a general sense of loss by consumers over control of their financial affairs; the loss of the opportunity to stop payment in transactions which are extraordinarily unsatisfactory (such as merchandise delivered in unusable condition or not as represented) or in which the customer has the legal right to cancel the transaction and decides to do so (such as the cooling-off period door-to-door sale transactions); liability for lost or stolen debit cards; liability for unauthorized transactions, including computer theft; proof of payment by EFT; difficulties of consumers in keeping an accurate account balance; questions as to who will lose more in elimination of "the float"; and possible loss of the protections of the Federal Wage Garnishment restrictions under Title II of the Consumer Credit Protection Act where an employer uses an automated payroll deposit system (see my testimony on *First National Bank of Arizona* v. *Usery*, in this respect). This list is not necessarily exhaustive. But it does outline enough very substantial concerns that tell us there is a present need to develop new law regarding EFT transactions and systems.

Question 2. Would you comment on the advisability of repealing the provision of Truth in Lending prohibiting issuance of unsolicited credit cards?

Answer. There are two primary objections to the provision of unsolicited credit cards. One is potential liability to the intended recipient if the card is obtained and used in an unauthorized manner prior to the intended recipient's "acceptance" of the card. Present limitations on liability provide that there shall be no cardholding liability unless the cardholder (a) requests and receives the card, or (b) signs the card, or (c) uses the card, or (d) authorizes another to use the card. Thus, the intended recipient would appear to have no liability for unauthorized use of an unsolicited card unless the card has been signed, used, or authorized for use by another. This objection, therefore, appears to be obviated. However, there are two other bases for possible objection to the provision of unsolicited credit cards. First, many persons may object to receiving them and, second, there may be substantial value in a system in which persons must take the affirmative step of applying for credit before they receive it. We do not have sufficient information on these latter two potential objections to evaluate repeal of the present prohibition, for this reason.

[The following are written questions submitted by Chairman Annunzio to Mr. Sheehan, along with Mr. Sheehan's answers:]

Question 1. Do you feel that banking agencies should require financial institutions who violate Truth in Lending to reimburse the consumer involved?

Answer. Yes; to the extent that a cost is incurred by the consumer. Our system of justice is predicated upon a penalty when guilt is proven. Without the threat of penalty, violations are invited by those that abuse the system. Therefore, legitimate claims should be made whole in order to protect the integrity of the system and discourage further abuse. Precautions against nuisance claims should be in place as appropriate guidelines for financial institutions to follow.

Question 2. You suggest that financial disclosure is being abused by financial institutions in the area of home ownership mortgaging. You paint a picture of the homeowner being confused by a "variety of gimmicks" offered by lending institutions. As an advocate of consumer education myself, I'd like to know if the United Steelworkers has a union-sponsored assistance program designed to help your members on such important consumer matters as financing a home purchase.

Answer. The USWA Education Department works with education coordinators in each of our district offices. Our program, individually and/or in a cooperative program with the more than 200 AFL-CIO Community Services Representatives located in 159 cities, annually conducts education classes on a wide variety of consumer issues as part of labor's local union counselor training program. Any member and spouse may participate. The enclosed pamphlet on Consumer Counseling provides additional details.

Our union sponsors annual summer education institutes for members and staff which are held at many universities. Subject matter includes timely consumer issues plus reports on pending consumer legislative issues.

Consumer articles appear regularly in labor publications so as to reach every member. The most recent issue of Viewpoint, AFL-CIO, IUD (enclosed) was devoted entirely to the consumer. An editorial page article on homeownership (enclosed) was published in the January, 1977 issue of Steel Labor (back page—See American Nightmare). In this same publication, the noted consumer expert, Sidney Margolius, contributed an article on page 11, Gimmicky new mortgages threat to home buyers. The article is short and to the point. May I request that the article be included as an appendix to our statement in response to your question.

Finally, our union has or cooperates with the Community Service Staff Representative in a referral service whereby members, upon request, can get professional counseling, including home financing and shopping for credit.

[The referred to enclosed material is retained in the files of the subcommittee.]

[The following is a written question submitted by Congresswoman Spellman to Mr. Sheehan, along with Mr. Sheehan's answer:]

Question. The Federal Reserve Board has recommended deleting Truth in Lending's ban on sending out unsolicited credit cards so that creditors could market combination debit-credit cards. Do you have any comments on this?

Answer. My first reaction is that there is not enough known about the debit card program; i.e., does it cost more to use than a standard credit card? What protection is available to the debit card user if the card is lost—will the $50 credit card limitation apply? Is this form of electronic banking and transfer of funds really an advantage to the consumer? How is the consumer's financial worth protected from those seeking such information? Will there be a surcharge on debit card users (similar to the surcharge proposed by the previous administration on credit card users) when electronic fund transfers cause a checking account to be overdrawn even if overdrawn for fewer than the days alloted before credit card interest rates are applicable? How much will the debit card consumer benefit from the cost savings that accrue to the lending institutions because the time factor in handling the paperwork will be tremendously reduced and borrowing time will drop to near zero?

Until these, and other questions are answered regarding the debit card program, we will oppose the deleting of the Truth in Lending's ban on sending out unsolicited debit cards.

[The following are written questions submitted by Congressman Vento to Mr. Sheehan, along with Mr. Sheehan's answers:]

Question 1. In your testimony, you suggested that Congress establish a national commission on Federal and State consumer law and activities. What would you consider its main goal to be and how long do you think the commission should last?

Answer. (a) To enlarge on our prepared statement, the main goal of the commission would be to undertake a comprehensive study of, and evaluation to determine, how state and national consumer laws and regulations serve or fail to serve the consumer interest: and recommend in a report of its findings to the President and the Congress, such solutions to the shortcomings in Federal and State law that the commission discovers.

The commission should for example include in its report how and why or by what procedures some states are able to implement a consumer law more effectively (as compared to other states).

(b) In 1970, the Congress established a National Commission on State Workmen's Compensation Law. The commission completed and submitted an extensive report to the President and the Congress within a 15-month lifespan. Using that as a yardstick of measure we would consider 12 to 15 months sufficient time for the commission to complete its work.

Question 2. What measures do you feel can be taken by Government and industry to promote increased home ownership at affordable prices?

Answer. The Congress can and should do something about the high cost of mortgage credit. High interest rates have reduced participation in the housing field. Lower interests rates would stimulate the needed housing construction. Lending institutions would benefit from more customers paying less interest hopefully, than from fewer home loan customers paying higher interest. Thus, the demand for new housing would draw upon the production of goods that new housing construction, furnishing and services require putting more people to work. A national good would result, as compared to the high interest rates and other home loan gimmicks devised to serve the narrow interests of the financial community.

Congress should pass legislation that would assist low and middle income earners to purchase homes.

Congress should work closely with the new Secretary of HUD, in connection with industry and labor, to explore remedies regarding the poor track record of HUD and scandals of recent past reported by GAO last fall. HUD deserves some priority attention in consideration of its role in urban development as it relates to our overall economy. HUD may, for example, sponsor a "National Crisis Conference on Housing" as soon as possible bringing together a variety of experts to develop a consensus on how best to promote home ownership at affordable prices.

[The following is a written question submitted by Chairman Annunzio to Ms. Mench, along with Ms. Mench's answer:]

Question. Would you care to expand on the AARP's position on mandatory early retirement for the record and on H.R. 65?

Answer. Both the National Retired Teachers Association and the American Association of Retired Persons are committed to the elimination of mandatory retirement policies and practices in all areas of employment. We firmly believe that mandatory retirement is morally and constitutionally wrong—forcing a man or woman to retire solely because he or she has reached a certain chronological age is no different than denying a person a job solely because of race, religion or sex.

Further, mandatory retirement can be damaging to the physical and mental health of the individual. The American Medical Association's Committee on Aging cites "ample clinical evidence that physical and emotional problems can be precipitated or exacerbated by the denial of employment opportunities."

We believe that mandatory retirement policies have resulted in unnecessary expenditure of millions of dollars by the Government and private industry, an incalculable loss of national productivity, and an intolerable waste of human resources.

Finally, because present demographic and employment patterns will likely mean a smaller work force and larger retirement population in the future, continued mandatory retirement practices will inevitably result in a substantially increased tax burden on working Americans and a long term deficit in the Social Security system.

The most convincing argument against mandatory retirement, of course, comes from older persons themselves. In a recent study of attitudes toward aging conducted by Louis Harris and Associates for the National Council on Aging, 86 percent of the respondents declared that "no one should be forced to retire because of age if he wants to continue working and is able to do a good job."

As one of the goals which we are pursuing to eliminate mandatory retirement, we have urged that the statutory upper age limit of 65 in the Age Discrimination in Employment Act of 1967 be abolished. Since the objective of H.R. 65 is to accomplish just that, our Associations would be supportive of such a measure.

[The following is a written question submitted by Congresswoman Spellman to Ms. Mench, along with Ms. Mench's answer:]

Question. Before what federal agencies is an agency for consumer advocacy most needed to assist elderly consumers?

Answer. Clearly, the regulatory agencies charged with enforcing the various laws and rules which have been developed to protect consumers would be one area in which the agency for consumer advocacy would need to work. As far as the elderly are concerned, these regulatory agencies would include the Federal Trade Commission, with its jurisdiction over unfair methods of competition and unfair or deceptive trade practices—in industries such as the funeral industry, eyeglass and hearing aid industries and automobile repair; the Consumer Product Safety Commission which is charged with setting product safety standards; the Federal Reserve Board, Federal Deposit Insurance Corporation and other agencies which control or regulate monetary policy; the Food and Drug Administration with its jurisdiction over medical devices and food and drug safety; the Federal Energy office and Federal Power Commission with their authority in establishing energy policy and programs.

These independent agencies—excepting the FDA—were generally not included among those departments and agencies which President Ford asked to develop consumer representation plans. Yet the decisions made by these agencies have a profound impact on the lives of consumers, especially elderly consumers.

[The following are written questions submitted by Congressman Vento to Ms. Mench, along with Ms. Mench's answer:]

Question 1. How well informed do you think your membership is about their new rights under the amended Equal Credit Opportunity Act?

Answer. Our Associations have taken major responsibility for informing our members of the status of the amendments to ECOA which extend the Act's protections to older Americans. We are continuing to assume that responsibility in that I am working with our public relations staff to prepare an article for our

April *Newsbulletins* which fully outlines an older person's rights under ECOA. These *Newsbulletins* are circulated to the Associations entire 10 million plus members, as well as to Members of Congress, the media and others who over time have asked to be placed on our publications mailing list.

In addition, I have been working with the public relations staffs of both the Federal Reserve Board and the Federal Trade Commission in preparing consumer information pamphlets which briefly detail coverage and protections of the ECOA. These pamphlets would then be made available to any interested party.

Hopefully as a result of these efforts, we can say that our members have been well informed about their rights under ECOA as amended.

Question 2. Have many elderly consumers been able to save money through cash discounts?

Answer. Our Associations understand that some merchants are offering special discounts to customers who pay cash for their purchases. We do not know to what extent elderly consumers have been able to save through such a program. We believe, however, that in those areas where the program has been publicized the elderly would be one of the groups to take advantage of the discounts.

We base this comment on our own experience with special purchase privilege programs which our Associations have entered into with various companies as a service to our members (including the American Motors Auto Purchase Program, Hotel/Motel discounts and auto rental discounts). These purchase privilege programs have been widely used by our membership. In January, we publicized, through the Associations' *Newsbulletins*, the availability of the various discount programs, and we have been receiving word from the companies involved of the sharp increase in use of the various programs since the announcement appeared.

This experience would seem to suggest that the elderly are prudent shoppers and like to get the best buy for their dollar. The publicity given any discount program seems to tie directly to program use, at least as far as the elderly are concerned.

[The following letter was received for inclusion in the record from Ms. Wieloszynski containing answers to written questions submitted by Chairman Annunzio and Congressman Vento:]

CONSUMER AFFAIRS,
Syracuse, N.Y., February 22, 1977.

Hon. FRANK ANNUNZIO,
Chairman, Subcommittee on Consumer Affairs, Committee on Banking, Currency and Housing, House Office Building Annex, Washington, D.C.

DEAR CONGRESSMAN ANNUNZIO: As I indicated in my testimony before the subcommittee, your invitation to me to take part in the hearings presented a special opportunity to my Office and the people we represent. I want to again thank you and the other members of the subcommittee for that.

But I also want to thank you, personally, for your generous and rewarding response.

I felt genuinely welcomed. I felt that the subcommittee was responsive to our concerns. And I came away from the hearings with a positive feeling that the subcommittee would give our concerns all due attention during its deliberations in the coming months.

I'm sorry that I could not respond sooner to your request for additional comments, but I stayed on in Washington to attend the annual meeting of Consumer Federation of America. I'm afraid that your questions arrived in Syracuse several days before I did.

In any case, I'll try to answer them now.

My suggestions for regulatory action are aimed, not at the technology now under development, but at the possible, perhaps probable, ramifications of that technology. Since the legislation I believe is necessary is in support of protections which the bankers, themselves, profess to support, their opposition to that legislation would seem to provide a conflict between their words and their deeds.

That legislation should be aimed at providing security for information developed through and stored within EFTS facilities . . . extending consumer protection applied to checks and credit cards to the EFTS transactions which supplant checks and credit cards . . . defining liability in the case of errors or system failures . . . requiring the disclosure to consumers of all risks, as well as benefits, connected with their use of EFTS; along with the disclosure of their rights and responsibilities in an EFTS environment . . . and protecting the existence of current services and access to them.

I believe the bankers are concerned that regulatory action might prevent them from using EFTS to substantially replace branch bank facilities, or that it could set up counterproductive conditions attached to the operation of EFTS facilities.

These are appropriate concerns for the bankers. But they don't diminish the need for or propriety of legislation to protect consumers. And, frankly, if there is a conflict between the interests of the bankers and the interests of consumers, the time to deal with that conflict is before EFT systems are fully deployed, not afterward.

I would suggest that a blanket opposition to legislation on EFTS is as unwarranted and illogical as a blanket demand for it.

In my view, the issue is not to question the need for consumer protection legislation . . . the issue is to question the design and application of legislation, to seek only that legislation which is needed, and to monitor that legislation to ensure that it meets the goals established for it. In this regard, the bankers should be given every reasonable opportunity to develop suitable technology and to deploy that technology to their maximum economic advantage. That means that the bankers must display a regard for the implications and consequences of that technology.

Bankers don't blindly give out blank checks. I suggest that we shouldn't either.

Our users study of EFTS in Syracuse showed that those who were using the point-of-sale terminals at the time did so because the terminals expanded their opportunities to make deposits and obtain cash. Most cited the extended banking hours and the convenience of retail store locations as reasons for their use of EFTS facilities.

A few people were concerned about the issues of security and liability. But most of those we talked with voiced no major concerns. Indeed, we concluded that it would be unlikely for people with major concerns about EFTS to be available to our survey, since they would not be using the terminals. Still, the majority concern involved the use of a computer. In a random sampling of 315 people who were not in the stores to use the terminals, we found 71 people who had no knowledge of the system, 18 people who had considered subscribing to the system, and 29 people who possessed access cards but weren't using them at the time. A copy of the full report is enclosed for your information.

[A copy of the full report is retained in the files of the subcommittee.]

Briefly, though, the most clear dissatisfaction came through in comments made by store managers and workers, some of who objected to doing the bank's work for it or objected to people using the terminals without shopping in their stores.

In response to Mr. Vento's questions, the point-of-sale terminals in Syracuse require subscribers to fill out forms that look very much like the forms used in connection with credit card transactions. The forms include a place for a consumer's signature, but to our knowledge, the signatures obtained on the forms are not checked against other identification. As far as we have been able to determine, anyone could sign any name to a transaction form without risk of discovery.

The forms are called withdrawal or deposit receipts. But we're not sure of their legal standing in the event of disputes or misappropriation.

We have noted instances in which relatives . . . in one case a child . . . were permitted to make transactions with the cards of other family members. We assume that friends could be doing the same thing. This practice could most certainly undercut a subscriber's ability to later question a signature on a transaction form in the event of a valid instance of theft and misuse of a card and codeword. In any case, the burden of proof would be on the subscriber, rather than the bank or the retailer. Incidentally, the bank guarantees merchant losses, but it has refused to publicly guarantee consumer losses.

In the bill-paying system, no proof of transaction is issued. Calls establishing transfers of funds are not recorded. To our knowledge, no call-backs are made to establish that a transfer has been properly authorized.

In this system, a thief could only authorize that someone's bills be paid. But there is a question of liability in the event of errors or system failures. In that case, the periodic transaction statement issued by the bank would merely indicate the error, rather than provide a method by which the error could establish liability. And the subscribers have nothing beyond their own records with which to show that an error might have been made.

As I indicated in my testimony, the bank is attempting to insure itself against the consequences of major errors. But, as in the case of the point-of-sale system, no attempt is made to inform subscribers of their rights in the event that an error does occur.

We have not seen any evidence of cost benefits to EFTS users in Syracuse. We are aware that both systems cost more to operate than the charges assessed by the banks to the people using the systems. This means that regular bank customers are subsidizing the costs during this promotional period. We expect that no cost benefits will materialize until the point-of-sale system becomes the primary banking mechanism for the commercial bank which is now using it. In the case of the bill-paying service, it was offered before thrift institutions in New York State were authorized to offer checking accounts. So it did not replace paper transactions. Rather, it provided an additional new service. Given the fact that this bank now permits people to maintain funds in interest-bearing accounts until a transfer to checking accounts is needed, and given the fact that regulation Q permits the bank to offer a higher interest rate than commercial banks may, we fully expect this bank's paper transactions to increase right along with increases in the number of people using its bill-paying service.

So far, our conclusion is that everybody's costs have *increased*, rather than decreased, in response to the introduction of EFTS. The impact of that is disguised . . . either because the distribution of the costs is disguised in the costs of other services, or because the quality or quantity of other services have been restricted to levels below those which would otherwise be possible.

In terms of profit vs. loss, we would characterize both systems as long-term investments by the banks. They'll be supported out of total earnings until established as self-sufficient. It's not clear that any ultimate readjustments in profits vs. losses will be of benefit to bank customers, even when that happens . . . since service levels could well be adversely affected.

In my view, the major savings to be realized by the banks through a reduction in paper are going to be paced by major savings realized through the elimination of branch banks and personnel. It is anything but clear that services now offered through branch banks and current staffing patterns will be maintained. This has serious implications in particular for low-income consumers of bank services and inner city neighborhoods in general. The location of terminal points is just as important as the type and quality of services offered through those terminal points. The locations right now are primarily in suburban settings.

Maybe we can all save a few bucks. But what do we lose elsewhere in exchange?

Bankers in New York State are concerned that all banks be given the ability to offer EFTS services. They want changes in State Law which will give all banks a competitive position. But I'm just as concerned about the ability of inner city retailers to compete with their suburban counterparts for access to EFTS facilities. Right now there are no major chain supermarkets located in the City of Syracuse. The supermarkets operating in our City are independently owned or operated. It's not clear that these stores will be able to show the market strength necessary to successfully compete with the larger chain stores for EFTS rights . . . at least not on the basis of a free marketplace alone.

If the banks want to seek the maximum benefits for themselves, their terminals are going to go in stores with the highest and most affluent traffic. It seems to me that no one has yet addressed the likelihood that economic discrimination is a highly probable consequence of EFTS right now. The precedent is already visible in our experience with mortgage redlining.

A low-income economy is primarily a cash-based economy. A high-income economy is primarily a credit-based economy. Thus, suburban locations for EFTS services carry a potential for greater profit (assuming a major credit potential for EFTS). In pure cost terms, inner city locations must be considered less productive. That conclusion must be enhanced by cultural conditions which render inner city residents ill-prepared to deal with the technology of EFTS. There will simply be more errors and a larger security problem at inner city locations than at suburban locations.

In summary, I'm just as concerned about service quality and access as I am about potential savings to be achieved by a reduction in banking-related costs.

I hope this will be helpful to the subcommittee. If additional questions should come up, please let me know. We'll do what we can to help.

Sincerely,

ROBERTA B. WIELOSZYNSKI,
Director.

[Whereupon, at 12:15 p.m., the hearing was adjourned, to reconvene at 10 a.m., on Wednesday, February 9, 1976.]

CONSUMER INFORMATION

WEDNESDAY, FEBRUARY 9, 1977

House of Representatives,
Subcommittee on Consumer Affairs of the
Committee on Banking, Finance and Urban Affairs,
Washington, D.C.

The committee met at 10:15 a.m. in room 2128 of the Rayburn House Office Building; Hon. Frank Annunzio (presiding).

Present: Representatives Annunzio, Spellman, Vento, St Germain, Wylie, and Evans.

Mr. Annunzio. The meeting of the subcommittee will come to order.

Because we have two representatives of the banking agencies before us today, I want to bring up a matter that is of deep concern to me—and that is unsolicited debit or EFTS cards. At least one witness will address this issue this morning.

Virtually every consumer witness who testified yesterday expressed deep concern about the headlong flight into EFTS and the unsolicited debit card aspect of the program. As I announced earlier, hearings on the entire credit card industry, including the debit and check guarantee card aspects, are scheduled for this subcommittee late this spring. At that time, I will offer legislation that will prohibit the distribution of unsolicited debit and check guarantee cards, the same prohibition that now extends to traditional credit cards. I have received reports of widespread distribution of these unsolicited cards, and I am greatly concerned about this problem.

I am even more concerned that some financial institutions, fearing that prohibitive legislation will be enacted, are planning to flood the market prior to passage of the legislation. I want to make it clear to those who are anticipating this move that they are doing so at their own risk. Clearly, each financial institution is being put on notice today.

If EFTS is the future of banking, and the electronic marvel that its backers proclaim, then the consumers will seek debit and check-cashing cards. However, if EFTS is not all that it is cracked up to be, then flooding the market with plastic cards will only be viewed as an attempt to cover up the shortcoming of the system, and an attempt to saddle customers with poor services.

To my knowledge, not a single study has been made by any financial institution as to whether or not consumers want or need electronic banking. Many financial institutions who are quite frankly scared to death of EFTS are nonetheless plunging headlong into the program solely to keep up with the competition. They may well keep up with the competition with both of them winding up in the poorhouse.

I am asking today for card companies and financial institutions to practice a little patience and wait for our hearings on unsolicited cards. If they are unwilling to wait for these hearings, then I will have no recourse but to shine the public spotlight on those companies that are flooding the market and to do everything in my power to see that the legislation severely punishes such tactics.

In today's meeting of our consumer information hearings we will hear the testimony of four persons actively involved in the Federal regulatory processes which concern consumers most.

Represented on our panel this morning are the Federal Trade Commission, the Federal Reserve System, the Office of Consumer Affairs—HEW, and the Comptroller of the Currency.

It is my hope that this meeting today will point up our mutual interest in the field of consumer credit protection and also illustrate to others our willingness for dialog.

I want to thank you all for your participation in these, our second "biannual" consumer information hearings, and as chairman, I welcome each of you.

At this time I would like to inform the panel that your entire statements will be made part of the record and that you can proceed in your own manner and to summarize your remarks so that the subcommittee can have time for questioning.

But I also want to remind you that in the event our time should run out that we will keep the record open and that you will be forwarded with a number of questions coming from the members of the subcommittee to be answered for the record.

Our first witness this morning is Gov. Philip C. Jackson, Jr., of the Federal Reserve System. I welcome you to the panel, Governor Jackson.

STATEMENT OF GOV. PHILIP C. JACKSON, JR., BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Governor JACKSON. Thank you, Mr. Chairman.

Our statement is relatively brief, so I believe I will proceed with it.

I appreciate this opportunity to participate on behalf of the Board of Governors in your subcommittee's hearings on the current status of consumer laws.

While it supports the basic public purpose of consumer credit legislation, the Board has become increasingly concerned about the degree of complexity and overlap of existing laws and hopes the situation can be clarified and simplified. It is small wonder that the Members of Congress and the Board have received a substantial quantity of complaints, particularly from small creditors, stating that they have difficulty understanding and complying with all of the laws. Some responsible observers are now questioning whether the existing regulatory framework is providing benefits to the public commensurate to its costs.

To give perspective to the issues we will raise, I would like first to provide a brief review of consumer credit legislation in our country. I will also report generally on the Board's experience to date as the principal agency charged with writing regulations to implement Federal legislation in this field. Finally, I would like to suggest some matters your committee may want to consider.

With rare exceptions, consumer credit regulatory legislation prior to 1968 was enacted by the various States rather than the Federal Government. Even then the laws were complicated. Most States have long had laws setting a ceiling on the price for loans to consumers. To this basic legislation, most States over time added a multiple layering of special conditions and rules.

Your own home State of Illinois Mr. Chairman, is a typical example. I am told that virtually no consumer credit transactions take place under the Illinois basic interest ceiling law. Instead, they occur under many different laws.

For example, the Retail Installment Sales Act governs the credit sale of goods other than motor vehicles, which fall under the Motor Vehicle Retail Installment Sales Act. There are six separate, but partially overlapping, laws in Illinois governing consumer loans. Each of these different laws tends to have its own set of special requirements for contract provisions, notices, administration, advertising, insurance, disclosure, and related matters. Thus, even without Federal legislation, the statutory situation was complex.

The Federal Government entered the consumer credit field initially through various credit programs concerning home mortgage credit, insurance or guarantees, and farm credit. The Board of Governors first began to regulate consumer credit practices in 1968 with the passage of the Federal Consumer Credit Protection Act, commonly known as Truth in Lending. The act directed the Board to write implementing regulations which became regulation Z.

Since 1968, the Congress has passed seven major amendments to the Consumer Credit Protection Act, as well as three separate disclosure statutes involving credit terms. Significantly, eight of these statutory changes have been enacted since October 1974—a period of less than 28 months—and 9 of the 10 laws have required implementing regulations.

Specifically, the statutory changes include in chronological order: The Fair Credit Reporting Act of 1970; The Credit Card Amendments to Truth in Lending, 1970; Technical Amendments to Truth in Lending in 1974; The Fair Credit Billing Act in 1974; The Equal Credit Opportunity Act in 1974; The Real Estate Settlement Procedures Act in 1974; The Federal Trade Commission Improvement Act in 1975; The Home Mortgage Disclosure Act of 1976; The Consumer Leasing Act of 1976; and last, the amendments to the Equal Credit Opportunity Act in 1976.

At the direction of Congress, the Federal Reserve has been involved in developing written regulations under all but one of the acts. The Board also issues official interpretations of its regulations. Recently, Congress empowered the Board to authorize official staff interpretations upon which creditors could rely without fear of civil liability, and the staff has begun issuing these interpretations. In addition, our staff has historically answered informal inquiries about the regulations. Although these staff interpretations do not have the force and effect of law, most conscientious creditors react to them as if they did. Finally, the courts, both State and Federal, have been offering further interpretations of the acts, regulations, and interpretations.

At this time, there are several hundred reported decisions on truth in lending alone.

In addition to implementing relatively specific statutory provisions, Congress has directed the Federal Trade Commission and the Board to issue rules and regulations defining and outlawing unfair or deceptive trade practices under the 1975 FTC Improvement Act.

Currently pending under that authority are three detailed trade regulation rules proposed by the Commission: the creditor practices rule, dealing with collateral and collection practices; the creditor amendment to the rule preserving consumers' claims and defenses, the so-called holder-in-due-course rule; and the used motor vehicle rule.

In summary, we now have a system which layers State laws, State regulations, Federal laws, Federal regulations, staff interpretations, and State and Federal court decisions.

I've brought along part of a bookshelf of one of our staff members who's charged with responsibility for writing regulations, interpretations, and letters, just to dramatically illustrate the scope of this responsibility.

If one had the advantage of knowing in advance that the governmental control of consumer credit would develop in the form I have outlined, two conclusions could readily have been drawn. First, State and Federal law would not fit very well together, and therefore would produce substantial conflicts and difficulties. The second would be that the entire consumer credit regulation framework would be complex and difficult to understand, administer, and comply with.

The relationship between State and Federal law is complicated by provisions in many of the acts the Board administers relating to preemption or exemption of State law. When should a State law be preempted by a Federal law? When should transactions within a State be exempted from a Federal law?

Further confusion arises from the fact that the various statutes set different standards for preemption/exemption applicable to different areas of law.

In addition, the problem is more complex because the subject matter and purposes of these statutes differ widely. Let me give you some examples of the preemption/exemption problem.

The original Truth in Lending Act set a rather simple standard under which those State disclosure laws found to be inconsistent with the Federal law were preempted. Likewise, the truth in lending standard for determining when a State should be exempt from chapter II of the Truth in Lending Act is that the State law must be substantially similar to the Federal law.

The Fair Credit Billing Act carried the standard for Federal preemption of State law one step further. As under truth in lending, a State's law is preempted to the extent that it is found to be inconsistent. However, the Board may not find that the State law is inconsistent, to the extent that it provides greater protection to the consumer. This additional step has caused considerable conceptual difficulty. How should the laws be compared—in their entireties, or section by section?

Defining and applying the standard raises still more problems. For example, New York requires that a billing inquiry be sent by registered mail; the Federal law does not. It could be argued that the New York law is more protective since it provides for better proof that the customer sent the inquiry. Alternatively, one could argue that it is less protective and thus inconsistent because of the additional burden placed upon the consumer to register the letter and pay the increased postage costs.

The Consumer Leasing Act adds a further complication. Under that act, to be protected from preemption, an otherwise inconsistent State law must provide not only greater protection, but greater benefit to the consumer.

While the preemption/exemption standards under the Equal Credit Opportunity Act are similar to the Truth in Lending Act, the subject matter of the act—adverse discrimination—is so different as to make the experience gained under truth in lending of limited value to the Board.

Determining what is inconsistent may not be too difficult. For example, Ohio prohibits discrimination on the basis of age. The Federal law permits the use of age in a credit scoring system so long as the age of an elderly applicant is not assigned a negative value. The Ohio law is in direct conflict, and thus is preempted as of March 23, 1977.

Determining what is more protective in the context of an antidiscrimination law is much trickier. Several years ago civil rights groups insisted that questions as to an applicant's race should not be permitted. Today, they take the position that not only should race be asked, but that it should be recorded for enforcement purposes. Which is more protective? Similar questions arise with respect to recordkeeping as to sex, marital status, and age.

Other State statutes may be affected as well. For example, in Alabama a person gains legal capacity to contract at the age of 21—unless that person is married, in which case the legal age is 18. Can a creditor take that statute into account in granting credit? If the creditor does so, is the creditor discriminating on the basis of marital status? If that is illegal discrimination, then the Alabama law may be preempted. But if the Alabama statute is preempted, does that mean that an unmarried 18-year-old can enter into a binding contract or that a married 18-year-old cannot?

The intricacies of the State-Federal relationship is not the only source of complexity. The economic practices and customs of every facet of American society are more varied and divergent than any law or regulation can anticipate. A rule designed to meet one need often produces unexpected consequences in another situation. The extensive regulations that result are a direct product of the dynamic credit system to which they apply.

Given these dynamics and this complexity, given the sheer quantity of State and Federal statutes, regulations, interpretations, and judicial decisions, and given the fact that they fit together so badly, it is not surprising that the loan officer of a small bank—charged with the varied responsibilities of making installment loans, buying dealer paper, overseeing a credit card operation, making home mortgage loans, extending construction credit, arranging for credit insurance, and so forth, is hard pressed to comply.

The Board of Governors is taking several actions in an effort to be responsive to some of the obvious needs that I have outlined. We have

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established a Consumer Advisory Council in accordance with the provisions of the 1976 statute. The Council met in November, with the next meeting scheduled for March 10. These meetings are open to the public. Membership of the Council is broadly representative of the interests of consumers and creditors alike. The Council is establishing study groups which plan to make on-site investigations of large and small creditors to better understand the ramifications of consumer credit laws regarding the credit-granting process.

The Board also has contracted with the Survey Research Center of the University of Michigan to undertake a special consumer survey intended to provide much needed information on the consumer's relationship to credit.

Several other Federal agencies are joining us in this survey effort. It is our hope that the survey will enable us to understand better the various circumstances in which consumers use credit, to evaluate consumers' perceptions of and interest in the benefits that consumer credit laws provide, and to gain insight as to how regulations can be more responsive to the consumer's needs.

In order to assist creditors, particularly small ones, in their efforts at compliance, the Board is expanding its issuance of approved forms which may be used by creditors without fear of violating technical provisions of the statutes or regulations. We are also continuing to issue binding staff interpretations where necessary. Under the statute, which your committee authorized, creditors relying on these staff interpretations are protected from the penalties of the law should the courts later determine that such interpretations are invalid.

Members of the Board's staff are engaged in a review of present consumer credit regulations for the purpose of developing proposals to make them easier to understand and comply with.

The Board recently promulgated a new regulation AA to encourage consumers to inform the system of their credit problems and to provide a better basis for action on the part of the Board in response to these consumer complaints.

Finally, as the supervisor for State member banks, we are substantially expanding our compliance and enforcement activities under the various consumer credit statutes. Our experience in this compliance process will enable us to better understand the impact of our regulations issued under consumer credit statutes.

The Board of Governors made a number of specific legislative recommendations in its 1975 yearend report. Among these was a suggestion that the Congress reexamine the Truth in Lending Act's provisions on the issuance of credit cards, and on cardholder liability in the event of unauthorized use, in light of recent developments in the electronic funds transfer field. Specifically, the Board recommended that Congress extend the $50 limit on consumer liability to noncredit funds transfer cards.

In addition, the Board suggested that the Congress reconsider the need for the existing ban on the unsolicited issuance of credit cards.

In the Board's view, the present limitation on liability has itself adequately curtailed the profligate issuance of credit cards prevalent in the mid-1960's, while the act's provisions restricting credit card issuance have lessened competition in the credit card field.

We sincerely hope that your subcommittee may find time to consider the proposals, as well as the other recommendations in the Board's report.

In our view, substantial benefits to the public could be realized if there were to be a determination as to the proper role of the States versus the Federal Government in consumer credit protection statutes. Such a determination should cover not only which law might govern or which might be preemptive of the other, but also such questions as which supervisor—State or Federal—is charged with policing organizations operating within the States.

As the larger creditors conduct their affairs over wide geographical areas, there is more urgent need to understand which benefits could accrue to the public from uniformity of regulations and procedures. Such benefits would then be weighed against our historic rights of the citizens of the several States to pass laws uniquely applicable to those who reside therein.

The effort to simplify consumer credit laws and regulations is a complex one in and of itself. While the need warrants your subcommittee's consideration, the goal will not be an easy one to accomplish. Even some creditors would argue against any attempt to simplify. Some feel that they have now mastered the complexities of the regulations and that any attempts to simplify will result only in a new set of requirements which will require substantial retraining and produce another period of uncertainty.

There are many who feel that complexity of the Truth in Lending statute is a byproduct of the penalties which the act imposes. The original concept of private enforcement of this statute has obvious imperfections. We believe there would be substantial potential for simplification if the penalties provided as a result of private suit or class action were restricted to instances of substantive violations that impair the consumer's capacity to comparison shop for credit. Technical violations of the statute might well be limited to administrative supervisory enforcement.

Mr. Chairman, I hope these comments have been responsive to the subcommittee's needs and will be pleased to respond to any questions you may have.

Mr. ANNUNZIO. I thank you, Governor Jackson, for your fine statement. You made many interesting observations. You have raised some good points, such as the State versus Federal. It is an age-old argument in our Government.

But, like yourself, I realize that more and more the States, and now the cities and the local boards of education, are coming to Washington for help. And as the dollar becomes less and less strong and so weak that it can't buy anything, the consumers are looking to Washington for answers.

So it is the circumstances that make Washington the vital center of activity in our Government, and I deeply appreciate the manner in which you have outlined some challenges for the subcommittee to face.

I thank you very much.

Our next witness this morning will be Mr. Christian S. White, of the Federal Trade Commission.

STATEMENT OF CHRISTIAN S. WHITE, ASSISTANT DIRECTOR FOR SPECIAL STATUTES, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

Mr. WHITE. Thank you, Mr. Chairman. My statement is not too long. I can proceed with it.

I appreciate the opportunity to represent the Federal Trade Commission in these hearings on consumer information.

As Assistant Director for Special Statutes of the Federal Trade Commission's Consumer Protection Bureau, I am responsible to the Commission for enforcement of many of the consumer protection statutes passed by Congress, including the Equal Credit Opportunity Act, the Fair Credit Billing Act, the Fair Credit Reporting Act, and the Truth in Lending Act.

Today I will focus my comments on four areas of current concern to the Commission: amendments needed to strengthen the enforcement of the above acts, simplification of the Truth in Lending Act, electronic funds transfer systems, and debt collection practices.

Before turning to each of the specific topics, I would offer for possible inclusion in the record of the hearing letters regarding the Commission's annual reports to the Federal Reserve Board on Truth in Lending for 1975 and 1976, as well as my remarks to the Privacy Protection Commission concerning the Fair Credit Reporting Act. I hope these documents will be useful to the subcommittee and to its staff in summarizing our recent experience with those statutes.

As to amendments to strengthen Commission enforcement, as you know, in January of 1975 Congress passed the Federal Trade Commission Improvement Act to strengthen the Commission's enforcement authority in the consumer protection area. One of the major new enforcement powers added by that act is found in the new section 5(m)(1)(A) of the FTC Act. This section provides that the Commission may seek civil penalties of up to $10,000 per violation of a trade regulation rule under the Federal Trade Commission Improvement Act. Another section, section 19(b), gives the Commission the power to seek refunds, rescission, and other forms of consumer redress for violations of its trade regulation rules.

However, a reading of these two new sections combined with the language of the special statutes assigned to the Commission leaves unclear the Commission's power to seek civil penalties or consumer redress for violations of certain special statutes and the rules implementing them; for example, the Truth in Lending Act and regulation Z. In the face of this uncertainty the Commission has thus far pursued these remedies only to the extent that violations of law have been separately defined in adjudicated cases of rulemaking proceedings under section 5 of the FTC Act—the Commission's general unfair and deceptive practice jurisdiction. This method of seeking civil penalties is currently being used in the credit advertising area. I will briefly describe that procedure.

Copies of previous Commission decisions have been sent to creditors by certified mail. The creditors advertisements are then monitored for violations. While this procedure is clearly more effective than reliance on individual cease and desist orders, it is still less efficient than enforcement of regulation Z as a trade regulation rule.

In addition, use of this procedure is currently limited by the number of litigated Commission cases which specifically find violations of regulation Z to be unfair and deceptive.

Since the Truth in Lending Act establishes a statutory standard for disclosure, ratification of that standard under the Federal Trade Commission Act would seem to be duplicative.

I might add that the use of the service of litigated cases finding violations appears to have been relatively effective in the credit advertising area. We have noted an increasing degree of interest in compliance with these sections not only where the pilot programs have been begun but in other areas throughout the country.

Thus, under the present structure, the Commission may have less power to enforce special statutes such as the Truth in Lending Act than it has to enforce its trade regulation rules. We believe this result to be inadvertent. We do not believe Congress intended to leave enforcement of truth in lending to the more cumbersome Pre-Improvement Act procedures. When the Commission called this issue to Congress' attention in connection with the Equal Credit Opportunity Act, that act was subsequently amended to allow enforcement of regulation B in the same manner as we enforce our trade regulation rules.

Finally, granting the Commission power to seek civil penalties for violation of these statutes would not raise the possibility of undue sanctions for technical violations. This problem has troubled the courts in truth in lending class action cases. Section 5(m) (1) (B) of the Federal Trade Commission Act specifically instructs courts in imposing civil penalties to consider factors such as the respondent's culpability for the violation, the prior history of similar violations by the company, the company's ability to pay, and the effect of the penalty on the respondent's ability to continue in business, and any other matters that justice may require in the interest of the penalty.

This section, I believe, provides the courts with ample discretion to impose a penalty appropriate to the circumstances of a particular violation.

Another area in which the Truth in Lending Act could be clarified and strengthened is enforcement of the right of rescission in home improvement contracts. First, an amendment is needed which would toll the act's 3-year statute of limitations on rescission once an FTC complaint is issued. Presently, the statute of limitations may expire before the Commission can order a home improvement firm to send out recission notices which may have been previously withheld from consumers or improperly presented to them. We believe our ability to effect this type of relief is essential to insure full compliance with the rescission section of the act in the home improvement market.

Second, our experience has been that many of the home improvement contracts entered into by creditors under our jurisdiction are subsequently assigned to creditors who are not subject to that jurisdiction. This restricts our ability to provide effective consumer redress for violations. Amendments are needed to clarify the assignee's liability for rescission in instances in which no disclosures are given or in which the disclosures were fraudulently backdated.

Let me turn to the issue of truth in lending simplification. As the Commission's 1975 and 1976 annual reports to the Federal Reserve Board indicate, the Commission is in full support of the Board's efforts to simplify the provisions of regulation Z. We have but two reservations concerning the approach currently being used.

First, we believe, the revision of the cost information disclosures required by truth in lending should be based on some evaluation of the effect which this information is actually having in the marketplace. We suspect that such an evaluation would reveal not only that some disclosure requirements should be eliminated, but also that some may need strengthening. I note that Governor Jackson has mentioned the type of research which may lead to this form of analysis.

Thus, we support the goal of simplifying credit information disclosures, we would caution, the program's objectives should be to provide consumers with better, more usable information, as well as to reduce creditors' compliance burdens.

Another area of concern to consumers is the rapid emergence of electronic funds transfer systems as a new method of exchanging value, a method which has the potential for rendering obsolete many of the protections now contained in the Consumer Credit Protection Act. The financial community has already introduced electronic services on a large scale. Such services include the authorized paycheck deposit, preauthorized payment of recurring obligations, automated 24-hour teller machines, point-of-sale check verification and debit cards. All of these services are likely to gain widespread acceptance among consumers, but they also present new problems.

The debit card, for example, is a convenient means of paying for goods through direct access to a bank account. Consumers may not realize, however, that using a debit card is like paying with cash. By using the debit card rather than a credit card, consumers relinquish an effective weapon against sellers of defective or shoddy merchandise—the right to withhold payment in the event of nonperformance by the seller. The debit card also poses some of the same risks to the consumer as the credit card but is not covered by those provisions of the Consumer Credit Protection Act limiting liability for unauthorized use.

The consumer's right to privacy which is now partially protected by the Fair Credit Reporting Act will require even greater safeguards when electronic funds transfer systems reach their full potential. Such systems will have the capacity for acquiring and storing an enormous volume of financial information on consumers relating both to their depository and credit experience. Ready access to such information at point-of-sale terminals or automated clearinghouses could permit creditors to obtain this information without the protection of the Fair Credit Reporting Act, since such data banks may not come within the act's definition of consumer reporting agencies.

Further, the fact that all financial information about a single individual could be electronically assembled and perhaps accessed by a system user increases the threat of Government intrusion into the most minute details of its citizens' affairs. This concern is particularly serious in light of the Supreme Court rulings that a citizen's right to privacy and his expectation of privacy do not extend to records of financial transactions held by a bank.

As you know, the National Commission on Electronic Funds Transfer will be submitting its interim report to Congress later this month.

That report may include preliminary recommendations on these and other issues that affect the rights of consumers. However, it is not too early to begin congressional consideration of these important issues, especially in view of the widespread implementation of these systems.

Let me turn to my fourth topic, debt collection. Last year the Commission submitted a statement supporting the objectives of H.R. 11969, a bill to prohibit certain debt collection practices. As you know, the Federal Trade Commission has been proceeding against debt collectors for years on the grounds that many of the practices which would be prohibited by that bill violate section 5 of the Federal Trade Commission Act.

The most recent of these is the *National Accounts Systems* case. The Commission has approved a consent order which would require one of the largest debt collection agencies in the country to stop engaging in misrepresentation, harassment, employer contacts, and other unfair and deceptive debt collection tactics. While *National Accounts Systems* illustrates the full breadth of the Commission's authority in eliminating debt collection abuses, it also demonstrates the major drawback of the Commission's administrative proceedings against debt collection agencies. Those proceedings appear to have had little deterrent effect on other industry members from perhaps engaging in the same practices. The debt collection industry is a fragmented industry, apparently comprised of highly mobile firms. Violations are usually undocumented and require extensive consumer testimony to prove. It is, in short, exactly the kind of industry in which the Commission has the greatest problems bringing about compliance. *National Accounts Systems* is only the latest in a long series of cases against the debt collection agencies, each one exacting the promise to discontinue unlawful practices.

For these reasons, we continue to support the enactment of legislation which would specify a list of prohibited practices and also provide for private enforcement. Both specification and private enforcement are needed to bring this type of industry into compliance with the law. While the Commission can and is continuing to seek out and define abusive debt collection practices, only Congress can provide the private right of action which is necessary to insure compliance in this type of industry.

The *National Accounts Systems* case also illustrates a problem in H.R. 11969, which would apply only to independent collection agencies and not creditors themselves. As we pointed out in our previous testimony, the debt collection bill with coverage that excludes creditors may encourage creditors to carry out their own debt collection activities.

Mr. Chairman, I would be pleased to respond to questions as you see fit.

[Mr. White's prepared statement, presented on behalf of the Federal Trade Commission, along with letter's regarding the Commission's annual reports to the Federal Reserve Board on Truth in Lending for 1975 and 1976, as well as his remarks to the Privacy Protection Study Commission of August 4, 1976, regarding the Fair Credit Reporting Act, follow:]

FEDERAL TRADE COMMISSION

WASHINGTON, D. C. 20580

Statement of
Federal Trade Commission
by
Christian S. White
Assistant Director for
Special Statutes

Before the
Subcommittee on Consumer Affairs
of the
Committee on
Banking, Currency and Housing
U.S. House of Representatives

Wednesday, February 9, 1977

Mr. Chairman, I appreciate the opportunity to represent the Federal Trade Commission in these hearings on consumer information. As Assistant Director for Special Statutes of the Federal Trade Commission's Bureau of Consumer Protection, I am responsible to the Commission for enforcement of many of the consumer protection statutes passed by Congress including the Equal Credit Opportunity Act (Pub.L. No. 93-495, as amended by Pub.L. No. 94-239), the Fair Credit Billing Act, (Pub.L. No. 93-495), the Fair Credit Reporting Act (Pub.L. No. 91-508) and the Truth in Lending Act (Pub.L. No. 90-321).

Today I will focus my comments to your subcommittee on four areas of current concern to the Commission:

1) Amendments Needed to Strengthen Commission Enforcement of the Truth in Lending, Fair Credit Reporting and Fair Credit Billing Acts;
2) Simplification of the Truth in Lending Act;
3) Electronic Funds Transfers Systems; and
4) Debt Collection Practices.

Before turning to each of the specific topics, I would like to offer for possible inclusion in the record of this hearing three documents: the Commission's Annual Reports to the Federal Reserve Board on Truth in Lending, for 1976 and 1975, and my remarks to the Privacy Protection Study Commission concerning the Fair Credit Reporting Act. These three documents will help summarize for the members of your subcommittee and your staff the Commission's recent experience with each of these statutes.

1) Amendments to Strengthen Commission Enforcement of the Truth in Lending Act, Fair Credit Billing Act and Fair Credit Reporting Act.

As you know, in January of 1975, Congress passed the Federal Trade Commission Improvement Act */ to strengthen the Commission's law enforcement authority in the consumer protection area. One of the major new enforcement powers added by that Act is found in the new section 5(m)(1)(A) of the Federal Trade Commission Act. This section provides that the Commission may seek civil penalties of up to $10,000 per violation of a Trade Regulation Rule issued under the Federal Trade Commission Act. Another new section, §19(b), also gives the Commission the power to seek refunds, rescission and other forms of consumer redress for violations of its trade regulation rules.

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*/ Magnuson-Moss Warranty--Federal Trade Commission Improvement Act, Pub. L. No. 93-637, 88 Stat. 2183-2203 (1975).

However, a reading of these two new sections combined with the language of the special statutes assigned to the Commission for enforcement leaves unclear the Commission's power to seek civil penalties or consumer redress directly for violations of certain of the Special Statutes or the rules implementing them, for example the Truth in Lending Act and Regulation Z. In the face of this uncertainty, the Commission has, thus far, pursued these remedies only to the extent violations of law have been separately defined in adjudication or rulemaking proceedings pursuant to §5 of the Federal Trade Commission Act.

This method of seeking civil penalties is currently being used in the credit advertising area. Copies of previous Commission decisions have been sent to creditors by certified mail and the creditor's advertisements are being monitored for violations. While this procedure is clearly a more effective enforcement procedure than our previous reliance on individual cease and desist orders, it is still less efficient than simple enforcement of Regulation Z as a trade regulation rule would be. In addition use of this procedure is currently limited by the number of litigated Commission cases specifically finding violations of Regulation Z to be unfair or deceptive. Since the Truth in Lending Act establishes a statutory standard for disclosure, ratification of that standard under the Federal Trade Commission Act would seem to be duplicative and wasteful.

Thus, the Commission may have less power to enforce special statutes such as Truth in Lending than it has to enforce its own rules. We believe this result to be inadvertent; we do not believe Congress intended to leave the Commission's enforcement of Truth in Lending to more cumbersome pre-Improvement Act enforcement procedures. */ Indeed, when we called this matter to the Congress' attention in connection with the Equal Credit Opportunity Act, that Act was amended to allow us to enforce Regulation B in the same manner we enforce our own trade regulation rules. **/

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*/ Under the Truth in Lending Act, the Commission is responsible for enforcement for about 90% of the creditors in the United States. Since the Act's inception the Commission has entered approximately 280 (mostly consent) orders against companies for violations of the Truth in Lending Act. We believe that the Commission's enormous responsibilities under both the Truth in Lending Act and other Acts such as the Fair Credit Reporting Act can more efficiently be carried out by amending those acts to provide for their enforcement as if they were a trade regulation rule promulgated under the Federal Trade Commission Act.

**/ See Pub. L. No. 94-239 which amends the Commission's enforcement powers under the Equal Credit Opportunity Act to provide that the Commission may enforce Regulation B "in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule".

Finally, granting the Commission the power to seek civil penalties for violations of the Truth in Lending, Fair Credit Billing and Fair Credit Reporting Acts will not raise the possibility of undue sanctions for technical violations which has troubled the courts in Truth in Lending class action cases. (See Ratner v. Chemical Bank, 54 F.R.D. 412 (D.C. N.Y. 1972)). Section 5(m)(1)(B) of the amended Federal Trade Commission Act specifically instructs the courts, in imposing civil penalties, to consider

(A) the degree of the respondent's culpability for the violation;

(B) any prior history of such conduct by the respondent;

(C) the respondent's ability to pay;

(D) effect of the penalty on the respondent's ability to continue to do business; and,

(E) such other matters as justice may require.

This section provides the courts with ample discretion to impose a penalty appropriate to the circumstances of a particular violation.

Our enforcement of the Truth in Lending Act's three day right of rescission in home improvement contracts illustrates another area in which our powers under the Act require clarification and strengthening.

First, an amendment is needed which would toll the Act's present three year statute of limitation on rescission once a Federal Trade Commission complaint is issued. Presently the three year statute of limitations may expire before the Commission can issue an order requiring a home improvement firm to send out rescission notices previously withheld from consumers or improperly presented to them. We believe that our ability to effect this type of relief is essential to ensure full compliance with the rescission provision of the Act in the home improvement market. */

Second, our experience has been that many of the home improvement contracts entered into by creditors under our jurisdiction are subsequently assigned to creditors who are not subject to our enforcement jurisdiction, thus severely restricting

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*/ See generally, In the Matter of Charnita, 80 F.T.C. 892 (D. 8829) aff'd 479 F.2d 684 (3rd Cir. 1973).

our ability to provide any form of effective consumer redress for violations. Amendments are needed which clarify the subsequent assignee's liability for rescission in instances in which no disclosures are given or in which the disclosures were fraudulently backdated. */

*/ Congress should also consider two additional amendments which would ensure effective private and administrative enforcement of the right of rescission. These would: (1) clarify the method of computation of reasonable value when a contract is rescinded after improvements have been made in the borrower's home (See In the Matter of Fabbis, 81 F.T.C. 678, 698-99 (D. 8833, 1972)); and (2) specifically provide for the award of attorney's fees in successful private actions to enforce the right of rescission. (See Rachbach v. Cogswell, No. 75-1930 (10th Cir., November 18, 1976).

2) Truth in Lending Simplification.

As our 1975 and 1976 annual reports to the Federal Reserve Board indicate, the Commission is in full support of the Board's efforts to simplify the provisions of Regulation Z. We have but two reservations concerning the approach currently being used. First we believe that revision of the cost information disclosures required by the Truth in Lending Act should be based on some evaluation of the effect which the information is actually having in the market place. We suspect that such an evaluation would reveal not only that some disclosure requirements should be eliminated, */ but also that some disclosure re uirements need strengthening. **/

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*/ For example, Section 226.4(e) of Regulation Z, which requires exclusion from the finance charge of certain charges in real property transactions, has created significant disclosure problems for creditors in states with a statutory fixed rate of charge covering all expenses connected with these transactions. No apparent benefits accrue to consumers as a result of the sometimes complicated disclosures required to comply with this section in those states.

**/ Section 226.7(b)(vii) requires a creditor to disclose, for example, that a finance charge will be imposed on 1) the average daily balance including current purchases or 2) the average daily balance excluding current purchases. Few, if any, customers realize that by doing business with a creditor using the first plan they forfeit their 30 day free ride for current purchases, i.e. purchases made during a month in which there was a previous balance.

Similarly, we believe that the evolution of consumer credit since the passage of the Truth in Lending Act in 1969 has created disclosure problems not specifically addressed by the Truth in Lending Act. Thus, for example, our 1974, 1975 and 1976 annual reports to the Federal Reserve Board have pointed to instances in which consumers are entering into door-to-door encyclopedia sales contracts and obtaining loans with average balances of $1800 without ever receiving disclosures of such basic cost of credit information as the amount of the finance charge and total of payments to be made on the contract.

Thus, while we support the goal of simplifying credit information disclosures, we would caution that the program's objective should be to provide consumers with better, more usable information, as well as to reduce creditors' compliance burdens.

3) Electronic Funds Transfers.

Another area of concern to consumers is the rapid emergence of electronic fund transfer systems as a new method of exchanging value, a method which has the potential for rendering obsolete many of the protections now contained in the Consumer

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Credit Protection Act. The financial community has already introduced electronically supported financial services on a large scale. Such services include the authorized paycheck deposit, pre-authorized payment of recurring obligations, automated twenty-four hour teller machines, point of sale check verification and debit cards. While all of these services are likely to gain widespread acceptance among consumers, they also present new problems.

The debit card, for example, is a convenient means of paying for goods through direct access to one's bank account. Consumers may not realize, however, that using a debit card is like paying with cash. By using a debit card rather than a credit card, consumers relinquish an effective weapon against sellers of defective or shoddy merchandise--the right to withhold payment in the event of non-performance by the seller. The debit card also poses some of the same risks to the consumer as the credit card but is not covered by those provisions of the Consumer Credit Protection Act which would limit the consumer's liability to $50 for unauthorized use and would prohibit the distribution of unsolicited cards.

The consumer's right to privacy, which is now partially protected by the Fair Credit Reporting Act, will require even greater safeguards when electronic fund transfer systems reach their full potential. Such systems will have the capacity for acquiring and storing an enormous volume of financial information about consumers relating both to their depository and credit experience. Ready access to such information at point of sale terminals or automated clearing houses could permit creditors to obtain this information without the protections of the Fair Credit Reporting Act since such data banks may not come within the Act's definition of "consumer reporting agency". Further, the fact that all financial information about a single individual could be electronically assembled and perhaps accessed by a system user increases the threat of government intrusion into the most minute details of its citizen's affairs. This concern is particularly serious in light of recent Supreme Court rulings that a citizen's right to privacy does not extend to records of financial transactions held by a bank. */

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*/ United States v. Miller, 425 U.S. 435 (1976).

As you know, the National Commission on Electronic Fund Transfers will be submitting its interim report to Congress later this month. That report may include preliminary recommendations on these and other issues that affect the rights of consumers. However, it is not too early to begin Congressional consideration of these important issues, especially in view of the already widespread implementation of electronic fund transfer systems.

4) Debt Collection.

Last year the Commission submitted a statement supporting the objective of H.R. 11969, a bill to prohibit the use of certain practices by debt collection agencies. As you know, the Federal Trade Commission has been proceeding against debt collectors for many years on the grounds that many of the practices prohibited by that bill violate Section 5 of the Federal Trade Commission Act. Act. The most recent of these cases is the National Accounts Systems case */ in which the Commission approved a consent order which will require one of the largest debt collection

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*/ F.T.C. File No. 742-3152 (consent order provisionally accepted December 9, 1976).

agencies in the country to stop engaging in misrepresentation, harassment, employer contacts and other unfair and deceptive debt collection tactics. While the <u>National Account Systems</u> case illustrates the full breadth of the Commission's authority in eliminating debt collection abuses, it also demonstrates the major drawback of Commission administrative proceedings against debt collection agencies--they appear to have had little deterrent effect on other industry members engaged in the same practices. Debt collection is a fragmented industry composed of highly mobile firms. Violations are usually undocumented and require extensive consumer testimony to prove. It is, in short, exactly the kind of industry in which the Commission has the greatest problems bringing about compliance. <u>National Account Systems</u> is only the latest of a long series of cases against debt collection agencies, each one exacting a promise to discontinue the unlawful practices. For these reasons, we continue to support the enactment of legislation which would specify a list of prohibited practices and also provide for private enforcement. Both specification and private enforcement are needed to bring this type of industry into compliance with the law. While the Commission can and is continuing to seek out and define abusive debt collection practices, only Congress can provide the private right of action which is necessary to insure compliance in an industry such as this.

The <u>National Accounts System</u> case, however, also illustrates a problem in H.R. 11969, which would apply only to independent collection agencies and not creditors themselves. National Accounts Systems is a wholly owned subsidiary of a major creditor, Diners Club, which is responsibile under the order for violations by its subsidiary. As pointed out in our previous testimony, a debt collection bill with coverage which excludes creditors may only encourage creditors to carry out their own debt collection activities.

This concludes my prepared remarks but I would be happy to answer any questions the Committee may have.

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

OFFICE OF THE SECRETARY

Mr. Frederic Solomon,
Assistant to the Board and Director,
Office of Saver and Consumer Affairs,
Board of Governors of the Federal Reserve System,
21st and Constitution Avenue, N.W.,
Washington, D. C. 20551

Re: 1975 Annual Report to Congress on the Truth in Lending Act.

Dear Mr. Solomon:

This is in reply to your letter of October 23, 1975 requesting information regarding the Commission's enforcement activities under the Truth in Lending Act for the purpose of preparing the Board's annual report to Congress for the year 1975.

Our response is provided to correspond with the four areas enumerated in your letter. We have not commented on the recent Fair Credit Billing amendments to the Truth in Lending Act, since it is still too early to evaluate the impact of these amendments.

1. The administration of the Federal Trade Commission's enforcement function under the Truth in Lending Act has not changed significantly since the passage of this legislation. The Commission's Division of Special Statutes, Bureau of Consumer Protection, is responsible for enforcement of the Truth in Lending Act with regard to national and multi-regional creditors, as well as for coordinating the informal interpretive and enforcement activities of the Commission's eleven regional offices. Because of continuing requests for assistance by creditors, the Division staff devotes a considerable amount of time to rendering informal interpretations of the Act for creditors under the Commission's jurisdiction. The vast majority of such inquiries have not raised major enforcement issues but are more in the nature of individual problems concerning various aspects of compliance with the statute.

In addition to inquiries from creditors, the Division and regional offices also receive a substantial volume of consumer inquiries and complaints. Many of these complaints raise individual problems which are unique to the particular consumer. It is the Commission's policy in these instances to attempt to assist these consumers to the extent that resources permit. The staff will, for example, refer a complainant to local and other federal authorities, advise consumers to seek private counsel for a determination of a creditor's civil liability under Section 130 of the Act, or offer such other information as may be responsive to the consumer's inquiries. We believe that, in addition to providing assistance to consumers where possible, handling such consumer complaints provides a useful tool for monitoring overall compliance with the Act.

The Commission's eleven regional offices bear enforcement responsibility under the Act with regard to the activities of creditors operating primarily within each office's region. While these offices occasionally render informal opinions in response to consumer and creditor inquiries, their major function involves the implementation of guidelines developed by the Division of Special Statutes to maximize the impact of the Commission's enforcement activities. As indicated above, the enforcement activities of each regional office are coordinated with the Division to insure uniformity of treatment.

The Commission also maintains an advertising monitoring program at the regional office level. Advertising violations detected by this program are usually corrected through established informal procedures; rarely is formal action based solely on advertising violations unless the violations are of a persistent or flagrant nature.

When significant law violations are discovered, formal administrative action generally is recommended by the staff. From the beginning of the 1975 fiscal year to date, the Commission has entered approximately 70 final orders against respondents charged with violating the Truth in Lending Act. There are now outstanding seven formal complaints against respondents charging violations of various provisions of the Act and one matter in which initial decisions have been rendered by administrative law judges but not yet appealed to the Commission.

2. The Commission has made no formal statistical assessment of the extent of compliance with the Truth in Lending Act by creditors subject to our enforcement jurisdiction since our April 1971 national survey of creditor compliance. The staff has indicated it believes that overall compliance with point of sale disclosure requirements continues at a relatively high level and that the pattern of substantial compliance by large creditors and lesser compliance by smaller creditors indicated in the earlier survey is continuing.

In the area of credit advertising, however, full compliance with the Act is less prevalent, although the level of compliance appears to be steadily increasing. Since no civil liability attaches to advertising violations, more formal administrative action by the Commission may be necessary to bring about compliance in this area.

During the past year, the Commission has initiated a pilot program designed to use the Commission's recently strengthened enforcement powers 1/ in several areas including our authority to insure a greater degree of compliance among creditors subject to our jurisdiction with the advertising provisions of the Truth in Lending Act.

1/ The Commission's enforcement powers were strengthened by passage of the Magnuson-Moss Warranty--FTC Improvement Act, 88 Stat. 2183 (1975).

As it relates to Truth in Lending, the pilot program would authorize two regional offices to notify possible credit violators of past orders which the Commission has entered in similar cases. If subsequent violations by the same advertiser are discovered the Commission may seek civil penalties for the violation under new section 5(m)(1)(A) of the Federal Trade Commission Act. 2/ The results of this program are not yet available for analysis.

2/ New Section 5(m)(1)(B) provides:

"If the Commission determines in a proceeding under subsection (b) that any act or practice is unfair or deceptive, and issues a final cease and desist order with respect to such act or practice, then the Commission may commence a civil action to obtain a civil penalty in a district court of the United States against any person, partnership, or corporation which engages in such act or practice--

(1) after such cease and desist order becomes final (whether or not such person, partnership, or corporation was subject to such cease and desist order), and

(2) with actual knowledge that such act or practice is unfair or deceptive and is unlawful under subsection (a)(1) of this section.

In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than $10,000 for each violation.

(C) In the case of a violation through continuing failure to comply with a rule or with section 5(a)(1) each day of continuance of such failure shall be treated as a separate violation, for purposes of subparagraphs (A) and (B). In determining the amount of such a civil penalty, the court shall take into account the degree of

3. The Commission has undertaken a limited consumer and creditor education effort during the past year. Although the number of creditors who are not in compliance with the Act or who are unaware of its requirements appears to continue to decline, we believe that creditor education efforts are an important adjunct to our other enforcement activities. The staff maintains contacts with industry groups and trade associations and continues to supply these groups, as well as individual creditors and attorneys, with informal guidance concerning compliance problems which have an impact upon broad categories of consumer creditors such as department stores and mortgage brokers.

2/ Footnote continued.

> culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.
>
> (2) If the cease and desist order establishing that the act or practice is unfair or deceptive was not issued against the defendant in a civil penalty action under paragraph (1)(B) the issues of fact in such action against such defendant shall be tried de novo.
>
> (3) The Commission may compromise or settle any action for a civil penalty if such compromise or settlement is accompanied by a public statement of its reasons and is approved by the court."

In the area of consumer education, the FTC's regional offices distributed public service announcements prepared by the Commission's Division of Consumer Education. These announcements are designed to inform consumers how to use Truth in Lending terms when shopping for credit. Approximately 3,000 English speaking stations, newspapers and professional educators received the announcements. Announcements were also distributed to Spanish speaking stations and newspapers.

The Division of Consumer Education also prepared an article entitled "Shopping for Credit Can Save You Cash" for the Yearbook of Agriculture which receives wide distribution. Copies of these consumer education materials are being mailed to your office under a separate cover.

4. In our 1974 report to the Board, we indicated our concern with two major problems under the Truth in Lending Act, and indicated that both problems were more susceptible to legislative or regulatory correction than to correction by individual enforcement proceedings. In our opinion, both problems persist.

The first problem area addressed in our previous report was that of coercion and deception in the sale of credit insurance. Last year our report contained penetration rate 3/ data obtained from major consumer finance companies in connection with our industry-wide investigation. Continued staff inquiries have found that the high penetration rates which are found in consumer loans made by major finance companies may, in fact, be higher among smaller consumer finance companies. For example, inquiries to two multi-regional consumer finance companies by regional offices produced the following penetration rate data:

3/ "Penetration rates" represent the percentage of all loans made on which credit insurance premiums are charged to borrowers.

Company A

	12 Month Period ending 12/31/73	September 1974	October 1974
credit life	94.82%	96.57%	97.41%
credit accident & health	88.77%	90.52%	94.06%

Company B

	12 Month Period ending 12/31/73	September 1974	October 1974
credit life	96.32%	95.31%	95.71%
credit accident & health	83.65%	82.77%	84.25%

Penetration rates for these companies reached 100% in several states for selected one month periods. We therefore reiterate the suggestion made in our previous report, that either:

(1) the Truth in Lending Act be amended to provide that the cost of credit insurance purchased in connection with a credit transaction be included in the disclosed "finance charge", regardless of whether its selection is "voluntary" or not; or,

(2) that Regulation Z be amended to require that no solicitation for the purchase of optional credit insurance may be made until five days (or other reasonable period of time) after the loan has been consummated, and at that time only by mail, using the form specified by the Board in the Regulation. 4/

The second area addressed in our previous report was the problem of the use of open end credit disclosures in credit sales involving large ticket items. As outlined in our previous report, we feel that use of open end credit disclosures in this situation deprives the customer of essential cost of credit information such as the dollar amount of the "finance charge", 5/ and the estimated credit sale price ("deferred payment price") of the goods. A recent complaint indicates the difficulty consumers may have with traditional open end disclosures that are given in isolated large ticket sales:

4/ In recognition of the problem which exists in credit insurance sales practices, the consumer finance industry has suggested, and several consumer finance companies have adopted, a rescission period for credit insurance sold in connection with consumer loans. This proposal gives consumers a negative option--to cancel unwanted insurance coverage within a stated period of time after consummation of the loan. The Commission staff's experience with creditors using such rescission periods indicates that the negative option provided does not significantly reduce overall penetration rates.

5/ The dollar amount of the finance charge is one of the two fundamental Truth in Lending disclosures, and, in some instances is more important to the consumer than the disclosure of the annual percentage rate. See, Report of the National Commission on Consumer Finance, Consumer Credit in the United States 183 (1972).

TYPED COPY

February 19, 1975

Gentlemen:

Last December 23, 1973, a saleslady from __________ came to my house offering me an encyclopedia for the price of $498.00. I was told by this lady that all I have to pay besides the $498.00 was 7% tax and $20.00 shipping charges. I figured the net amount to be $552.86.

When I received the monthly statments I noticed that they were adding finance charges that I wasn't told about. ($5.00 to $7.00) approximately every month. I call the company and they told me that the net amount of the encyclopedia was $786.00.

This price wasn't told to me and according to the saleslady was going to be $552.86.

* * * *

Please see what could be done about this problem. (Money is very tight.)

Thank you very much

Signed (____________)

The contract provided the consumer in this case is attached to this letter as Attachment 1.

In the past year another abuse connected with the use of open end credit disclosures for what are essentially one time purchases has been brought to the Commission staff's attention. Section 226.7(e) of Regulation Z allows open end creditors to make unilateral changes in the terms of their open end accounts after notice to consumers 15 days prior to the beginning date of the billing cycle in which the increase is imposed on his account. Our staff was recently contacted by a consumer who signed an open end credit sale contract providing for an 18% annual percentage rate. During the next billing cycle the consumer was notified that the annual percentage rate was being changed to 21%. Similar complaints have been received by the staff regarding increases in both annual percentage rates and minimum payments at later periods in the consumers' contract. While we believe that the use of open end disclosures in what are essentially isolated credit sales of large ticket items deprives the consumer of important point of sale disclosures, the application of §226.7(e) to these transactions completely frustrates any effectiveness which Truth in Lending may have for consumers entering into these transactions. A consumer entering a 12 or 24 month credit sale contract should be able to rely on the disclosed annual percentage rates and minimum payments remaining the same. Therefore, we strongly recommend that Regulation Z and the Truth in Lending Act be amended to provide for full cost of credit disclosures under specified circumstances 6/ in open end credit transactions and to prohibit changes in the terms of open end credit accounts which would be applicable to outstanding amounts on the account.

* * *

We wish to point out two additional areas in which we feel amendment to the Truth in Lending Act is necessary, and two areas in which we feel formal interpretations by the Federal Reserve Board would measurably improve compliance by creditors subject to our jurisdiction.

6/ Such circumstances could include, for example, situations in which purchases of over a specified dollar amount are made, or in which purchases are made in an amount requiring a separate third party credit check to be made, or in which purchases are made immediately after opening a new account.

The first area in which we feel amendment of the Truth in Lending Act is appropriate is with respect to the three year conditional limitation on the right of rescission created by §405 of Public Law 93-495 (effective October 28, 1974; 15 U.S.C. 1635(f)). Our experience with enforcement proceedings under this provision has shown that it may frustrate Commission enforcement of the right of rescission. The statute contains no provision which tolls the running of the three year period upon filing of an administrative complaint by the Commission. Thus, by the time the Commission determines in formal proceedings that a respondent has denied consumers their right to rescind, the time period for rescission by the consumer may have expired.

It is particularly important that the consumers' right to rescind be preserved until the Commission can order a respondent to send out notices of their right to rescind, since in many instances the consumers' contracts will have been assigned to third parties over whom the Commission does not have enforcement jurisdiction. In those instances, the consumer after receiving the notice will be required to institute his own private action to rescind the contract if he wishes to do so. 7/

7/ The Commission, of course, now has the power to provide appropriate consumer redress without reference to the specific provisions of §125 of the Truth in Lending Act in those instances in which it has jurisdiction over the creditor or assignees holding the contracts. Moreover, we are confident that the courts will toll the conditional limitation in §125(f) in private consumer actions filed as a result of timely Commission proceedings. See American Pipe & Construction Co. v. Utah, 414 U.S. 538 (1974). It is probable, however, that until this question is finally resolved by the courts, substantial numbers of consumers will be deterred from exercising their right to rescind by the prospect of lengthy litigation.

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Moreover, we believe that such an amendment would be in keeping with the present rationale for the three year limitation since the basic purpose of the limitation, which was to insure that title to property is clear after the three year period, will be preserved except in a limited number of instances in which the property is the subject of pending administrative proceedings. The proposed amendment would have the effect of tolling the statute only for administrative actions filed within the three year period and, thus, all concerned would be on clear notice as to property whose title is clouded by the pending proceeding.

Several other amendments to the Truth in Lending Act appear to be necessary to implement fully the right of rescission. Among these are: a) a clarification of the liability of an assignee of an instrument to rescission; b) a clarification of the method of computation of the reasonable value of property under Section 125 of the Truth in Lending Act when a partially or fully performed contract is rescinded; c) creation of a mechanism by which the enforcement agency with jurisdication over the original creditor may enforce the right of rescission with respect to the original creditor's assignee when the assignee is not subject to the agency's general enforcement jurisdiction; and (d) clarification of the consumer's right to enforce the provisions of §125 of the Truth in Lending Act under §130 of the Act. The Commission's staff is currently preparing a package of legislative proposals concerning these questions which will be submitted to the Board and to Congress if deemed necessary by the Commission.

Yet another amendment which we believe would make the Truth in Lending Act more responsive to the needs of consumers would be a very limited expansion of the Fair Credit Billing Act to other than open end credit. The proposed expansion would give customers of other than open end creditors the right to obtain an explanation or correction of charges (such as late payment charges) made on their account, and give the customers the right to obtain a limited number of statements of their accounts. Other than open end credit customers normally do not receive periodic statements from the creditor.

Customers are left to their own resources to determine the correctness of the charges assessed to them and to ensure that all payments are made on time. Since the Fair Credit Billing Act does not presently extend to other than open end credit, the customer has no legal right to demand a reinvestigation of his account to determine if late charges have been properly assessed or to determine if a rebate of unearned finance charges was properly calculated. Additionally, customers of other than open end creditors should have the legal right to request a limited number of statements of their account from the creditor during the course of the obligation. A customer may wish to obtain such a statement, for example, to determine if his payments on the account are up to date, or to determine the amount of interest he has paid for income tax purposes.

Finally, there are two areas of the present regulation which the Commission's staff feels that formal interpretations by the Federal Reserve Board would facilitate creditor compliance. 8/

The first area in which formal interpretation would be desirable is that of the application of Regulation Z to mortgage brokers and other arrangers of consumer credit transactions. There are two questions in this area which have been the source of persistent inquiries from creditors subject to our jurisdiction. The first question regards the timing of the disclosure of the right of rescission in a situation in which a consumer contracts with a mortgage broker

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8/ Such interpretations would also be of benefit to the creditors, since good faith reliance on an FRB interpretation is a defense to a civil action brought under §130 of the Act.

to obtain a loan from an unspecified lender. 9/ The second question which typically arises is that of the responsibility of the broker under Section 226.6(d) of Regulation Z to make disclosures of the credit terms with respect to the loan he is arranging, and the time at which these disclosures should be made. 10/ Each of these questions affect significant numbers of arrangers and lenders under the Act and a comprehensive interpretation by the Board would, in our view, help to improve compliance in this area. Presently, the Commission staff is of the opinion that compliance in this area is very low.

Another area of interpretive activity which would facilitate compliance with the Act and regulation is the promulgation of additional sample disclosure forms similar to those appended to the original publication of Regulation Z -- "What You Ought to Know About Truth in Lending". Such forms would ease the burden on many small creditors in complying with the Act. The staff currently receives numerous inquiries from small creditors requesting approved disclosure forms to use in their transactions. Staff has also received similar requests from consumer attorneys who feel that a standard disclosure form would help to insure the meaningfulness and clarity of the disclosures. We realize that there are significant problems associated with official promulgation of forms for even the most basic credit transactions, but in light of the numerous inquiries we receive with regard to such forms, we deem it necessary to call the Board's attention to this matter.

Finally, in response to your request for additional comments regarding the Truth in Lending Act, we would point out that despite the widespread compliance with Regulation Z

9/ See, e.g., Palmer v. Wilson, 359 F. Supp. 1099, 1102 (D.C. Cal. 1973), vacated on other grounds 502 F.2d 860 (9th Cir. 1974).

10/ See e.g., Boggan v. Euclid National Bank, Civ. No. 75-1177 (6th Cir., April 28, 1975) vacating and remanding decision below; Pedro v. Pacific Plan, 393 F. Supp. 315 (N.D. Cal. 1973).

by most creditors and the Board's commendable efforts to adjust the Regulation to make it more meaningful to consumers, there still exists a substantial question concerning the effectiveness of the Act and regulation in providing meaningful consumer credit cost information to consumers at a time and in a manner which will allow the consumer to make intelligent decisions concerning the use of credit.

There has been no substantial reevaluation of the Act's effectiveness since the Report of the National Commission on Consumer Finance 11/. The studies on which Chapter 10 of that report are based were carried out a short time after the passage of the Act and focused on consumer awareness of the most fundamental aspects of Truth in Lending terminology -- the "finance charge" and "annual percentage rate". There are still important questions to be answered concerning the effectiveness of the detailed disclosures required by the Act and the Regulation. For example, information developed in connection with a pending Commission investigation suggests that consumer awareness of Truth in Lending disclosures in some consumer credit markets is very low even though the finance companies involved orally recite the major disclosures prior to the time the loan is closed. There also appears to be a wide variance among the different companies, and among the different offices within a single company, as to what types of credit information is given in response to consumer phone requests for loans. Moreover, the Commission's staff itself was puzzled by many of the disclosures contained on the face of the contracts subpoenaed during this investigation. Certainly, many of these contracts are not so clear as to provide meaningful information when presented to consumers immediately prior to the closing of the loan. We would therefore suggest that the Board recommend to Congress that an independent evaluation of the Act and regulation be authorized to update the National Commission's studies and determine what, if any, new approaches to Truth in Lending -- such as the publication or posting of annual percentage rates -- are available to achieve the goals of the original Act.

11/ Report of the National Commission on Consumer Finance, Consumer Credit in the United States 169-191 (1972).

Our recommendation that a reevaluation of the Act be undertaken does not represent any change in the Commission's strong support for the concept of Truth in Lending nor is it intended to indicate any dissatisfaction with the present Act and regulation, which in our view have made a major contribution both towards protection of the consumers and towards stimulating competition among creditors in the consumer credit market. We do feel, however, that reevaluation of the Act after five years of operation could provide needed insight concerning those areas in which improvements in the Act are possible. Additionally, such an appraisal would help enforcement agencies, such as the Commission, direct their activities to areas which will yield the greatest benefits to consumers.

We hope you will find the above information responsive to your inquiry and helpful to you in preparing your report to Congress. Please let us know if any additional information is needed and if there is anyway in which the Commission can be of assistance in achieving the goals of this legislation.

By direction of the Commission.

Charles A. Tobin,
Secretary.

PREFERRED REVOLVING CREDIT AGREEMENT

PATRON'S COPY

Please deliver to me:
One set of ENCYCLOPAEDIA

in Anniversary binding 498 —
and
N/C
Plus $
$
$
TOTAL $498 —
Date Dec 23, 1973

YEARBOOK PURCHASE PRIVILEGES

As a subscriber, I wish to receive both the BOOK OF THE YEAR at $9.95 per copy and the YEARBOOK OF SCIENCE AND THE FUTURE AT $9.95 per copy for the next 10 years (prices and shipping charges, if any, subject to change if conditions require). I may suspend my purchase of either or both Yearbooks at any time by notifying you.

SOCIETY MEMBERSHIP

I am also entitled to enroll, at the next available quarterly enrollment date, as a member of the Society, and you will renew my membership each year unless I advise you to the contrary. As a member, I will receive the official Society magazine each quarter. My membership dues of $6.00 annually may be added to my account. I may suspend my membership in the Society at any time by notifying you.

Schedule of Finance Charges

*Residents of:	Periodic Rate (Mo.)	Annual Percentage Rate
Minn., Seattle	1% on monthly balance	12%
Colo., Del., N.C., Mont., Nev., N.H.	1½% on monthly balance	18%
N.J.	1½% on balances under $700	18%
	1% on balances over $700	12%
D.C., Md., N.Y., Tex., Wisc.	1½% on balances under $500	18%
	1% on balances over $500	12%
Iowa	¾% on monthly balance	9%

I will also receive full 10-year membership in the LIBRARY RESEARCH SERVICE. This service entitles me to receive, at my request, up to 100 research reports, subject only to the conditions outlined on the Certificate which will be sent to me.

Please accept this order under your Preferred Revolving Credit Plan. I understand that the cash price of the above purchase is $498 — plus a tax of 7 % and $20 for shipping and handling. A *Finance Charge** shall be added to my monthly balance after deducting any payments or credits for the month. However, no *Finance Charge* will be incurred if my purchase is paid for in full within sixty days. I agree to pay herewith $15 —, and promise to pay Encyclopaedia Inc. minimum monthly payments of $19.70 —, which includes the *Finance Charge*, until my account is paid in full. Payments due on the 1st day of each month, beginning April, 1974. Should I exercise my privilege to order additional merchandise and accessories through my account, my monthly payments may be adjusted.

This agreement contains my entire understanding of the terms of your Preferred Revolving Credit Plan. *I acknowledge receipt of a copy of this agreement.*

☐ Please add the Society's first year dues of $6.00 to my account and enter membership in the name of:

Mrs./Mr./Miss

Mrs./Mr./Miss

Address

City State Zip Code

Representative *Bond Number*

NOTICE TO BUYER: 1. Do not sign this agreement before you read it or if it contains any blank spaces. 2. You are entitled to a completely filled-in copy of this agreement. 3. Finance Charges are made at a rate not in excess of that permitted by law and you may pay your account in full at any time without incurring any additional charge for prepayment. 4. BUYER'S RIGHT TO CANCEL: You, the buyer, may cancel this transaction at any time prior to midnight of the fourth business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right. 5. You are to receive a statement each month which will show the balance due at the beginning of the period: the dollar amount of each purchase; credits to your account during the period, and the amount of the *Finance Charge*.

S-321

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

THE SECRETARY

Governor Philip C. Jackson, Jr.
Board of Governors of the
Federal Reserve System
21st and Constitution Avenue, N.W.
Washington, D. C. 20551

NOV 15 1976

Re: 1976 Annual Report to Congress on the Truth in Lending Act

Dear Governor Jackson:

This is in reply to your letter of October 19, 1976 requesting information regarding the Commission's enforcement activities under the Truth in Lending Act for the purpose of preparing the Board's Annual Report to Congress for the year 1976.

Our response is provided to correspond with the four areas enumerated in your letter. Although we have commented on certain specific problems arising under the Fair Credit Billing amendments to the Truth in Lending Act, it is still too early to evaluate the degree of compliance with these amendments on the part of creditors subject to our jurisdiction. A limited-size compliance survey will be conducted in 1977.

1. The administration of the Federal Trade Commission's enforcement function under the Truth in Lending Act has not changed significantly since the passage of this legislation. The Commission's Division of Special Statutes, Bureau of Consumer Protection, is responsible for enforcement of the Truth in Lending Act with regard to national and multi-regional creditors as well as coordinating informal interpretive and enforcement activities of the Commission's eleven regional offices. In addition, the Bureau of Consumer Protection's Compliance Division has assumed major responsibility for the implementation of the Commission's pilot enforcement program for credit advertising. This program is based on the civil penalty provisions of Section 19 of the Federal Trade Commission Act which was added by the Magnuson-Moss Warranty--Federal Trade Commission Improvement Act (Pub. L. No. 93-637, Jan. 4, 1975).

Because of continuing requests for assistance by creditors, the Division of Special Statutes and the regional offices devote considerable resources to rendering informal interpretations of the Act for creditors under the Commission's jurisdiction. The vast majority of such inquiries have not raised major enforcement issues but are more in the nature of individual problems concerning the various aspects of compliance with the statute.

In addition to inquiries from creditors, the Division of Special Statutes and the regional offices also receive a substantial volume of consumer inquiries and complaints. Many of these complaints raise individual problems which are unique to the particular consumer. It is the Commission's policy in these instances to attempt to assist these consumers to the extent that resources permit. Staff will, for example, refer a complainant to local and other federal authorities, advise consumers to seek private counsel for determination of the creditor's civil liability under §130 of the Act, or offer such other information as may be responsive to the consumer's inquiry. We believe that in addition to providing assistance to consumers where possible, handling such consumer complaints provides a useful tool for monitoring overall compliance with the Act.

The Commission's eleven regional offices bear enforcement responsibility under the Act for the activities of creditors operating primarily within each office's region. While these offices occasionally render informal opinions in response to consumer and creditor inquiries, their major function involves the implementation of the Commission's enforcement program. As indicated above, the enforcement activities of each regional office are coordinated through the Bureau of Consumer Protection to ensure uniformity of treatment.

The Commission also maintains an advertising monitoring program at the regional office level. Advertising violations detected by this program are usually corrected through established informal procedures.

When significant advertising or disclosure violations are discovered, formal administrative action is generally recommended by the staff. From the beginning of the 1976 fiscal year to date, the Commission has entered approximately 36 consent orders against respondents alleged to have violated the Truth in Lending Act. In addition, there are now outstanding seven formal complaints charging respondents with violations of various provisions of the Act. Two of these matters are currently on appeal to the Commission after initial decision by administrative law judges and the other five are in various stages of the administrative process. 1/ The Commission also accepted a $40,000 civil penalty for violations of a previously entered cease and desist order. 2/

The most important development in the Commission's enforcement of the Act is the increasing number of instances in which the staff is seeking either consumer redress or civil penalties. Thus, for example, the Commission recently accepted a consent order requiring partial refunds of credit insurance premiums by a creditor alleged to have violated the credit insurance sales provisions of Regulation Z. 3/ Similar relief is being sought in other cases. 4/ More significantly, the Commission's staff is now seeking civil penalties of up to $10,000 per violation for credit advertising violations of Regulation Z as part of the pilot enforcement program which we described in our 1975 report. One significant benefit from this pilot program appears to have been increased attention to the advertising requirements of Regulation Z in some industries. (See attachment #1).

2. The Commission has made no formal statistical assessment of the extent of compliance with the Truth in Lending Act by creditors subject to our enforcement jurisdiction since our April, 1971 national survey of creditor compliance. The staff has indicated that as in the past it believes overall compliance with the point of sale disclosure requirements continues at a relatively high level and that the pattern of substantial compliance by

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See Footnotes at end of letter.

large creditors and lesser compliance by smaller creditors indicated in the earlier survey is continuing. It must be noted, however, that our assessment of the degree of compliance with Regulation Z is necessarily limited to the outward compliance of the disclosure forms used by creditors. The staff has indicated increasing concern that many creditors whose forms are in substantial compliance with the Act may be engaged in other practices which violate the Act. Thus, for example, a creditor's contracts may outwardly comply with the provisions of Regulation Z, but because disclosures are not made prior to consummation of the contract, or a completed copy of the disclosures is not provided to the consumer, or credit life insurance is forced upon the consumer, the creditor's practices may still be in violation of Regulation Z. Such violations are, in many instances, more significant than mere deviations in the form of disclosures. The extent of such problems, however, cannot be measured by statistical sampling but must necessarily be isolated by investigation of individual creditors.

As noted above, recent Commission enforcement activity appears to have increased the level of awareness among creditors of Regulation Z's advertising requirements and compliance in this important area appears to be steadily increasing.

3. The Commission has continued a limited consumer and creditor education effort during the past year. The staff maintains contacts with industry groups and trade associations and continues to supply these groups, as well as individual creditors and attorneys, with informal guidance concerning compliance problems which have impact on broad categories of consumer creditors such as department stores and mortgage brokers. The staff is also planning a limited effort to insure that lessors who are subject to the consumer leasing amendments of the Truth in Lending Act are aware of the obligations imposed on them by the new regulation.

Because of limited staff resources, the Commission, like the Federal Reserve Board, has not been able to review and approve forms for creditors despite a steady number of requests for such approvals. We would, therefore, support promulgation by the Board of model forms which can be relied on by small creditors and lessors who wish to use standard credit and leasing plans.

In the area of consumer education the FTC staff has prepared and distributed a consumer pamphlet summarizing the consumer's principal rights under the provisions of the new Fair Credit Billing Act. Various regional offices also maintain continuing liaison with local consumer organizations. In addition the Division of Special Statutes has informally participated in consumer and creditor education efforts.

4. We have noted with approval the Board's recent efforts to supply Congress with legislative recommendations to clarify and simplify the requirements of the Truth in Lending Act. These efforts are, we believe, responsive to many of the concerns expressed in our previous report to the Board. There are, however, areas of continuing concern to us in which we believe the provisions of Regulation Z should be strengthened, not diluted. These are discussed below.

(A) Open End Credit

Most of the efforts to simplify Regulation Z have been directed at the "other than open end credit" disclosures and appear to assume that the disclosure of certain basic consumer credit cost information such as the annual percentage rate, finance charge, total of payments and schedule of payments should continue to be provided to consumers prior to their incurring substantial indebtedness. As you know, the Commission has for some time voiced its concern over the growing movement of creditors away from traditional other than open end disclosures for "big ticket" purchases of appliances and furniture. This trend is rapidly extending to other traditionally "closed end" credit areas such as consumer loans. This shift deprives consumers of all of the previously listed cost of credit disclosures except the annual percentage rate. Open end credit disclosures are now being used by door to door sellers of encyclopedias and exercise equipment as well as consumer loan programs with average initial advances of $1800. 5/ Open end credit disclosures are even being proposed for second mortgage loan programs. Some of these plans are spurious, but an increasing number appear to be legitimate open end plans as that term is now defined. The movement to open end credit is, we think, aptly summarized by a recent consumer finance industry survey which found that half the presidents of small consumer finance companies surveyed believed that revolving credit will replace the institutional credit contract as a principal lending vehicle by 1982. 6/

This movement to open end credit is not without benefit to consumers. Indeed the simplification of the method of assessing finance charges and the resulting elimination of such esoteric refund devices as the "Rule of 78's" must be viewed as a direct benefit to consumers. In fact, open end credit can be considered as a model for simplification of credit contracts and the disclosure problems resulting from them.

We believe, however, that a consumer who is undertaking substantial indebtedness in a consumer credit transaction should be furnished with disclosures of the amount of the finance charge, schedule of payments, and total of payments that the present open end credit disclosures do not provide. In fact, the increasing use of open end credit in transactions involving a limited number of purchases or loans of substantial amount, can be viewed as an evolving third form of credit which was not clearly envisioned by the drafters of the Truth in Lending Act and Regulation Z. Since this shift seems to be the trend for the future, a basic reassessment of the Act's disclosure scheme is appropriate. In light of the growing movement to open end credit on the part of retailers and other creditors subject to our jurisdiction, we recommend that any comprehensive legislative or regulatory revision of the Truth in Lending Act or Regulation Z include efforts to insure that basic cost of credit information is disclosed to consumers prior to incurring substantial indebtedness.

(B) Credit Insurance

Our concern with current credit insurance sales practices has been discussed in detail in our prior two reports and we have noted the Board's recommendation to Congress that the Truth in Lending Act be amended to provide a reasonable cancellation period before credit insurance can be classified as voluntary. 7/ In this respect we wish to point out that such a cancellation period has been employed by some of the creditors whose penetration rates we have reported to you in the past. A cancellation period appears to be an effective remedy only for the most blatantly coercive credit insurance sales practices and does not appear to be effective in dealing with the more common methods of including insurance on a contract without the consumer's affirmative election. 8/ For the proposed cancellation period to be an effective remedy to deceptive or coercive credit insurance sales practices, the notice of the right to cancel should be separately mailed or delivered to the consumer after the credit transaction has been consummated.

(C) Right of Rescission

Section 125 of the Truth in Lending Act was designed to eliminate home improvement and loan broker fraud of the type symbolized by the Monarch Homes case. 9/ Unlike other provisions of the original Truth in Lending Act, Section 125 created substantive rights on the part of the consumer to rescind transactions in which required disclosures were not made. In attempting to enforce these rights, the Commission staff has encountered a number of significant obstacles which we believe should be corrected by amendments to the Act. As indicated in our 1975 report, these include:

(i) a provision tolling the present three year statute of limitations in Section 125(f) for filing of an administrative complaint;

(ii) creation of a mechanism under which the enforcement agency with jurisdiction over the original creditor may enforce the right of rescission with respect to the original creditor's assignee, even if the assignee is not subject to the agency's general enforcement jurisdiction;

(iii) establishment of objective criteria for the computation of reasonable value of the property retained by a consumer under Section 125(b) when a partially or fully performed contract is rescinded; and

(iv) clarification of the consumer's right to enforce the provisions of Section 125 under Section 130 of the Truth in Lending Act.

(D) Fair Credit Billing Act

Although we have not made a comprehensive assessment of the degree of compliance with the Fair Credit Billing Act by creditors under our jurisdiction, the staff has identified the following problem areas:

(i) Definition of a Billing Error. There appears to be substantial confusion on the part of consumers as to what constitutes a "billing error". The current billing error notice prescribed by the Regulation does not define the term "billing error" and many consumers have apparently assumed that a dispute over the quality of property in their physical

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possession or services performed, is a billing error subject to the Act's dispute resolution procedures. Since this misplaced reliance on the Act's dispute resolution procedures can result in the accumulation of unnecessary finance charges and eventually harm the consumer's credit rating, the staff has recommended that a summary of the language of Section 226.2(j)(3)n.1 10/ be incorporated on the billing error notice. At the same time, the notice should also make clear that the consumer's right to withhold payment for credit card purchases does extend both to billing errors and to disputes over quality.

(ii) Definition of Proper Written Notification of a Billing Error. Section 226.2(cc) of Regulation Z requires written notification of billing errors to take place "within 60 days of the first mailing or delivering to the customer ... of the periodic statement on which the disputed item(s) or amount(s) is reflected...". Because this "first mailing" limitation is not clearly communicated to the customer in the regulation's billing notice, many customers may proceed with informal dispute resolution attempts (for example, by telephone) assuming that they may file a dispute within sixty days from receipt of any periodic statement reflecting the disputed amount. In light of this problem, the staff has recommended that either the billing dispute notice be amended to include this limitation or, since the "first billing" limitation is not contained in the Fair Credit Billing Act itself, that the requirement be dropped from the regulation's definition of "proper written notification".

(iii) Coverage of the Fair Credit Billing Act. The billing dispute procedures of Regulation Z are made applicable only to extensions of "open end credit". The dispute resolution procedures are, thus, not available either to customers engaged in billing disputes with mail order sellers who do not assess finance charges (particularly book sellers and record sellers) or "other than open end" creditors. A consumer who is being dunned for payment of undelivered or returned merchandise or who believes an error has been made on his loan account has the same need for the Fair Credit Billing dispute mechanism as does a consumer who is being dunned by a credit card issuer. Therefore the staff believes that a limited expansion of the Fair Credit Billing Act may be necessary.

(iv) Credit balances. As you know, the Commission recently ordered the refund of over 3 million dollars in credit balances which were "written off" by major open end creditors. Recent amendments to Regulation Z have provided for sending of periodic statements where there is a credit balance of more than $1 in an account 11/ and for refunds upon request of credit balances created by "excess payments." 12/ Not addressed by Regulation Z are the questions of what steps a creditor must take to return the credit balance to the customer before it writes off a credit balance, or what disposition must be made of credit balances created by means other than "excess payments" (for example, refunds or returns). In the interest of ensuring uniform treatment of all creditors we would suggest that legislative or administrative action be taken to codify in Regulation Z, the principles of the Commission's credit balance cases.

(E) Discounts and Surcharges

In its February 27, 1976 amendments to the Truth in Lending Act, 13/ Congress prohibited the imposition of a "surcharge" on the use of any credit card while authorizing the use of "discounts" of up to 5% to cash customers to encourage payment by cash, check or other means not involving use of a credit card. Our initial staff enforcement efforts have revealed significant confusion among small merchants concerning the type of promotional activity which is permissible under the amendment. In light of the civil liability which attaches to violations of the Act, we would urge the Board to issue clarifying regulations as soon as possible. Moreover, since the present distinction between a discount and a surcharge appears to look to the form of the transaction rather than the substance, we continue to believe that it should be eliminated.

* * * *

Finally, we wish to take this opportunity to make a final comment on the current simplification recommendations. As noted in our previous report there has been no systematic evaluation of the Truth in Lending Act's effectiveness since the Report of the National Commission on Consumer Finance. We believe that such a reevaluation is necessary since without one future decisions concerning what disclosures should be required and how detailed these disclosures should be, will continue to be made on the same impressionistic basis on which past decisions were made. In addition, we would stress that the past seven years of experience with Truth in Lending has served to highlight various credit practices of questionable fairness to consumers. 14/ To the extent that any simplification of Regulation Z will reduce the availability of private redress on the part of consumers, it should be joined with a strengthening of the substantive protections available to them.

We hope you will find the above information responsive to your inquiry and helpful to you in preparing your report to Congress. Please let us know if any additional information is needed or if there is any other way in which the Commission can be of assistance in achieving the goals of this legislation.

By direction of the Commission.

signed and hand-delivered

Charles A. Tobin
Secretary

Attachments

FOOTNOTES

1/ A cumulative listing of Federal Trade Commission Truth in Lending cases is found in 1 Cons. Cred. Guide (CCH) at 851-937 (1976).

2/ United States v. Arlen Realty and Development, M75-Civ. 1601 (D. Md., Nov. 18, 1975) (Consent Judgement).

3/ Guardian Loan, C-2846 (Oct. 20, 1976).

4/ USLIFE Credit Corporation, D. 9057 (Complaint Issued September 26, 1975).

5/ In contrast, the average cash advance for Bankamericard and Mastercharge credit cards is less than $115 and the average sales transaction is $25. Kahn, Retailing Today 3 (Sept. 1976).

6/ National Consumer Finance Association, "A View of the Future" Credit 4, 6 (November 1976). See also Report of National Commission on Consumer Finance, Consumer Finance in the United States 203 (1972).

7/ Board of Governors of the Federal Reserve System, 62nd Annual Report 277-78 (1976).

8/ For a description of these practices see Commercial Credit Corporation 82 F.T.C. 1841 (C-2420, 1973) and the staff statement accompanying our 1974 report.

9/ 114 Cong. Rec. 1610-11 (1968), See also Slaughter v. Jefferson Federal, 361 F. Supp. 590 (D. D.C. 1973) rev'd on appeal.

[illegible] 12 C.F.R. §226.2([illegible])(3)n.[illegible] (1976).

"The delivery of property or services different from that described in any agreement, the delivery of the wrong quantity, late delivery, or delivery to the wrong location shall be considered to be a billing error subject to this paragraph, but any dispute with respect to the quality of property in the physical possession of the customer or services performed for the customer shall not be considered to be a billing error under this paragraph."

11/ 12 C.F.R. §226.7(b) (1976).

12/ 12 C.F.R. §226.7(h) (1976).

13/ Taxation of Depositories Act, Pub. L. No. 94-222 (Feb. 27, 1976).

14/ See e.g., Hunt, The Rule of 78: Hidden Penalty for Prepayment in Consumer Credit Transactions, 55 B.U.L. Rev. 331 (1975). Compare, 12 C.F.R. §226.818 (1976) (Rule of 78's too complex to explain meaningfully). See also, Johnson v. McCrackin-Sturman Ford, 527 F.2d 257 (3rd Cir. 1975) ("Absent a provision to the contrary, a creditor receives a windfall when he accelerates payment. . . ."); Ives v. W.T. Grant, 522 F.2d 749 (2d Cir. 1975) (unearned insurance premiums retained by creditor); Grubb v. Oliver Enterprises, 358 F. Supp. 970 (D.Ga. 1972)($10 deducted from $50 loan to pay for credit insurance charges).

STATEMENT OF

CHRISTIAN S. WHITE

Assistant Director
for
Special Statutes

FEDERAL TRADE COMMISSION

Before the

PRIVACY PROTECTION STUDY COMMISSION

Hearings on

THE RECORD-KEEPING PRACTICES

OF CONSUMER AND COMMERCIAL

REPORTING AGENCIES

Wednesday, August 4, 1976

These remarks represent the views of a member of the FTC's staff. They are not intended to be, and should not be construed as representative of an official Commission policy.

GOOD AFTERNOON MR. CHAIRMAN

My name is Christian S. White and I am Assistant Director for Special Statutes of the Federal Trade Commission's Bureau of Consumer Protection. In that capacity I am responsible to the Commission for enforcement of nine separate federal statutes ranging from the Magnuson-Moss Warranty Act 1/ to the Truth in Lending Act 2/, and including the Fair Credit Reporting Act ("FCRA"). 3/ Our enforcement of the FCRA has provided the bulk of the F.T.C.'s experience with the record-keeping practices of consumer and commercial reporting agencies.

These remarks are my own. They have not been approved by the FTC nor do they necessarily represent the views of the Commission as a body or any individual Commissioner.

As you know, I had the privilege of appearing before the Privacy Protection Study Commission in connection with its hearings on the record-keeping practices of credit card issuers on February 12, 1976 in New York City. At that time I submitted a statement summarizing the general nature of the Commission's enforcement powers and describing the Commission's enforcement activities in the area of privacy. I will not reiterate the substance of that testimony, but direct my remarks to the specific questions posed in the notice of these hearings.

1/ 15 U.S.C. §2302, *et seq.*

2/ 15 U.S.C. §1601, *et seq.*

3/ 15 U.S.C. §1681 et seq.

First, however, I would like to emphasize two points. Private sector personal information systems play an important part in the nation's economy. Since other witnesses will testify to the importance of this industry and its activities to our economy, my remarks are focused on some of the problems which have arisen under the Fair Credit Reporting Act. Second, my specific remarks will be limited to consumer reporting, although the enforcement problems discussed are similar to those which may arise in any federal regulation of personal information systems.

As you know, commercial credit reporting was specifically excluded from the scope of the Fair Credit Reporting Act, 4/ based, I believe, on the assumption that a businessman is better able to confront and deal with third party information systems than is the individual consumer 5/.

4/ 15 U.S.C. 1681a(d)(1)(1970); Fernandez v. Retail Credit Company, 349 F. Supp. 652, 654 (E.D. La. 1972).

5/ Note, Judicial Construction of the Fair Credit Reporting Act: Scope and Civil Liability 76 Colum. L. Rev. 458, 471-472 (1976). There is, of course, legislative history supporting the application of the Act to some business transactions involving individuals, but the courts have not implemented this distinction. Id. at 472. But See, Sizemore v. Bambi Leasing 360 F. Supp. 252 (N.D. Ga. 1973).

This rationale is certainly applicable to large publicly held corporations, where credit information will relate only to the business. However, it is hard to discern the distinction between an individual seeking credit to buy a car and an individual seeking credit for the operation of a wholly owned business, since in the latter situation, as in the former, credit information is likely to pertain to the businessman as an individual.

I believe that an individual businessman should be protected by disclosure and dispute mechanisms similar to those provided by the FCRA but that commercial reporting should not be subject to restrictions similar to the present Act's time limitations on reporting adverse information. Moreover, I think it is clear that a businessman who is, as an individual, the subject of an investigative report should be accorded at least the minimal notice that such a report will be prepared that is provided by Section 606 of the FCRA 6/. Finally, I would point out that including business transactions within the protections of consumer legislation has precedent in recent laws such as the Equal Credit Opportunity Act. 7/

6/ Fernandez, supra, note 4.

7/ See generally, 12 C.F.R. §202.10(c)(1975).

SPECIFIC QUESTIONS

Categories of clients using services by consumer reporting agencies, types of services available, and types of information provided.

My previous testimony includes a general breakdown of types of information services provided by the consumer reporting industry and since you have had many witnesses appear before you today who are more qualified than I to describe the details of this industry's products, services and customers, I will not address this question.

Procedures for collecting, updating, archiving and purging information which effect the accuracy and timeliness of information including information collected from public records.

As you are aware, the Commission staff is formally challenging some of the collection and correction procedures used in investigative reporting 8/. Because this matter is currently in litigation before an Administrative Law Judge,

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8/ Equifax (formerly Retail Credit Company), F.T.C. Docket No. 8954 (Complaint issued February 21, 1974).

I will not comment on it. The staff has completed its case-in-chief and the record of this proceeding is public.

There are a number of significant accuracy and timeliness questions in the credit reporting area which the Commission's staff hopes to address in the near future. These include:

Whether the term "accuracy" under Section 607(b) 9/ includes a completeness and timeliness component. For example, some consumer reporting agencies maintain that a report with information seven years old is "accurate" no matter how incomplete or misleading the passage of time has made the information.

Whether Section 611 of the Fair Credit Reporting Act, which requires correction of inaccurate or incomplete information when disputed by consumers, requires credit bureaus to update information that was complete when recorded in the consumer's file but has subsequently become incomplete.

9/ "Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates."

For example, some credit bureaus assert that there is no statutory obligation to reflect the fact that a loan with a $2500 balance when reported in 1970 was paid off in 1974 when a consumer challenges the completeness of the report.

Whether consumer reporting agencies have an obligation to add credit information to their reports when the consumer so requests. This question must be distinguished from the previous two questions which concern information already in a consumer's file.

For a consumer a "no file" report can be the equivalent to derogatory information in its effect on the creditor's decision to grant or deny credit. 10/ One recent expression of this continuing problem is the question of whether credit bureaus have

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10/ The number of lines of credit contained in a consumer report is a factor in some creditors' credit scoring systems as well as a criteria specified in certain prescreening requests. See generally, Clontz, Fair Credit Reporting Act Manual 541, 564 (1975 cum. supp.)

an obligation to establish files in the names of women who have been denied separate credit identities by past discriminatory reporting practices of creditors.

There is no obvious answer since it is difficult for credit bureaus to verify and report information about a consumer's transactions with non-subscriber creditors. If consumer reporting agencies are required to add such information when requested, then some limitations on this duty must be set out. For example a local credit bureau should be able to restrict its reporting to local creditors.

Public record information poses special problems under Section 607(b) of the Act. For example, one consumer complained that a local credit bureau recorded suits filed but made no attempt to record their disposition. 11/ Public record information also

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11/ See, Clontz, supra note 10, at 530.

appears to be misfiled in a number of instances, in part because of the absence of a unique identifier such as an account number.

Development of automated systems for the exchange of information.

I believe that expanded technological capability has produced a corresponding increase in the use of personal information systems. These developments can be beneficial both to consumers and businesses alike in terms of lower cost, higher quality of information, and more accurate decisions. Such developments also point to the need to reevaluate our conceptions of personal information systems and the privacy issues they pose. Examples of new systems and new issues include:

Some automated credit reporting systems have placed on-line terminals in the credit offices of some large users. While the cost savings for the user would appear to be significant, the practice removes certain safeguards which were inherent in the interposition of a credit bureau employee between the user and the data bank. For example, in one system the user's inquiry is answered by a display of the four files most closely corresponding to the input identification line. From this display the user can make a choice concerning which file most closely resembles the subject on whom he is seeking information. In some instances this procedure could lead to consideration of the credit history of the applicant's spouse or father in the decision to grant or deny credit, and because an inquiry will be recorded on only one file, there is no way of knowing what information was actually considered. In the traditional system this problem is not apt to arise since the individual selecting the file is not the same individual making the decision to grant or deny credit.

Another new system apparently being used on an experimental basis scores credit applications by computer and automatically accesses a consumer reporting agency's files for a credit report which is also electronically processed. In this system their is no human intervention in the decision making process, raising fundamental questions concerning the basic assumptions on which certain provisions of the FCRA are based, such as Section 611(d) which allows the consumer to insert a written statement of dispute in his file.

Should an individual have a right in law to access to the medical information about him that is maintained by a consumer reporting agency?

The FCRA exempts from disclosure information or records, obtained with the consent of the consumer, from licensed physicians, hospitals, clinics or related facilities. 12/

Since "medical information" plays a vital role in the underwriting of insurance and hiring, retention, and promotion practices of employers, consumer access to this information

12/ Medical information obtained without the consent of the consumer must be disclosed. Information bearing on the individual's health, but not obtained from a licensed physician, hospital, clinic or related facility must also be disclosed.

would seem crucial to the overall objective of the FCRA. The present exemption, however, was included in the FCRA to prevent the disclosure of raw medical data which the physician would not want his patient to receive from non-medical personnel.

I believe that the consumer should be given access to this information and that the approach taken in the proposed amendments to the FCRA in S. 1840 13/ is a fair compromise. That proposal would allow the consumer to have medical information disclosed to the physician of his choice who would then decide whether the information should be disclosed to the consumer. This procedure would insure the accuracy and completeness of medical information in a consumer report while implementing the objective of the House conferees who added the original exemption to the Senate bill. 14/

13/ 94th Cong. 1st Sess. (Star print, June 2, 1975).

14/ The House conferees stated that they inserted the exception because:

> "raw medical information should only be tendered with the counsel of a physician or other medically trained personnel."

2 U.S. Cong. Code & Adm. News 4411 (1970).

Should the preparation of an investigative report require prior authorization of the individual.

The Commission staff strongly believe that the consumer should authorize in writing the preparation of any investigative consumer report and be able to limit the authorization with respect to time and type of information collected. Currently the FCRA does not provide for informed consent. After pro forma notice the consumer reporting agency has a carte blanche to inquire into every aspect of the individual's life. An individual should have the right to choose not to be investigated by a consumer reporting agency or to limit the scope of the investigation.

Special problems exist when the investigation involves the acquisition and use of a consumer's medical records. The confidential nature of this information must be preserved in order to protect the privacy of the individual and maintain the integrity of the doctor-patient relationship. I believe that all of the elements of an informed consent should be met before medical data is taken from a doctor's office or from the medical files of a hospital or clinic. 15/

15/ I believe, for example, that the consent provisions in S. 1840 should be significantly strengthened.

Finally, the basic argument against informed consent appears to be that it would be meaningless since consumers have no alternatives. To the contrary, there is increasing evidence that this assumption is incorrect. Indeed, in a recent Commission antitrust case the Administrative Law Judge found that "several automobile insurance companies have wholly eliminated or substantially reduced their purchases of insurance reports primarily because ... [of costs] ... and because of sensitivity regarding the notification requirements of the Fair Credit Reporting Act." 16/

This finding is also supported by our experience that some insurance companies either attempt to bury the required disclosure in the fine print of their contract or characterize these extraordinary inquiries as "routine". 17/

16/ Retail Credit Company, D. 8920, Initial Decision at 88 (Feb. 10, 1976).

17/ See Berkshire Life Insurance Company, Home Life Insurance Company, New York Life Insurance Company, Southern Farm Bureau, Teacher's Insurance and Annuity Association: Assurances of Voluntary Compliance Nos. 2229-33 (Aug. 2, 1972).

<u>What responsibilities to the individual do consumer reporting agencies have with respect to assuring the accuracy, timeliness and relevance of information they maintain about individuals and the uses to which the information is put?</u>

I have already touched upon some of the problems which have arisen concerning accuracy and timeliness of information reported by credit bureaus. As I indicated in my prior statement, the question of what information is relevant to a particular transaction is a difficult one. Some investigative reporting agencies have, however, tailored their reporting forms for different categories of reports indicating that the task of determining what information is relevant for a particular decision making process is not impossible. Because credit bureau reports are not prepared for use in specific transactions they cannot be tailored readily to distinguish between the needs of, for example, a collection agency and a credit grantor and, therefore, imposing a relevancy requirement is much more difficult, and perhaps self-defeating in terms of costs.

We are not aware of any major relevance problems in the credit reporting area.

The issue of consumer reporting agency responsibility for the uses to which a credit report is put focuses on a weak link in the FCRA statutory scheme. Although Section 607(a) requires consumer reporting agencies to obtain certifications of the purposes for which reports are sought, compliance with this section requires only the pro forma execution of a contract by major users. Moreover the obligations created by Section 607(a) run only to the consumer reporting agency and the Act provides no meaningful user liability 18/ for obtaining reports for impermissible purposes or for using reports for purposes other than those for which they were obtained.

18/ The Act does provide for criminal liability for "knowingly and willfully" obtaining a consumer report under false pretenses. 15 U.S.C. §1681q (1970). This standard of proof is so high that it is meaningless in all but the most aggravated instances of violations. The FTC does, of course, have authority to enforce any requirement imposed by the FCRA, however, this enforcement procedure does not provide a means of redress for the individual consumer.

Consumer reporting agencies are in the business of selling consumer reports. To expect them to police vigorously how customers use reports is not realistic. One staff investigation determined that a major user of consumer reports had never distributed instructions to its staff describing the permissible purposes for obtaining reports. Consumer reporting agencies themselves generally rely on user certification except in instances of a new or questionable subscriber.

Individual certification by small users has often fallen short of even minimal statutory standards. One Commission file shows that reports were distributed for no stated reason or for such reasons as:

"Find out stability of individual".

"Witness for a trial and collection purposes".

"Verify financial responsibility of two parties".

"For credit reference for business venture."

"Internal security."

"Gain sufficient information on credit paying habits. The purpose is to become a financial partner." [in a restaurant business].

"Business reasons".

Limitations on disclosure of balance owing information to consumer reporting agencies; or limitations on use to which such information is put.

Credit reporting systems offering a continuously updated report on the monthly balances of consumer accounts are a good example of the increasingly sophisticated product which modern personal information systems can provide. This trend prompts concern for the privacy of individuals involved in such systems. I believe, however, that there should be no limitation on the reporting of balance owing information by credit bureaus. Such information is relevant to a creditor's decision to grant or deny credit or extend the amount of credit for which a consumer is eligible. As I indicated before the real issue here is whether a consumer reporting agency should be required to report and periodically update such information.

There are types of information which the Commission staff believed should not be reported. One example of this would be a report concerning all negative information at a particular address. 20/

Should consumers be given a legal right to a copy of a consumer report from the consumer reporting agency making the report and the organization or individual receiving the report?

It seems beyond dispute that a consumer should have the same right to a copy of his consumer report that his employer dentist, landlord, insurance agent, stockbroker, and almost everyone else doing business with him has. If a consumer reporting agency can supply a copy to its customers, it can give a copy to the consumers.

20/ One consumer who was denied credit based on the number of adverse reports at his address (a 140 unit apartment building) characterized this practice as an "odd application of the doctrine of ancestral guilt".

Moreover, providing the consumer with the right to a copy will measurably reduce the burden upon the consumer to correct information since initial disclosures can be made by mail and disputed items indicated by return mail. There are, in fact, instances in which the failure of the Fair Credit Reporting Act to grant consumers the right to a copy of his report frustrates the operation of the statutory disclosure provisions. Take the case of a consumer in Georgia who is reported on by a credit bureau located in New Jersey. Why should this Georgia consumer be required to incur telephone charges to correct information which later turns out to be erroneous and completely unrelated to him? The FCRA, however, permits such charges.

Consumer reporting agencies are gradually recognizing the consumer's right to obtain a copy of his report. One credit reporting agency has gone as far as providing consumers automated translations of coded reports. There are still many bureaus who have not recognized this basic right or who selectively grant it.

The question of whether the user of a consumer report should be required to provide a copy is more difficult. In the case of investigative reporting, where almost all reports are written and prepared for a specific transaction, I believe that such a requirement is justified, although not essential if the consumer has the right to obtain a copy from the consumer reporting agency.

Credit reports on the other hand are frequently made orally to users and this practice results in significant cost savings. We would not support a recommendation which would eliminate oral credit reports, and, therefore, believe that any requirement that the user provide a copy be limited to investigative reports.

Should a federal agency be required to notify an individual when a credit report has been obtained on him and advise the individual of his right pursuant to the Privacy Act of 1974?

As indicated in my previous statement before the Commission, I believe that the Privacy Act should be amended to require notification to individuals whenever any information obtained from third parties is used to deny the individual a benefit. As you know, Section 615 of the Fair Credit Reporting Act presently requires federal agencies to take such action when the individual is denied credit, insurance or employment based on information contained in a consumer report. Amendment of the Privacy Act to require notification to individuals of their right under the Privacy Act to review and obtain a copy of their files would offer a useful supplement to the FCRA notice since consumers cannot be expected to exercise rights they are ignorant of. The Privacy Act should also be amended to require notice of adverse action whenever benefits are denied based on third party information.

In offering these comments I must reiterate that the FTC's ability to obtain access to groups of credit reports to determine compliance with the Fair Credit Reporting Act is absolutely essential to our enforcement capability. I believe that the Court of Appeals correctly concluded in the Retail Credit case 21/ that our enforcement activities are exempt from the general FCRA restriction on access to consumer reports by Government agencies. The court's order in that case also restricts our use of credit reports obtained under it.

21/ F.T.C. v. Manager, Retail Credit Company, 515 F.2d 993 (1975).

Should the Fair Credit Reporting Act apply to Claims Reports?

Claims reports should be subject to the FCRA. These reports may be used as a basis for denying consumers substantial benefits and the minimum due process rights secured by the FCRA should apply. Indeed, one United States district court has so ruled. 22/ An informal Commission staff interpretation, however, reaches the opposite conclusion. 23/ We continue to believe that conclusion was correct. It does not appear that Congress intended to require §606(a) notices in claims report situations. The staff interpretation was also in my judgment influenced by the conviction that the public interest would not be served if insurers were required to give advance notification of a claims report under Section 606(a) of the Fair Credit Reporting Act, since such notification could enable a minority of unscrupulous claimants to avoid scrutiny. While this analysis may be

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22/ Beresh v. Retail Credit Co., 358 F. Supp. 260 (1973).

23/ FTC, Compliance with the Fair Credit Reporting Act, pp. 33-34 (May 1973; 5 CCH Consumer Credit Guide, ¶11,314.

questioned, it does offer an interesting example of the type of all or nothing choices which an agency faces when implementing a broadly worded statute without rulemaking power.

<u>Should the Federal Trade Commission be granted Rulemaking Authority With Respect to Implementation of the Fair Credit Reporting Act?</u>

I believe that the Fair Credit Reporting Act will never offer really effective protection to consumers until some agency is granted substantive rulemaking power under the Act. The claims report question discussed above is a perfect example of why such authority is needed.

The present statutory standards are too general to be meaningful without further interpretation, and providing such interpretations by complaint and order uses resources which could otherwise be devoted to substantive enforcement efforts. There are abundant examples of areas in which rulemaking would increase the Act's effectiveness. Rules could:

Spell out the minimum content of a section 606 notice, for example, by specifying that the term "investigative report" is not to be altered to "routine inquiry" and by ensuring that a definition of "investigative consumer report" is provided for those consumers who are not lawyers.

Spell out the minimum content of a section 615(a) notice by, for example, adding an express requirement that the full address of the credit bureau--not a Post Office box--be included and providing for some indication of how information in a consumer report was used, for example, whether the denial is based on insufficient credit history, contradiction of information contained on the consumer's application or derogatory information.

Provide a prima facie reasonable time for investigation of disputed information.

Clarify the application of the obsolete information section to certain factual situations, for example, the period of time for which a satisfied judgment could be reported in a state having a statute of limitations greater than 7 years. 24/

Provide exceptions to certain provisions of the Act to restrict the application of certain provisions to miscellaneous types of reporting such as check cashing guides and claims reports.

Although the consumer reporting industry would benefit from clarification of certain of the Act's requirements, the primary benefit would accrue to consumers who would have for the first time a relatively clear basis on which to judge whether their rights under the Act have been violated. There would also be considerable benefit to enforce-

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24/ Judgments are exempted from the general 7 year limitation on the reporting of adverse information because the relevant statute of limitations for execution may be longer. At least one credit bureau used this exception to argue that it could report satisfied judgements for 12 years.

ment agencies since the industry would be required to bring their considerable expertise forward on the public record with respect to the details of their day to day operations.

Finally, much of the debate over this question revolves around whether the FTC should be given rulemaking power under the Act. While I believe that the FTC is in a better position than any other agency to promulgate rules under the FCRA, it makes little difference whether the FTC or some other agency is given the power so long as rulemaking authority is granted. Moreover, I would emphasize that whatever agency is assigned this task, sufficient time and resources must be alloted to ensure that the job is done well.

Rulemaking powers alone, however, are not enough. There are several provision of FCRA which need amendment. For example, as indicated previously, the consumer should have the right to a copy of his report. Another example of a section needing amendment is section 615 which provides consumers who are denied credit cards notices that a credit report has been used against them, but does not provide consumers who are denied housing with the same notice.

Finally, the Act's private enforcement provisions should be strengthened. I believe these weak enforcement provisions and the lack of specificity in the statute have combined to produce a low level of compliance, particularly in the area of user notification on which most other protections of the Act depend. 25/ Consumer protection such as the Fair Credit Reporting Act cannot be effectively implemented by administrative enforcement alone. Given the large number of individual transactions subject to the Act, vigorous private enforcement is essential.

Thank you for the opportunity to appear before you.

25/ 15 USC §1681m. Without the disclosures provided for by this section, the additional protections of the Act become meaningless. For an example of the problem, see American Express (C-2821, May 24, 1976).

Mr. ANNUNZIO. Thank you, Mr. White, for your statement and your many wonderful suggestions, but most of all, I am deeply grateful for the support I received last year from the Federal Trade Commission on the debt collection bill, and I am happy to hear your remarks this morning—that you once again endorse the activities of this committee, which will be working on the debt collection bill shortly.

Our next witness is Mr. Allan Finkel of the Office of Consumer Affairs, Department of Health, Education, and Welfare.

Mr. Finkel, you may proceed in your own fashion.

STATEMENT OF ALLAN FINKEL, OFFICE OF CONSUMER AFFAIRS, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. FINKEL. Thank you, Mr. Chairman.

Mr. Chairman, members of the Subcommittee on Consumer Affairs, on behalf of the Office of Consumer Affairs, I am pleased to be here today to discuss credit and banking problems facing consumers. While time does not permit an in-depth analysis of consumer credit problems, I will attempt to highlight a number of major concerns of the consumer community.

One of the primary consumer concerns over the last 2 years has been the privacy of financial records. In particular, our Office has been actively examining the possible effect on privacy of electronic fund transfer systems. As our Office pointed out in 1975:

> Completely unrestrained, the ultimate EFTS could reveal almost everything about an individual, even to the point of mercilessly tracking his movements. It could tell what a person was doing, where he was doing it, and when. While this admittedly depicts EFTS in the extreme, consumers legitimately fear a system which centralizes and coordinates data about their lives, that gives a clear picture of their lifestyles, political, economic and religious beliefs, opinions, and interests.

Because of the potential threat to privacy posed by EFTS, we urge this subcommittee to scrupulously review the recommendations of the National Commission on Electronic Fund Transfers when it issues its final report this October. We hope that Congress will insure that any EFTS legislation adequately protects the privacy of electronic records, the security of electronic funds, and the rights, such as stop payment, which consumers have come to expect from any system of transacting business.

Since EFTS is not yet in full operation, we must still concern ourselves with current bank recordkeeping practices. While present methods of operations do not possess the speed and efficiency of EFTS, they do collect a substantial amount of highly private information. Let me call your attention to a recent episode of CBS's "60 Minutes." For the benefit of the show, a couple volunteered to give a private investigator access to their canceled checks and bank records for the preceding year. Using only the checks and public records to which they led, the investigator was able to discover that the couple owned a home, an older model car, and a pet; that they had one child and were expecting a second; that they were overextended financially, and even that the husband had received a traffic ticket in another woman's car.

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Certainly, the use of this information without further explanation could be highly incriminating. Yet approximately 100 Government agencies can obtain immediate access to these bare records by issuing administrative subpenas.

Further complicating the scene is the fact that the individual has no initial opportunity to explain the records, since no prior notification that the records are being investigated is required. Moreover, even if a person was notified, he might be able to try to explain his records, but he certainly would have no opportunity to protest the investigation. Although the reason for contesting the subpena is usually known only to the individual, recent Supreme Court rulings have held that only the bank may object to an administrative subpena, since the bank, and not the individual, is considered the owner of the requested records.

In view of the foregoing, we recommend the subcommittee look into the need for notifying individuals that their records are going to be subpenaed. We also hope the subcommittee will review the feasibility of allowing individuals to contest administrative subpenas as though they were the owners of the records.

Of equal concern to consumers today is what is known as an Investigative Credit Report. Although bank records may reveal a lot about an individual's lifestyle, investigative credit reports can reveal even more, and are potentially more destructive of the individual's right to privacy and right to fair credit information practices. Although the 1971 Fair Credit Reporting Act had a significant impact on credit reporting companies, abuses in this field continue. Tactics such as impersonation, falsification of records, and collection of irrelevant material were well documented at the hearings held on the proposed FCRA amendments in 1975 and in newspaper, magazine, and television stories since.

Based on these facts, we ask that this subcommittee examine a consumer's right to exercise some control over whether an investigative credit report will be compiled, the accuracy and relevancy of such reports, and the use to which the reports will be put.

We also hope the subcommittee will reconsider another area of serious credit abuse, debt collection practices. Collectors' use of threatening or obscene phone calls, their entrapment tactics, and their harassment of debtors' friends and employers has also been well documented by this subcommittee.

We urge Congress to again examine methods of eliminating such abuse. Of course, any debt collection practices bill will have to take into account the possible effect of prevention on the cost of credit. However, we are confident that a suitable compromise between allowing collectors to collect on genuine debts and protecting the consumer's right to privacy can be reached.

Briefly stated, other types of consumer credit problems receiving attention in our office include questions about complicated interest rate calculations, such as those made under regulation Z; confusion about savings account calculations or charges made for banking services; consumer complaints of denial of credit on the basis of age, sex, or race; problems with correcting credit card billing errors; complaints about merchants sending disputed bills to collection agencies.

I realize that in this short period of time we have only been able to scratch the surface of consumer credit problems. If the Office of Consumer Affairs can be of any further service to you in examining this area, please let us know.

Thank You.

Mr. ANNUNZIO. Thank you, Mr. Finkel, for your very fine statement. And I am also delighted to note that your agency is in favor of our debt collection bill.

Our next witness is Mr. Thomas W. Taylor, Office of the Comptroller of the Currency.

I ask unanimous consent that Mr. Taylor's entire statement be made part of the record. Without objection, so ordered.

STATEMENT OF THOMAS W. TAYLOR, ASSOCIATE DEPUTY COMPTROLLER OF THE CURRENCY FOR CONSUMER AFFAIRS

Mr. TAYLOR. Thank you, Mr. Chairman.

I welcome this opportunity to appear before the subcommittee to discuss the continuing commitment of the Office of the Comptroller of the Currency to the protection of consumers' interests in their dealings with national banks.

Because of the intimate involvement of banks with our daily affairs, this industry is a unique focal point of many consumer interests.

For our part, the Comptroller's Office has pursued policies intended to insure that the development of the national banking system will be in the interest of the banking public. In fostering aggressive competition among banks and other financial institutions, we have encouraged the provision of an evergrowing number of financial services.

Recognizing that particular attention to individual consumers would help reinforce public confidence in the banking system and promote safety and soundness, the Comptroller commenced a study in the summer of 1973 to determine what this Office should do to carry out our legal responsibilities in protecting consumer interests. As a result of this internal review, a special division for consumer affairs was established in September 1974, before the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act of 1974 mandated that each bank regulatory agency have such a division. Since its creation, our Consumer Affairs Division has grown rapidly in staff and budget, and has become a central point for consumer assistance and consumer protection law enforcement.

We believe that compliance with consumer protection statutes is a prerequisite to successful retail banking, as a bank acts in its own best interest when it serves the public fairly and within the scope of the law.

These laws are many and complex, covering a wide variety of banking services. They include Truth in Lending, Equal Credit Opportunity, Fair Credit Reporting, Fair Credit Billing, Fair Housing, Home Mortgage Disclosure, Real Estate Settlement Procedures, Consumer Leasing, advertising, usury, and applicable State laws.

In our role as supervisor of national banks, the Comptroller's Office attempts to educate bankers on the requirements of these laws and to detect and correct noncompliance. Over the past 3 years we have intensified our activities in this area.

As the foremost example of our efforts, the Comptroller has assigned a specially trained corps of national bank examiners to conduct consumers compliance investigations of every national bank during the coming year. Over 6 percent of our field staff currently is allocated to the consumer area. Support for these personnel is provided by consumer specialists in each region.

We have conducted three 2-week schools which trained over 140 examiners in the new procedures; a second series of three schools is scheduled for March and April, and a third series will take place in the fall.

The schools stress examination techniques and feature heavy reliance on case studies to give experience in examining for compliance. The procedures are tailored to spot problems most likely to result in harm to consumers.

We make use of sophisticated financial calculators, specially programed for consumer transactions, and sampling techniques designed to increase our effectiveness. Particular emphasis is placed on evaluating policies and practices to detect unlawful discrimination.

Statistical sampling of a bank's loans is taken as part of a review for conformity with various statutory and regulatory requirements. Bank lending policies are examined as are policies implementing consumer protection laws. Extensive interviews of lending officers are conducted, as well, to assist us in assuring that a bank adheres to its policy standards.

Where violations are detected during the examination, we will use the full authority of our Office to see that these violations are corrected. In the majority of cases, banks will volunteer to reimburse their customers when made aware of unlawful overcharges. For the few recalcitrant institutions, however, we may find it necessary to rely upon our additional cease-and-desist powers under the Financial Institutions Supervisory Act.

For the committee's information, we are attaching a copy of "Banking Circular No. 73," sent to all national banks last summer explaining our expanded consumer examinations, followup procedures and formal enforcement plans. Upon publication, copies of the new Comptroller's Handbook for Consumer Examinations also will be distributed.

As of this date, approximately 12 percent of the country's 4,700 national banks have been examined under the new procedures. Preliminary analysis of these reports indicates that our expanded efforts in this area are both justified and effective. Significant evidence of noncompliance with the consumer protection laws has been detected. In some areas this noncompliance has resulted in overcharges to consumers, sums which now will be reimbursed.

As the new laws take hold and consumer consciousness rises, we find that consumer complaints account for an increasingly large part of the workload of the Consumer Affairs Division. In 1976, the first year in which we have kept a tally, the number of complaints handled by all of our offices around the country totaled 6,234. In our Washington office alone, the volume increased 46 percent over the previous year.

Complaints against national banks cover numerous consumer banking activities. Among the complaints received are ones dealing with check cashing privileges, interest charges, deposits not credited, rebates, and individual credit decisions.

Notably, credit card difficulties account for a substantial part of all complaints. Most of these involve allegations of billing errors or denial of applications on the grounds of sex or marital status, or failure of applicants to meet banks' credit standards.

We have designed a computer program to catalog these complaints. When a complaint is received, inquiry is made by letter to the bank against which the complaint was made. If necessary, an examiner visits the bank to complete the investigation. Depending on what we discover, either the bank is asked to correct its error, or the complainant is informed that no basis for remedial action has been found.

Sometimes facts essential to resolution of a controversy are disputed and may turn on such issues as credibility of witnesses which can be resolved, consistent with due process, only in a judicial forum. In those instances we advise the complainant to seek legal counsel.

Mr. Annunzio. We will have to suspend for a minute. We have a vote, and we will be back.

For the members that come back, I would appreciate it.

[Brief recess is taken.]

Mr. Annunzio. Mr. Taylor, would you proceed, please?

Mr. Taylor. Thank you, Mr. Chairman.

I was in the process of outlining our consumer complaint handling procedures.

In order to deal more efficiently with the sizable increase in consumer complaints, we are attempting presently to streamline our procedures by requesting a number of national banks throughout the country to designate specific personnel who are available to discuss consumer problems with members of our staff and with the consumers themselves.

As a large number of questions posed by complainants involve a misunderstanding of the reason for a bank's action or lack of action, the problems frequently can be resolved readily by our staff telephoning bank officials to review the matters and determine what actions, if any, are necessary. In many instances bank officials may clear up misunderstandings by communicating directly with the complainants.

In addition to our own examination efforts, I would like to outline some of the other activities in the consumer protection area which the Comptroller of the Currency has undertaken in recent months. In March 1976, this Office, together with the Civil Rights Division of the Justice Department, HUD, the Federal Reserve Board, the FDIC, and the Federal Home Loan Bank Board, created the Interagency Task Force on Fair Housing Enforcement.

The purpose of the task force is to consider the various aspects of fair housing enforcement and seek solutions to the problems encountered. Discussions so far have centered on the powers of each agency to implement regulations concerning fair housing and the desirability of keeping records on applicants' race, color, sex, et cetera; examining procedures, training and techniques; appropriate and permissible corrective mechanisms; and whether consumer examinations should be worked into regular commercial examination or should be completely separate.

The task force has developed a memorandum of understanding by which any agency receiving a fair housing complaint will give notice to other agencies which might be interested in such a complaint.

For instance, if HUD receives a complaint of discrimination against a national bank, it will investigate the complaint, but at the same time it will give notice to us and to the Justice Department.

Separately, our Office has signed a special memorandum of understanding with the Department of Justice, Civil Rights Division, to the effect that this Office will select several banks at which Justice attorneys will be present as observers during the fair housing portion of the consumer examination.

This understanding should result in a training technique by which the experts at Justice will be able to offer our examiners the benefit of their experience in investigating discrimination allegations.

A copy of the agreement is attached. The program is expected to be operational by mid-March.

[The referred-to copy of the agreement is retained in the files of the subcommittee.]

A third major activity in the fair housing area is a data collection survey which our Office is conducting in a number of banks across the Nation at this time. Loan applicants at selected national banks are being asked to complete a special form which records their personal and economic characteristics. The bank involved then is required to provide a written explanation why any application is rejected.

Location of property is also recorded, and we anticipate that a comparison of this information will be made with census tract data available from the Commerce Department. Upon completion of the pilot project in the near future, we will evaluate the suitability of the program of nationwide use.

As you can see, the Comptroller of the Currency is devoting extensive resources to the consumer protection area. We have found that generally both consumers and banks have benefited from the changes brought about by the new consumer protection laws. Despite the complexity of many of the regulations, increased disclosure and more rigorous, nondiscriminatory credit guidelines have served to educate the public and improve relations between banks and their customers.

At this point I will depart from my prepared statement and summarize some of the recommendations we have suggested in the areas of legislation.

In general we agree with the comments that have been made so far by the panel on the simplification of truth in lending. We have also questioned in the statement the utility of the Home Mortgage Disclosure Act and regulation C and RESPA.

I would like to make a brief comment on electronic funds transfer, which is fast becoming a major area of consumer concern. Consumer protection and security safeguards are two key issues which the National Commission on EFT can be expected to address in their interim report, scheduled for release February 23, 1977.

Thus far, the Commission has developed a data base and gathered background material through numerous public hearings, and we look forward to reviewing their recommendations.

For our part, the Comptroller's Office has worked to keep national banks informed and aware of the problems confronting the creation of an electronic funds transfer system.

We attach a copy of our "EFTS Guidelines" which attempts to characterize the current state-of-the-art. We intend in the near future to revise and update these guidelines to reflect recent developments. (The copy of the "EFST Guidelines" is attached to Mr. Taylor's prepared statement.)

By now it should be evident that the Comptroller of the Currency has a strong commitment to the enforcement of the consumer protection laws. However, we also recognize that, no matter how noble the intent nor how powerful the language, no law fully can accomplish its purpose without those whom it is designed to protect having a fundamental awareness of their rights.

Our experience continues to demonstrate that customers of national banks normally learn of their rights under the various consumer protection laws only when they write to us with specific complaints. For this reason, we view education of the public at large as the most important challenge to the efficiency of Federal statutory protections.

As a partial solution we now are preparing a consumer guide to national banks which will explain how consumers can use banking services to their best advantage and what legal rights they may exercise to protect their interests.

The ultimate solution cannot be wholly within the means of a bank regulatory agency. Although consumer education by Federal agencies may not have been contemplated at the time of enactment of the various consumer protection laws, we suggest to the subcommittee that the Education Division of the Department of Health, Education, and Welfare already possesses the necessary authority to develop a broad program of this sort. Within its broad mandate, that Division is responsible to act as the key advocate for assuring the provisions of professional and financial assistance to strengthen education in accordance with Federal law and regulations.

Some progress in this direction already has been made. In the latter half of 1976 the Office of Consumer Affairs in HEW established the Interagency Consumer Education and Information Liaison, CEIL. Representatives from more than 50 Government agencies, including our own, convene once monthly to develop and disseminate information to our Nation's schools and communities. The potential of this panel is apparent, but, whether through CEIL, the Education Division, or some other vehicle, our Office is ready to support fully any efforts in behalf of consumer education in the financial area, and we pledge all facilities at our disposal in aid of producing an effective educational program.

I deliberately have concentrated my remarks today on the benefits resulting from the Federal consumer protection laws. Before closing, however, I would draw the subcommittee's attention to the countervailing considerations of cost and paperwork generated by these statutes.

It is a timeworn truism that every benefit carries a price tag. Invariably, the cost of compliance with any law becomes a business expense which is passed along proportionately to the consumer.

It is with this recognition that we favor periodic reevaluation of the consumer protection laws by those Federal agencies charged with their enforcement. Where the agencies, as a result of their regulatory experience, have not found requirements to be cost effective or particularly helpful to the consumer, we would hope that Congress would give consideration to repeal or revision. As part of this process, we think it appropriate for the subcommittee to conduct a survey of financial institutions and consumers to ascertain the level of public interest in the consumer protection laws now on the books.

I want to thank the subcommittee again for its invitation. I shall be happy to answer any questions.

[The prepared statement of Mr. Taylor, presented on behalf of the Office of the Comptroller of the Currency, along with an appendix containing Banking Circular No. 73, regarding compliance with consumer laws—expanded examination procedures, a "Memorandum of Understanding Regarding Joint Examinations of National Banks in the Area of Fair Housing Compliance," and a copy of "EFTS Guidelines," follows:]

Statement of

Thomas W. Taylor

Associate Deputy Comptroller of the Currency

for Consumer Affairs

Before the

Consumer Affairs Subcommittee

of the

Committee on Banking, Finance

and Urban Affairs

U. S. House of Representatives

February 9, 1977

I welcome this opportunity to appear before the Committee to discuss the continuing commitment of the Office of the Comptroller of the Currency to the protection of consumers' interests in their dealings with national banks. Because of the intimate involvement of banks with our daily affairs, this industry is a unique focal point of many consumer interests.

Banks serve their communities and their customers in many important ways. By financing new and established businesses, they help provide gainful employment for a substantial part of their community work force. By investing in municipal securities, banks help fund education, sanitation, and other essential community services and programs. And through the purchase of tax anticipation notes they help provide funds necessary for communities to continue the regular, day-to-day functioning of their government and local economy.

In more personal terms, banks, through savings plans and loan services, make it possible for individuals to improve their standard of living. Banks also enable their customers to organize their daily financial affairs through the use of checking, bill-paying, and trust services.

For our part, the Comptroller's Office has pursued policies intended to insure that the development of the national banking system will be in the interest of the banking public. In fostering aggressive competition among banks and other financial institutions, we have encouraged the provision of an ever-growing number of financial services.

Recognizing that particular attention to individual consumers would help reinforce public confidence in the banking system and promote safety and soundness, the Comptroller commenced a study in the summer of 1973 to determine what this Office should do to carry out our legal responsibilities in protecting consumer interests. As a result of this internal review, a special division for consumer affairs was established in September 1974, before the Magnuson-Moss Warranty -- Federal Trade Commission Improvement Act of 1974 mandated that each bank regulatory agency have such a division. Since its creation, our Consumer Affairs Division has grown rapidly in staff and budget, and has become a central point for consumer assistance and consumer protection law enforcement.

We believe that compliance with consumer protection statutes is a prerequisite to successful retail banking , as a bank acts in its own best interest when it serves the public fairly and within the scope of the law. These laws are many and complex, covering a wide variety of banking services. They include Truth in Lending, Equal Credit Opportunity, Fair Credit Reporting, Fair Credit Billing, Fair Housing, Home Mortgage Disclosure, Real Estate Settlement Procedures, Consumer Leasing, advertising, usury, and applicable state laws. In our role as supervisor of national banks, the Comptroller's Office attempts to educate bankers on the requirements of these laws and to detect and correct noncompliance. Over the past three years we have intensified our activities in this area.

As the foremost example, the Comptroller has assigned a specially trained corps of national bank examiners to conduct consumer compliance investigations of every national bank during the coming year. Over 6% of our field staff currently is allocated to the consumer area. Support for these personnel is provided by Consumer Specialists in each Region. We have conducted three 2-week schools which trained over 140 examiners in the new procedures; a second series of three schools is scheduled for March and April, and a third series will take place in the fall.

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Where violations are detected during the examination, we will use the full authority of our Office to see that these violations are corrected. In the majority of cases, banks will volunteer to reimburse their customers when made aware of unlawful overcharges. For the few recalcitrant institutions, however, we may find it necessary to rely upon our additional cease-and-desist powers under the Financial Institutions Supervisory Act.

For the Committee's information, we are attaching a copy of a Banking Circular sent to all national banks last summer explaining our expanded consumer examinations, follow-up procedures and formal enforcement plans. Upon publication, copies of the new Comptroller's Handbook for Consumer Examinations also will be distributed.

As of this date, approximately 12% of the country's 4,700 national banks have been examined under the new procedures. Preliminary analysis of these reports indicates that our expanded efforts in this area are both justified and effective. Significant evidence of noncompliance with the consumer protection laws has been detected. In some areas this noncompliance has resulted in overcharges to consumers, sums which now will be reimbursed.

As the new laws take hold and consumer consciousness rises, we find that consumer complaints account for an increasingly large part of the work load of the Consumer Affairs Division. In 1976, the first year in which we have kept a tally, the number of complaints handled by all of our offices around the country totaled 6,234. In our Washington Office alone, the volume increased 46% over the previous year.

Complaints against national banks cover numerous consumer banking activities. Among the complaints received are ones dealing with check cashing privileges, interest charges, deposits not credited, rebates, and individual credit decisions. Notably, credit card difficulties account for a substantial part of all complaints. Most of these involve allegations of billing errors or denial of applications on the grounds of sex or marital status, or failure of applicants to meet banks' credit standards.

We have designed a computer program to catalog these complaints. When a complaint is received, inquiry is made by letter to the bank against which the complaint was made. If necessary, an examiner visits the bank to complete the investigation. Depending on what we discover, either the bank is asked to correct its error, or the complainant is informed that no basis for remedial action has been found. Sometimes, facts essential to resolution of a controversy are disputed and may turn on such issues as credibility of witnesses which can be resolved, consistent with due process, only in a judicial forum. In those instances we advise the complainant to seek legal counsel.

In order to deal more efficiently with the sizable increase in consumer complaints, we are attempting presently to streamline our procedures by requesting a number of national banks throughout the country to designate specific personnel who are available to discuss consumer problems with members of our staff and with the consumers themselves. As a large number of questions posed by complainants involve a misunderstanding of the reason for a bank's actions or lack of action, the problems frequently can be resolved readily by our staff telephoning bank officials to review the matters and determine what actions, if any, are necessary. In many instances bank officials may clear up misunderstandings by communicating directly with the complainants.

In addition to our own examination efforts, I would like to outline some of the other activities in the consumer protection area which the Comptroller of the Currency has undertaken in recent months. In March 1976, this Office, together with the Civil Rights Division of the Justice Department, HUD, the

Federal Reserve Board, the FDIC, and the Federal Home Loan Bank Board, created the Interagency Task Force on Fair Housing Enforcement. The purpose of the Task Force is to consider the various aspects of fair housing enforcement and seek solutions to the problems encountered. Discussions so far have centered on the powers of each agency to implement regulations concerning fair housing and the desirability of keeping records on applicants' race, color, sex, etc.; examining procedures, training and techniques; appropriate and permissible corrective mechanisms; and whether consumer examinations should be worked into regular commercial examinations or should be completely separate.

The Task Force has developed a memorandum of understanding by which any agency receiving a fair housing complaint will give notice to other agencies which might be interested in such a complaint. For instance, if HUD receives a complaint of discrimination against a national bank, it will investigate the complaint, but at the same time it will give notice to us and to the Justice Department.

Separately, our Office has signed a special memorandum of understanding with the Department of Justice, Civil Rights Division, to the effect that this Office will select several banks at which Justice attorneys will be present as observers during the fair housing portion of the consumer examination. This understanding should result in a training technique by which the experts at Justice will be able to offer our examiners the benefit of their experience in investigating discrimination allegations. A copy of the agreement is attached. The program is expected to be operational by mid-March.

A third major activity in the fair housing area is a data collection survey which our Office is conducting in a number of banks across the nation at this time. Loan applicants at selected national banks are being asked to complete a special form which records their personal and economic characteristics. The bank involved then is required to provide a written explanation why any application is rejected. Location of property also is recorded, and we anticipate that a comparison of this information will be made with census tract data available from the Commerce Department. Upon completion of the pilot project in the near future, we will evaluate the suitability of the program to nationwide use.

As you can see, the Comptroller of the Currency is devoting extensive resources to the consumer protection area. We have found that generally both consumers and banks have benefitted from the changes brought about by the new consumer protection laws. Despite the complexity of many of the regulations, increased disclosure and more rigorous, nondiscriminatory credit guidelines have served to educate the public and improve relations between banks and their customers.

However, our involvement also has shown us that legislation designed to protect consumer interests has produced some undesirable aspects. It is with this perspective that we offer for the Committee's consideration the following observations to maximize the benefits of consumer protection legislation.

Truth-in-Lending

A consensus now is forming among all responsible for enforcing the Truth in Lending Act that substantial changes in the Act and Federal Reserve Regulation Z are needed. By simplifying a number of provisions in the law, Congress can achieve a much higher level of consumer understanding of basic loan terms. Specifically, we recommend that required disclosures for all types of credit be limited to these core terms -- annual percentage rate; amount financed; finance charge expressed as a dollar amount; number, amount and due dates or periods of payment; and security interests.

Because late fees, rebates, etc., are not likely to be considerations in comparison shopping, disclosure of these terms is of questionable value. Congress might consider legislating a standarization of some of these terms, as the ability of the free market to regulate these subjects effectively via arm's length bargaining is somewhat suspect.

We believe that the present civil liability provisions in the law also need to be reexamined. It appears that many creditors making good faith efforts to comply become involved in litigation for trivial, technical violations resulting in harm to no one. Thus, it has been our experience that these provisions tend to benefit attorneys, printers, and defaulting borrowers more than the consumer.

As a final note on the subject of Truth in Lending, we wish to go on record in support of the proposals for changes

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in the Act made by the Federal Reserve Board in their 1976 annual report. We agree with the Board that adoption of its recommendations for simplification would not deprive consumers of essential information needed to shop for credit.

Home Mortgage Disclosure

Federal Reserve Regulation C recently was adopted pursuant to the authority of the Home Mortgage Disclosure Act. Early indications bear out what we had warned at the time that law was passed; that is, that disclosure of data showing geographic distribution of loans granted is not very valuable in pinpointing banks that discriminate.

Geocoding, or pairing the street address of mortgaged property with the appropriate census tract, poses another problem encountered by banks seeking to comply with the Act. Given the fact that loan officers are not necessarily expert map readers, the lack of clarity in many census maps causes considerable trouble. The sporadic availability of these maps only compounds the problem.

Real Estate Settlement Procedures

Of the first 126 national banks given careful review for consumer law compliance under our new procedures, 43 have been found to violate some section of the Real Estate Settlement Procedures Act (RESPA). The majority of the violations involved the failure of a bank to give a good faith estimate to the loan applicant. Fortunately, this type of oversight normally does not harm the consumer, because it is given only to persons making written application and occurs at a point in the transaction when the applicant already has completed his or her shopping for loan terms.

As you recall, the original purpose of RESPA was to disclose settlement costs to the borrowers sufficiently in advance of closing to allow him or her to compare terms. Congress soon became aware after enactment that the 12-day notice requirement needlessly was delaying many simple transactions. Accordingly, the law was amended to require only a one-day waiting period. Unfortunately, the dilemma persists, because now borrowers are denied the opportunity to shop around if they wish. In light of these problems, we question whether RESPA offers any real benefit to anyone.

Electronic Funds Transfers

Electronic Funds Transfer is fast becoming a major area of consumer concern. Consumer protection and security safeguards are two key issues which the National Commission on Electronic Fund Transfers can be expected to address in their interim report, scheduled for release February 23, 1977. Thus far, the Commission has developed a data base and gathered background material through numerous public hearings. We look forward to reviewing their recommendations.

For our part, the Comptroller's Office has worked to keep national banks informed and aware of the problems confronting the creation of an electronic funds transfer system. We attach a copy of our "EFTS Guidelines," which attempts to characterize the current state of the art. We intend in the near future to revise and update these guidelines to reflect recent developments.

Consumer Education

By now it should be evident that the Comptroller of the Currency has a strong commitment to the enforcement of the consumer protection laws. However, we also recognize that, no matter how noble the intent nor how powerful the language, no law fully can accomplish its purpose without those whom it is designed to protect having a fundamental awareness of their rights.

Our experience continues to demonstrate that customers of national banks normally learn of their rights under the various consumer protection laws only when they write to us with specific complaints. For this reason, we view education of the public at large as the most important challenge to the efficiency of federal statutory protections. As a partial solution we now are preparing a consumer guide to national banks which will explain how consumers can use banking services to their best advantage and what legal rights they may exercise to protect their interests.

The ultimate solution cannot be wholly within the means of a bank regulatory agency. Although consumer education by federal agencies may not have been contemplated at the time of enactment of the various consumer protection laws, we suggest to the Committee that the Education Division of the Department of Health, Education and Welfare already possesses the necessary authority to develop a broad program of this sort. Within its broad mandate, that Division is responsible to act as the key advocate for assuring the provisions of professional and financial assistance to strengthen education in accordance with federal laws and regulations.

Some progress in this direction already has been made. In the latter half of 1976 the Office of Consumer Affairs in HEW established the Interagency Consumer Education and Information Liaison (CEIL). Representatives from more than 50 government agencies, including our own, convene once monthly to develop and disseminate information to our nation's schools and communities. The potential of this panel is apparent, but, whether through CEIL, the Education Division, or some other vehicle, our Office is ready to support fully any efforts in behalf of consumer education in the financial area, and we pledge all facilities at our disposal in aid of producing an effective educational program.

Conclusion

I deliberately have concentrated my remarks today on the benefits resulting from the federal consumer protection laws. Before closing, however, I would draw the Committee's attention to the countervailing considerations of cost and paperwork generated by these statutes.

It is a timeworn truism that every benefit carries a price tag. Invariably, the cost of compliance with any law becomes a business expense which is passed along proportionately to the consumer.

It is with this recognition that we favor periodic reevaluation of the consumer protection laws by those federal agencies charged with their enforcement. Where the agencies, as a result of their regulatory experience, have not found requirements to be cost effective or particularly helpful to the consumer, we would hope that Congress would give consideration to repeal or revision. As part of this process, we think it appropriate for the Committee to conduct a survey of financial institutions and consumers to ascertain the level of public interest in the consumer protection laws now on the books.

I want to thank the Committee again for its invitation. I shall be happy to answer any questions.

Appendix to

Statement of

Thomas W. Taylor

Associate Deputy Comptroller of the Currency

for Consumer Affairs

Before the

Consumer Affairs Subcommittee

of the

Committee on Banking, Finance

and Urban Affairs

U. S. House of Representatives

February 9, 1977

Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

July 9, 1976

Banking Circular No.73

To: Presidents of All National Banks

Subject: Compliance with Consumer Laws -- Expanded Examination Procedures

Within the past few weeks the Comptroller's Office has begun to implement new examination procedures designed to better determine compliance by national banks with a number of statutes enacted to protect consumer interests. Key elements of the new examination effort include:

-- Completely revised and greatly expanded examination question-naires which will enable the examiner to probe the policies, procedures and practices of national banks for the purpose of assuring full compliance with the requirements of consumer protection statutes and regulations.

-- Expanded training programs which will require a mastery by assistant examiners of the new consumer-oriented examination procedures as a prerequisite to obtaining a commission.

-- Coordinated follow-up procedures which will require our Regional Offices to secure early bank correction of deficient practices.

-- Involvement by the Comptroller's Enforcement and Compliance Division in assisting the Regional Offices in obtaining correction of deficiencies by recalcitrant institutions -- through formal procedures under the Financial Institutions Supervisory Act when necessary.

The new examination procedures initially will concentrate upon those problem areas in which noncompliance may have a significantly adverse impact upon consumers. When it is discovered that customers have been harmed by noncompliance, we are confident that national banks will act in a manner consistent with the public's faith and trust in them. It is expected that such actions will include taking whatever steps are deemed appropriate to remedy conditions resulting from violations of law, including restitution.

The experience of our examination force suggests that many deficient practices could be avoided simply by banks scrutinizing their own compliance more carefully. Indeed, inadvertent violations are frequently caused by a failure of bank officers and counsel to match an understanding of the law with an awareness of the details of the bank's procedures and practices. Because even highly technical violations of a number of these statutes can result in substantial punitive damages and protracted litigation, bank counsel, in particular, must be alert to deviations from statutory and regulatory requirements. A list of the statutes which should be reviewed by bank counsel is attached to this Circular.

In sum, the Comptroller's Office intends to assure whatever degree of examiner scrutiny may be necessary to obtain conscientious bank compliance with the requirements of these statutes. I encourage each of you to anticipate this heightened examiner inquiry by conducting your own thorough in-house reviews of practices and procedures in this complex, rapidly changing area.

Very truly yours,

James E. Smith

James E. Smith
Comptroller of the Currency

Attachment

MEMORANDUM OF UNDERSTANDING REGARDING JOINT EXAMINATIONS OF NATIONAL BANKS IN THE AREA OF FAIR HOUSING COMPLIANCE

The Department of Justice and the Office of the Comptroller of the Currency agree that Justice Department attorneys may observe selected fair housing examinations conducted by examiners of the Comptroller's Office for the purpose of evaluating the Comptroller's examining procedures and the examiners' techniques. The observation of bank examinations shall be conducted under the following conditions:

1. The Comptroller will select approximately six banks to be examined, inform the bank officials of the joint examining procedures, and solicit their permission to have a Justice Department attorney accompany the examiners.

2. Each bank selected for joint examination will receive a copy of this agreement prior to giving its consent to the presence of an observer.

3. The Comptroller's Office will select the examiners to conduct the fair housing examination. The observers will be selected by the Department of Justice.

4. Prior to the joint examinations, the selected examiners will receive instructions concerning the requirements of the 1968 Fair Housing Act, as amended, 42 U.S.C. 3601 et seq. Department of Justice attorneys will assist in giving these instructions.

5. With the prior permission of the banks, a Justice Department observer will accompany the bank examiners into the selected banks during regularly scheduled examinations for that portion of the examination which involves fair housing lending practices.

6. The Justice Department attorney will observe the examiners during the course of the fair housing examination. This observer will not attempt to discuss the lending practices with bank personnel. The role of such person will be limited to that of an observer.

7. At all times while the joint examination is in progress, the observer will be subject to the directions of the examiner in charge.

8. Following each fair housing examination, the observer will discuss the examination with the examiners who conducted it.

9. When all of the selected banks have been examined, the Justice Department representatives who have been observers will meet with the examiners and members of the Comptroller's Washington staff to discuss and evaluate the examining techniques and the information developed during the examinations.

10. The observers will maintain strict confidentiality as to their observations during the examinations and during any discussions before or after such examinations, in conformity with 18 U.S.C. §1905.

11. The Department of Justice will take no action under Title VIII of the Fair Housing Act of 1968 or under the Equal Credit Opportunity Act, as amended, (15 U.S.C. 1691 et seq.), based on its observations during bank examinations, unless the Comptroller's Office refers potential violations of these statutes to the Department for action.

12. If within six months of the examination, the Department of Justice receives a complaint alleging discrimination in lending against any of the banks at which it has been represented by an observer, it will take no action under Title VIII of the Civil Rights Act of 1968 or under the Equal Credit Opportunity Act (to the extent that the latter is coterminous with the former) without first informing the Comptroller's Office of such complaint and giving that Office a reasonable opportunity to resolve the matter.

13. Any questions or difficulties that arise over the joint examinations will be referred to Mr. John E. Shockey, Acting Chief Counsel, Comptroller of the Currency, and Mr. Walter Gorman, Deputy Chief, Housing Section, Civil Rights Division, Department of Justice, for mutual resolution.

14. The costs incurred by Department of Justice observers will be borne by the Department. The costs incurred by examiners will be borne by the Office of the Comptroller of the Currency.

It is contemplated that six banks will be selected for joint examination and that the examinations will take place between January 15 and March 15, 1977.

Dated: ____________________

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division
Department of Justice

Dated: December 6, 1976

Robert Bloom
Acting Comptroller of the Currency

Comptroller of the Currency
Administrator of National Banks

EFTS GUIDELINES

April 16, 1976

Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Banking Circular No. 66

April 16, 1976

TO: Presidents of all National Banks

SUBJECT: EFTS Guidelines

Nearly a year ago, I wrote you setting forth some of my concerns relating to the development of Electronic Funds Transfer Systems (EFTS). During the intervening months, we have all learned more about EFTS and a number of innovative and experimental projects are currently underway around the country. These projects represent an unsurpassed opportunity for learning in the real world and I am confident that the experiences gained in these early years of EFTS will serve the public and the industry well.

A number of bankers have requested that this Office provide some guidance to insure an orderly transition from a paper-based transaction system toward an electronic payments mechanism. These requests, coupled with a review of Federal and State legislative activity, testimony offered by consumer groups and bankers alike, and the recent publication of major studies (National Science Foundation: The Consequences of Electronic Funds Transfer, and Office of Telecommunication Policy: Legal Protection of Privacy) highlight two major categories of concern. These are Consumer Protection and Security Safeguards in an EFTS environment. These subjects are also incorporated into the Congressional mandate to the National Commission on Electronic Funds Transfers. The Commission is now hard at work on its complex and demanding tasks, but the Commission has clearly expressed its desire that innovation and experimentation be encouraged during its statutory lifespan and we must grapple with these Consumer and Security issues in advance of the interim or final Commission reports.

Accordingly, I asked that my staff synthesize the "state of the art" thinking in the form of guidelines that might prove helpful to you in your evaluation of EFTS systems for your bank. These guidelines are by no means regulations, nor are they to be interpreted as operating standards nor as static and timeless thoughts. They are simply representative of our current thinking and offered for your consideration as new systems are developed or existing systems reviewed.

Questions regarding these guidelines should be directed to Mr. Thomas W. Taylor, Associate Deputy Comptroller at (202) 447-1600.

James E. Smith

James E. Smith
Comptroller of the Currency

Enclosure

ELECTRONIC FUNDS TRANSFER SYSTEM (EFTS) GUIDELINES

At present many banks are involved in or contemplating participation in one or more EFTS services. Creativity, innovation, and experimentation have been critically important to the progress of the banking industry in the past and certainly take on even greater importance as we move toward an electronic transaction environment. The following guidelines are supplied for your review and are purely advisory in nature. They are intended to assist you in your EFTS ventures and should not be construed as a legal constraint on your activities. These guidelines do represent the learning which has been achieved within the industry during the past year.

It would be premature to issue strict regulations at this early stage of EFTS development, for to do so might preempt the broader public benefits which accrue from experimentation and innovation. Similarly, it would be inappropriate for this Office to devise systems standards or specify technology, for these functions have been and should remain the responsibility of the private sector. Pending more formal standards being issued over the next several years by a number of organizations, our examiners will use these guidelines in the evaluation of your EFT systems.

Two basic sets of concerns are treated herein in these guidelines. The first set represents those concerns which have been expressed by consumer advocates, individuals, and various research groups and deal primarily with consumer rights and liabilities in EFTS. The second set are those which focus attention on safeguarding the security and systems integrity of terminal-network operations.

This Office recognizes the rate of change within the industry and the lead time required to translate a technological or marketing concept into operating reality. There is an impetus to the timely publication of these guidelines - the realization that it is far easier and less costly to incorporate adequate consumer and system safeguards into the design of a system than it is to superimpose these features on an existing system.

CONSUMER GUIDELINES

1. Concerns have been expressed by consumers that data captured by or maintained within an EFTS system could be divulged to others without their knowledge or approval. The bank should assure its customers that it will use the personal and financial information collected by the EFTS system only for banking purposes. The bank will not sell or divulge this information to any party, without the customer's written instructions, unless legally required to do so, or within generally accepted banking practices.

2. Where a national bank utilizes the services, terminals, or computer network systems of another firm, a contract between the bank and the outside firm must indicate that any information compiled by the servicer must be treated with the same degree of confidentiality as in the case of transactions handled entirely within the bank.

3. Where selective unsolicited mailings of debit or asset cards are undertaken, the mailing will be only to existing bank customers, unless the issued card requires validation before use. In considering card issuance, senior management should use stricter screening criteria for off-line systems than on-line EFTS systems. In developing the card issue strategy, bank management should consider the Federal Reserve Board's Truth in Lending Staff Letter, Number 796, a copy of which is attached. The bank should evaluate the risk of alienating a significantly large number of its customers by distributing unsolicited cards.

4. Customers should be provided with the name and telephone number of the banking department to be notified in the event of card loss, statement error, or to report complaints. Such notification should at a minimum comply with the provisions of Section 226.13(b) (4) of Regulation Z of the Board of Governors of the Federal Reserve System.

5. There is a concern that non-bank terminal operators, such as retail merchant employees in a point-of-sale environment, might have access to customer balance or overdraft status information. It is the intent of this guideline to protect the confidentiality of the customer's financial relationship with his financial institution. Accordingly, no account balance, specific overdraft information, or similar specific dollar amount information should be transmitted to a terminal operator other than a duly authorized bank employee or the customer. This guideline is not to be interpreted to prevent the types of administrative traffic that are normally associated with the retail transactions at the point-of-sale. This would include an instruction not to complete a transaction, to pick up the card, request a current address or driver's license for customer identification or verification purposes, or to alert the terminal operator that the transaction may be suspect due to frequency or locational constraints designed into the operating system, etc. The release of account information to non-bank terminal operators, by any means, when the computer or terminal system is not operational should be limited to transaction approval or instructions for denial. It may also be appropriate for the bank to provide instructions at each terminal location for customers to follow, with an appropriate bank telephone number and extension, in the event a transaction is denied at the point-of-sale. This will encourage the customer to effect an immediate inquiry to the bank or servicing corporation should his transaction be denied and reduce the potential for mistakes or adverse customer reaction.

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6. Customers have voiced concerns that it would be difficult to maintain a running record of their transactions in an EFT environment. Accordingly, banking transactions consummated through a manned or unmanned banking terminal should be acknowledged by a receipt prepared at the time and location of the transaction. Telephonic transfers and automated clearinghouse transactions need to be shown only on the periodic statement. Upon receipt of the periodic statement, the customer shall have an opportunity to file a written protest to any transaction. Receipt of any protest should be acknowledged in writing by the bank. The bank's resolution of the protest should be accomplished within 30 days of the bank's receipt of the customer's letter. The customer should be provided a copy of the original receipt, where appropriate. To maximize consumer acceptance descriptive statements or facsimile receipts should describe fully the terminal transaction.

7. Pre-authorized debit and credit transactions shall be supported by written authorization agreements between the customer, company, and/or bank. A company should send a notification to its customer of its intent to debit a customer's account where the amount of the prearranged transaction varies from previous charges, unless by a reasonable and pre-authorized percentage. This notification should be accomplished seven calendar days prior to the date the company intends to process the debit. A customer should have the right to stop payment on any prearranged transaction. This guideline reflects current NACHA procedures.

8. The bank shall develop and maintain reasonable procedures to ensure that its customers do not suffer losses from unauthorized withdrawals from their accounts. Whatever liabilities accrue to each party to a transaction should be clearly identified and conspicuously disclosed in the contractual relationship between the bank and customer. It must be made clear to the customer that he bears a responsibility to the bank for prompt notification of card loss or theft. It should be presumed that the bank will bear liability for any users' losses except in cases of customer negligence, fraud or collusion.

9. It is a requirement in a card oriented transaction environment to provide for adequate customer identification and authentication (e.g. to ensure the person attempting to conduct the transaction is in fact the customer and is authorized to conduct transactions on that account). One acceptable identification and authentication technique currently in use is the personal identification number (PIN). In the event a PIN is used, it should not be issued using any number which is obtainable through the examination of articles of identification that a customer may maintain on his person, i.e. Social Security Number, street address, or birth date. It may also be appropriate for the card to contain a signature panel with tamper proof properties,

thereby providing the terminal operator with an additional means of identification. To enhance the security code system in a point-of-sale environment employing PIN's, the customer should enter his own PIN rather than giving it verbally or in writing to the terminal operator. It must be clear, however, that it is not the intent of this guideline to limit or restrict identification and authentication procedures to the use of a PIN. Rather, as new personal identification and authentication techniques are developed within the banking industry, banks should be free to experiment and employ these new techniques. The customer must understand the importance of his PIN and his liability for disclosing this information to another individual. The customer should be instructed not to write PIN's on the plastic card itself.

SECURITY GUIDELINES

10. On-line data transmissions between banking terminals and the central processor units should be protected from spoofing, tapping, message insertion, modification of message content, and surveillance. One of the currently available techniques to provide this level of protection is message encryption. One specific encryption technique that might be considered is the use of the National Bureau of Standards algorithm. However, it should be noted that security techniques for protection of messages between terminals and central computer systems are under intensive development within the industry and it is likely that other

standards will be developed in the near future. It is further suggested that, to detect fraudulent message alteration or replacement, each EFT terminal generate unique control data based on message sequence and message data contents on all outgoing requests and that the terminal or CPU verify control data on incoming messages. This is generally consistent with the ABA/Mitre report on EFTS security.

11. Terminal and operator identifying or authentication codes should be used to guarantee the integrity of the terminal as well as the authority of the operator to undertake the transaction. In those situations in which a retail electronic cash register is employed as an EFT terminal, the bank should effect some form of agreement with the retailer to ensure that an adequate audit trail exists and that the retail employee consummating or accomodating the transaction can be adequately identified through an audit or edit routine within the retailer's system.

12. To prevent the ready access of the customers' account numbers and personal identification numbers (where PIN's are used for customer identification and transaction authentication), it is desirable to prevent or preclude the existence of both the account number and the PIN on magnetic tape or hard copy reports for any longer than absolutely necessary in the card issuance process. Accordingly, magnetic tapes used in the process of encoding

new cards with PIN numbers and account numbers should be destroyed within a reasonable period of time. Where service bureaus are used, the bank should, through contractual arrangements, ensure that such tapes are destroyed. Similarly, hard copy listing in which PIN and account numbers might be linked should also be under effective dual control before destruction and destroyed as soon as practical. (For additional comments concerning the PIN as an authentication technique, reference consumer guideline #9.)

13. Blank cards should be kept under effective dual control and accounted for in each of the various steps in encoding, embossing, stuffing and mailing. The encoding equipment and inherent security features (scrambler plugs) should be kept under dual control. Access to the physical area in which encoding is accomplished should be limited to authorized personnel and dual control procedures employed. There should be a basic separation of duties between personnel assigned custody of blank cards and personnel responsible for the encoding and mailing of cards.

14. Considerations that are appropriate in the physical distribution of transaction cards follow:

A. Cards should be mailed in envelopes with a return address which does not show the bank's name or usual place of business. The envelopes should instruct the U.S. Postal Service, "Do Not Forward".

B. A separate, individual Post Office box number to which the cards are returned should not be under the control of the Mail Department or any department associated with the daily operations of the EFTS program. For example, it may be appropriate for cards to be returned to the auditor, the Controller's Office within the bank, or bank security department.

C. Postal authorities should be advised by the bank and their assistance requested when a large issue of plastics is to be mailed.

D. Premailers should be employed in advance of any card issue to detect invalid addresses and/or unauthorized recipients such as minors, pets, etc. This is standard practice within the credit card industry today and certainly appropriate for use in a debit card environment.

E. The plastic card and the PIN number should not be mailed together. A suitable amount of time should be allowed for the return of any plastic cards that were undeliverable prior to the mailing of the PIN.

F. As in the premailer, when plastics are issued, the mailer should indicate the type accounts which may be accessed by the customer and request that the customer notify the bank immediately of any discrepancies.

G. The PIN mailer should also advise the customer that his cards were indeed mailed to him and to notify the bank immediately if such cards were not received by him.

H. The PIN mailer should not contain any account numbers other than the PIN itself. This will assist in eliminating the possibility the PIN and account numbers being joined by an unauthorized individual.

I. Waste or spoiled cards should be destroyed under dual control with the event properly documented. Returned cards should be properly receipted to the customer.

15. Banks should be aware that in any terminal network system employed for the primary function of transferring funds electronically the exposure to fraud and criminal or wrongful use is much higher if the terminals are operated off-line. On-line operation is preferable, from a security standpoint, although each bank's decision is likely to be influenced by differing degrees of exposure and marketing considerations.

While it may be desirable not to have the PIN encoded on the card's magnetic stripe, the realities of present technological capabilities suggest that even many on-line systems will be operated in an off-line mode for at least a certain portion of the day. The PIN would, in that case, have to be encoded on the stripe. Accordingly, if the PIN is contained on the magnetic stripe, some secure scrambling technique must be employed so that simple skimming will not make available to an unauthorized user both the account number and PIN.

16. Any automated teller machine that operates in an off-line mode or may operate in an off-line mode for a portion of the day should have available an adequate negative file to accomodate all bad cards for a period of two years or for a period which reasonably exceeds the normal card expiration - reissue cycle, whichever is

shorter. Off-line ATM's should be converted to an on-line basis as soon as economically and operationally feasible, but any ATM operated off-line should have its negative files updated every business day. Off-line and on-line terminals should have a maximum amount set for withdrawals during a specified period of time, both in dollar amounts and total number of uses. Of course, off-line ATM's should have much lower maximums. Negative files should have sufficient capacity to include all "hot cards" of sharing institutions and should the capacity limit be approached, on-line conversion is necessary.

17. Automated teller machines should be balanced every business day. Automated teller machine deposit envelopes should be matched with the deposit receipts under dual control every banking day and any deviation should be brought to the customers attention within 24 hours of correction. Loan payments should be posted to the customers account (loan account) not later than the next business day following the date of the transaction.

18. Reports describing both completed and attempted transactions should be available for the entire terminal network system, whether on-line or off-line. (Such reports, however, should not include the customers PIN number if any is used). "Suspect" lists should be provided that indicate that a customer has accessed the system with a greater frequency than might be reasonably expected.

The cost and operational feasibility of such a "suspect" list program, however, might be prohibitive in off-line systems and other control techniques should be considered. It may be appropriate to include audit verification of the identity and authenticity of the user following the first use of the card and on some reasonable frequency thereafter.

19. It is futile to incorporate extensive terminal network security safeguards unless the computer room and related internal activities are at least as secure against physical or intellectual threat. Banks must strengthen and adhere to the basic internal controls necessary within the data processing installation itself. Controls over physical security should be tightened as "on-line" EFT systems become more commonplace. Protection against fire, theft, and other destructive acts must be increased. Separation of duties within the center must be rigidly enforced, and all systems must be fully documented and audited.

20. The complete and accurate identification of a customer using an automated teller machine has relied principally upon the possession of a transaction card and use of a personal identification number. There have been some instances where an unauthorized user has come into possession of both the card and PIN. Where

losses to the institution accruing from this unauthorized or wrongful use of the card and PIN become significant, a bank might consider the installation of a camera system to photograph each user. The pictures of the user could be developed when a fraudulent or wrongful transaction is suspected.

21. Off-premise ATM's should be serviced at varying hours to minimize service pattern detection. When replenishing the currency supply within the ATM, the bank may wish to employ armed guard protection where practical. Currency should be kept to a minimum, to limit possible burglary losses, but consistent with banking needs. When items for subsequent deposit are picked up from ATM's, this operation should be under dual control, at a minimum.

22. Any operator of a bank owned or controlled POS device initiating banking transactions should be thoroughly trained in the operation of that device. Quality control monitoring, which might include a listing of errors by terminal and by operator, and follow up training of the terminal operators may prove helpful.

23. Where a bank contemplates installation and operation of an in-store banking facility, whether operated by merchant or bank personnel, management should review the security devices and procedures currently in place in that merchant location prior to

installation. Availability and accessibility of an alarm system should be considered, even though retail POS devices do not come under the purview of the Bank Protection Act.

24. In the event a bank POS system goes out of order, the merchant should be aware of the backup procedures available, applicable floor-limits and a contact to restore service.

25. In a multibank switching environment, control over telecommunication data flows is critical and exposure to fraud or criminal abuse through spoofing, tapping, etc., may be significant unless appropriate strategies are employed to protect message flows. One recognized technique today may be message encryption. The system software must allow for matching responses to the proper requests and ascertaining that the responses were generated by the valid authorizing system. The system should be able to detect and report invalid responses, unanswered requests, duplicate messages, and lost messages. As previously cited, encryption standards are likely to be developed later this year, but it should also be recognized that alternative techniques may become available as a result of technological or systems innovation.

26. In a shared environment, individual banks must balance and settle each business day and adequate transaction reports must

be available to identify all transactions affecting each individual institution. In the event of line failure in a shared on-line environment, backup routing of verification messages should be available, even if through human intervention supported by ordinary telephones.

27. Banks issuing credit and/or debit cards (where credit lines are attached to the accounts or the cards are used in off-line systems) should review the customers creditworthiness prior to the issuance or reissuance of any such card.

28. Maintenance engineers should not have unmonitored access to ATM or POS equipment. Banks should furnish an individual knowledgeable of the system maintained to provide their half of the dual control over such terminals.

29. The bank should, for the protection of their customers, ensure that automated teller machines are located in well-lighted areas. The machine keyboard and display should be properly shielded so as to avoid disclosure of a customer's account information or personal identification number (PIN) through visual surveillance. Every bank should adopt and maintain Automatic Teller Machine (ATM) safeguards to insure the safety of funds, items and other information contained or recorded therein. These shall include security devices consistent with the minimum requirements of the Bank Protection Act of 1968 and these guidelines.

30. Bankers Blanket Bond Coverage should be reviewed with the bank's carrier to ascertain whether and to what extent EFT systems are covered. Bank management and the board of directors should be fully aware of the potential liability assumed by the bank should it elect to self-insure.

SUPERVISORY ACTION

The examining staff of this Office will review the bank-customer agreements and the underlying rights and liabilities of all parties in the contractual arrangements. Examiners will also review the security safeguards and operator procedures employed in the terminal-network based EFTS systems as they would any other operating system. Where evidence of consumer abuse or imprudent procedures by the bank are disclosed by the examination, corrective action will be initiated.

No. 796

§ 226.13(a)	Automated bank teller cards used in conjunction with or without computer facilities are not credit cards provided that they do not permit cash loan advances or by agreement permit overdraft checking services.
§ 226.13(b)	" " " " " "
§ 226.2(l)	" " " " " "
§ 226.4(d)	" " " " " "

May 16, 1974

This is in response to your recent inquiry as well as several others received concerning the proposed issuance of certain plastic cards to checking and savings account customers of banks. The cards in question are designed to be used in automated teller machines and will permit customers to make deposits and withdrawals from their checking or savings accounts, to pay loan instalments and utility bills, and to transfer funds between various accounts. In some cases, however, the cards may be used by customers to obtain cash loan advances which will result in charges against their overdraft checking account or credit card account. You have asked our opinion, with reference to Sec. 226.13(b) of Regulation Z, as to whether such cards may be issued on an unsolicited basis.

In regard to those cards which can be utilized to obtain cash loan advances charged to a credit account, whether an open end account relating to a credit card or an overdraft checking account where the creditor and customer agree to overdraft privileges, it is staff's opinion that such cards clearly fall within the definition of credit card in Sec. 226.13(a)(6) and thus may not be issued except in response to a specific request.

The remaining cards in question, which may not be used to effectuate a cash loan advance, fall into two categories, depending upon whether the automated teller machines facilitating their use are "on-line" with the bank's computer or not. A card used in conjunction with an "on-line" teller machine will not, except in the case of computer malfunction, permit an overdraft of a customer's account. Since credit cannot be extended, these cards would clearly appear to fall outside the Regulation's definition of credit cards and, thus, beyond the sanction of Sec. 226.13(b) and may be distributed on an unsolicited basis.

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The use of cards in conjunction with automated teller machines which are not "on-line" with a computer may, at times, result in a customer overdrawing his account. However, it is our understanding that the banks in question do not intend that the customer use the card to obtain credit or to borrow funds and that in the event that such a transaction results in an overdraft, the banks will promptly notify the customer of that fact and require immediate repayment plus, usually, the normal overdraft fee. If overdrafts become a frequent occurrence under these circumstances the card will be withdrawn from the customer or the machines will be programmed to reject the card's further use. If this procedure is followed, we do not believe that the banks have granted credit to their customer, which is the right to defer the payment of debt or to incur debt and defer its payment (Sec. 226.2(1)). Nor do we view the fee for overdrawing an account in these circumstances as the imposition of a finance charge (Sec. 226.4(d)). Thus, it is staff's opinion that cards used in conjunction with a machine that is not "on-line" with a computer likewise fall outside the definition of credit card and may be issued on an unsolicited basis, so long as the bank follows the procedures just described. However, where there is an agreement between the bank and the customer to honor any such overdrafts, staff would view such transactions as "credit" and cards issued to facilitate those transactions as "credit cards".

In reaching these technical conclusions, staff recognizes that at some future date, an issuer of such "non-credit" cards might wish to consider offering credit privileges in connection with such cards. Any offering of credit privileges in connection with such cards unless remote in time from, and otherwise unconnected with, this issuance could cast doubt upon the bona fides with which the cards were initially provided and might indicate an intent to evade the dictates of Sec. 132 of the Act. Also, the existence of any facts or circumstances at variance with, or in addition to, those described above could lead to a different conclusion.

We trust that the foregoing is responsive to your inquiries.

Sincerely,

Jerauld C. Kluckman
Chief, Truth in Lending Section

Mr. ANNUNZIO. Thank you, Mr. Taylor, for your excellent statement. The subcommittee will look forward to this consumer guide when the Comptroller's office publishes the guide, so that you can make those available to us.

Mr. TAYLOR. We certainly will.

Mr. ANNUNZIO. At this point I would like for Mrs. Spellman to begin the questioning.

Mrs. SPELLMAN. Although I did not get to hear all of this—and I'm sorry about that, but I was at another committee meeting and could not get away—I glanced through the materials that you have presented. I want to ask Mr. White, if I might, the Federal Reserve Board has recommended repeal of most of the Truth in Lending civil liability sections so that it applies only to a few disclosures and only material statements of those few disclosures.

Would you comment on the likely consumer protection consequences of doing this, or am I misunderstanding what the proposal is?

Mr. WHITE. My proposal went to the issue of administrative enforcement by the FTC, and so it is, to some extent, a separate issue. The proposal was simply to make it easier for the Commission to enforce the statutes.

With respect to the Federal Reserve Board's proposal to reduce the civil liability provisions, I think generally that from the standpoint of a staff member at the Commission with what we think is a fairly awesome number of creditors for which we have enforcement responsibility the civil liability provisions are essential to maintaining a high level of compliance by those creditors under our jurisdiction. As a practical matter there are just too many creditors for us to insure compliance administratively.

The administrative complaint process is helpful, but it simply does not provide the kind of coverage in our situation that can be obtained by the other agencies with supervisory responsibility. We don't have that type of responsibility; therefore, we simply try to allocate our enforcement responsibilities where we will get the best return for consumers.

Mrs. SPELLMAN. I'm concerned, and I mentioned this yesterday. I'm concerned with what I think generally is a lack of enforcement or an inability in many cases to enforce the laws that we now have on the books.

I know, in some agencies there's a 3-year lag. When we have a 3-year lag or even a 4-year lag, then the laws we have just aren't worth very much, because that is not providing justice.

In some cases I have found where there were things that I was especially concerned about. I would bring together people from the various agencies, all of whom seemed to have responsibilities for enforcing a piece of the law. We would sit down and work out what was considered to be a proper way of handling a case, one that would be meaningful, and we would try to solve that particular problem.

That doesn't mean we can always get it through for that takes some doing. But, if all of us were to sit around a table we would come up with some kind of solution. We can't know until we have really had a change to talk with one other, I suspect.

Mr. WHITE. We would have to have the opportunity to exchange views on this subject because our viewpoint may be tempered by the different backgrounds and different enforcement procedures we have used in the past.

Mrs. SPELLMAN. In your opinion, do you think the consumers' interests are really being protected today by the Federal Government with the kinds of backlogs that you have and the kinds of problems that each of you face in your own attempts at enforcement?

Mr. TAYLOR. Is that an open question?

Mrs. SPELLMAN. That's an open question.

Mr. TAYLOR. I think, speaking for our agency, that they are doing an adequate job at the present time. It is admittedly a recent effort, but we recognized the problem about 2 years ago and we started in November of 1974 a test project to see how we could better enforce compliance by national banks. And as a result of that test project, we have expanded it nationwide starting last fall.

I thought my statement addressed that fairly clearly, but there are instances where there are cash reimbursements made to customers as a result of our findings.

Mrs. SPELLMAN. Mr. Finkel, what's the role of your Office in coordinating Federal agency consumer divisions?

Mr. FINKEL. At the present time, what we attempt to do is to bring what we believe are the views of the consumer community to the attention of the various regulatory agencies which deal with the consumer problems in the marketplace.

One of the ways we can best do this and have done in the past is to provide substantive comment on proposed rules and regulations which appear in the "Federal Register" and also to provide testimony such as we are doing today on bills which are of concern to the consumer community.

Mrs. SPELLMAN. Having provided that kind of advice and instruction to the various agencies, what do you see is happening as a result of it? Are you happy with the kind of attention they are giving to that advice?

Mr. FINKEL. I think that there are instances where we are pleased and there are those where we are disappointed. I don't think that everything is being done which could be done to help the consumer, but of course, there are reasons for it. For example, it is often alleged that a number of agencies are limited by a lack of statutory authority, a lack of funds and differing philosophies of those who administer the agencies. Moreover, even when an agency does take action in some area of consumer concern, the administrative proceeding may take so long as to make the value to consumers of the agency's action minimal. But it is the job of our Office to continue to bring to the attention of these agencies what we and the consumer community believe are shortcomings.

And indeed our advice and recommendations are often reflected in subsequent agency operations and decisions.

In addition, a recent example of our role in bringing the view of the consumer to government policymakers was our participation in the White House consideration of the "Parens Patriae" antitrust legislation. We believe our ability to communicate the concern of the consumer community to the President weighed heavily in his reluctant eleventh hour decision to sign this important piece of consumer legislation.

Mrs. SPELLMAN. Thank you very much. My time is up.

Mr. ANNUNZIO. Thank you, Mrs. Spellman.

Mr. Wylie of Ohio.

Mr. WYLIE. Thank you, Mr. Chairman, and thank you, members of this very distinguished panel for appearing here this morning and giving us your valuable time.

Governor Jackson, on page 1 of your statement you say, with rare exceptions consumer credit regulatory legislation was enacted by the various States rather than the Federal Government, and you point out, many States have laws setting ceilings on prices for loans, and there are multiple layers of special conditions and rules. And of course, you imply from that, and I think rightly so, that it is very difficult for a consumer to know exactly what to do with the multiplicity of rules and regulations from the Federal Government and the State.

And then you point out that, for example, consumer transactions might occur under six different laws in the State of Illinois. I think I know the answer to this, but there is sort of an implication left that we should have some sort of a Federal law which would set a ceiling for—a ceiling price for loans to consumers, a Federal law.

Governor JACKSON. Well, Mr. Wylie, I think our suggestion to the subcommittee was perhaps substantially broader than the narrow field you have outlined. I think our suggestion is to urge the subcommittee to consider in the course of its legislative oversight and policy discussions during this Congress the proper relationship between Federal and State law in this whole area of consumer credit protection.

Now, the issue of whether or not the price should have a ceiling set by law and whether that ceiling should be set by Federal or State law is a completely separate issue, as you know. For instance, in the home mortgage credit field, under the FHA and VA loan programs, there was a period in which the ceiling was set by Federal statute. The result was not very satisfactory. That has been now modified so that the direct price paid by the consumer is set by Federal regulation; however, the yield to the investor is not set due to the discount mechanism.

You have a multiplicity of issues like this. There have been some times when there have been advocates of a Federal interest ceiling law for consumer loans. That would be a question that, I think, this committee ought to address rather than a Federal regulator.

Mr. WYLIE. Well, I had a feeling I knew what your answer would be, but I did not want that statement to be misinterpreted. You are not in any way suggesting a Federal usury statute.

Governor JACKSON. I know your own State of Ohio has been addressing this issue for many months, pro and con.

Mr. WYLIE. But a specific answer, I say you are not in any way suggesting a Federal usury statute?

Governor JACKSON. No.

Mr. WYLIE. On page 3 of your statement you outline 10 statutory changes to credit laws.

Do you think we should give you better guidelines so that you can implement these laws by regulations, or should we, by statute, be more specific in what we really mean?

In other words, last year in the Debt Collection Practices Act I offered an amendment that simply stated—in the Debt Collection Practices Act we told you what we mean, and the FTC doesn't have any rulemaking or regulatory authority, and if there is some doubt as to what we mean, they should come back to us.

Do you understand the thrust of my question?

Governor JACKSON. Yes. If I had to make a personal suggestion to the subcommittee, I believe we have had more difficulty in implementing the statutes in cases where the subcommittee has had substantial evidence of abuse in a particular field. But instead of attacking only the areas of known abuse, the statutory remedies for such abuse are applied over a broader field than the evidence would indicate.

Let me give you an example. I believe the subcommittee heard a substantial amount of evidence of abuse in the area of consumer leasing, primarily applicable in the leasing of automobiles and primarily along the west coast of the United States. And in response to that, and in response to the recommendations of the Board of Governors—and I'm using this example because we have to plead partially guilty to the offense I'm commenting on—the Congress passed a Consumer Leasing Act, applicable not only to automobiles, or to motor vehicles, but to all personal property.

In the regulation-writing process, we ran into the issue of, "What do you do about furnished apartments where the primary purpose was to lease real property?" There's no question that personal property is being furnished as part and parcel of the lease. Frankly, this was a very, very difficult issue.

Mr. WYLIE. How did you finally resolve it? Have you resolved it yet?

Governor JACKSON. We used a certain amount of regulatory license and decided that leases for real property which included the use of personal property as an instance thereto were not the kind of leases to be covered by the regulation.

Frankly, we weren't able to find any legislative history either to support or attack that conclusion. We just thought it was the only reasonable thing to do until such time as your subcommittee, under its oversight responsibilities, could make a decision, pro or con.

We found that some of the provisions of the same act, particularly those dealing with pricing and tagging, were very difficult to apply to those lessors that leased a multiplicity of small, personal items, in contrast to those that might lease something substantial, like an automobile.

In the case of the Consumer Leasing Act, hindsight would encourage me to recommend, personally, that it might have been better to limit the coverage of that law to motor vehicles or automobiles. The subcommittee may have had a different judgment, but it appeared, at least from the testimony, that the abuse was confined to a narrow sector of the economy; the application to a broad sector of the economy produced problems.

Mr. WYLIE. So you are suggesting we take another look at that truth in leasing law?

Governor JACKSON. I'm using that as an example of the whole field of consumer credit.

Unfortunately, as we proceed in one direction—and we have learned this through hard experience—we propose an amendment to the regulation which we think will cure a problem that has cropped up, only to find that the amendment itself has created a bigger problem that we never expected in another area. I'm sure you have run into the same difficulties.

Mr. WYLIE. I have been given a note that my time is up, but I would like to ask Mr. White, if I may, to follow up on my debt collection practices question a little while ago.

You say on page 12 of your statement, where you make a reference to the FTC Improvements Act—with reference to your remarks on page 12, would you please elaborate on how the Debt Collection Practices Act would extend the authority of the FTC beyond the powers given to the FTC by the Improvements Act?

Mr. WHITE. Mr. Chairman, I don't think that act would extend the Commission's powers. The principal importance of the statute would be to specify the unlawful conduct so that there weren't any debates about whether a particular type of debt collection practice was an unfair or deceptive practice. Unlawful practices would simply be enumerated in the statute, and that specificity I think would be very, very helpful to getting compliance.

Our procedure now, of course, is to operate under the Federal Trade Commission general jurisdiction, and many different types of practices could violate the general proscription of unfairness or deception. The statute would, I think, give clarity, and I think that is very important in this kind of industry.

Second, the statute could and should, in my judgment, provide for private enforcement, since this is another area in which the Commission could not conceivably deal with every violation that could possibly come up under the statute.

Mr. WYLIE. Thank you very much.

Mr. ANNUNZIO. Thank you, Mr. Wylie.

Mr. Vento?

Mr. VENTO. Mr. Chairman, I have a couple of questions. One is to Mr. Finkel.

You commented—and I think properly so—on the privacy of financial data and banking records. I am interested, in light of that, of those comments, talking about protection from various disseminations of that information, especially in the public sector if, in light of the Supreme Court decision, to say that there is not necessary some action to protect the public from private examination of those same records without knowledge.

Mr. FINKEL. Do you mean the Supreme Court decision which I referred to?

Mr. VENTO. Yes.

Mr. FINKEL. I would think so.

Mr. VENTO. In other words, today, Mr. Chairman, there is no protection. In other words, in light of that court decision that was recently rendered, there is not adequate protection, in your mind.

Mr. FINKEL. That's correct.

Mr. VENTO. The other question that comes to mind in looking at some of the work that has been done by the Comptroller of the Currency, which I think is an excellent paper, and seems to indicate a certain recognition and responsibility that's very broad in terms of education and training of the employees and examiners, is, on the top of page 7 you talk about some of the activities, and I'm wondering if in fact the Comptroller of the Currency's responsibility could be included to pick up redlining data and implementation of that sort of action by Congress.

I would like your response, Mr. Taylor.

Mr. TAYLOR. Well, Congressman, redlining is a difficult area, as is the whole area of discrimination because of the difficulty in detecting it.

A couple of the areas that I addressed through the task force and through our examination with Justice is aimed, basically, at getting at discrimination. Now, redlining, to my knowledge, has never been declared illegal, per se, in law. I think that some of the data we're collecting under our pilot projects from the sampling of banks around the country may give us an indication of whether redlining, in effect, is actually going on or not. But until we analyze that data, I'm not prepared to say that is a truism.

Mr. VENTO. In other words, your examination of this pilot project is not designed to shed any light on that particular subject; is that what you're saying?

Mr. TAYLOR. To the extent that redlining is connected with discrimination in the granting of housing credit, yes, I think that it would detect some of that.

Mr. VENTO. We had a number of other questions that have been submitted. One deals with protection for debit card users. I notice the chairman has kind of teed off on that subject at the beginning of the meeting, and I commend him for his interest and actions in this area. Certainly, he deserves our strong support.

The financial climate in which consumers find themselves is indeed a very dynamic one, as stated by Mr. White, in terms of attempting to implement and in terms of Congress acting to protect the consumers. And of course, the rule and regulation power.

I guess, maybe a question first to Mr. White. Do you think that the guidelines, for instance, that the Board of Governors of the Federal Reserve System have given, in terms of its responsibility would continually necessitate action by Congress in order to change various policies? Would you prefer that, or don't you feel you have latitude to move into and make the necessary changes?

I notice that an interesting parallel was drawn here between the complaint procedure by the FTC representative and the actual rule and regulation power in which the complaint procedure turned out to be a more awkward model to deal with the consumer complaint.

How do you feel about the general responsibility, Mr. White, of the Federal Reserve Board as opposed to specific acts of Congress directing you?

Mr. WHITE. I think that the relationship as one of the enforcement agencies for several of the regulations issued by the Federal Reserve Board has been good. We sometimes approach problems from different perspectives, based on our different responsibilities, but that process has been productive. There are instances, as I cited in my testimony, for example in the debt collection area, in which I think that specification by statute is a productive, simple way to deal with a particular problem.

I'm not sure that is fully responsive to your question.

Mr. VENTO. I meant Mr. Jackson to answer the question. If he could, I would like a response. And I think time permits it.

Governor JACKSON. Congressman, I think the area where we have been writing regulations along with the Federal Trade Commission has been under the Federal Trade Commission Improvement Act—section 18(f), I believe, is the correct citation—in which the Congress authorized the Federal Trade Commission and the Board of Governors to determine unfair and deceptive practices. Under the provisions of that section of the act, if the Federal Trade Commission adopts a rule pertaining to nonbanks in general, the Board of Governors is required within 60 days to adopt a similar rule applicable to banks, unless the Board finds one of two exceptions that would enable it to not adopt such a rule: first, that the rule is uniquely not applicable to banks or, second, that the adoption of the rule for banks would be injurious to the payments mechanism system of the economy.

In fact, as I mentioned in my testimony, we have three pending rules today. In all three of those cases we have published similar rules for public comment and are participating in the rulemaking process jointly with the FTC.

Mr. VENTO. Well, Mr. Chairman, I know my time is up. But the major part of my question, I think—and I wanted you to address this, Governor Jackson—is whether or not you felt that you would rather have the initiative from Congress in terms of the dynamics of the financial and consumer protection as opposed to taking some of those initiatives on your own.

Governor JACKSON. I don't think there is any question that, from our point of view, the public policy issue should be the concern of Congress, and the regulator should respond to legislative direction.

Let me speak personally, not on behalf of the Board. It scares me sometimes to see the authority which, as a regulator, we have to determine public policy in areas which the Congress has not had an opportunity to consider. I don't enjoy that privilege. I don't think I'm smart enough to administer it, in too many instances.

Mr. VENTO. Thank you.

Mr. ANNUNZIO. Thank you, Mr. Vento.

I, as chairman of the committee, want to welcome another new face to our committee, Mr. Evans of the State of Delaware. And we are delighted to have you as a member of this panel.

Mr. Evans?

Mr. EVANS. Mr. Chairman, thank you very much. I'm delighted to be a member of this panel.

Governor JACKSON. I certainly agree with you that the regulators should respond to legislative intent, because that is where the accountability is, and I commend you for your efforts in that direction and for your thoughts.

Let me ask a question of you, Mr. Taylor, if I may. We have been focusing on the liabilities of the electronic funds transfer system, and it appears to me that there are a number of liabilities in terms of the consumer, especially in terms of the invasion of privacy, and I'm deeply concerned about that.

But there are two sides to that coin. What are the benefits for the consumers in the development of EFTS?

Mr. TAYLOR. Well, I happen to be a member of the EFT Commission, also, so I'm speaking a little bit from two different properties, I guess.

Mr. Evans. I'm sure you can be totally objective.

Mr. Taylor. I think in the whole realm of EFTS you're talking about benefits to be derived from the whole spectrum?

Mr. Evans. Right.

Mr. Taylor. I think it won't result in decreased cost to the consumer, but at least there'll be a compression on the increment of cost that the financial institutions are facing, particularly in the paper-based system, because if the paper-based check system continues to grow at the rate of increase it has in the last 10 years, it will probably overwhelm the industry's capability to deal with it.

Obviously all the evidence indicates that the consumer today is very happy with the paper-based system, but there are problems 5 or 10 years down the road that have to be dealth with today, and I think plastic obviously has economies and efficiencies that will aid the economy as a whole.

It also gives ease; it makes transactions easier. As a user of plastic myself, I appreciate the opportunity to be able to go to an automatic terminal and put my card in and get cash at anytime I need it rather than during the regular banking hours.

Mr. Evans. Thank you, sir.

I have a question for Governor Jackson. Being an ex-small businessman myself, I'm concerned about small business in America. I would be interested to know how you might be able to protect small business from being forced out of competition because of the sometimes enormous expense of an EFTS system. Big business might be able to acquire them, but small business, I think, might be hurt very badly because of the expense. Is there any possibility of a sharing of that system?

Mr. Jackson. Mr. Evans, I don't believe that I have the personal background or knowledge to properly answer your question. I might be able to do some research on behalf of the Board. Of course, we are members, as an organization, of the EFTS Commission. Former Governor Mitchell is active on the Commission, but I don't believe I have the factual evidence to give you. I think, before you had an opportunity to participate in the hearings, we were discussing a similar problem in the same area with regard to small creditors' difficulty mastering the complex and substantial system of consumer credit protection statutes.

The Board has, in response to that need, tried to develop sample forms which would be available for small creditors and small business people to use for credit applications, and so forth.

Here again, that has both good and bad aspects. The good aspect is that a small creditor can use them and feel protected from violation of the statute.

The opposite effect is that it might tend to make all creditors use the same form.

I think the Real Estate Settlement Procedures Act problems that developed a few years ago are a great example of the opposite side of that difficulty. So it's not an easy solution.

Mr. Evans. Well, we live in an imperfect world. I don't think it's ever going to be perfect, but we can strike the problems, and that's what I'm interested in achieving, and I'm sure you are also.

I have another question, Mr. Chairman, if I may, of Mr. Finkel, in terms of our oversight function here, and I commend you on the manner in which you conduct the subcommittee. I've had very little opportunity to be here before, but I look forward to the fairness in which you apparently conduct it.

I think it's important to take a look at the legislation that we do pass in the Congress and see how it is working.

Mr. Finkel, do you think the Equal Credit Opportunity Act has had any positive impact on the number of sex and marital status credit discrimination complaints in your office?

Mr. FINKEL. We still get complaints about it, Congressman. We have not done a study, but I can take a look at the complaints that we get concerning that particular issue and tell you whether or not there has been a decline. I'm not sure whether that will be a reflection of what has occurred, but certainly we can do that for you and provide you with that data.

We also receive many complaints about credit discrimination on the basis of race and age. We will, therefore, be happy to see the prohibition of these forms of credit discrimination go into effect in March.

Mr. EVANS. My 5 minutes are up, Mr. Finkel. Thank you very much, and I would appreciate that information.

Thank you, Mr. Chairman.

Mr. ANNUNZIO. Thank you, Mr. Evans, and I will take my 5 minutes at this time.

Governor Jackson, you cite my home State of Illinois as a typical example of a State with a variety of statutes in the consumer credit area. Do you feel it would be proper for the Federal Government to set interest rate ceilings on consumer credit transactions throughout the country so as to reduce the complexity of the current statutory scheme?

Governor JACKSON. I believe that was substantially the same question Mr. Wylie asked, Mr. Chairman. I personally would not be in favor of that.

Mr. ANNUNZIO. I was just wondering, since you cited all of those examples in your statement, if you had any suggestions as to how we could overcome the complexity of the various State statutes versus Federal laws.

Governor JACKSON. This is a very substantive legislative policy question, Mr. Chairman, and that is the reason for the Board's urging. We understood one of the purposes of this hearing was to provide an oversight, to give direction to legislative action during the coming year. And in our judgment a fundamental question, though not unique to consumer credit, as you well know—it applies to all Federal-State relationships. But it appears to us that the present complexity with regard to State versus Federal rules in consumer credit as opportunities for solutions that would simplify the law and provide public benefits.

Mr. ANNUNZIO. I know, Governor Jackson, you're familiar with the GAO study on the Federal supervision of State and national banks, and in their findings they suggested that the banking agencies have not aggressively monitored consumer protection law compliances.

What is the justification for your suggestion that violations of truth in lending might be limited to administrative supervisory enforcement?

Governor JACKSON. I hasten to say that in this area we are not making a blanket recommendation. We are urging the subcommittee to study the balances between the two points of view to determine what should be the proper public policy.

I think Mr. White's testimony is a graphic illustration of the difficulty. The Federal depository supervisory agencies are substantially amplifying their consumer credit examination and compliance programs. The Board of Governors is in the middle of substantially expanding its program. We have had 100 people in schools. Our schools run 75 hours. Mr. Taylor has outlined a program very similar to ours.

You will find that expanded compliance programs are taking place in most of the supervisory agencies. Unfortunately, as Mr. White outlined, there are a substantial number of other creditors in the country. I've heard estimates of as high as a million as the number of creditors that are not subject to such direct supervisory oversight. This does complicate the tradeoff between agency enforcement of technical provisions versus private action, with each individual being his own attorney general, so to speak. The answer cannot be given simply but must be studied.

Speaking back to the fundamental question asked before, we think this is the primary function of the legislative body, not the regulatory body.

Mr. ANNUNZIO. Governor, in my judgment, it's not the Truth in Lending Act that is complicated and needs simplification; it is regulation Z. Why can't the Board—you know, I have written many letters to the Chairman—issue regulations in layman's language so that the average person occupying a seat out there can understand them?

Governor JACKSON. I share your concerns, Mr. Chairman, and as a person that made a living as a creditor for a long period of years, I also tried to study those regulations. However, you have this fundamental question of complexity versus certainty. As long as the penalties for violation of the statute, for violation of the most minor technical provision of the statute or regulation exist, the creditor in most cases is seeking certainty in what must be done to comply. If I can paraphrase many creditors' attitudes, they ask the Board to tell them what needs to be done to comply. The potential penalties can be substantial, particularly in class action suits.

And in turn, when you attempt to do that, many times you lapse into what I call legalese that can ultimately be interpreted only by lawyers and the courts, rather than consumerese that the average person could understand.

Unfortunately, the public benefits of simplification of language are not clear. I think one of the most discouraging things I've heard recently was the fact that a major New York bank made a substantial investment, in trying to convert their routine consumer note to what I call standard street English that any person should be able to understand. It took a good bit of resources to do so. The principal lending officer in charge of that division recently told me that having done so, even though they were very proud of the result and felt that they did the right thing, they could not identify any benefit that the bank had received as a consequence. They could not show that they had one additional customer or one less problem with those customers as a result of having done so.

Now, I am discouraged by that. I am discouraged because it might lead you to believe that our people don't read what they sign. And I think that is a bad public practice.

Mr. ANNUNZIO. I concur.

My time is expired, but I would like to ask the members of the panel—we have more time if you have any additional questions. Feel free to ask.

Mr. Wylie?

Mr. WYLIE. I reread your statement, Mr. Finkel, on page 2, and your reference to the "60 Minutes" program kind of peaks my curiosity.

Mr. ANNUNZIO. You know, Mr. Wylie, I watched that program.

Mr. WYLIE. It says at the end that the husband had received a traffic ticket in another woman's car. He must have been able to explain it.

Mr. ANNUNZIO. I think the explanation of a traffic ticket is simple. [Laughter.]

Mr. WYLIE. I guess my question is this: Do you have any laws administered by HEW that would cover such activity?

Mr. FINKEL. Not to my knowledge, not that HEW administers.

Mr. WYLIE. How do we get to that? Should there be any laws that would prevent what happened there. The couple voluntarily gave the checks, the canceled checks, to an investigator, and the bank records, for the preceding year. I'm not so concerned about the situation where a young couple, or any couple, for that matter, would give the checks and the bank statements up voluntarily. It's a situation where the information could be subpenaed, and that takes me on down to the last sentence. It says, yet approximately 100 Government agencies can obtain immediate access to these records by issuing administrative subpenas. And you regard that as being wrong, I assume, from your statement.

Mr. FINKEL. Well, it depends on what they're going to do with the information.

But I would like to, if I may—I brought two people from my staff with me who have looked into this particular problem, and I would like to call upon them, one of them, if I may, to answer your question.

Mr. WYLIE. That would be fine. And while they're answering that one, they might address themselves to another one. And since I have asked them to do that, I think it is perfectly proper that they do it.

We passed a rule in Congress and the House this time—I don't know that the Senate has the same rule—which will give each subcommittee chairman and each committee chairman a subpena power, so that 165 people in Congress have subpena power now and could supposedly subpena such records. And I would be glad to have a comment on it. I think it's wrong. I voted against it. I think it makes it too widespread, and I think it can be abused. I don't think you can necessarily assume that everybody that has subpena power under the circumstances is going to be responsible.

I would rather have your comments or your staff members' comments, since you made reference to the issue.

Mr. FINKEL. My comment, of course, would be that this was just raised to illustrate the point of privacy and the concern that we have over the individual's privacy with regard to credit records.

But I would like to introduce you to Ms. Stacey Dean from our staff. I cleared this with Mr. Kutcher, Mr. Chairman, that I was bringing Ms. Dean with me, and I would like her to amplify on that.

Ms. DEAN. Thank you, Mr. Wylie.

I think our point on that was that we would favor some sort of notification of the individual to whom records pertain prior to the subpena. I believe the IRS has recently instituted a procedure whereby they notify a person that his or her records have been subpenaed, and then the IRS is prohibited from acting for an additional 14 days to give the individual an opportunity to contest. I think this procedure would be very valuable to all of the Government agencies.

Mr. WYLIE. I take it from this statement here that you think there might be abuse of this practice, and you are suggesting that Congress make some rule or pass a law along these lines or give you the authority to establish a rule or a regulation which would require notice in advance; is that what you are suggesting?

Ms. DEAN. Yes; I am suggesting that individual agencies promulgate rules on their own initiative or be required under law to promulgate rules requiring notice to an individual that his or her records have been subpenaed and giving the individual an opportunity to contest.

Mr. WYLIE. Is it your suggestion that that problem might be increased if we go to electronic funds transfers?

Ms. DEAN. Oh, yes; because the problem with EFTS is that the systems themselves will be able to collect data in such a rapid fashion. Under the present system, limited information is available from limited outlets; that is, banks, credit card companies, retail outlets. But, if EFTS is expanded to include point-of-sale and other remote access terminals all over the country, information could be collected on an individual by all of these terminals and correlated at some central point. The potential invasion of privacy by Government agencies and private businesses would be much greater.

Mr. WYLIE. I think Mr. Taylor wants to comment on that. But at the present time, even with checks, the data on a check could be fed into a computer, of course, and centralized, and is, as far as that's concerned. So I don't understand how it would be any different. If we eliminate the check, that's the only thing we eliminate, isn't it, the writing of the check by the individual in an electronic funds transfer system?

Ms. DEAN. Yes; each bank would maintain—maintains its own records at the present time, and this may be computerized. But the potential problem is that under EFTS all of the information from different banks or from all over the country could be centralized and obtained from one point at one time with a great deal of speed and efficiency.

Mr. WYLIE. I think that could be done at the present time, couldn't it, Mr. Taylor?

Mr. TAYLOR. Legally, it could, I would think. I really did not mean to draw your attention to it, but I do have some thoughts on that. For instance, the Commission has been grappling with this issue. California has a model statute, or we think it is a model, governing the area of due process—I think that's the key—in which a Government agency or anybody who would subpena records from a bank, for instance, of this character is required to, in addition to issuing the subpena, give notice to the customer or the bank that this is being done and provides a time for the customer to go into court and get an injunction.

So due process, I think, is the key to solving this dilemma.

As far as the centralization of records in an EFTS environment, it has favorable and unfavorable aspects. Unfavorably, you do have a greater ability to concentrate records at one source. On the other hand, it also gives you better control over that access. And the banking community, I might observe, has a very excellent record in protecting the confidentiality of its customers' information. The only direct impact has come from the Government, as far as accessing this information, and one of the things we stress in our EFTS guidelines put out by our Office is that this information should be particularly secure, and we try to monitor that through our EDP examinations. I think that's the key, because we have heard testimony at the Commission that electronic records are often destroyed more quickly than paper records. And from an examiner's point of view, in my own experience, it's a lot easier to gather information on a paper-based system than it is on an electronics system.

But if the security is there, I think the electronics potentially gives you better protection.

Mr. WYLIE. Mr. Taylor, on page 5 of your statement, you state you have designed a computer program to catalog consumer complaints. Can you give us from your experience regarding those complaints what percentage you would suggest have merit and what percentage might be frivolous?

Mr. TAYLOR. Very few of them are what I would call frivolous, but a great number—and I can't give you a precise percentage—but a substantial number of them result, really, from a misunderstanding of the customer or by the customer of what the bank's policies or practices or procedures might be.

So, a substantial amount of them are of that nature, and where we find that the bank has really committed no illegal acts, in other words.

Mr. WYLIE. A question a little earlier to Mr. Finkel, and a question to you just now, brings me to another dilemma that we find ourselves in. In another subcommittee of which I'm a member, we are in the process of trying to develop some mechanism to predict when a bank might fail, and during those hearings it has been suggested that we ought to be able to go through and find out who the loans are being made to, what the business transaction at the bank is as far as customer relations is concerned and so forth, and I'm very apprehensive about that, let me say, and I'm suggesting that there ought to be instances where a bank can make a loan to a customer and maybe not necessarily the examiner be able to go into the background of the loan or the customer's personal life or his history and that sort of thing.

In this case here, with the electronic funds transfer, I think that it's all the more important that you see an inconsistency in the two things that we are trying to accomplish there, as I did.

Mr. TAYLOR. Let me see. You see the inconsistency as being that there is going to be more focalizing of more information in one area?

Mr. WYLIE. There will be more centralized information and more access to information as far as customers are concerned and as far as the hearings are concerned in the other subcommittee.

Mr. TAYLOR. I personally think there will be less access.

Mr. WYLIE. You think there will be less access? Under what, an electronic environment?

Mr. TAYLOR. Yes.

Mr. WYLIE. There will be less access to Federal examiners?

Mr. TAYLOR. No; not to examiners. I think it has been well established in over 100 years of examining experience that we pretty much have carte blanche to examine for the safety and soundness of a bank's condition, and we have pretty wide authority to look at any bank record that we deem necessary to do so.

Mr. WYLIE. Can you go into the individual transactions to do that at the present time?

Mr. TAYLOR. Certainly. We do it on investigation of consumer complaints, for instance.

Mr. WYLIE. And we heard from those hearings that there were a considerably greater number of consumer complaints since the truth in lending bill and since the Consumer Protection Act were passed. Have you found that to be true?

Mr. TAYLOR. Yes; as I indicated in my statement, in our Washington office alone, we had a 46-percent increase in the number of complaint letters received in 1976 over 1975, and I think part of that is attributable to the fact of the notice requirement under regulation B in which the customer is given notice that they are protected by regulation B, the Equal Credit Opportunity Act, and it gives the name and address of the enforcement agency for that particular bank. In the case of the national banks, it is our Office.

Mr. WYLIE. I should not have used the word "frivolous" earlier. I should have used the word "technical." How many of those complaints would you say are of a technical nature rather than substantive?

Mr. TAYLOR. I would be hard-pressed to give you an answer. I would say the majority are technical, but that is an off-the-top-of-my-head observation.

Mr. WYLIE. Thank you very much.

Mr. ANNUNZIO. Thank you, Mr. Wylie.

Mr. Evans?

Mr. EVANS. Thank you, Mr. Chairman.

One quick question, because I'm sure these ladies and gentlemen would like to go to lunch, and I appreciate your candidness and your patience.

Mr. Finkel, when you receive a consumer complaint about that collection harassment, what do you suggest to that consumer? If I called you and I weren't a U.S. Congressman and said, I'm being harassed at my employers' office, what do you suggest?

Mr. FINKEL. We unfortunately have no statutory authority whatsoever. We are primarily, if I can use the term, lobbying on behalf of the consumer, and so, as I stated before to Congresswoman Spellman, we inform the agency which would have jurisdiction over such a matter, of your particular complaint.

Now, in addition to that, we try to do something else in the Office. Very often Federal officials, and excuse me for painting with a broad brush, but many Federal officials go ahead and tell consumers, just write to Washington, if you have a problem, or write to your Congressman. Write to your Congressman if you have a problem, and we'll try to help you. And many people then write to Washington, thinking that they are going to receive assistance when in fact many of their problems have no solution because of a lack of statutory authority to proceed, whether it be ours or the Federal Trade Commission or the Federal Reserve Board or whatever the case may be. So, what our Office does try to do is to tell them that indeed we are aware of the shortcomings of the Federal statutory structure in the Federal Government and that we are attempting to generically resolve just the types of problems that they have. We tell them that in all candor, because if there's one thing that upsets the public it is just to refer them to another agency who refers them in turn to another agency and so forth.

Mr. EVANS. As one who has been referred from agency to agency, I can sympathize with that. Do you have any suggestions as to legislation that might correct this in any way?

Mr. FINKEL. Well, of course, we made specific recommendations in our testimony this morning.

With regard to consumer complaints, though, I would like to point out a problem. Our Office is in the process of conducting a consumer complaint study, a feasibility study, to improve the handling of consumer complaints. We have completed two phases of that study, and we are in the third and fourth phase now.

The first phase of the study takes a look at the handling of consumer complaints in regulatory agencies which deal with the consumer in the marketplace, for example, the Federal Trade Commission, the Food and Drug Administration, and Federal Communication Commission, and the Federal Power Commission. Phase 2 examines the service-oriented agencies such as the Veterans' Administration.

In addition to that, in phases 3 and 4, we're taking a look at industry, voluntary organizations and State and local governments.

Mr. EVANS. That's quite a job.

Mr. FINKEL. Oh, by the way, I'd like to point something else out, because this question does often arise. This is an independent contractor who is doing this on the basis of a competitive bid.

Now, one of the things that we found in phases 1 and 2, in looking at the Federal regulatory agencies and some of the service-oriented agencies is that consumer complaints are not always used as input to policy. Very often the agencies receive consumer complaints and do not use these as one information factor in determining subsequent policy. We would like to see a change in that.

Now, if you're interested in this particular area, I can make available to you copies of phases 1 and 2, which contain a report on each of the agencies and how they deal with consumer problems from the time the complaint enters the agency until it leaves.

We are also concerned with whether or not the—I'm sorry. Am I taking too much time?

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Mr. EVANS. I would appreciate it very much, and I think if you sent that it might answer some of these questions and perhaps we could improve the way we do protect consumers.

Mr. FINKEL. I make that offer to any other gentleman on the panel. If you so wish, I will provide you with copies of phases 1 and 2 of the report.

Mr. EVANS. Well, thank you, Mr. Finkel, and ladies and gentlemen of the panel, and, Mr. Chairman, thank you.

Mr. ANNUNZIO. I want to thank the representatives of the regulatory agencies who appeared this morning. For 2 days these information hearings have demonstrated a tremendous interest on the part of the public. I've noted for 2 days all of the chairs have been occupied for many hours by people walking in and walking out of the House Banking, Finance and Urban Affairs Committee.

I also would like the record to show that your statements will prove invaluable to this subcommittee as they proceed to work during the 95th Congress on legislation that affects the consumers.

Your counsel and your advice will be accepted wherever possible. I again want to thank you very much for your cooperation, and the committee stands adjourned until tomorrow at 10 a.m. We are going to meet again tomorrow to hear the representatives of industry.

We have heard from the consumer representatives, the regulatory agencies, and tomorrow we will hear from the industry representatives at 10 a.m.

[The following are written questions submitted by Chairman Annunzio to Governor Jackson, along with Governor Jackson's answers:]

Question 1. As part of current administrative enforcement, does the Board require financial institutions who violate Truth in Lending to reimburse the consumers involved?

Answer. The Board does not, as a matter of general policy, currently require banks under its enforcement jurisdiction which have been found through examination to have violated the Truth in Lending Act to reimburse the consumers involved. However, the Board has such a policy under active consideration. Specifically, a task force of the Federal Reserve System formed to study a number of enforcement issues is considering the question of reimbursement of overcharges. The task force is expected to present its recommendations to the Board in the near future.

Questions 2 and 3. If the civil liability provisions of Truth in Lending are reduced to all but material misstatements of a few disclosures, does that mean that credit card requirements which are a part of Truth in Lending will also no longer be subject to civil liability?

According to the Board's Truth in Lending civil liability recommendations, anything that is not a material misstatement of the APR, finance charge, amount financed or the repayment schedule would constitute a *technical* violation. Do you really mean to say that a violation such as a financial institution's failure to notify a consumer that for three days he has a right to rescind a credit transaction involving a security interest in his home is merely a technical violation of the law?

Answer. What the Board recommended in its July 16, 1976, letter to you regarding simplification was that Congress consider the possibility of limiting the penalty provisions of the Truth in Lending Act to violations of certain of the disclosure requirements. It suggested that one limitation might be to allow civil suits only for disclosure errors which actually interfere with a consumer's ability to make meaningful comparisons of credit terms, and further suggested four terms that probably are of substantial help in making those comparisons. This list was meant to be illustrative only and was not intended to be inclusive. It does not mean that the Board considers all other disclosures to be merely technical; in fact, what the Board suggested was that Congress itself consider making such a determination. We believe it would be possible for Congress to amend the Act to define what is "material" and what is "technical" and to make that list inclusive. Under such a scheme, violation of a provision designated as material would be prima facie a material misstatement and therefore actionable.

It should be stressed that the Board has simply urged that Congress consider amending the civil liability provision and suggested one possible way of approaching that task. The July 16 letter stated that the Board could not make an unqualified recommendation because simplification might result in the loss of certain consumer protections, which loss must be carefully weighed against the potential benefits.

To answer the specific questions as to whether the credit card provisions and the rescission provisions would be classified as technical and therefore non-actionable, I would reply in two ways. First, as just stated, the Board itself does not presume to have designated which provisions are technical and which are material. Second, the four terms that were cited as being material to a consumer's credit decision were examples relating solely to the Act's requirements of disclosure of credit terms in closed-end credit transactions. The right of rescission is a substantive right quite different from disclosure of credit terms. The right is equally applicable to closed and open end credit plans. The Board's suggestion regarding limitation of liability did not speak to that question. Likewise, the Board's July 16 letter specifically pointed out that since the open-end credit area, including credit card provisions, has been so affected by the recent Fair Credit Billing Act amendments, the Board did not wish at that time to make any recommendations for changes regarding these provisions.

Question 4. If the civil liability provision of Truth in Lending is reduced applying only to material misstatements of a few disclosures, how does the Board justify placing the burden of proving a violation was a *material misstatement* upon consumers when there are already no less than four creditor exemptions from liability in the law?

Answer. As explained in my answer above, the Board's suggestion is that Congress make the determination of what is material and what is technical and incorporate these designations in the Act. If this were done, there would be no burden of proof on the plaintiff/consumer to prove something was a material misstatement, since this would be taken care of by a statutory presumption. If the Congress so desired, this fact could be made clear in the legislative history of any amendments.

Question 5. How would Truth in Lending be simplified for consumers by limiting its penalties, as proposed by the Board?

Answer. Although, admittedly, limitation of the penalty provision as discussed above would have its most immediate impact on creditors, the Board believes that such a change could also ultimately benefit consumers. Much of the complexity of Regulation Z (the regulation implementing the Truth in Lending Act) and its numerous Board and staff interpretations have been prompted by creditor concerns over the civil liability provisions; the threat of severe penalties for relatively minor technical violations has led many creditors to seek greater certainty, producing a lengthy and complex regulatory scheme. And as more and more disclosures are made by creditors anxious to avoid the risk of civil liability, it appears that the *essential* credit terms may receive less attention in the disclosure form. If the truly important terms are identified, then hopefully these terms can be emphasized and the Act will better provide consumers with the information they really need in order to make intelligent credit decisions.

Question 6. One of the Board's recommendations is to repeal most of the civil liability section leaving consumers to rely on administrative enforcement for protection. A footnote in Mr. White's testimony states that under Truth in Lending, the Commission is responsible for enforcement for about 90 percent of the creditors in the United States. Given this fact, how will a consumer dealing with a creditor under jurisdiction of the Federal Trade Commisison be protected since FTC does *not* act on individual complaints?

Answer. This question raises a serious issue. While those agencies which conduct regular examinations of the creditors under their jurisdictions can provide the supervision necessary to ensure compliance, it would take an enormous increase in the resources of the Federal Trade Commission to do the same for the many creditors under its jurisdiction. Consequently, Congress will want to consider carefully which of the disclosures should be actionable and which should not. However, trimming the liability provisions does not mean that customers of creditors subject to the FTC's jurisdiction would be without protection. Those consumers could continue to bring suits for violations of disclosure provisions deemed necessary to their ability to shop. Furthermore, I believe that creditors as a group will continue to make a conscientious effort to comply with the Federal statute. The change in the liability provisions would not hamstring the FTC from continuing to take action, as it has in the past, against creditors displaying a pattern or practice of violation.

Question 7. In the interest of clarifying Regulation Z, why don't Regulation Z sections note in the margin the section of the statute the provision implements?

Answer. The suggestion that the provisions of Regulation Z note which section of the Truth in Lending Act they implement has some merit, and I have passed it along to the Board staff. One possible problem with such a scheme is that it might prove somewhat confusing, especially in those cases where a section of the Regulation does not have a specific counterpart in the Act, where only part of it has a specific counterpart, or where it implements more than one statutory provision. The latest revision of the Regulation is already in the printing stage, but the suggestion will be seriously considered for the next printing.

Question 8. Many provisions of Regulation Z are confusing because they refer to required disclosures by section number so that you have to flip back and forth to determine all of the disclosures. Why can't required disclosures be enumerated?—Even if the provision were longer it would at least be clear. [Example: Section 226.8(n)]

Answer. Although I appreciate the difficulty of following the many cross-references contained in Regulation Z, I doubt there is any practical alternative to this arrangement. Making reference to another section rather than setting out the text of that section avoids redundancy and keeps an already lengthy regulation from becoming altogether overwhelming. Repetition of the full regulatory text could nearly double the length of an already long regulation. Staff has informed me that the practice of cross-referencing by section number is commonly practiced by other regulatory agencies, e.g., see the Internal Revenue Code and Regulations. Basically, the required disclosures you refer to are enumerated and grouped together in only three of the 15 sections of the Regulation: §§ 226.7, 226.8 and 226.15.

Question 9. What are the important benefits consumers will derive from the expansion of EFT Systems?

Answer. EFT offers the consumer the following important benefits:

a. More competitive markets for the services offered by depository institutions.

b. Expanded consumer choice among payment alternatives and depository institutions.

c. Greater consumer convenience by providing easier, more efficient, and expanded access to financial services over greater geographical distances and from a greater number of locations than at present.

d. Increased security of financial transactions, by reducing the need for carrying cash.

e. Reduced costs of financial transactions over time and with sufficient transaction volumes.

Question 10. Deletion of the ban on unsolicited credit cards as the Board recommends would amount to Congress endorsing the unlimited expansion of EFTS. Why should Congress do this at a time when EFTS's benefits to consumers appear minimal and its potential harm with respect to fraud, mistake and issues of privacy is tremendous?

Answer. I do not believe that the Board's recommendation regarding the deletion of the ban on unsolicited credit cards could be considered as an endorsement by Congress of the unlimited expansion of EFTS. Certainly, such an endorsement was not the Board's intent. The Board's recommendation regarding the removal of the ban is based on two reasons. First, one of the primary justifications for promulgating the ban on unsolicited issuance of credit cards was that consumers needed protection from the unauthorized use of unsolicited cards. Section 133 of the Act affords that protection by specifying that there is *no* liability for the unauthorized use of a credit card which has not been accepted by the customer. In the Board's view, this limitation on liability will, in and of itself, effectively curtail the profligate issuance of credit cards.

Second, the unsolicited ban contained in § 132 has acted as an unwarranted restraint on competition with the bank credit card field. No new entrant in that business can build a cardholder base rapidly enough to generate profitable volume. Without effective competition, no consumer protection measure can truly be effective. The Board does not believe that the anti-competitive restraints contained in the ban on the unsolicited issuance of credit cards are in the consumers' interest.

It is the Board's view that the extension to debit cards of liability limits for unauthorized use will effectively police their issuance, while not impeding effective competition in this newly emerging field.

Question 11. The Annual Report to Congress on the Equal Credit Opportunity Act for the year 1976 stated that "during 1976 some reserve banks experimented with conducting separate consumer examinations, while other banks found it more effective to examine for compliance with the Act during the regular commercial examination." Could you tell the Subcommittee which Federal Reserve Banks experimented with separate consumer examinations and the Board's assessment of the effectiveness of such examinations?

Answer. Special consumer-related examinations have been conducted on an experimental basis by the New York, Richmond, Chicago, and St. Louis Federal Reserve Banks. Some of these examinations were conducted separate from the commercial examination and others were conducted concurrent with, but not as a part of, the commercial examination. These examinations result in a thorough review of a bank's compliance with the Federal consumer laws by examiners who have received special training. These examiners also take time to explain the regulations where questions exist. Our overall assessment indicates that this type of special examination, whether separate or concurrent, combined with increased educational emphasis, appears to be the best approach in assuring that bankers understand and comply with the consumer protection regulations.

The Federal Reserve System is currently in the process of developing a special examination program along the line of the special examinations that will be implemented uniformly throughout the entire System.

[The following are written questions submitted by Chairman Annunzio to Mr. White, along with Mr. White's answers:]

Question 1. Has the FTC obtained information as to the effects on creditors and consumers of its rule on preservation of consumers claims and defenses?

Answer. In August 1976, the firm of Yankelovich, Skelly and White, Inc. completed a short term impact study of the Trade Regulation Rule on Preservation of Consumers' Claims and Defenses. The study, based on a random sample of credit institutions, found no significant impact on consumer credit policy, interest rates, or credit supply. It found that credit institutions were relying, to a greater extent, on various recourse arrangements with dealers; and that a small number of dealers had been terminated because they were perceived to be "fly by night" establishments. A copy of the study is submitted for the committee's consideration.

The Commission has also allocated some $100,000 to a long term, quantitative analysis of the impact of the rule. At the present time we are designing a comprehensive methodology with the aid of market research firms, the Credit Research Center at Purdue University, and various other consultants. While this effort is, of necessity, a longer term proposition than the Yankelovich survey, we have no reason to believe that any significant changes have occurred; or problems developed, since that study.

[A copy of the study mentioned in Mr. White's answer entitled "A Qualitative Evaluation of the Impact of the Holder-In-Due-Course Rule on Lending Institutions," prepared by the firm of Yankelovich, Skelly & White, Inc., is retained in the files of the subcommittee.]

Question 2. Do you think EFT Systems should have a "stop payment" capacity as check and credit cards do?

Answer. We believe that all debit card systems should have a two day reversibility period comparable to the period within which stop payment may be ordered in a check transaction. This feature should not apply, however, where the debit card is used to withdraw cash from an account since the user could have no claims or defenses to assert in such a transaction.

We also feel that the merchant should be permitted to require that the debit card be used as a cash transaction without the reversibility feature if so desired since merchants today have the discretion as to whether or not to accept a check. We believe that competitive forces will result in a widespread acceptance of debit cards with the reversibility feature notwithstanding this option on the part of the merchant.

Question 3. Members of the banking community have testified before the EFT Commission that regulating any aspect of electronic banking at this stage would be premature and seriously prohibit the growth of a needed technology. What is your opinion of this view?

Answer. We believe that the development of electronic funds transfers systems should be left as much as possible to the competitive forces of the marketplace. Such an approach is particularly necessary with regard to the issues of the sharing of EFT facilities and the distribution of EFT terminals.

We also feel, however, that some regulation will be necessary to protect the rights of consumers of EFT services because many of the protections which already exist in the consumer credit area will not apply to debit card transactions even though such transactions create risks to consumers which are similar to those involved in credit transactions. As to the timing of such regulation, we disagree that action at this stage would be premature. The offering of EFT services by the financial industry has grown at a rapid pace. It is important to implement the needed protections for the consumer at this stage both for the consumer's benefit and so that providers of the services will be able to design their systems to incorporate the needed protections.

Question 4. Shouldn't consumers have a legal right to a copy of the consumer reporting agency's report on them?

Answer. As you know, under the present provisions of the Fair Credit Reporting Act a consumer's creditors, insurors, employers, doctors, landlords and literally everyone else engaged in a "business transaction" with him can obtain a copy of his credit report. Only the consumer himself is denied a copy. We believe this result to be completely unjustified.

In addition, the fact that a consumer cannot obtain a copy of his report by mail, substantially complicates the Act's disclosure and correction procedures since a consumer must either go to the credit bureau or await a return phone call after filling out an identification form. Extreme examples of the frustration of the Act by this procedure can be seen from the attached complaints filed by a consumer, now living in France, concerning a credit bureau located in Seattle and by a consumer, living in Georgia, who was denied credit based on a credit report from New Jersey (attachments 1 and 2). We believe these examples speak for themselves as to the unreasonableness of the present Act's requirements.

[A copy of the attachments mentioned in Mr. White's answer follows:]

[ATTACHMENT 1]

Rice
FCRA

06341

December 28, 1976 '77

tellier
92370 Chaville
France

RECEIVED

Mr. Thomas J. Rosch
Federal Trade Commission
Bureau of Consumer Protection
Pennsylvania Avenue & Sixth NW
Washington D.C. 20680
U.S.A.

Subject: Credit Bureau Report

Dear Mr. Rosch,

I am an american citizen formerly of Washington State, now living permanently in France. I was denied credit by Sears & Roebuck, Philadelphia on the basis of a report from:

Credit Northwest Corp.
1601 Second Avenue
Seattle, Washington. 98101

I wrote to this Credit Bureau asking on what information they based their report. From their reply, I gather that I would have to travel to Seattle for an interwiew to get this information disclosed to me.

I was provided with a sheet " know your rights under the fair credit reporting act" In it I read my right to "be told by a consumer reporting agency the nature, substance and names of sources of the information collected"

Needless to say, it is utterly impractical for me to travel to Seattle from Paris only to be interviewed, but I want wery much to clarify this credit situation.

Certainly there must be a way to obtain this information without going to Seattle.

I would wery much appreciate your assistance in advising me how to do this.

I also would like to know if it is legal for a credit bureau to report adverse information on anyone without first telling him.

I hate being declared guilty without having a chance to know what I am accused of. This is so contrary to the american concept of justice.

Very sincerely yours.

[ATTACHMENT 2]

CREDIT INDEX

A DIVISION OF

THE NATIONAL COMPUTER CREDIT FILE ☐ MARKET RESEARCH ☐ COMMERCIAL REPORTING

170 MT. AIRY ROAD ☐ BASKING RIDGE, NEW JERSEY 07920 ☐ (201) 766-5000

OCT 06 1975

Date

JACK "X"
RT 3 FRIENDSHIP RD

HBL100375

In response to your recent inquiry, we have checked our files and did find information concerning you. We will be glad to discuss this matter with you after reasonable notice, either in person or by telephone at a mutually convenient time during normal business hours. In either case, you must supply us with proper identification prior to disclosure.

If you desire telephone disclosure, please advise us in writing, prior to disclosure, and supply us with your telephone number where we can call you collect between the hours of 9 and 4 on a normal business day*. Also, please let us know when it is best for us to call you. If you cannot be reached by telephone during normal business hours, you may call us on any Friday between the hours of 9:00 a.m. and 12:00 noon and between 1:00 p.m. and 4:00 p.m.

If you desire personal disclosure, either call or write us for an appointment. Our office is located at:

170 Mt. Airy Road
Basking Ridge, N. J. 07920

Please let us hear from you.

Jean L. Marmo

Jean L. Marmo
Credit Index

* Section 610 of the Fair Credit Reporting Act permits disclosure by telephone if you have made a written request, with proper identification, for telephone disclosure and the toll charge for the telephone call is prepaid by or charged directly to you. This Federal Law does not require that we issue written disclosure of our files.

OCT 21 2 14 PM 1975

October 16, 1975

FEDERAL TRADE COMMISSION
NOV 6 197
OFFICE OF SECRETARY

Credit Index
170 Mt. Airy Road
Basking Ridge, N. J. 07920

Dear Sirs:

I am forwarding a copy of your letter of October 6 to Senators Herman Talmadge and Sam Nunn of Georgia and Representative Jack Brinkley of Georgia to ask that the provision of the Fair Credit Reporting Act be amended to require organizations such as yours to make a disclosure without the expense to the person involved of a long-distance telephone call.

The idea of discussing this in person is utterly ridiculous when you consider that you have one office which is located in New Jersey, yet you undoubtably do a national credit reporting service, so it is impossible for a person to discuss this in person.

While the Federal Law may not require that you issue written disclosure I I am requesting that you make such a disclosure in view of the above listed circumstances. In the event that you refuse to do so, please let me know in writing.

Yours very truly,

Rt 3, Friendship Road

CREDIT INDEX
A DIVISION OF
THE HOOPER-HOLMES BUREAU, INC.
THE NATIONAL COMPUTER CREDIT FILE ☐ MARKET RESEARCH ☐ COMMERCIAL REPORTING

170 MT. AIRY ROAD ☐ BASKING RIDGE, NEW JERSEY 07920 ☐ (201) 766-5222

Mr. Jack "X"
Rt 3, Friendship Road

October 21, 1975

Dear Mr. "X"

Thank you for your correspondence of October 16, 1975. In an effort to clear this matter up, we will hereby disclose to you what our files contain:

> "American Education Publications reported Mary "X" of Rt 3, a in January, 1972 as being nine months delinquent in making payments, however, having a zero balance. In their terms, this means they consider her an unsatisfactory customer.
>
> RCA Music Service reported Garcy "X" of Rt 3, in July, 1973 as being nine months delinquent in the payment of $34.00."

If you should dispute the accuracy of the above information, please do not hesitate to contact us and we shall look further into the matter.

Very truly yours,

Joan L. Marmo

Joan L. Marmo
Credit Index

Jlm:

OFFICES THROUGHOUT THE U.S. AND CANADA

OCT 28 11 30 AM 1975

October 24, 1975

Honorable Sam Nunn
Senate Office Bldg.
Washington, D.C.

Dear Senator Nunn:

I wrote you earlier concerning this matter and wanted to follow-up with the following information. Attached is a copy of a letter I received from Credit Index disclosing what their files showed, which resulted in them giving me a bad credit rating.

The problem is that I do not know either of the two people listed on the letter. Since Route 3, Americus is 87 miles long it is totally absurd to assume that since a person has the same last name and lives on the same rural route, that they are your immediate family and this is what a Mrs. Fields at Credit Index in Basking Ridge, N.J. informed me was done in my case.

I would like to ask that you use your influence to amend the Fair Credit Reporting Act to force credit reporting agencies to check with local credit bureaus before issuing adverse credit reports. This would eliminate the type aggravation that I am experiencing at present since the local credit bureau would have reported that my credit was AAA-1.

I realize that in these computer age mistakes occur, but I also believe that it's our duty as citizens to make an effort to correct those mistakes when we can.

Yours very truly,

Question 5. You cite a number of regulations on debit cards which you feel to be needed. In the absence of these regulations, what particular problems do you feel the consumer will encounter?

Answer. Much of the difficulty surrounding the use of EFT services has to do with the consumer's understanding and perception of these services. For example, we believe that many consumers will assume that the debit card carries with it many of the same features of the credit card, such as limited liability for unauthorized use or the ability to reverse transactions. Therefore, it is necessary at the outset to clearly define the rights and liabilities of debit card users and to require clear and meaningful disclosure of these rights to the potential user.

There are also problems relating to other kinds of EFT services some of which are already in use such as pre-authorized payroll deposit. We feel it is important to extend the protections of the Federal Wage Garnishment Act to a wage earner's salary for a reasonable period of time after it has been electronically deposited in a financial institution. Without this protection creditors would be able to circumvent the safeguards of the federal law by immediately garnisheeing the consumer's entire paycheck as soon as it has been credited to his account in a depository institution. This protection is especially important to the lower income consumer who is most likely to be subjected to garnishment proceedings.

Question 6. In your testimony you indicate the Commission is in full support of the Board's efforts to simplify the provisions of Regulation Z. Later in your testimony you quite correctly point out that the debit card should be covered by Truth in Lending's prohibition on issuance of unsolicited credit cards. Yet the Board not only does not make that recommendation but suggests this protection should be deleted even with respect to credit cards. Could you explain this apparent inconsistency?

Answer. Our testimony refers to the fact that debit cards are not subject to the Truth in Lending Acts protections to illustrate the wholly unprotected situation of present debit card holders. Our recommendations concerning issuance of unsolicited debit cards would be limited to suggesting that there be no liability for unauthorized use of a debit card unless the card issuer can show that the consumer's negligence was the cause of any loss arising from such use.

Like the Federal Reserve Board, we are concerned that the present prohibition on mailing unsolicited credit cards may have had an anticompetitive impact on the credit card industry without significantly adding to the protection already provided by the limitations on liability for unauthorized use.

There is however, always the possibility that a consumer will be billed for unauthorized charges on an unsolicited card and be put through the often elaborate procedures creditors have established to determine that the charges are in fact unauthorized. This eventuality could be lessened by providing that, if the card is issued on an unsolicited basis and the consumer alleges the charges are unauthorized, continued billings will constitute a violation of the Truth in Lending Act unless the credit card issuer can prove by a preponderance of the evidence that the use was authorized. Such a requirement could remain in effect for a reasonable time after unsolicited issuance, thus placing the entire risk of loss on the card issuer.

Finally, there are two limitations to the automatic transfer for the policy considerations underlying the prohibition of the issuance of unsolicited credit cards to debit cards. First, distribution of debit cards has apparently not taken place on the scale that credit cards were distributed prior to the unsolicited credit card amendment. Thus, the solidification of market share that the unsolicited credit card amendments are alleged to have produced may not occur. Secondly, a latent theme of the unsolicited credit card amendments was that such mailings could lure consumers into becoming overextended. Similar considerations do not seem applicable to debit cards.

[The following are written questions submitted by Congressman Vento to Mr. White, along with Mr. White's answers:]

Question 1. The Federal Reserve Board simplification recommendations seem to indicate failure to make credit life insurance disclosure is merely a technical violation. Would you agree?

Answer. In previous testimony before your subcommittee we detailed instances in which the failure to include charges for required credit life insurance in the annual percentage rate can alter the disclosed annual percentage rate on a transaction by as much as 20 percentage points (see attachments A and B). This is clearly not, in our opinion, a technical violation of the Act.

In a recent consumer survey, we found that nearly 40% of the consumers responding purchased insurance either because they were told or given the impression that it was required to obtain the loan. We continue to believe that the best method of insuring that consumers are, in fact, granted a choice as to whether to buy insurance is to have creditors mail consumers a separate notice granting them a reasonable period of time in which to cancel the insurance coverage sold to them in connection with the credit transaction. Only by physically separating the consumer's choice to obtain insurance from the creditor's decision to extend credit can the choice be made truly voluntary. In addition, the proposed cancellation period could inject some much needed price competition into an area that has been historically characterized by "reverse rate competition" (that is creditors tend to sell the most expensive credit insurance policies available so that their share of the premium will be correspondingly higher). This recommendation is discussed in greater detail in the Commission's 1976 annual report to the Federal Reserve Board which was supplied for the record.

[Attachments A and B, referred to in the question, follow:]

ATTACHMENT A

FEDERAL TRADE COMMISSION 1974 REPORT TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, NOVEMBER 1974

Statement of Staff of the Division of Special Statutes on Credit Insurance Sales Practices and Section 106(b) of the Truth in Lending Act (Title I of the Consumer Credit Cost Disclosure Act, Public Law No. 90-321 (1968) 15 U.S.C. 1601, *et seq.*)

The following material is offered in support of the Commission's recommendation that the provisions of the Truth in Lending Act dealing with disclosure of the costs of credit life and credit accident and health insurance be amended. Much of the information on which this memorandum is based has been drawn from material gathered in the course of the staff's current investigation of credit insurance sales practices of direct loan finance companies. The opinions expressed are those of the staff, and not of the Commission.

The Truth in Lending Act, of course, exempts from disclosure as part of the cost of credit, premiums for credit life and credit accident and health insurance which the consumer wishes to purchase to protect himself in the course of his indebtedness. Both the Act and Regulation Z seek to insure that the consumer's "election" of insurance coverage will be voluntary by requiring written disclosure to the consumer of the voluntary nature of the insurance and an affirmative written election of the coverage by the consumer. (Regulation Z, Section 266.4(a)(5)).

[4] See National Commission on Consumer Finance, *Consumer Credit in the United States*, at 172–73, 182–83 (1972).

In our opinion this statutory scheme has not accomplished its objective, at least in the direct personal loan market which is within the Commission's jurisdiction. The statute and regulation fail to recognize the inherently unequal and potentially coercive relationship which exists between the borrower and the lender in a small loan situation and fail realistically to appraise the strength of the economic motivations which most creditors have to place insurance on as many loans as possible.

The consumer complaint, attached with accompanying correspondence as Appendix 1 to this memorandum, is typical of the type of credit insurance complaint the Division receives from consumers. The complainant, an unmarried attorney, sought to finance the purchase of a car by obtaining a bank loan. He asserts that when he arrived at the bank to pick up his check he was told that no loan would be made unless he "elected" credit insurance. Since the consumer had obligated himself to purchase the car the next day, he signed the insurance election in order to obtain the loan and unsuccessfully attempted, at a subsequent time, to obtain a refund of unearned insurance premiums.

Since the creditor who is the subject of this complaint does not fall within our jurisdiction, we have not attempted to verify the allegations made in this complaint, and, as the subsequent correspondence between the consumer and the bank regulatory agency indicates, the actual incident may have been an isolated misunderstanding between the lender and the borrower. If we assume, however, that the allegations of the consumer are true, this complaint illustrates the relatively helpless position of consumers who are faced with this type of tactic. Consumers may sign the credit insurance election and obtain the loan or they may cancel their purchase plans and seek credit from some other source. However, since many consumers seek personal loans only when they have an immediate need for credit, there is, in reality, only one option—take the loan and pay the extra charge for insurance.

Once a consumer has signed the credit insurance election, he is without a remedy and has little hope of proving before a court that he did not elect the coverage. Even a complaint to a regulatory agency, including the Federal Trade Commission, will produce action only if the incident is part of an identifiable and deliberate, company-wide pattern of conduct. In addition, the investigation of such practices is a time-consuming one requiring the regulatory agency to gather and analyze insurance sales data and interview large numbers of consumers. Agency action will normally come so late in time as to have no effect on the consumer's own transaction.

We are aware that the most common method used to force the consumer to purchase credit insurance is not nearly as obvious as that described by the above complainant. The usual approach is described best in these excerpts from a memorandum of a district manager of a subsidiary of a major national finance company to his five branch managers.

"April 27, 1973.

"Attached is a breakdown of insurance sales for all offices in district — by month for the first quarter of 1973.

"The statistics, as laid out, are quite clear, and I'm sure that each of you are capable of analyzing the trend in your individual branch. . .

"It is my opinion that taking into consideration total overall sales only two offices in the district are anywhere near satisfactory; these are: (Office 1 and Office 2). The rest of the branches in the district are just going to have to face reality—you are being out sold and out dazzled in your approach to selling insurance by these two offices and, I can assure you, other offices throughout the Region.

"I have discussed with both Mr. (X in Office 1), and Mr. (Y) and staff, in (Office 2), their approach toward selling insurance. They both state quite simply regarding life and A & H that they include it automatically on the loan (both types). They only retract or switch after making every attempt to sell the customer on accepting it in the loan as it is. They do not soft pedal it or give the customer a chance to turn it down before it is even written into the loan. Their approach is automatic and positive.

"I think we can all safely say it is far easier to leave it in and let the customer insist on having it retracted rather than opening the gate, so to speak, and allowing the sale to slip through our fingers before we have even made a real sale attempt.

"I want to make it clear that in regards to the above statements, I'm speaking primarily about life and A & H. Fire insurance sales are another matter.

. . . .

"All of the other offices in the district should pay particular attention to the fact that, for the most part, the trend is adverse and down in your respective branches—meaning that our mental approach to selling insurance is getting weaker. We are giving the customer more and more opportunities to turn it down rather than taking a firmer approach.

"There was a time when our credit life sales would have registered 100 per cent, or 99.9 per cent, throughout the region. I feel quite confident that credit life can be maintained somewhere in the area of around 98 per cent. There is ample evidence in (Office 1 and Office 2) and (Office 3) in February, that this can be accomplished.

"Health and Accident insurance can be and must be maintained around 90 percent, and in some cases, obviously, we can even go higher.

* * * * * * *

"The overall importance of insurance sales in relation to our gross profit cannot and should not be underestimated. At the present time the branches are going to receive 35% of all sales. In addition to that, no losses are going to be charged directly to the branch P & L's. They are going to be handled on a higher level, and as I understand it, on a zone level. So, it follows by maintaining good solid underwriting policies and selling consistently, we can build the profit on the branch level and the zone level as well.

"I would like to lay out what I believe are realistic guidelines for the sale of insurance, and I believe by the end of the second quarter, we should be hitting in each branch very near to these figures.

Credit Life 98%, Health and Accident 90%, Fire 60%.

As you can see, much discussion and emphasis must be given to this area by management to insure that sales are on an upswing and this trend is reversed by the end of June.

"Immediately upon receipt of this I.O.C., all managers are to hold a staff meeting regarding insurance sales only. I want a copy of what is discussed at this meeting and what steps you, as a manager, are going to take to insure that insurance sales are brought back into line."

(The entire memorandum is reproduced as Appendix 2.)

The consumer, especially a consumer who has an immediate need for a loan, who is confronted with this tactic will often purchase insurance without question, simply assuming that the insurance is a part of the loan. The tactic is an effective one since most consumers will not know that they had an option and, thus, will complain to no one.

It is our tentative conclusion that these tactics are in wide use and that they are responsible for the high level of credit insurance sales which pervade the direct loan market. The effectiveness of this type of salesmanship is reflected in the State by State penetration rates (that is the percentage of all loans made on which credit insurance is sold) for credit life insurance sales which the division has obtained from various major finance companies.

For example, Table 1 reflects penetration rates obtained from four major national companies (Company A, Company B, Company C and Company D) for a two month period of 1973 in selected states. Additional rates obtained for the entire year show that the penetration rates for these two months are representive of those for the entire year.

TABLE 1.—LIFE INSURANCE PENETRATION RATES FOR OCTOBER AND NOVEMBER 1973 FOR SELECTED STATES

		October/November					
States	Company A	Company B		Company C		Company D	
Florida	97	97	98	98	95	93	92
Washington	98	98	98	94	95	93	92
Michigan	97	98	98	98	98	92	95
Pennsylvania	99	97	97	96	90	88	81

(Company A gave single penetration rates for the combined period of October and November 1973.)

Another company, Company E, with over 700 offices throughout the country, supplied the following data: For the month of October, 18 offices (selected by Commission staff) wrote life insurance on 838 of 843 eligible loan applicants representing a penetration rate of 99.4 percent. The rate for November was 98.7

percent. During the two-month period, accident and health insurance was written for 1,325 out of 1,394 borrowers eligible for coverage, for a penetration rate of 94 percent.

Yet another company, Company F provided the staff with equally high figures on a sampling limited to twelve branch offices (selected by Commission staff) in ten states on loans made during October and November of 1973. Of approximately 1,400 loan contracts entered into with borrowers eligible to purchase insurance, life insurance was placed on 1,346, or 96 percent of the total. Eight of the twelve offices selected showed credit life insurance penetration rates of 100 percent for each of the two months surveyed. Relatively high rates were reflected for accident and health insurance sales as well.

In the case of Company B, which operates in over 40 states, penetration rates for life insurance sales reached 90 percent in over 34 states for the two-month period. In 22 states, the penetration rate for life insurance sales for that period equaled 95 percent or higher. Company B's national penetration rate for credit life insurance sales was 94.01 percent for the year 1973, 94.48 percent for October 1973, and 94.75 percent for November 1973. Also, in five selected states in which Company B wrote a total of 58,626 loans (17.9 percent of its total loan volume), its 1973 penetration rate for credit life insurance was over 97 percent.

Company A's data reflects credit life insurance penetration rates of 90 percent or higher in 32 of the more than 45 states in which it did business over the same two-month period. Company A's national penetration rate for credit life insurance was 90.5 percent for the two months of October and November 1973. Also, in five selected states in which Company A wrote a total of 97,346 loans (13.7 percent of its total loan volume), its 1973 penetration rate for credit life insurance was over 97 percent.

In our experience, it is a fairly easy matter to select individual branch offices of major finance companies for which the penetration rate for credit life insurance will be 100% and the credit accident and health insurance penetration rates will be in the 90 percent range. The experience of our regional offices suggests that high penetration rates are not limited to major finance companies but, if anything, are more common in smaller operations.

The motivation for forcing credit insurance is clear. First, it provides security for the company in case of the consumer's injury or death. More important, however, is the fact that the sale of credit insurance is very profitable.

The profitability of credit insurance sales is attested to by the branch manager's memorandum quoted above. In addition, the National Commission on Consumer Finance found that in some States finance companies would operate at a loss without the income generated by credit insurance sales.[1]

It is reasonable to assume that a finance company whose operating profit is tied to its sales of insurance will exert as much pressure as possible on the consumer to purchase insurance. Further, since credit insurance is, in effect, a hidden finance charge, it is equally reasonable to assume that strong economic motivation will exist to sell insurance on all loans, whether the extra profit is needed to break even or simply to improve earnings. Finally, it is clear that, due to the inherently unequal and dependent nature of the lender-borrower relationship in the personal loan market, it takes relatively little pressure to induce a borrower to purchase insurance.

The effect of the practices discussed above is to vitiate completely the cost of credit disclosures which a consumer receives under the Truth in Lending Act. In a small loan transaction, the failure to include credit insurance premiums may alter the annual percentage rate substantially.

For example, as part of our current credit insurance investigation the loan disclosure described below was obtained from a finance company branch office.

(A) Amount financed	$393.12
(B) Credit life insurance	8.80
(C) Disability insurance	28.08
(D) Property insurance	9.36
(E) Recorders fees	2.50
(F) Finance charge (interest and loan fee)	74.88
(G) Total of payments	468.00

[1] National Commission on Consumer Finance, *Consumer Credit in the United States* at 88 (1972). Senator William Proxmire, in a statement released November 12, 1974, has estimated that consumers paid $615 million extra for credit insurance in 1973. (See, *Washington Post*, November 21, 1974, § A at 9, Col. 1.)

(H) 12 monthly payments of $39 each.
(I) Annual percentage rate, 33.48%.

The credit insurance authorization was signed and properly completed.

The office in question made 53 loans during the month this loan was made. Of these 53 loans 100% included credit life insurance and 96.2% (51 loans) included credit accident and health insurance also. Information obtained concerning the prior month showed equally high penetration rates.

If the cost of credit life and accident and health insurance had been included in the finance charge for this loan, the annual percentage rate would be 53.75%.

Although we sympathize with the position of creditors who operate in States in which the rate ceiling is so low that their only return is derived from the sale of credit insurance, we do not consider this to be a sufficient reason to suspend the operation of the Truth in Lending Act in those States. Nor do we feel that the inclusion of credit insurance charges in the finance charge, will, as has been suggested, necessarily result in an automatic violation of the usury laws of States having low rates since, in most instances, these laws are drafted in terms of interest rates, and not annual percentage rates.

Appendix 1

STATEMENT OF STAFF OF DIVISION OF SPECIAL STATUTES ON CREDIT INSURANCE SALES PRACTICES

AUGUST 14, 1974.

DIVISION OF SPECIAL STATUTES,
Bureau of Consumer Protection,
Federal Trade Commission, Washington, D.C

GENTLEMEN: It has come to my attention that the Commission staff is undertaking a study of practices related to credit life and health insurance. Although I would hope I have some degree of business sophistication, I also regrettably have some first hand experience with the abuses that result from current practices with respect to credit insurance. I believe, therefore, that you may find the experience related below to be of some interest.

In the Fall of 1971, I had arranged for the purchase of a car of which I was in need. I had also made arrangements for an auto loan with ————————

When I arrived at the bank to pick up my check, I was told that I would have to indicate that I "desired" credit life insurance by checking the appropriate box on the note form. If I did not do this, I would not be given the loan. Despite my protests, the bank officer remained firm. Since I was obligated to close the transaction on the car, the following day, I had little choice.

Although the bank was to later claim that I had in fact "requested" the insurance, I was single at the time, without dependents, and I think it fairly obvious that I would have no reason to wish to enrich the bank's insurance affiliate by the amount of the premium on this insurance, for which I could have no possible use.

Subsequent to my own experience, I have heard of other such cases and would imagine such incidents are even more common among non-bank lenders.

It is my belief that these abuses are practically inevitable so long as credit life insurance is written by companies directly affiliated with lenders. Further, since the lender's risk is presumably compensated for in the interest rates, I question the economic justification for a lender's interest in seeing that such coverage is provided. Perhaps, such insurance should be separately available to borrowers. I am convinced, however, that in the vast majority of cases credit life or health insurance is simply a device to enable lenders to collect unstated finance charges, in circumvention of the Truth In Lending Act.

I am enclosing copies of my correspondence with reference to the incident I have related in the hope it will help you focus on some of the problems in this area.

Very truly yours,

JULY 29, 1972.

(Letter to Creditor)

DEAR MR. ———: Sometime prior to November 8, 1971. I entered into negotiations concerning an auto loan with Mrs. ————————, then assistant manager of your ———————————— branch. During the course of these negotiations I inquired as to the true annual percentage rate and the dollar amount of finance charge on the proposed loan. I also asked that she disclose any other pertinent information. At no time did Mrs. ______________ reveal that creditor's life insurance was to be required.

When I arrived at the bank on the evening of November 8, 1971, to sign the note, Mrs. ______________ insisted that I indicate that I desired creditor's life insurance as well. Despite my vigorous protests Mrs. ______________ stated that the loan would not be granted unless I indicated that I "voluntarily" sought the insurance. Since I was obligated to purchase the automobile the following day I had little choice.

While the ethics of this transaction have never been in doubt, it now appears that by structuring it in this fashion the bank has violated, among other things, the Truth in Lending Act and Federal Reserve Regulation Z. I must insist, therefore, that the bank refund to me any retained portion of the premium on the creditor's life insurance as well as any finance charge applicable thereto, with interest from December 15, 1971, and furnish me with satisfactory assurance that this practice is no longer being engaged in. In addition to Regulation Z, your attention is directed to Truth in Lending Act Sections 1605 and 1640.

Very truly yours,

AUGUST 3, 1972.

(Letter from Creditor)

DEAR MR. ———: Your letter to Mr. ____________________, concerning a secured installment loan, has been referred to me for reply.

I have reviewed a copy of the Note and Security Agreement which you signed on November 8, 1971. The insurance section clearly explains that credit life insurance is not required and that if it is desired you must separately sign for such. I note that you signed for this insurance and, therefore, the cost of the insurance was properly excluded from the finance charge pursuant to Section 226.4(a)(5), subsections (i) and (ii), of Regulation Z.

You claim that Mrs. ______________ stated that the loan would not be granted unless you purchased credit life insurance. I have personally spoken with Mrs. ______________ and she emphatically denies that she made any statement, either directly or indirectly, that the purchase of credit life insurance was required in order to grant your loan. Mrs. ______________ is a long-standing and experienced officer of ____________________ Bank and is well aware of the requirements imposed by the Truth in Lending Act and Regulation Z.

In addition, in view of the fact that you are an attorney, I find it difficult to understand how you could sign such a provision, if you did not desire such insurance, when the insurance explanation clearly states that the purchase is voluntary.

Therefore, since it is my opinion that there exists no violation of the various disclosure laws or regulations, I have advised the bank not to refund any portion of the insurance premium or finance charge.

Very truly yours,

AUGUST 7, 1972.

(To Creditor)

DEAR MR. ———: I am taking this opportunity to reiterate certain points of my letter of July 29, because I believe that upon further reflection you will realize the tenuousness of your position.

As you are aware, a bank that requires creditor's life insurance must include the cost in the finance charge, under Sections 226.4(a)(5)(i) and (ii) of Federal Reserve Regulation Z.

Although the form of installment note used by ____________________ Bank indicated that the borrower "voluntarily" sought creditor's life insurance, it was in fact required in my case. I had obligated myself to purchase an automobile the following day in reliance upon the bank's description of the transaction, which concealed the creditors life insurance requirement; I therefore think it clear that the bank violated Regulation Z by excluding the cost of the insurance from the finance charge.

As you note in your letter of August 3, I am an attorney. Under these circumstances I find it difficult to accept that you, the courts, or the regulatory agencies could seriously believe that I would voluntarily seek to purchase a commodity as worthless as creditor's life insurance.

While the amount involved here is probably quite small, even in view of 15 U.S.C. 1640, and hardly worth my goodwill as a depositor, I feel that your letter constitutes an unwarranted attack on my veracity and am quite prepared to see this matter through to its inevitable conclusion.

May I suggest, therefore, that you reinvestigate and reconsider this matter. You might, for example, wish to assure yourself that similar transactions have not been engaged in with others.

Very truly yours,

AUGUST 8, 1972.

(From Creditor)

DEAR MR. ———: In response to your August 7th letter, please be advised that I believe that a reconsideration of this situation is not warranted.

I have long been aware of the practice by certain lenders whereby credit life or credit related insurance is required as an incident to the grant of a loan. ——————————— owns twenty banks throughout the Commonwealth and quite some time ago all were advised that, in order to exclude the cost of such insurance from the finance charge, the purchase must be voluntary. In fact, all of our banks, including ———————————, utilize a separate installment note form, in addition to the one you signed, which requires the purchase of credit insurance, and thus includes such cost as a portion of the finance charge.

I would disagree with your characterization of credit life insurance as a worthless commodity. The purchase of such insurance does protect both the borrower and the lender and serves a recognized and legitimate function in the credit field.

I am sure that ——————————— values your good will but it also must place some faith in statements of its officers and employees. I am satisfied that we have reached the proper conclusion.

Very truly yours,

AUGUST 14, 1972.

(To Bank Regulatory Agency)

GENTLEMEN: It has come to my attention that some ——————————— banks are violating Federal Reserve Regulation Z by requiring borrowers to sign that they "desire" credit life insurance, while excluding the cost of the insurance from the finance charge of the loan.

In my own case, negotiations for an auto loan were begun between myself and Mrs. ———————, then assistant manager of the ———————————, some time prior to November 7, 1971. Although I made every effort to elicit all pertinent details of the transaction, the fact that credit life insurance would be required was concealed. Nor was the cost of such insurance included in the finance charge I was told would be applied.

On the evening of November 7, when I arrived at the bank to sign the installment note I was informed that I would have to sign a clause to the effect that I "desired" credit life insurance or the previously promised loan would be withheld. I certainly did not "desire" such insurance, and protested in the strongest terms. However, inasmuch as I had obligated myself to purchase an automobile the following day in reliance upon the bank's original description of the transaction, I had little choice. Since I was, in fact, required to purchase the bank's credit life insurance and the cost of the insurance was not included in the finance charge, it is my opinion that ——————————— violated Sections 226.4(a)(5)(i) and (ii) of Federal Reserve Regulation Z.

I have called this matter to the attention of ——————————— Bank, whose officials deny that the insurance was required. The facts, however, indicate otherwise.

Having prepaid the two-year loan in four months I was merely seeking the refund of a small sum and the bank's assurance that such transactions would be halted. The bank, on the other hand, had a great deal more at stake, including avoidance of criminal penalties under 15 U.S.C. 1611. Moreover, I am unmarried, without dependents, and have a group term-life insurance policy many times in excess of the debt I incurred. I think it strains credulity to believe that I would "desire" to incur the additional expense of something so worthless to me as credit life insurance.

Following my own experience reports of similar transactions by banks have come to my attention.

It would indeed be a travesty if Congress' actions in seeking to provide a measure of consumer protection in the credit field, and the Federal Reserve Board's efforts in promulgating Regulation Z, should all be brought to nought by use of such crude and transparent devices. I hope, therefore, that you will give this matter the full attention I believe it so urgently requires. Of course I shall be most happy to assist in any way possible.

Very truly yours,

AUGUST 16, 1972.

(From Bank Regulatory Agency)

DEAR MR. ———: Thank you very much for your letter of August 14, 1972, in connection with a possible violation of the Board's Regulation Z by ————.

As you know, the charge for credit life insurance need not be shown as a portion of the "finance charge" provided that written disclosure of the fact that such insurance is not required is made and the customer executes the separate statement requesting that the insurance be furnished.

In order that we may be in a position to pursue the matter, if necessary, I would appreciate it very much if you would let me have copies of all papers in your possession relating to the transaction.

Very truly yours,

AUGUST 21, 1972.

(To Bank Regulatory Agency)

DEAR MR. ———: Thank you for your prompt response to my letter of August 14.

In accordance with your request I am enclosing copies of all documents in my possession that I believe to be pertinent to your inquiry, including copies of my correspondence with Mr. ————————, Assistant Counsel.

In connection with these papers I hope you will bear in mind the points made in my letter to you of August 14. Although, as you will note, my signature appears on the installment note following the statement "I desire Credit Life Insurance" the facts establish that the bank, in fact, required the purchase of the insurance. Therefore, the insurance was required insurance, whose cost should have been included in the finance charge under Section 226.4(a)(5) of the Federal Reserve Regulation Z.

It is precisely this aspect of the transaction that is so reprehensible. It would seem that unless enforcement action can be taken lenders have found a way to effectively render Section 226.4(a)(5) meaningless.

I have complete confidence in your disposition of this matter and remain available to render any assistance requested.

Very truly yours,

AUGUST 25, 1972.

(From Bank Regulatory Agency)

DEAR MR. ———: Thank you very much for your letter of August 21, 1972, and enclosures.

We have reviewed the documents and I have spoken with counsel for ————.

Inasmuch as all documents seem to be in order, I would suggest that you pursue the remedies available to you under the Truth in Lending Act. As you must realize, resolution of the problem necessarily turns on the creditability of the positions advanced by the parties, a determination which we are unable to undertake.

Very truly yours,

APPENDIX 2

STATEMENT OF STAFF OF DIVISION OF SPECIAL STATUTES ON CREDIT INSURANCE SALES PRACTICES

From ———————————————— Office ——— District ———

Subject—Insurance Sales.

To All Offices—Office———District———Date—April 27, 1973.

Attached is a breakdown of insurance sales for all offices in district by month for the first quarter of 1973.

The statistics, as laid out, are quite clear, and I'm sure that each of you are capable of analyzing the trend in your individual branch.

It is my opinion that taking into consideration total overall sales only two offices in the district are anywhere near satisfactory; there are: ————

and ______________. The rest of the branches in the district are just going to have to face reality—you are being out sold and out dazzled in your approach to selling insurance by these two offices and, I can assure you, other offices throughout the Region.

I have discussed with both Mr. ______________, in ______________, and Mr. ______________ and staff, in ____________________, their approach towards selling insurance. They both state quite simply regarding life and A & H that they include it automatically on the loan (both types). They only retract or switch after making every attempt to sell the customer on accepting it in the loan as it is. They do not soft pedal it or give the customer a chance to turn it down before it is even written into the loan. Their approach is automatic and positive.

I think we can all safely say it is far easier to leave it in and let the customer insist on having it retracted rather than opening the gate, so to speak, and allowing the sale to slip through our fingers before we have even made a real sale attempt.

I want to make it clear that in regards to the above statements, I'm speaking primarily about life and A & H. Fire insurance sales are another matter.

All of the other offices in the district should pay particular attention to the fact that, for the most part, the trend is adverse and down in your respective branches—meaning that our mental approach to selling insurance is getting weaker. We are giving the customer more and more opportunities to turn it down rather than taking a firmer approach.

There was a time when our credit life sales would have registered 100 per cent, or 99.9 per cent, throughout the region. I feel quite confident that credit life can be maintained somewhere in the area of around 98 per cent. There is ample evidence in______________ and ______________ in February, that this can be accomplished.

Health and Accident insurance can be and must maintained around 90 per cent, and in some cases, obviously, we can even go higher.

Fire insurance, as stated above, is another matter. However, in all too many cases during the review of receivables, I note cases where we fail to even offer the customer insurance when they were not in a position to furnish evidence, or there was clearly no fire insurance in effect. This is extremely poor salesmanship and clearly points out that we are not even alert to selling fire insurance when the opportunity exists.

I find it extremely difficult to believe that seasoned managers, who are very quick to point out how good they are from time to time, are being out dazzled by young managers such as Mr. ______________ and Mr. ______________ regarding fire insurance sales.

No one is expecting all offices to sell 100 per cent fire insurance, but each office can contribute a small amount of fire insurance each month by making sure that no opportunity is missed. Remember, we are allowed by law to have fire insurance coverage on loans (in both states) exceeding a certain amount. There is absolutely no reason why where there is evidence of collateral, and this collateral needs insurance coverage, that we cannot have this sale.

The overall importance of insurance sales in relation to our gross profit cannot and should not be underestimated. At the present time the branches are going to receive 35% of all sales. In addition to that, no losses are going to be charged directly to the branch P & L's. They are going to be handled on a higher level, and as I understand it, on a zone level. So, it follows by maintaining good solid underwriting policies and selling consistently, we can build the profit on the branch level and the zone level as well.

I would like to lay out what I believe are realistic guidelines for the sale of insurance, and I believe by the end of the second quarter, we should be hitting in each branch very near to these figures:

Credit Life 98%, Health and Accident 90%, Fire 60%.

As you can see, much discussion and emphasis must be given to this area by management to insure that sales are on an upswing and this trend is reversed by the end of June.

Immediately upon receipt of this I.O.C., all managers are to hold a staff meeting regarding insurance sales only. I want a copy of what is discussed at this meeting and what steps you, as a manager, are going to take to insure that insurance sales are brought back into line. Please furnish a copy of your report to Mr. ______________. All reports will be expected no later than May 15, 1973.

[In percent]

Trend	Up	Down	Up	Down	Down	Down	Percent
January:							
Life	96	89	91	92	89	93	95
H. & A	82	29	62	66	75	80	50
Fire	56	17	26	11	7	0	0
February:							
Life	95	83	100	100	94	83	92
H. & A	95	16	100	83	68	70	66
Fire	60	10	30	5	0	0	0
March:							
Life	100	69	95	92	82	84	91
H. & A	91	30	90	66	82	62	60
Fire	61	33	46	13	0	0	0

ATTACHMENT B

FEDERAL TRADE COMMISSION 1974 REPORT TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, INFORMAL STAFF OPINION LETTER ON PROPOSED OPEN END LOAN PROGRAM

FEDERAL TRADE COMMISSION,
BUREAU OF CONSUMER PROTECTION,
Washington, D.C., October 18, 1974.

DEAR MR. ———: In our meeting of September 30, 1974, representatives of your client, ————————, presented a description of a proposed loan program and requested a staff letter advising whether the proposed program constitutes open end credit for Truth in Lending purposes.

The proposed program purports to offer a customer a line of credit which would represent a maximum amount a customer could draw against when he received future advances. Ordinarily, the customer would take out an initial loan for a minimum of $500 and return when he wished to request additional amounts.

The amount of the credit line would be determined at the time of the initial loan application and would be based on a point system keyed to the same factors relied on in the typical installment loan. The amount of the credit line would be subject to modification if there were a change in the customer's financial situation.

When a customer applied for an additional advance the applicant would be questioned as to his or her employment status, current address and outstanding liabilities. No new application form would be required. However, a telephone check with a credit bureau would be made and the customer's credit references would be verified.

If the credit report revealed adverse information, no advance would be made. If the report revealed significant changes in financial status, the customer might be removed from the revolving loan program.

A customer would be required to make minimum monthly repayments but would be entitled to pay off the outstanding balance without penalty. An account with no balance due which remained inactive for six (6) consecutive months would automatically be closed out. Thereafter, no additional advances would be possible without opening a new account, including, we assume, taking a new application and obtaining a new credit report.

Having given careful consideration to all aspects of ———————— proposed loan program, we have concluded that it fails to qualify as open end credit under the terms of Regulation Z, Section 226.2(r).

This conclusion is based upon various aspects of the proposed plan which we believe to be inconsistent with some of the essential aspects of open end credit. First, the proposed program contemplates the automatic ordering of credit investigations which could alter, or even terminate, a customer's ability to obtain a loan. A credit worthiness decision would be made for each requested advance, and adverse information could not only result in a denial of the request but also could modify the maximum amount of the credit line or remove a customer from the program. These facts strongly suggest that, from the customer's point of view, the program involves a series of separate loan transactions rather than a true line of credit.

Regulation Z's definition of open end credit specifies that the credit must be "extended on an account pursuant to a plan. . . ." Truth in Lending Interpretation Section 226.203 emphasizes that the existence of an account pursuant to a plan is a fundamental qualification for open end credit. Under such a plan, "It is contemplated that there will or may be repetitive transactions on a revolving basis." (Interp. 226.203).

In our view, the extension of credit on an account pursuant to a plan under which "the creditor may permit the customer to make purchases or obtain loans from time to time" (Sec. 226.2(r)(1)) means that credit is available to a consumer on a continuing basis under terms established in an initial agreement. However, if a separate credit worthiness decision is made for each loan, then the customer has no on-going right to receive credit; rather, credit is being extended on a per transaction basis. Except for the repayment terms of the loans, the situation is indistinguishable from that of a consumer who receives a series of installment loans.

This is not to say that verification of credit information in connection with a new advance is automatically, in and of itself, sufficient to place a loan program in the "other than open end" category. However, the presence or absence of such a provision in a loan program bears directly on the issue of whether the parties do in fact contemplate the extension of credit on a continuing basis. *Maes* v. *Motivation For Tomorrow, Inc.*, 356 F. Supp 47 (N.D. Ca. 1973).

Another difficulty with the proposed plan is the requirement of a minimum initial advance of $500 and the apparent requirement that future advances be for a minimum of $500. This is a substantial and fundamental departure from the typical open end credit plan, which generally permits the customer to control the amount of credit extended. The requirement of a minimum advance undermines the likelihood that there will be repetitive transactions on the account in the future.

Finally, when an account has been paid out for more than six months, it would be closed out. Again, this differs from the typical open end credit plan, in which the passage of time generally has no effect on the ability to obtain additional advances. When the time period is as short as six months, the creditor is not "permitting" the customer to "obtain loans from time to time."

We appreciate the opportunity to be of assistance to you and hope that this letter has been responsive to your inquiry.

Very truly yours,

SHELDON FELDMAN,
Assistant Director for Special Statutes.

Question 2. What language would be needed to be added to the various titles of the Consumer Credit Protection Act to insure that all of the FTC's enforcement authority is available to enforce violations of the Act?

Answer. Since FTC enforcement of the Fair Credit Billing Act, Consumer Leasing Act and the Truth in Lending Act is carried out under a single provision of the Truth in Lending Act, amendments to the Act and to the Fair Credit Reporting Act would be necessary. Proposed amendments to these statutes are set out below, with the added provisions italicized and deleted provisions bracketed.

Section 108(c) of the Truth in Lending Act, 15 USC Section 1607(c), is amended to read:

(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed [a violation of a requirement imposed under that Act,] *an unfair or deceptive act or practice in violation of Section 5(a)(1) of the Federal Trade Commission Act.* All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, *including the power to seek civil penalties and consumer redress for violations of any Federal Reserve Board regulations promulgated under this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.*

Section 621(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681s(a) (1970) is amended to read:

"§ 621. Administrative enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in violation of Section 5(a)(*1*) of the Federal Trade Commission Act and shall be subject to enforcement by the Federal Trade Commission under section 5(b) thereof with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act were part of this title. *The Commission's enforcement powers under this section shall include, but not be limited to, the power to seek civil penalties and consumer redress for any violation of this title as if the violation were a violation of a Commission trade regulation rule.* Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this title.

[The following are written questions submitted by Chairman Annunzio to Mr. Finkel, along with Mr. Finkel's answers:]

Question 1. When you get consumer complaints which you refer to other agencies, do you follow up so that you can assess how effectively the agencies respond?

Answer. The Office of Consumer Affairs asks each agency to which a complaint is referred to send us a copy of its response, which is then filed with the original letter. If we are able to be of further assistance after receiving the agency's response, we will make an additional response to the consumer. For example, if the agency merely advises the consumer to contact state officials on the matter, we will supply the consumer with the name and address of the person whom they should contact.

Question 2. Do you think investigative credit reports should be restricted in scope to correlate with the user's purpose?

Answer. The Office of Consumer Affairs has, for several years, considered the collection of irrelevant information in conjunction with investigative credit reports a very serious problem. However, we believe that direct regulation of relevancy would be both difficult to draft and difficult to enforce.

Therefore, we suggested that indirect regulation of relevancy be achieved through certain disclosure requirements. In particular, credit companies should be required:

(1) to obtain the express and informed consent of the consumer before conducting an investigative credit report:

(2) to supply the consumer with a copy of the report compiled;

(3) to disclose its investigative sources to the consumer upon request.

With these additional rights, consumers will be in a better position to contest the accuracy of the credit information retained about them. Furthermore, with credit reports and their sources fully available to the subjects of reports, credit investigators and those who use their services may be forced, for competitive reasons, to drastically reduce the amount of irrelevant material they collect and use.

Question 3. Do you feel that EFT Systems need to be regulated more in the initial stages of development in order to assure consumer privacy and security?

Answer. Yes, oversight of the development stages of EFTS is essential to insure adequate privacy and security protection are available to consumers immediately.

Systems must be built in to protect against theft of data and funds and, through identification procedures, proof of payment, etc., against fraud.

Also, in the initial stages of EFTS, legislation should clarify whether security provisions, especially those relating to responsibility for fraud and liability for theft, loss or error, now provided under the UCC, common law, and credit card legislation will apply to EFTS.

Privacy law should also be immediately clarified or initiated which would specify what civil or criminal penalties apply to the unauthorized use of information stored in an EFT System.

Finally, as you have pointed out, Mr. Annunzio, unsolicited mailings of debit cards should be banned in order to protect the privacy and security of bank customers from the time EFTS Systems are initiated.

Question 4. Do you think savings disclosure legislation is important to consumers?

Answer. Yes. We supported Truth-in-Savings legislation when it was introduced in 1975. We still believe that the effective disclosure of interest rates is of major importance to consumers. Disclosure will enable consumers to shop among banks for the best return on their savings and also give consumers the opportunity to check the accuracy of their banks' interest calculations.

Question 5. How do you suggest this Congress legislate to protect the privacy of consumer bank records?

Answer. We have not completed our study of this area and, therefore, are not in a position to recommend specific legislation at this time. However, we think that legislation structured along the lines of the Sunshine Act or the Privacy Act would be appropriate. In other words, we would favor legislation containing general guidelines on notice, opportunity to contest, etc. which could then be adapted by regulation to the specific problems of each federal agency.

Question 6. What is the role of your office in coordinating federal consumer divisions?

Answer. One of our office's most important activities in coordinating federal consumer services has been our sponsorship of and participation in the Interagency Council on Citizen Participation (ICCP) and the Interagency Consumer Education and Information Liaison (CEIL). In addition, the office has served on the following Interagency Councils: Council on Wage and Price Stability, Energy Resources Council Subcommittee on Electricity, Interagency Task Force on Product Liability, Executive Advisory Committee of the Gas Policy Advisory Council and the Agricultural Policy Working Committee. All of these interagency activities have helped us develop and monitor the consumer activities of the Federal departments and agencies.

The Office of Consumer Affairs is also responsible for monitoring the effectiveness of "Consumer Representation Plans" which have been established within the 17 Federal Executive Departments and agencies for the purpose of assuring consumer representation at the earliest possible stages of the decision-making process. In order to establish direct working relationships among these executive departments and agencies, OCA works with each of the 17 staffs in the improvement of consumer participation.

Another of the important functions served by OCA in coordinating Federal agency consumer divisions is the development of educational materials about federal consumer services. The office compiles and publishes the *Guide to Federal Consumer Service.* This guide briefs the public on the consumer functions of all federal departments and agencies and lists the names, addresses, and phone numbers of persons whom consumers can contact for more information on specific topics.

In addition, OCA is the policy director of the Consumer Information Center. The Center helps develop, edit and collect the most valuable consumer information available from a large number of federal agencies. The Center then publishes a list of over 250 publications of interest to consumers and distributes it through mail order requests, through members of Congress and through the Park Service and other regional federal offices.

[The following is a written question submitted by Congresswoman Spellman to Mr. Finkel, along with Mr. Finkel's answer:]

Question. What are the most frequent kinds of problems consumers write about to the Office of Consumer Affairs?

Answer. I have enclosed for your review the top twenty consumer complaints received by the Office of Consumer Affairs for the years 1974, 1975, and 1976. Also enclosed is a breakdown of the specific types of automobile complaints received by our office in 1976.

[The information mentioned by Congresswoman Spellman in her answer follows:]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
OFFICE OF CONSUMER AFFAIRS
WASHINGTON, D.C. 20201

TOP TWENTY COMPLAINTS

1974

Rank	Category	Total Number	% Yearly Total	Monthly Average
Total	Complaints	23948		1997
1.	Automobiles	3747	16	312
2.	Mail Orders	1526	6	127
3.	Credit	1089	5	91
4.	Appliances	927	4	77
5.	Business Practices	895	4	72
6.	Housing	799	3	67
7.	Food	687	3	57
8.	Travel	675	3	56
9.	Prices	603	3	50
10.	Advertising	494	2	41
11.	Television/Radio	473	2	39
12.	Insurance	426	2	36
13.	Energy (#29 in 1975)	413	2	34
14.	Magazines	396	2	33
15.	Movers	346	1	29
16.	Furniture	330	1	27
17.	Household	309	1	26
18.	Books (#26 in 1975)	294	1	25
19.	Mobile HOmes	281	1	23
20.	Home Repairs	269	1	22
21.	Utilities (#15 in 1975)	221	.9	18
22.	Containers (canning lids) (#4 in 1975)	211	.8	17
30.	Credit Cards (#20 in 1975)	151	.6	13

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
OFFICE OF CONSUMER AFFAIRS
WASHINGTON, D.C. 20201

TOP TWENTY COMPLAINTS

January through November 1975

Rank	Category	Total Number	% Year to Date Total	Monthly Average
Total	Complaints	26876		2443
1.	Automobiles	3878	14	353
2.	Mail Orders	1605	6	146
3.	Housing	1412	5	[illegible]
4.	Containers (canning lids) (# 22 in 1974)	1385	5	126
5.	Appliances	928	3	84
6.	Business Practices	893	3	81
7.	Credit	865	3	79
8.	Food	719	3	65
9.	Prices	513	2	47
10.	Insurance	482	2	44
11.	Travel	474	2	43
12.	Television/Radio	458	2	42
13.	Advertising	421	2	38
14.	Furniture	311	1	28
15.	Utilities (#21 in 1974)	310	1	28
16.	Magazines	302	1	27
17.	Household	299	1	27
18.	Mobile Homes	275	1	25
18.	Movers	275	1	25
19.	Home Repairs	254	.9	23
20.	Credit Cards (#30 in 1974)	236	.8	21
26.	Books (#18 in 1974)	180	.7	16
29.	Energy (#13 in 1974)	155	.6	14

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
OFFICE OF CONSUMER AFFAIRS
WASHINGTON, D.C. 20201

TOP TWENTY COMPLAINTS

February through June 1976

Rank	Category	Total #	% Total	Monthly Average
Total	Complaints	11098	– –	2220
1.	Automobiles	2024	18	405
2.	Mail Orders	928	8	186
3.	Business Practices	491	4	98
4.	Appliances	384	4	77
5.	Credit	383	4	77
6.	Housing	343	3	69
7.	Food	279	3	56
8.	Insurance	232	2	56
9.	Advertising	230	2	56
10.	Travel	190	2	38
11.	Prices	157	1	31
12.	Television/Radio	156	1	31
13.	Magazines	133	1	27
14.	Utilities	120	1	24
15.	Medical	112	1	22
16.	Furniture	108	.9	21
17.	Household	101	.9	20
18.	Auto Insurance	96	.8	19
	Home Repairs	96	.8	19
19.	Mobile Homes	94	.8	19
20.	Containers	92	.8	18
21.	Watches	91	.8	18
22.	Movers (#18 in 1975)	90	.8	18
23.	Schools	90	.8	18
24.	Credit Cards	87	.7	17

Total number of complaints received February through December 1976..................20835*
(monthly average: 1894)

Total number of automobile complaints received February through December 1976.........3989
(monthly average: 363)

Complaints processed by OCA..2320
- Defective..590
- Pricing..38
- Safety...172
- Service..802
- Unethical practices by dealer....................98
- Warranty...550
- Assessories......................................66
- No product description...........................4

Telephone complaints...857

Other complaints (Third party, information copies)...................812

*No figures available for January 1976 due to computer breakdown.

[The following are written questions submitted by Congressman Vento to Mr. Finkel, along with Mr. Finkel's answers:]

Question 1. Can you speculate on the conclusions of the National Commission on Electronic Fund Transfers when it issues its final report in October?

Answer. Because our office is not privy to all of the data available to the Commission or the deliberations of the Commission, we are not in a position to speculate on what conclusions will be drawn in the final report. We can only hope that the consumer concerns expressed by our office and other consumer organizations in testimony before the Commission will be given serious consideration.

Question 2. The National Retail Merchants Association has issued a policy statement opposing the establishment of debit cards which include a stop payment guarantee for the consumer. Consumers have a right to stop payment with checks and credit cards. Do you think it is fair not to provide stop payments for debit cards?

Answer. As we have stated in all of our comments on EFTS from 1975 to the present time, we believe that stop payment is a valuable right which consumers have come to expect from their system of transacting financial business. Stop payment provides consumers with effective means of leverage against vendors who fail to perform or misrepresent their products in some material way. Without this leverage consumers would often be left in an untenably weak position.

[The following are written questions submitted by Chairman Annunzio to Mr. Taylor, along with Mr. Taylor's answers:]

Question 1. Last April you issued EFT guidelines to banks, which if followed, would ease consumers' fears. Is there any indication that banks have been adhering to them?

Answer. The EFTS Guidelines were written following our observations of various bank policies and practices in the evolving technology of electronic fund transfers. We issued guidelines based upon our understanding of the "state of the art" at that time to help national banks in evaluating their EFT systems and to pinpoint areas of concern. They are by no means regulations, nor are they to be interpreted as operating standards or as the static position of this Agency. They are being reviewed at the present time and will be reissued within the next few months to reflect our thoughts on new developments in the EFT environment.

Our EDP examiners are currently using the security features in the Guidelines in conjunction with their examinations of electronic data processing facilities. The Banking Operations Division of this Office indicates that, to date, examinations reflect that national banks are either complying with the EFT guidelines or are making the necessary modifications to do so. In the fall of this year we will probably be incorporating the consumer features of the Guidelines in our Consumer Compliance Examination.

We have received a few consumer complaints about EFT operations and in those instances where we believed the banks' practices to be unsound the banks have agreed to modify their systems or practices satisfactorily.

I would like to mention that we have distributed over 16,000 copies of the EFTS Guidelines. Besides distributing them to our examiners and the 4,700 national banks, we have sent them upon request to state banks, state banking departments, thrift institutions, attorneys, data processors, consumer groups, and other interested parties.

Question 2. Why hasn't your agency made public its survey of 27 national banks which reportedly showed that 74 percent failed to disclose accurately, if at all, the finance charges on loans?

Answer. As we indicated to you in our letter of November 5, 1976, we have not followed a policy of making public announcements concerning violations found in individual banks. We have considered this from time to time and have concluded that it was the intention and expectation of Congress that the banking agencies would use the same private approach to consumer law enforcement as they do in regard to other banking laws. This conclusion is reinforced by the cross-reference to the Financial Institutions Supervisory Act (cease and desist power) found in the Consumer Credit Protection Act and other recently enacted consumer protection laws. The Supervisory Act provides that the normal rule is that enforcement proceedings under it are to be private, although the Agency may determine that hearings under the Act will be public if it determines that it is "necessary to protect the public interest".

Disclosure of possible violations discovered during examinations would be both impractical and unfair. Examiners are trained to be severe with national banks and, not being lawyers, they err occasionally on interpretations of law. It would thus be misleading to the public and harassing to the banks to impose a disclosure requirement on what is an investigatory finding of a violation of law. Such investigatory findings are not publicized by other federal agencies prior to institution of court actions.

In the matter of public disclosure of bank names we are also concerned that our traditional and effective methods of examination not be weakened. Our Office is now able to examine national banks with the cooperation of bankers who know that information in the examination reports will remain confidential. We do not believe that Congress intends that our ability to examine national banks for the purpose of financial soundness and compliance with laws be compromised by publicizing information obtained through this cooperation. The fomenting of widespread private litigation by such public disclosure would shut off our examiners from open communication with bankers by making bank examination an adversary proceeding—a development which would render the examination process much more burdensome to the private sector, much less effective to the regulatory agencies and injurious to the public welfare.

We are also concerned about equity among competing lenders. If Congress desires public disclosure by enforcement agencies of alleged consumer law violations to be the rule rather than the exception as required by the present statutes, such an approach should be adopted through specific legislation after careful study.

Apart from the policy considerations and statutory considerations outlined above, other concerns include the potential of massive liabilities for purely technical violations of extremely complex rules and the lack of equivalent examination and enforcement ability over non-bank lenders and the consequent uneven and unfair enforcement (e.g., Congress has heard testimony that federally regulated financial institutions account for less than 25% of all transactions covered by Truth in Lending. Over 75% of such transactions, therefore, are not systematically reviewed because there is no examination function covering them).

To date, this Office has been able to achieve correction of abuses without public proceedings. In view of the peculiar sensitivity of depository institutions to loss of public confidence, we feel that it is important to continue this policy. However, we do not foreclose the possibility of public enforcement proceedings in appropriate circumstances.

Question 3. You mentioned in your testimony that in the course of your new examination procedures, "significant evidence of non-compliance with the consumer protection laws has been detected." How widespread is this non-compliance and what dollar amount of overcharges to consumers is involved?

Answer. During our examinations we have been discovering errors with frequency, but I should have emphasized that most of these are not necessarily serious and often inadvertent violations have occurred even though banks have made good faith attempts to comply with a variety of complex laws.

In my statement I indicated that we had examined about 12% of the national banks and in some we have discovered violations that have resulted in monetary harm to customers. To date, 26 of these banks have reimbursed their customers approximately $113,326. Three banks have agreed to make reimbursements in the near future that will involve substantial sums. At this time we are reviewing situations involving several other banks which will probably result in some reimbursement.

Question 4. The Federal Reserve Board has recommended deleting Truth in Lending's ban of sending out unsolicited credit cards so that creditors could market combination debit-credit cards. Why should consumers be forced to receive unwanted cards?

Answer. At the present time the combination of a credit card with a pure debit card does not exist except in circumstances where an overdraft line of credit is attached to a debit card. In connection with the circumstances noted, the existing prohibition on issuing unsolicited cards is applicable. It is possible that sometime in the future cards will be issued that combine both the credit and debit functions.

It is our position that the present provisions in the Truth in Lending Act prohibiting the unsolicited issuance of credit cards have had the effect of contributing to the duopoly that we now have in the national bank credit card system. Indeed, many observers believe this duopoly may become a monopoly as a result of the Department of Justice's decision that neither card association could prohibit any bank from issuing the other association's card. This prohibition has made the marketing of any potential new cards unduly expensive. We support the position that the $50 limit on customer liability is sufficient protection if the card is used without the holder's authorization. Indeed, there is no liability if a consumer destroys a card he does not want to use upon receipt, or if he does not sign the card.

There is even less danger of consumer liability in connection with the issuance of an unsolicited debit card if depository institutions provide for proper post validation procedure. For instance, a depository institution may send a debit card to a consumer with instructions that if he desires to use the card he should notify the institution and an authentication code will be forwarded in a separate mailing, or the customer may be requested to come into an office of the bank to receive an authentication code. Such protections are prevalent in the industry at the present time.

An alternative proposal might be that banks could issue unsolicited debit cards to their own customers, with appropriate safeguards as noted above, and could not issue unsolicited cards to non-customers. This presumes that a bank would use adequate pre-screening methods before sending cards to their customers, which is also a prevalent practice when depository institutions issue unsolicited debit cards. If there is one lesson banks have learned well, it is that as a result of the credit card problems of the 1960's, mass issuance of unsolicited cards is imprudent.

[The following is a written question submitted by Congresswoman Spellman to Mr. Taylor, along with Mr. Taylor's answer:]

Question. You stated that your office is requesting a "number of national banks throughout the country to designate specific personnel who are able to discuss consumer problems" with members of your staff and with the consumers themselves. How many banks have been requested to designate such personnel and how many have done so to date?

Answer. Our San Francisco Regional Office proposed this idea as a more efficient and meaningful way to resolve consumer complaints. The national banks in that Region, which are relatively few in number, responded enthusiastically to the suggestion and the plan has been successfully implemented there. The Consumer Affairs Division suggested to the other National Bank Regions that they might want to consider a similar proposal. So far, the only other Region which has instituted a similar plan is the Fourth National Bank Region, headquartered in Cleveland. Other Regions have developed contacts in certain banks with whom they have a greater amount of consumer complaint correspondence, particularly large banks. The Washington Office has recently written to 42 banks in the Washington Metropolitan Area to establish such a contact plan with all banks in this area subject to our regulatory authority. This plan may not be reasonable in all Regions as there are too many banks of such a small size for the plan to be workable.

[The following is a written question submitted by Congressman Vento to Mr. Taylor, along with Mr. Taylor's answer:]

Question. In recommending dismantling of Truth in Lending civil liability protections, the Federal Reserve Board recommends reliance on administrative remedies. What types of administrative remedies does the Comptroller have available? How often have they been used in the past in connection with Truth in Lending violations?

Answer. It is our understanding that the Board proposes to eliminate some civil liability protections in situations where technical violations of Truth in Lending have not interfered with the customer's disclosure rights in shopping for credit.

This Office has been able to obtain voluntary compliance with the various consumer credit protection laws in the majority of discovered violations. We vigorously pursue all available remedies to obtain corrective action from banks which resist voluntary compliance. In the latter instance our procedure is to serve notice on the respondent banks of our intention to commence cease and desist proceedings under the Financial Institutions Supervisory Act of 1966 (12 U.S.C. 181(b) (1). We were the first bank regulatory agency to serve notice that we would use this power to obtain reimbursement for customers retroactively under the Truth in Lending Act. To date, we have not been required to use cease and desist proceedings for this purpose. More often, this Office enters into a formal agreement with a respondent bank to obtain correction before resorting to formal cease and desist orders.

In 1976, we entered into four formal agreements to correct violations of Truth in Lending and filed two cease and desist orders.

[Whereupon, at 12:30 p.m., the hearing was adjourned, to reconvene at 10 a.m., on Thursday, February 10, 1977.]

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CONSUMER INFORMATION

THURSDAY, FEBRUARY 10, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CONSUMER AFFAIRS OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
Washington, D.C.

The committee met at 10 a.m. in room 2128 of the Rayburn House Office Building, Hon. Frank Annunzio presiding.

Present: Representatives Annunzio, Vento, Fauntroy, and Wylie.

Mr. ANNUNZIO. The meeting of the subcommittee will come to order, and I want to welcome all of our witnesses today.

As we enter our third day of consumer information hearings I want to welcome our panel of industry representatives.

As you all know, we have already heard from our consumer representatives and from Federal Government officials. Today, we will hear testimony from those who must comply with the laws and regulations that the rest of us work so hard to enact.

I am sure you will have much to say but I want to make it clear that I am as interested to hear your position on the state of the consumer credit industry as I was to hear the consumer witnesses and the Government representatives on Tuesday and Wednesday.

Throughout the year, the Subcommittee on Consumer Affairs deals with various liaison persons from your organizations, who often attempt to gather information and locate solutions for some of the problems that consumers have in getting and paying for credit.

I don't think many people realize that on advisory boards, conventional discussion panels, and throughout the legislative process, we often spend as much time working with each other as we do criticizing each other.

At times it may seem that our respective responsibilities put us on different sides of the fence, but I want to assure you here this morning that we fully realize that it is you—not us on the subcommittee, or those who work in the Federal Reserve System, or in the FTC—but you, who are one-half of every consumer credit transaction.

I appreciate this and welcome you here this morning. I want to also point out to you that on these information hearings of this week, that we have had the largest public participation of people sitting in the audience with every seat occupied. As I mentioned yesterday, this is the first time in all of the years that I have been on the House Banking, Finance and Urban Affairs Committee, that we have had such full participation. So that consumers and consumer credit is becoming a subject of widespread interest on the part of the American people, and you, as members of the banking industry, I now fully realize that the American people are worried about the extent of the $1 bill that they carry and what it can purchase.

Everybody associates the $1 bill with the purchasing power of that $1 bill so that the less they get, the more they complain, and with justification, because we all would like to see our dollar go much further.

Now, this morning, we will hear from each one of you. Before we start, I am making a unanimous request that your statements be fully printed in the record, and without objection, so ordered, so that when your name is called, you can either read your statement, or carry on in any manner that you see fit, or cut your statement down and give us portions of it in your own language. But your entire statement will be printed in the record.

The ranking minority member on this subcommittee, who has worked with me so long and hard in the last session of the Congress deserves as much credit as I do for the progress that this subcommittee has made on legislation. His constituent from Columbus, Ohio, is here this morning, so I'm going to defer from introducing any of the witnesses, as I want for Mr. Chalmers P. Wylie of Columbus, Ohio, to introduce his constituent as our first witness this morning.

Mr. Wylie?

Mr. WYLIE. Thank you very much, Mr. Chairman. That is very thoughtful and very generous, and I am most appreciative.

It is indeed a personal privilege and honor that I have this morning to introduce my friend, John Fisher, to the subcommittee, Mr. Chairman. Mr. Fisher is here to testify on the impact of electronic fund transfers on the consumer, and it's my understanding that his invitation to come here today was prompted by an article that he wrote on EFTS, which appeared in the January 18 issue of "American Banker," but to call him an expert in electronic funds transfers would be understating his credentials. His academic background, his business background, evidences the scope of his knowledge in the banking field. He is a graduate of Ohio State University and is on the faculty of the Ohio School of Banking at Ohio University and he was on the faculty at the University of Colorado School of Banking, and the graduate school of the University of Wisconsin, and the Stonier School of Banking at Rutgers University, and he is a past director of the Bank Marketing Association in Chicago, Ill. Mr. Chairman, I would like you to know that.

Mr. Fisher has another dimension in that he was program director for WCLT radio station for 10 years in Lincoln County, from whence I came. But presently Mr. Fisher is vice president of First Bank Group of Ohio, a position he has held since 1970, and he is at the same time vice president of City National Bank & Trust Co. of Columbus, Ohio, and I think it is fair to say that he supervised the establishment of the BankAmericard system in the State of Ohio and was executive director of the BankAmericard Association.

I believe he will be a valuable resource to the subcommittee in telling us what EFTS can and cannot do, and he is prepared to tell us about the burning social issues, I think, behind the installation of an electronic funds transfer system such as privacy, computer fraud, and paper transaction.

I talked to Mr. Fisher last night, and I think he is prepared to talk on this subject. So, it's a real pleasure and honor that I have to welcome you to the subcommittee this morning, John Fisher, and we appreciate the fact that you did come in from Columbus to help us on the consideration of this legislation on this very, very difficult subject.

STATEMENT OF JOHN FISHER, VICE PRESIDENT OF THE FIRST BANK GROUP OF OHIO AND THE CITY NATIONAL BANK & TRUST CO., COLUMBUS, OHIO

Mr. FISHER. Mr. Wylie, thank you very much, and I had not expected to hear all those nice background comments, but it was pleasant nevertheless.

Mr. WYLIE. I didn't really expect to make the first major speech of the day.

Mr. FISHER. I do appreciate very much the opportunity to testify before this important group.

My bank has been one of the pioneers in the bank credit card industry and in the developing of electronic funds transfer systems. As a result, it has been vitally interested in the customer understanding and acceptance of these significant services.

My comments are divided into two sections: first, a summary of activity in the credit card arena; and second, two suggestions for support on the part of this subcommittee.

Due to the recent publicity surrounding these hearings, particularly in the February 7th issue of "Business Week," let me now direct my comments at what is said to be the consumer concerns.

First, I want to be very firm in stating that the purported staff paper dealing with credit and debit cards and suggesting that we are "becoming a nation of credit card junkies" is so inflammatory, misguided, and totally inappropriate that a public apology is clearly in order. It's one thing to use the drug-related reference for those who indulge in "Twinkies and Ho-Ho's" as junk-food junkies and say it in a song with a smile—but it's something far more important when junky words are used by the staff of this subcommittee in the public press referring to an industry serving 50 million customers and operating under stringent laws in which this subcommittee served as midwife. I will gladly stand in line to hear that apology.

Now, let me objectively tell you about debit cards, the, according to your staff paper, to-be-feared and dreaded debit card. This is one. It's usable here in Washington, and in every city in America where a merchant displays a blue-white-and-gold emblem—that's almost 1½ million such merchants.

This service has been available from my bank for over a year and a half and will soon be available from many financial organizations nationwide. It allows a customer to pay a bill at a merchant store using a plastic card but accessing funds in his checking account.

It deducts or debits the amount of sale from the checking account but only after the paper document, a sales draft, arrives at the bank via a merchant deposit. In other words, the to-be-feared debit card operates like a check and not like the erroneous information contained in the prereleases of this hearing and the liabilities associated with its usage are comparable to those of a check.

Today, debit cards, with the possible exception of a limited number of experimental projects being conducted primarily by selected savings and loan associations, do not directly transfer funds at the time of the transaction out of the customer deposit account. That capability does not exist within the banking industry. Even if the industry thought the customer would accept it, it couldn't produce it.

The capability to directly transfer funds from a deposit account requires the ability, using terminals and online computer networks, to switch messages, sales information, from any merchant to the location of the customer's account. We are many subcommittee hearings and virtually millions of dollars away from that ability.

It is true that the financial industry, particularly commercial banks, has talked and dreamed and planned and schemed about eliminating paper through direct transfer—the so-called checkless society.

In my view, that's an impractical near-term objective and an unfortunate choice of words. To accomplish that objective on a broad scale, the financial industry must accomplish these four major tasks.

First, issue, and cause a high percentage of customers to use, plastic cards in place of all other forms of payment. The penetration of plastic cards in the marketplace today is about 40 percent of the customer base.

Second, install a nationwide terminal and computer switched network permitting any individual to access loan or deposit accounts from any merchant—anywhere.

Third, gain acceptance through realistic cost-benefit pricing to all merchants comparable to the pricing procedures of checking systems of today.

And, finally, standardize a sophisticated and low-cost customer identification system for national usage.

These are very significant undertakings. We're only about 10 percent along the road toward their completion; therefore, I believe all the discussions about the certainties of the checkless society are bayings at the Moon rather than harnessing the light in the night.

Now, let me turn our attention to a second credit card concern as indicated by the prepublicity of these hearings. This is the issue of duality; the newly acquired ability for a bank to participate in both the BankAmericard and Master Charge systems which evidently has caused the staff of this subcommittee to be concerned about concentration. Here's the situation.

Most active credit card banks are planning to provide at least the dual merchant services of accepting a single merchant deposit, providing a common authorization service and issuing a single monthly statement of all merchant plastic card activity. This activity promises to improve the competitive nature and the efficiency of the credit card industry. I believe we will reduce the cost to the merchant by eliminating the unnecessary duplication that has been the practice for the past 10 years.

On the other hand, few banks plan to issue both cards as it seems completely unnecessary for customers to use both if the issuing bank has provided acceptable service particularly through a sufficient line of credit, with a single card. There will continue to be marketing differences between the two systems, but it is true the lines of differentiation, which were always more fabrication than fact, will diminish. The dual environment of the future will require each bank to be more sensitive to marketplace needs since the protection from competitor access will be eliminated. This is well and good. After all, we compete as banks and not as two national credit card systems.

This brings me to my final point concerning the credit card industry. From the advance notice of this hearing, apparently there is concern about the elimination of the 25-day, interest-free period for both credit and debit cards. There definitely is an effort within the credit card industry to bring about a more equitable pricing arrangement in which he who benefits—pays.

As you know, today, if a credit card statement is paid in full within 25 days of the billing date, no interest is charged and, as a result, about 33 percent of the users pay nothing for the service, causing those who cannot pay off in full to fund the entire system.

This means those who can best afford to pay for the service—don't; and those who can least afford to pay for it—subsidize the rest. If you are truly interested in all of the consumers and not just protecting those who can exploit the 25-day grace period, then you must support banks in their efforts to charge monthly or transaction fees. This revenue stream will be necessary if the banking industry is to expand the service to higher risk customers.

With that background, let me finally present my view of the only genuine consumer concern as these credit and debit card programs evolve into EFT systems.

This is the one concern that should be of significant interest to require action on the part of this subcommittee. I am referring to consumer identification systems and all the overtones of security, privacy, and protection from loss—all are associated with the needs and fears surrounding customer identification. The customer signature on a check, withdrawal slip, credit card sales draft, and so forth, is today's accepted procedure for proving the liability for payment. I suggest to you that that will remain true for some time into the future.

It is true that financial transactions which are handled without a signature, such as with an automatic teller machine, use a security code known as a PIN number, a personal identification number, to prove the identity of the user. When a paper document signed by the customer is involved, the PIN will have limited value or usage. These systems will be sufficient only as long as EFT remains a limited service. But, as it matures, possibly by 1980, more sophisticated identification systems will be demanded by the consumer. I believe signature dynamics, the ability to identify a customer as the signature is written, the dynamics, may prove to be an acceptable procedure. The technology has been developing in England and the United States during the past 2 years.

Regardless of the technology, this subcommittee and others that will follow eventually must deal with prompting vendors to supply and urge the consumer to accept new forms of identification which finally could lead to an elimination of the paper transaction. I believe this role of the advocate for new systems is proper for this subcommittee and therefore for Congress.

To support that belief, I ask you to accept the statement that the use of fingerprinting as a fail-safe physical identification system is acceptable as a social procedure. However, had it not been invented until this moment, and were it now to be urged upon our society, it should be apparent that congressional support, through legislation, would be needed to gain broad acceptance.

I am suggesting the same type of social urging may be needed to support and thereby gain consumer support of electronic identification in the future. I am urging you to think of yourselves as advocates in addition to your role as a protector.

Finally, I urge this subcommittee to become an early and active supporter for the legislative recommendations certain to be forthcoming later this year by the Presidentially appointed Commission. After almost 2 years of study, the 26 Commission members must be regarded as the best informed group in the country on this complex subject. Regardless of the substance of their legislative recommendations, the financial industry must have a more clearly defined environment in which to operate rather than the antiquated and expanding debit cards and the unproductive regulations of today. The consumer needs the convenience promised through maturing electronic delivery systems; he deserves to be paid for "having money in the bank" which hopefully can be accomplished through the reduced operating cost of technology; and he demands a banking system that is in tune with his expanding financial requirements.

If the promise is to come true, I think new legislative direction, particularly in the area of expanded branching powers, and the issue of competitor access to banking systems and services, must be addressed as quickly as possible.

The greatest disservice to the consumer will be inaction.

I do thank you for this opportunity, and I salute your dedication and diligence.

Mr. ANNUNZIO. I thank you, Mr. Fisher, for your excellent statement. As chairman of the subcommittee, I want to assure you that when the ballgame is over, and if it's necessary for me to apologize, those that know me, know that I will publicly apologize. But, I stand behind the statement of the staff who consulted with me, because I am not one of those that gets elected that is interested in being the most popular man in my district. I tell it as it is.

We have all kinds of junkies, and the sooner that people realize that we have those kinds of people living in our society, the better off we are all going to be.

I am just a little bit tired of turning on the television everyday and listening to all of these experts who tell people how they should run their lives. I grew up like you did—I don't know how old you are, I am 62 years old and we had a coal flat, and that is how we got our heat. And nobody told my mother how to raise me and we did not have that much in my neighborhood, nor did we have all of these programs.

I almost sound like a Republican when I get going.

[Laughter.]

Mr. ANNUNZIO. So, I am not ready to apologize, because after all the chips are in, this subcommittee is going to deal deliberately, fairly, and squarely with the problem to protect everybody who is involved in this program. And that's what I want to assure you of.

But I do appreciate your comments, and I appreciate the work you have done on your statement, and the suggestions that you made to the subcommittee, because when you are drafting legislation, everybody's advice is important. And your statement will be important to this subcommittee in its deliberations in reaching a conclusion on legislation.

So, thank you very much.

And now I welcome Mr. Carl E. Grant of the American Bankers Association, who is accompanied by Mr. J. Donald Saul.

STATEMENT OF CARL E. GRANT; ACCOMPANIED BY J. DONALD SAUL, CHAIRMAN OF THE CONSUMER CREDIT GOVERNMENT RELATIONS COMMITTEE OF THE AMERICAN BANKERS ASSOCIATION

Mr. GRANT. Mr. Chairman and members of the subcommittee, I am Carl E. Grant, senior vice president of the Liberty National Bank & Trust Co. of Oklahoma City, Okla. I serve as cochairman of the Consumer Credit Government Relations Committee of the Installment Lending and Bank Card Divisions of the American Bankers Association, on whose behalf I appear today. Accompanying me is J. Donald Saul, vice president of the First National Bank of Cincinnati, Ohio, cochairman of the Consumer Credit Government Relations Committee. The membership of our association consists of approximately 92 percent of the Nation's more than 14,000 commercial banks.

The American Bankers Association appreciates this opportunity to discuss its concerns in the area of consumer credit law and to help in identifying the problems that bankers and bank customers have with some of the legislation and its accompanying regulations. This is the second time we have appeared before this subcommittee at a "consumer information" hearing. This oversight approach should be helpful in your deliberations over the next 2 years, and is a logical way to begin a new Congress.

Serving the financial needs of consumers is an important part of the banking industry, as evidenced by the approximately $84 billion in outstanding consumer installment credit currently held by banks. Our success as bankers has always depended upon good relations and fair dealing with our customers. Because only if the consumer is satisfied, will he or she continue to deal with us.

Over the years ABA has endorsed the principles and intent of consumer legislation. We believe in equal credit opportunity, fair credit billing, and honest credit reporting. And ABA worked closely with Congress to develop the Fair Credit Billing Act. What we have opposed, however, is overregulation in these areas. Burying both banker and consumer in a blizzard of paperwork benefits no one.

In this vein, I would like to mention three current efforts which have broad ABA support:

One, we are cooperating fully with the Commission on Federal Paperwork's study of excessive paperwork required to meet Government regulations.

Two, there is a growing feeling in the Congress that the complexity and confusion generated by the truth in lending laws far outweigh the consumer benefits. We applaud the current efforts of the Congress to examine and simplify truth in lending legislation, and hope that ABA will have an opportunity for significant input in that endeavor.

And, three, the Federal Reserve Board has announced its intention to conduct a consumer credit survey. This survey will try to determine the level of public understanding of the consumer credit laws and regulations and public opinion regarding these laws.

It is apparent that ABA's concern is not with the intent of most consumer legislation, but with its complexity and structure. The problems in this area are well-illustrated by truth in lending. While we agree that the consumer should be given information such as true annual percentage rate, we believe he should be given the data in a simple, easy to understand fashion. As it now stands, there is reasonable doubt that the average consumer really comprehends all the required disclosures. Most consumers and lenders do not easily understand "legalese" and the result is confusion. So much so that bankers and other lenders have often found it impossible to avoid technical violations. Since 1972, the number of truth in lending related lawsuits has increased over 400 percent—to over 2,000 a year—almost all of them based on unintentional technical violations.

These unavoidable technical violations have led to "nuisance" suits for amounts smaller than legal costs. In these cases, some banks have found it easier and less expensive to settle out of court and/or forgive a loan. And while the consumer involved may feel good about this result, the long-range effect is an increase in consumer borrowing costs. Small banks, and their customers, which have fewer resources to meet such situations, have been hardest hit by the costs of compliance and of defense against technical violations suits.

The American Bankers Association believes that the doctrine of substantial compliance, or a similar device should be incorporated into the Truth in Lending Act to discourage suits for technical violations. Also, civil liability should be limited to material violations proven to have harmed the consumer.

The Real Estate Settlement Procedures Act is a good example of what can be done. The law was enacted to deal with real abuses in real estate settlement procedures. But once Congress realized that the cure was worse than the ailment, it was quick to respond on reversing the act. We believe this has set the precedent for action on truth in lending.

We have been talking here about legislation grounded in good intention but mired in confusion. I would like to turn now to a specific consumer credit problem which resulted from the actions of a regulatory agency—the Federal Trade Commission.

Last August, ABA testified before a House Commerce Subcommittee on the abrogation of the holder in due course doctrine promulgated by the FTC. We expressed our concerns about the rule's potential negative impact on the cost and availability of some types of consumer credit, as well as its potential for cutting off small businesses from credit sources.

In 1975, the FTC promulgated its "seller rule" requiring that vendors of goods and services insert in all sales contracts a prescribed notice stating that any subsequent purchaser of such contract was subject to all claims and defenses which could be asserted against the seller. However, the FTC also took two additional steps: first, inclusion of the "purchase money loan" and, second, the simultaneous proposal of the "creditor rule," a similar rule applicable to all "direct loans."

The FTC appears to have based its decision to go forward with the rule on the premise that lenders are best positioned to police the market and that such a procedure is socially desirable.

Analysis of the legislative history of the FTC Improvement Act, where Congress addressed itself directly to the question of unfair credit practices, reveals that the legislators did not intend to grant the Commission power to abolish, in a single stroke, the considered distinctions and limitations reflected in a long series of State consumer credit statutes dealing with the subject.

A trade regulation rule is proper only if the FTC has the power under its enabling statute to adopt such a rule, and if it follows the requisite administrative procedures. Specifically, it is not clear that the FTC has the authority to promulgate a general rule to define as "unfair" a broad sweep of acts and practices, many of which are specifically sanctioned by State statutes.

We urge Congress to keep a close eye on the effects of the "seller rule." We also do not believe that the similar "creditor rule" should be permitted to become effective until all the facts are in.

The FTC holder in due course action is a primary example of a growing problem. In recent years, with the rapid rise of the consumer movement, virtually all 50 States have adopted consumer legislation in one form or another. So, in addition to complying with a myriad of State laws and regulations, lenders must also contend with layers of Federal requirements. It has long been our feeling that States are most often best equipped to deal with consumer legislation needs within their own borders, since they are closer to unique local circumstances and requirements. However, if a need for Federal legislation is proven, such law should take into consideration the intent of existing State law and as far as possible not conflict with it, nor should it impose additional paperwork burdens through duplication of reporting or other such requirements.

We know that Congress never intended that the cost of legislation overshadow its benefits. However, this is what has happened; and it has happened at a time when consumers are already bearing a heavy burden of inflation in almost all areas of the economy. We encourage this subcommittee and the entire Congress to undertake an extensive cost-benefit analysis of existing consumer credit laws and regulations, with an end to eliminating any requirements which impose costs disproportionate to the consumer benefits derived.

We urge also that Congress require any further consumer credit proposals be accompanied by a cost-benefit impact statement. This is in line with congressional desires to control costs of legislation as demonstrated in the newly instituted congressional budgetary process. Through this process, Congress is writing specific legislation, while considering the whole budget and its impact on the total national economic posture. Rather than enacting budgetary legislation in a piecemeal fashion, Congress is looking at its macroeconomic impact and weighing tradeoffs among various programs and resources.

Similarly, a cost-benefit analysis attached to consumer legislation would estimate the Government's costs of implementing such legislation, as well as the initial and recurring costs of compliance for private industry. Both Government and industry costs would be weighed against the practical results and benefit to the consumer.

Allowing all concerned to tell their story in a public forum demonstrates a real sense of equity and fairplay. The ABA thanks you for your consideration and reminds you that our association stands ready to assist you at all times.

[The prepared statement of Mr. Grant, presented on behalf of the American Bankers Association, follows:]

STATEMENT OF THE
AMERICAN BANKERS ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON CONSUMER AFFAIRS
OF THE
COMMITTEE ON BANKING, FINANCE, AND URBAN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

FEBRUARY 10, 1977

Mr. Chairman and members of the Subcommittee, I am Carl E. Grant, Senior Vice President of the Liberty National Bank and Trust Company of Oklahoma City, Oklahoma. I serve as co-chairman of the Consumer Credit Government Relations Committee of the Instalment Lending and Bank Card Divisions of the American Bankers Association, on whose behalf I appear today. Accompanying me is J. Donald Saul, Vice President of the First National Bank of Cincinnati, Ohio, co-chairman of the Consumer Credit Government Relations Committee. The membership of our Association consists of approximately 92% of the nation's more than 14,000 commercial banks.

The American Bankers Association appreciates this opportunity to discuss its concerns in the area of consumer credit law and to help in identifying the problems that bankers and bank customers have with some of the legislation and its accompanying regulations. This is the second time we have appeared before this Subcommittee at a "consumer information" hearing. This oversight approach should be helpful in your deliberations over the next two years, and is a logical way to begin a new Congress.

Serving the financial needs of consumers is an important part of the banking industry, as evidenced by the approximately $84 billion in outstanding consumer instalment credit currently held by banks. Our success as bankers has always depended upon good relations and fair dealing with our customers. Because only if the consumer is satisfied, will he or she continue to deal with us.

Over the years ABA has endorsed the principles and intent of consumer legislation. We believe in equal credit opportunity, fair credit billing, and honest credit reporting. We have supported the thrust of the Consumer Leasing Act of 1976. And ABA worked closely with Congress to develop the Fair Credit Billing Act. What we have opposed, however, is over-regulation in these areas. Burying both banker and consumer in a blizzard of paperwork benefits no one.

In this vein, I would like to mention three current efforts which have broad ABA support:

1. We are cooperating fully with the Commission on Federal Paperwork's study of excessive paperwork required to meet government regulations.

2. There is a growing feeling in the Congress that the complexity and confusion generated by the Truth in Lending law far outweigh the consumer benefits. We applaud the current efforts of the Congress to examine and simplify Truth in Lending legislation, and hope that ABA will have an opportunity for significant input in that endeavor.

3. The Federal Reserve Board has announced its intention to conduct a consumer credit survey. This survey will try to determine the level of public understanding of the consumer credit laws and regulations and public opinion regarding these laws.

Federal Deposit Insurance Corporation chairman Robert E. Barnett, recently zeroed in on the problem when he noted that, "There are too many new laws and regulations and they are too complicated; we can't keep up with them. We want to obey, or enforce, the letter as well as the spirit of the law, but we can't be sure we know what it is".

It is apparent that ABA's concern is not with the intent of most consumer legislation, but with its complexity and structure. The problems in this area are well-illustrated by Truth in Lending. While we agree that the consumer should be given information such as true annual percentage rate, we believe he should be given the data in a simple, easy to understand fashion. As it now stands, there is reasonable doubt that the average consumer really comprehends all the required disclosures. Most consumers and lenders do not easily understand "legalese" and the result is confusion. So much so that bankers and other lenders have often found it impossible to avoid technical violations. Since 1972, the number of Truth in Lending related law suits has increased over 400 percent -- to over 2,000 a year -- almost all of them based on unintentional technical violations.

These unavoidable technical violations have led to "nuisance" suits for amounts smaller than legal costs. In these cases, some banks have found it easier and less expensive to settle out of court and/or forgive a loan. And while the consumer involved may feel good about this result, the long range effect is an increase in consumer borrowing costs. Small banks, and their customers, which have fewer resources to meet such situations, have been hardest hit by the costs of compliance and of defense against technical violation suits.

The American Bankers Association believes that the doctrine of substantial compliance, or a similar device should be incorporated into the Truth in Lending Act to discourage suits for technical violations. Also, civil liability should be limited to material violations proven to have harmed the consumer.

The Real Estate Settlement Procedures Act is a good example of what can be done. The law was enacted to deal with real abuses in real estate settlement procedures. But once Congress realized that the cure was worse than the ailment, it was quick to respond on reversing the Act. We believe this has set the precedent for action on Truth in Lending.

We have been talking here about legislation grounded in good intention but mired in confusion. I would like to turn now to a specific consumer credit problem which resulted from the actions of a regulatory agency -- the Federal Trade Commission.

Last August, ABA testified before a House Commerce Subcommittee on the abrogation of the holder in due course doctrine promulgated by the FTC. We expressed our concerns about the rule's potential negative impact on the cost and availability of some types of consumer credit, as well as its potential for cutting off small businesses from credit sources.

In 1975, the FTC promulgated its "seller rule" requiring that vendors of goods and services insert in all sales contracts a prescribed notice stating that any subsequent purchaser of such contract was subject to all claims and defenses which could be asserted against the seller. However, the FTC also took two additional steps: (1) inclusion of the "purchase money loan" and (2) the simultaneious proposal of the "creditor rule", a similar rule applicable to all "direct loans".

The FTC appears to have based its decision to go forward with the rule on the premise that lenders are best positioned to police the market and that such a procedure is socially desirable.

Analysis of the legislative history of the FTC Improvement Act, where Congress addressed itself directly to the question of unfair credit practices, reveals that the legislators did not intend to grant the Commission power to abolish, in a single stroke, the considered distinctions and limitations reflected in a long series of state consumer credit statutes dealing with the subject.

A Trade Regulation Rule is proper only if the FTC has the power under its enabling statute to adopt such a rule, and if it follows the requisite administrative procedures. Specifically, it is not clear that the FTC has the authority to promulgate a general rule to define as "unfair" a broad sweep of acts and practices, many of which are specifically sanctioned by state statutes.

We urge Congress to keep a close eye on the effects of the "seller rule". We also do not believe that the similar "creditor rule" should be permitted to become effective until all the facts are in.

The FTC holder in due course action is a primary example of a growing problem. In recent years, with the rapid rise of the consumer movement, virtually all 50 states have adopted consumer legislation in one form or another. So, in addition to complying with a myriad of state laws and regulations, lenders must also contend with layers of Federal requirements. It has long been our feeling that states are most often best equipped to deal with consumer legislation needs within their own borders, since they are closer to unique local circumstances and requirements. However, if a need for Federal legislation is proven, such law should take into consideration the intent of existing state law and as far as possible not conflict with it, nor should it impose additional paperwork burdens through duplication of reporting or other such requirements.

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We also wish to voice our concerns regarding the consumer compliance examinations now being implemented by the Comptroller of the Currency, the FDIC, and the Federal Reserve. There is no doubt that such examinations will uncover largely technical violations, because such violations are unavoidable. Again this points out the need for relief from affirmative administrative remedies and/or civil liability for such unintentional violations. While simplification of regulations will lead to better understanding and better compliance, such relief for technical violations will also allow regulators to concentrate on substantive ones.

Consumer compliance examinations will necessitate the hiring of additional personnel. We question whether the unearthing of mostly unintentional technical violations is worth the price? In considering consumer legislation, the Congress should weigh the costs and the benefits to the consumer.

There are those who have stated that excessive consumer credit legislation will put us out of the consumer credit business. In most cases this undoubtedly is not the case -- but it will induce some lenders to reduce or suspend some types of consumer lending, and it certainly will increase the cost of extending credit to the consumer.

We know that Congress never intended that the cost of legislation overshadow its benefits. However, this is what has happended; and it has happened at a time when consumers are already bearing a heavy burden of inflation in almost all areas of the economy. We encourage this Subcommittee and the entire Congress to undertake an extensive cost/benefit analysis of existing consumer credit laws and regulation, with an end to eliminating any requirements which impose costs disproportionate to the consumer benefits derived.

We urge also that Congress require any further consumer credit proposals be accompanied by a cost/benefit impact statement. This is in line with Congressional desires to control costs of legislation as demonstrated in the newly instituted Congressional budgetary process. Through this process, Congress is writing specific legislation, while considering the whole budget and its impact on the total national economic posture. Rather than enacting budgetary legislation in a piecemeal fashion, Congress is looking at its macroeconomic impact and weighing trade-offs among various programs and resources.

Similarly, a cost/benefit analysis attached to consumer legislation would estimate the government's costs of implementing such legislation, as well as the initial and recurring costs of compliance for private industry. Both government and industry costs would be weighed against the practical results and benefit to the consumer.

In closing, I would like to summarize our major points:

1. We want to serve the consumer and obey the law. We have no quarrel with the intent of the great bulk of consumer credit legislation. We merely caution that legislation and/or regulation not carefully analyzed and reviewed can cause more problems than it solves and cost the consumer more than it saves.

2. Existing legislation can and should be simplified to aid in consumer understanding and creditor avoidance of unintentional technical violations.

3. Congress should require that all future consumer credit

legislation contain a cost/benefit impact statement, so that legislators and constitutents can weigh whether the end justifies the means.

The ABA thanks the Chairman and the Subcommittee for this opportunity to appear here today. Allowing all concerned to tell their story in a public forum demonstrates a real sense of equity and fair play. Again, we thank you for your consideration and remind you that our Association stands ready to assist you at all times.

Mr. ANNUNZIO. I thank you very much, Mr. Grant, for your excellent statement, and I'm particularly pleased about your remarks on ABA cooperating with this subcommittee on three or four very good pieces of legislation, and I appreciate the statistics as to the installment credit business tax is doing.

About 6 months ago the banks were in very bad financial shape. But even with the passage of the Equal Credit Opportunity Act Amendment, which prohibits discrimination because of race, color, creed, nationality, sex, and age, the installment credit business went up about a billion dollars. That statistic came from the Federal Reserve Board and Dr. Burns. I don't think that hurt the profit of the banks.

I like that other statement about the consumers, serving the consumer. Your stockholders will appreciate that, because when the customers are happy, you know that's how they collect dividends on the stocks they own. And that's all that this subcommittee is trying to do—to see if we can get people together.

So, I thank you for your statement, and it is a very, very significant suggestion that you have made to the subcommittee.

Our next witness is Mr. Leslie R. Butler, of the Consumer Banking Association.

Mr. Butler?

STATEMENT OF LESLIE R. BUTLER, MEMBER, EXECUTIVE COMMITTEE, CONSUMER BANKERS ASSOCIATION

Mr. BUTLER. Thank you, Mr. Chairman.

I am Leslie R. Butler, senior vice president in charge of retail banking at First Pennsylvania Bank, Philadelphia, Pa. I am a member of the executive committee of the Consumer Bankers Association and I am appearing before you today to present the association's views with regard to the problems faced by the consumer credit departments of commercial banks. Our association directly represents the consumer banking departments of commercial banks which hold approximately 55 percent of the consumer credit outstandings in all commercial banking institutions.

I might note that last summer my bank ran a loan promotion featuring the loan arranger and pronto. Pictures circulated widely in the Philadelphia area of an associate and I dressed as the Lone Ranger and Tonto. On the basis of that program, and in light of my testimony today to this subcommittee, some of my fellow bankers suggested I appear as "the masked lender." If I were to do so, my message would be that despite the legitimate and regulatory activity of recent years, we lenders and our customers are still doing business in the marketplace and have every intention of continuing to do so.

As a representative of the Consumer Bankers Association and, more importantly, as a banker engaged in an active and competitive market, I have always tried to remain progressive and to anticipate the needs and demands of our consumer customers. Unfortunately, Congress and some regulators have often taken the approach that bankers are insensitive to the concerns of the consumer. As a consumer banker, I would argue strongly that I and the members of our association are more concerned with our customers and our more constructive consumer advocates than many who masquerade under that banner.

We make every effort, frequently at substantial cost, to comply with the page after page of laws, including Federal and State consumer laws and regulations. We support fully any activity which in practice helps communicate to the consumer his rights and privileges under the law as well as give him an intelligent basis upon which to make a credit decision. We deal with customers on a fair and equitable basis since our continued viability in the consumer market depends upon customer satisfaction.

The simple fact remains that when the professors have returned to their halls of ivy, the consumer advocates to their press clippings, and the legislators-regulators to other tasks, we are still in our communities dealing with our customers daily for their credit and deposit needs. We want their business today and tomorrow. Our very existence is dependent on our service and good faith. Therefore, I would like to take this opportunity to discuss briefly the impact the plethora of consumer credit laws and regulations has had upon the banking industry and upon the consumers who do business with our institutions.

Probably the most important piece of consumer credit legislation passed by Congress was the Truth in Lending Act. I heartily support the intent of truth in lending which was to enable consumers to obtain information upon which they could make an informed judgment on the use of credit and readily compare the terms of credit available to him is a desirable goal. I strongly question whether the practical impact of truth in lending is anything like what was intended.

Under truth in lending the consumer should have enough information available to make an intelligent decision on choice of terms, cost of credit, and ultimately whether or not to enter the credit contract. I wonder if anyone has actually gone into the marketplace and actually examined what the average consumer wants to know and how his responsible banker tries to convey that data without violating truth in lending. Truth in Lending Act falls far short of facilitating meaningful creditor-customer communications and, in fact, in some cases may impede communication between the banker and the bank customers. The act and regulation Z are exceedingly complicated. It is very difficult for a customer to fully understand and to appreciate the disclosures which are being made to him. As Prof. Jonathan Landers pointed out to the Senate committee last summer, the Truth in Lending Act has been transformed from a credit cost disclosure act into a credit contract term disclosure act with severe punitive damage. The situation that has developed is that the banker has been required either by the Congress, the Federal Reserve Board, or the courts to continue to make more and more hypertechnical contract disclosures to the consumer, which do not in any way aid the consumer in making an informed judgment on the use of credit or enable him to compare credit terms.

I have previously submitted for your information a copy of the home improvements contracts used by my bank. You will see that the disclosures are exceedingly complicated, and the consumers could not identify the pertinent information needed to easily comprehend the important credit terms.

I think most bankers would agree that of primary importance to their customers is cash flow. In short, "what will it cost me per month." It is clearly appropriate also to disclose number of payments, annual percentage rate and finance charge. These latter disclosures need to be supported by consumer education which cannot take place on the disclosure form. There has been too much attention to regulation and not enough to consumer education.

Therefore, I would strongly urge this committee to consider the various proposals that have been forwarded to you for simplification of truth in lending. As a starting point, with regard to truth in lending, I would again suggest and hope you would readily agree that the most important items of disclosure which should be given to the consumer are those items which the customer actually cares about and can use. This is the information which consumers need in order to shop for credit and to make a decision whether they enter into a transaction. We should disclose simply and clearly number and amount of payments, APR, and finance charge.

If this Congress, in its discretion, feels that additional disclosures are needed, I believe that the penalty for improperly making additional disclosures should not be punitive in nature and that the enforcement of those additional disclosures should be left to the appropriate administrative agencies. However, the primary disclosures should in fact be subject to punitive damages if the lender knowingly does not provide the consumer with accurate basic information.

Furthermore, I would urge the Congress to seriously review regulation B (equal credit opportunity) and the burdens that have been placed upon lenders in complying with this new law. An institution such as First Pennsylvania will be able to comply with regulation B for we have the legal and technical staff available to implement these changes. However, many merchants and small creditors are simply not going to be able to comply. The provisions of regulation B are of such a hypertechnical and legal nature that smaller creditors do not have the resources to comply with the mandates of the regulations. The larger creditors will compy, will continue to expand their marketplace as smaller creditors are driven out of the marketplace by the cost and complexity of doing business. Those costs are ultimately passed on to the consumer in the form of higher rates or reduced availability for lower cost credit.

The proliferation of laws in the consumer credit area has also led to a dramatic conflict between both State and national law. In many States there is a growing body of consumer laws on the books. In many instances State laws which attempt to codify Federal law for State purposes conflict with or require additional disclosures beyond that which is mandated by Federal law.

An example is Pennsylvania Act 260, was effective November 24, 1976, which in part adopts the FTC door-to-door sales rule which was promulgated by the Federal Trade Commission a number of years ago. Unfortunately, certain of the exemptions that were in the FTC trade regulation rule were not included in the Pennsylvania Act. Specifically, this act provides that a Door-to-Door Sales Act notice of cancellation must be given to any consumer who was contacted or called upon at his residence even though the final home improvement contract is signed at the seller's place of business. Under the Truth in

Lending Act, if a home improvement is secured by the buyer's residence, the buyer must be given a 3-day right of rescission. Both laws require that two copies of the rescission notices be given to each buyer; each customer, therefore, will be handed four rights to rescind.

I believe that a disclosure requirement such as this has the effect of deluging the customer with information he does not need or desire and serves to frustrate the original intent of the Truth in Lending Act, which was to give the customer the right to rescind the transaction within a 3-business-day period.

And I've also submitted a copy of the Federal rescission notice, along with the home improvement contract I mentioned before. Those two forms together constitute the four rights to rescind which we are now required to give the customer.

I'm sure the subcommittee can appreciate all the confusion that has been placed in the consumer credit marketplace because of the numerous laws and regulations which have been issued in the past year.

For this reason we would like to seriously suggest that the Congress place a moratorium on any legislation until some independent organization has an opportunity to evaluate the impact of the recently passed acts and regulations on the consumer credit market. To my knowledge, no current data has been gathered regarding the economic impact of these laws. Furthermore, there have not been any studies to determine what type of benefits, if any, have accrued to the consumer. Economic research into this area is badly needed.

Finally, a substantial compliance burden has been placed upon all creditors. Creditors have had to destroy literally millions of forms to stay in compliance. My institution has spent thousands of dollars for legal fees just to stay in compliance. There has been a major effort over the past few years to continually retrain our employees to make sure their actions are in conformity with various laws.

Finally, as noted in a previous example, the consumer lender is being regulated both at the State and national level. I believe that whenever Congress decides to enter a particular area it should seriously consider complete preemption of State law in that area if the State law is not as protective. However, if the State is adequately handling the problem, the Congress should not enter this area. Thus the lender will not be whipsawed between trying to comply with both State and Federal laws which are very similar in aims but are at variance in their requirements.

In summary, then, we would suggest the following:

First, truth in lending should be simplified to reflect actual needs of the marketplace. Emphasis should be on the effective communication of several key items, and enforcement should be adjusted accordingly.

Second, moratorium on consumer credit legislation should be declared and some actual field research should be conducted on the economic and social impact of these laws. Testimony by special interest groups while valuable, will never provide the accurate picture of the marketplace that well-planned and executed, independent research will.

Third, if Congress is going to continue to regulate consumer credit, they have an obligation to do a better job of data-gathering on the need for the legislation and economic impact of prior and proposed legislation.

Finally, if Congress chooses to act in a particular area, it should seriously consider preempting all State law in that area or leave the area entirely to the prerogative of the State.

The Consumer Bankers Association appreciates having the opportunity to appear before you, and our staff stands ready at any time to consult with members of this subcommittee to discuss ways of better formulating consumer legislation.

Thank you for your time and attention.

Mr. ANNUNZIO. Thank you, Mr. Butler, for your very constructive statement.

At this time I am going to ask unanimous consent that all of these forms—if you can leave them—be left with the subcommittee and be made part of the record.

Without objection, so ordered.

[The rescission notice and home improvement installment contract follow:]

TS-122 20-858 7/69

RESCISSION NOTICE

This Notice is given in connection with the credit sale by Contractor to Customer of the goods and/or services described in a contract of even date.

NOTICE TO CUSTOMER REQUIRED BY FEDERAL LAW:

You have entered into a transaction on , 19 which may result in a lien, mortgage, or other security interest on your home. You have a legal right under Federal law to cancel this transaction, if you desire to do so, without any penalty or obligation, within three business days from the above date or any later date on which all material disclosures required under the Truth in Lending Act have been given to you. If you so cancel the transaction, any lien, mortgage, or other security interest on your home arising from this transaction is automatically void. You are also entitled to receive a refund of any downpayment or other consideration if you cancel. If you decide to cancel this transaction, you may do so by notifying

(Name of Contractor)

at
No. and Street City County State Zip

by mail or telegram sent not later than midnight of , 19 . You may also use any other form of written notice identifying the transaction if it is delivered to the above address not later than that time. This notice may be used for that purpose by dating and signing below.

I hereby cancel this transaction.

Date 19

(Customer's Signature)

Each of Undersigned Acknowledges Receipt of 2 Completely Filled in Copies of this NOTICE

(Customer's Signature) *Date* *19* *(Customer's Signature)* *Date* *19*

(Customer's Signature) *Date* *19* *(Customer's Signature)* *Date* *19*

See reverse side for important information about your right of rescission

ADDITIONAL PROVISIONS

1. Upon the request of Holder, each Buyer and Co-Buyer shall execute and deliver a certificate of completion or satisfaction in form and content satisfactory to Holder. Contractor shall not be liable for delays or damages caused by strikes, material or labor shortages, or other conditions beyond Contractor's control. Contractor assumes no responsibility for securing any license, permit or other authorization to do the work, labor and services herein specified.

2. The following acts, omissions and events shall, for the purposes of this Contract, constitute events of default hereunder, upon the happening of any one or more of which all obligations of the Buyer (including without limitation all installments due hereunder and any other sums lawfully due hereunder) shall, at the option of the Holder and without notice or demand on Buyer, become immediately due and payable: failure of Buyer to make any installment payment hereunder punctually on its due date; failure of Buyer to observe or perform any of Buyer's other obligations hereunder; any Buyer provides Holder, in Buyer's Credit Application, herewith or hereafter with any false information, warranty or signature; death or dissolution of any Buyer or Co-Buyer or any guarantor hereof; Buyer shall become insolvent or shall make an assignment for the benefit of creditors; there shall be instituted by or against Buyer, bankruptcy, insolvency, reorganization, arrangement, debt adjustment or liquidation proceedings; or the real property improved hereunder shall be subjected to any lien, encumbrance or charge or be subjected to or be threatened with condemnation or foreclosure proceedings.

3. Contractor may at his option add to this Contract subsequent home improvement sales made by Contractor to the Buyer and if Contractor does so, the unpaid balance of the goods and services covered by this Contract shall be increased by the amount financed under the subsequent sale or sales and all **FINANCE CHARGES** and installment payments shall be increased proportionately provided that the consolidated balance shall include the additional cost of premiums for continuing in force, until the due date of final installment of the consolidated balance, any insurance coverage provided for herein. All terms and conditions of this Contract shall equally apply to said sale or sales.

4. Buyer warrants and represents that, as a part of or in connection with the inducement to enter into this Contract, no person has promised or offered to pay, credit or allow to Buyer any compensation or reward for the procurement of a home improvement installment contract with others; nor has any person offered, delivered, paid, credited or allowed to Buyer any gift, bonus, award, merchandise, trading stamps or cash loan as an inducement to enter into this Contract.

5. The Holder's rights and remedies are cumulative and not alternative. Waiver of any default shall not constitute waiver of any subsequent default. Any provision hereof found to be invalid under applicable law shall be invalid only with respect to the offending provision. All words used herein shall be construed to be of such gender and number as the circumstances require. This Contract shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto, but shall inure to the benefit of the successors or assigns of the Contractor only.

6. This Contract contains the entire agreement between the parties hereto. Buyer agrees that Contractor has made no representations, promises or warranties, express or implied, to Buyer with respect to the goods and services covered by this Contract, except as contained herein and that no modification or alteration of this Contract shall be binding unless endorsed hereon in writing by the parties hereto. Pennsylvania law applies to this Contract and governs its construction and interpretation.

NOTICE: See other side for important information.

NOTICE OF PROPOSED CREDIT INSURANCE

The Signer(s) of this Contract hereby take(s) notice that group credit life insurance coverage and/or group credit accident and health insurance coverage will be applicable to this Contract if so marked on the front of this Contract and each such type of coverage will be written by the insurance company named. This insurance, subject to acceptance by the insurer, covers only the person signing the request for such insurance. The amount of charge is indicated for each type of credit insurance to be purchased. The term of insurance will commence as of the date the **FINANCE CHARGE** begins to accrue and will expire on the original scheduled maturity date of the indebtedness. Subject to acceptance by the insurer and within 30 days after delivery of the goods and furnishing of the services under the Contract, there will be delivered to the insured debtor a certificate of insurance more fully describing the insurance. In the event of prepayment of the indebtedness, a refund of insurance charges will be made where due.

9-4982A

CONTRACTOR'S ASSIGNMENT

For value received, the undersigned (meaning the Contractor whose signature to the foregoing Home Improvement Installment Contract and this Assignment appears on the face of the Contract) hereby sells, assigns and transfers to FIRST PENNSYLVANIA BANK N.A., its successors and assigns (herein called "Assignee") the Contract and all moneys due and to become due thereunder, with full power in Assignee in its or in the name of undersigned to take all legal or other action as undersigned might take save for this assignment. Undersigned warrants and continues to warrant that: undersigned's title to the Contract is absolute and is not subject to any assignment, claim, lien, right of set-off or security interest of any character prior to that of Assignee; the Contract is genuine and complete in all respects and has not been materially altered; the Contract does not contain the forged or unauthorized signature of any Buyer, Co-Buyer or guarantor, and all parties had capacity to contract; the form and content of the Contract and the transaction from which it arose comply in every particular with all applicable regulations, rulings, proclamations and statutes, Federal or State, controlling the sale of goods and services and the extension of credit in connection therewith, including without limitation the Home Improvement Finance Act (Pennsylvania), trade regulation rules and cease and desist orders as promulgated from time to time by the Federal Trade Commission, the Truth in Lending Act (Federal) and Regulation Z of the Board of Governors of the Federal Reserve System, the Equal Credit Opportunity Act (Federal) and Regulation B of the Board of Governors of the Federal Reserve System, and the Magnuson-Moss Warranty Act (Federal); an executed copy of the Contract containing disclosures conforming to and completed in accordance with the aforedescribed laws and regulations has been received by Buyer; each Buyer entitled thereto has received two completed rescission notices; the recission period with respect to the Contract has expired and the right of recission under Regulation Z has not been exercised; the transaction which gave rise to the Contract was the furnishing of the goods and services described in the Contract; the goods were delivered and installed and all services performed in accordance with the Contract and to the satisfaction of the Buyer; all bills for labor and materials furnished in connection with the transaction which gave rise to the Contract have been paid in full or will be so paid promptly after Assignee's purchase of the Contract, and no liens for or on account of such labor and materials have been or will be filed; the cash downpayment and/or trade-in were actually received and no part thereof consisted of notes, post-dated checks, or other credit advance by undersigned to Buyer; all warranties and statements contained in the Contract and in the Buyer's credit statement or application are true; there is owing on the Contract the Total of Payments set forth therein; and undersigned has no knowledge of any facts impairing the validity of the Contract. If, at any time, any of the foregoing warranties should appear to have been breached, the undersigned shall repurchase the Contract from Assignee upon demand, and shall pay therefor the amount owing thereon plus any and all costs and expenses paid or incurred by Assignee in respect thereto.

(SEE FACE OF CONTRACT FOR CONTRACTOR'S SIGNATURE TO THIS ASSIGNMENT)

TS-332A Rev. 1/77 (PA.)
20-458-6

TS-332A Rev. 1 77 (PA.)
20-458-6

HOME IMPROVEMENT INSTALLMENT CONTRACT

(For use in Pennsylvania only)

Date.................................19..........

ORIGINAL TO PENCO

Contractor's Name and place of Business........ Name .... No. & Street .... Municipality .... County .... State .... Zip

Buyer's Name and Address........ Name .... No. & Street .... Municipality .... County .... State .... Zip

Contractor agrees to sell and Buyer (which means Buyer and all Buyers who sign below, jointly and severally) agrees to buy the following goods and services, which are to be furnished or used in the modernization, rehabilitation, repair, alteration or improvement of the real property located at Buyer's address given above or at........ No. & Street .... Municipality .... State .... Zip

Description of Goods and Services (or describe generally and attach identifying description)

for a Deferred Payment Price computed as follows:

1. Cash Price (of goods and services including taxes) $
2. Downpayment
   - Cash Downpayment .... $........
   - Trade-in (Describe)
   - .... $........
   - Total Downpayment .... $........ $
3. Unpaid Balance of Cash Price (1 – 2) .... $
4. Other Charges Financed
   - (a) Credit Life and/or Accident and Health Insurance (if Buyer is under 65) to be procured by Contractor. ☐ Yes ☐ No.
     If "yes" see INSURANCE below and NOTICE OF PROPOSED CREDIT INSURANCE on the reverse side hereof.
     The Name of the Insurer is:
     Check One Box { ☐ Old Republic Life Insurance Company; or ☐ .... Insert Name of other Insurer
     If "yes" and a separate charge is to be made therefor the charge is
     Credit Life .... $........
     Credit Accident and Health $........
   - (b) Official Fees (Describe)
     .... $........
     .... $........
   - (c) Other Charges (Describe)
     .... $........
     .... $........
   - Total of Other Charges Financed $........ $
5. Unpaid Balance, i.e. Amount Financed (3 + 4) .... $
6. **FINANCE CHARGE** .... $
7. Total of Payments (5 + 6) .... $
8. Deferred Payment Price (1 + 4 + 6) .... $

ANNUAL PERCENTAGE RATE .... %

Buyer agrees to pay the Total of Payments (Item 7 at left) beginning approximately........, 19........ in........ successive equal monthly installments of $........ (TIME BEING OF THE ESSENCE), plus in respect of the final installment any remaining amount of the Total of Payments then unpaid and all other sums lawfully due hereunder, at any office of FIRST PENNSYLVANIA BANK N.A. or such other place as the Holder hereof may designate. The approximate date the **FINANCE CHARGE** will begin to accrue is........, 19........ "Holder" as used in this Contract means the Contractor or anyone claiming under or through the Contractor and currently entitled to his rights.

DELINQUENCY, COLLECTION AND DEFAULT CHARGES: For each default in payment which continues for a period of not less than 10 days, Buyer agrees to pay a delinquency and collection charge in an amount equal to 5% of the amount of the installment in default or $5.00, whichever is less. If the Holder refers this Contract to an attorney (not a salaried employee of the Holder) for collection, Buyer agrees to pay as reasonable attorney's fees a sum equal to 20% of the amount due and payable under this Contract, plus court costs actually incurred. Upon the occurrence of any event of default, as specified in Item 2 of the ADDITIONAL PROVISIONS on the reverse side hereof, the Holder may declare immediately due and payable all sums lawfully due hereunder, but if Buyer pays the entire balance due Holder after acceleration but prior to the last scheduled installment due date hereof, refund credit will be given to Buyer as if prepayment in full had occurred on such date.

REFUND FOR PREPAYMENT OF CONTRACT: A refund of unearned **FINANCE CHARGE** for prepayment in full of the balance due on this Contract will be determined as of the next succeeding installment due date in accordance with the Sum of the Digits Method, commonly called the Rule of 78's, but no refund will be made if it amounts to less than $1.00 or would result in a minimum **FINANCE CHARGE** of less than $12.00.

SECURITY—RESCISSION AND LIQUIDATED DAMAGES: This Contract authorizes the Holder to cause judgment to be entered by confession against Buyer for the sums payable hereunder with costs of suit and 20% added as attorney's fees. Entry of such a judgment in the appropriate public office creates a lien on all real property of Buyer in the county where the judgment is entered. Upon the occurrence of any event of default specified in this Contract, the Holder may issue appropriate writs of execution to the appropriate public officials and cause all real and personal property, and the proceeds thereof, of Buyer to be applied in satisfaction of sums remaining unpaid on this Contract.

If an address is inserted in the following blank provided therefor, Buyer has granted Holder a real estate mortgage on the premises located at

.... No. & Street .... Municipality .... County .... State .... Zip

Recordation of the mortgage in the appropriate public office creates a lien on the property described in the mortgage. Upon the occurrence of any event of default specified in this Contract, the Holder may foreclose on the mortgage and cause the property, or the proceeds thereof, to be applied in satisfaction of sums remaining unpaid on this Contract.

Upon the occurrence of any event of default hereunder, Buyer hereby grants Holder a right to set-off against the balance owed hereunder any moneys of the Buyer which are now or may in the future be deposited with or owed by the Holder to the Buyer. Any judgment by confession, real estate mortgage and right of set-off may cover after-acquired property and secure other and future indebtedness of Buyer to Holder. In addition, a mechanic's lien may attach to the real property improved pursuant to this Contract in favor of the Contractor and/or any subcontractor. Intending to be legally bound and notwithstanding any language to the contrary in any other agreement or obligation between Buyer and Holder, Holder hereby waives the right to treat as security for this Contract any collateral which, by the terms of any other agreement or obligation, would otherwise be security for this Contract, and except for any subsequent agreement to refinance and/or consolidate the net unpaid balance of the Total of Payments hereof (Item 7 at left), Holder also hereby waives the right to treat the goods purchased hereunder as security for any other agreement or obligation of Buyer to Holder.

This Contract may be rescinded by the Buyer until midnight of the third business day following the date hereof by giving written notice of rescission to the Contractor at his place of business given in this Contract but if Buyer rescinds thereafter, Buyer is still entitled to offer defenses in mitigation of damages and to pursue any rights of action or defenses that arise out of the transaction. If after the rescission period but prior to the time the Contractor starts performance of this Contract, Buyer fails or refuses to accept delivery of the goods or performance of the services covered hereby, Buyer agrees to pay to Contractor as liquidated damages an amount equal to 10% of the Cash Price stated herein.

INSURANCE

CREDIT LIFE AND/OR ACCIDENT AND HEALTH INSURANCE ARE NOT REQUIRED but are available through Contractor for the term of the Contract at the cost(s), if any, indicated below and in item 4(a) above. Insurance coverage, subject to acceptance by the insurance company named above, will commence when all work scheduled under the Contract is completed and the Contract is assigned to and accepted by FIRST PENNSYLVANIA BANK N.A., at which time the **FINANCE CHARGE** will begin to accrue, and will terminate on the last originally scheduled installment due date. You must check the appropriate box(es) and date and sign below.

I desire [check appropriate box(es)]:
- ☐ Credit Life Insurance (must be under 65) .... Premium $........
- ☐ Credit Accident and Health Insurance (must be under 65) .... Premium $........
- ☐ No Insurance

Signature........

➡ (Person to be covered by Credit Life and/or Accident & Health Insurance, if any)

Date........19........

Each Buyer and Co-Buyer, jointly and severally, hereby authorizes and empowers the Prothonotary, Clerk or any attorney, of any court of record within the United States or elsewhere, at any time, to appear for each Buyer and or Co-Buyer and to confess judgment as often as necessary against each Buyer and/or Co-Buyer and in favor of the Holder, as of any term, with or without declaration filed for such sum or sums as may be payable hereunder with costs of suit and with 20% added as attorney's fees. With respect to any judgment entered hereon, each Buyer and Co-Buyer releases all errors and waives all rights of appeal, appraisement, stay of execution, inquisition and exemption under any law now or hereafter in force, and each hereby agrees that real estate may be sold under a writ of execution and voluntarily condemns the same and authorizes the Prothonotary or Clerk to enter said condemnation on such writ; and each Buyer and Co-Buyer agrees that a true copy hereof, verified by affidavit made by the Holder or someone acting on its behalf, may be filed in such proceeding in lieu of filing the original as warrant of attorney, any rule of court, custom or practice to the contrary notwithstanding.

This Contract is subject to the ADDITIONAL PROVISIONS set forth on the reverse side hereof, the same being incorporated herein by reference.

Notice to Buyer: (1) Do not sign this contract before you read it. (2) You are entitled to a completely filled-in copy of this contract. (3) Under the law you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the FINANCE CHARGE. (4) You may rescind this contract until midnight of the third business day following the date hereof by giving written notice of rescission to the contractor at his place of business given in this contract, but if you rescind this contract after midnight of the third business day following, you are still entitled to offer defenses in mitigation of damages and to pursue any rights of action or defenses that arise out of the transaction.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

In Witness Whereof, the parties hereto have signed this Contract the above date.

Contractor's signature set forth below shall also operate as Contractor's execution of the Contractor's Assignment on the reverse side hereof.

Buyer acknowledges receipt of a completely filled-in copy of this contract.

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached Notice of Cancellation form for an explanation of this right.

........(Seal)
(Contractor)

By........
(Signature and Title)

........(Seal)
(Buyer)

........(Seal)
(Co-Buyer)

NOTICE: See other side for important information.

84-746 O - 77 (Face p. 340) No. 3

EFFECT OF RESCISSION. When a customer exercises his right to rescind under paragraph (a) of this section*, he is not liable for any finance or other charge, and any security interest becomes void upon such a rescission. Within 10 days after receipt of a notice of rescission, the creditor shall return to the customer any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the customer, the customer may retain possession of it. Upon the performance of the creditor's obligations under this section, the customer shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the customer shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the customer, at the option of the customer. If the creditor does not take possession of the property within 10 days after tender by the customer, ownership of the property vests in the customer without obligation on his part to pay for it.

*This reference is to Section 226. 9(a) of Federal Reserve Board Regulation Z, which provides for the right of rescission referred to above.

Mr. ANNUNZIO. I like your line where you said, less regulation and more consumer education. I have been using that line now for about 2 years.

We do appreciate you appearing before the subcommittee.

Our next witness this morning is Ms. Dolores Marunyak.

Welcome, will you proceed in your own manner.

STATEMENT OF DOLORES MARUNYAK, FIRST VICE CHAIRMAN OF THE BOARD OF DIRECTORS, CREDIT MANAGEMENT DIVISION, NATIONAL RETAIL MERCHANTS ASSOCIATION; ACCOMPANIED BY PETER MANGIONE

Ms. MARUNYAK. Thank you, Mr. Chairman.

I am Dolores Marunyak, Credit Manager of S. W. Metzler Stores of Uniontown, Pa.

I am also first vice chairman of the board of directors of the Credit Management Division of the National Retail Merchants Association and am appearing today as NRMA's representative.

NRMA is a nonprofit national association representing the general merchandise retail industry. The association's members operate more than 30,000 retail outlets throughout the United States and account for approximately $85 billion in sales annually. The bulk of the association's 3,500 members are small businesses, and approximately 75 percent have sales of under $1 million annually.

In the few minutes I have this morning, I want to describe for the subcommittee the climate in which retailers offer credit to their customers. I hope my remarks will provide some assistance to the subcommittee as it considers whether reform of existing credit legislation, including simplification, is appropriate, and as it considers whether there is any need for new legislation in the area of consumer credit.

In light of the substantial burdens associated with the granting of consumer credit, such as continually rising costs and limited ability to recover those costs due to finance charge rate ceilings, extensive compliance procedures required by State and Federal laws and regulations, as well as exposure to expensive litigation, I think it is appropriate to begin by explaining why retailers endure these aggravations and extend credit to their customers.

The primary reason retailers extend credit is that their customers demand it. The forces of competition also make the offering of credit essential to the continued growth of a retailer's business. Simply stated, retailers are in the business of selling merchandise, and credit generates sales by affording consumers the opportunity to make purchases.

General merchandise retailers have found that customers prefer to shop at stores that offer credit. With credit, consumers can more readily purchase a dress, suit, shirt, stove, refrigerator, or other goods which they need without waiting to accumulate the full purchase price in cash. Credit also permits customers to take advantage of sales and to purchase items on time that help consumers economize, such as storm windows that reduce heating bills. Credit thus affords customers the opportunity to pay for goods and services over a period of time in accordance with their budget.

For the small retailer, there are two methods by which it may offer its customers the opportunity of making purchases on credit: operate its own credit plan or accept third-party credit extended by an outside financing agency, such as a bank or other financial institution. While there are pros and cons for both systems, many small merchants presently offer their own credit plans and want to be able to offer their own credit plans in the future. Regrettably, many small retailers are finding it increasingly difficult and expensive to continue their independent credit operations.

Let me mention some of the reasons why small merchants prefer their own credit plans to third-party arrangements.

As noted earlier, retailers view their credit operations as a support function for the selling of merchandise. Consequently, retailers utilize a liberal, but reasoned, credit-granting philosophy. Retailers thus prefer an independent credit operation, because it permits them to make credit available to as many of their customers as reasonably possible. Third-party credit financiers, on the other hand, must be concerned with the profitability of each account from a purely credit point of view.

Moreover, in small towns, where retailers build strong ties with their customers, a flexible and personalized credit program can be very important to the vitality of a small retailer's business. An inhouse credit program allows a merchant to be in touch with its customers in ways not possible if an outside third-party handles credit contacts with a customer.

Direct contact with the customer in connection with credit matters is particularly important because the bulk of credit extended by general merchandise retailers is open-end credit, under which credit contacts continue long after the application is approved. Thus, an inhouse credit plan, unlike a third-party arrangement, permits the retailer to deal with its credit customers individually and permits the retailer to extend credit in amounts it believes its customers need and can handle or to make adjustments in payment schedules in the event personal circumstances are altered. These options are lost if a third party controls the credit available in the merchant's store. By participating in all aspects of the credit relationship with a customer, the retailer has the opportunity to make sure that the credit relationship does not impair but rather enhances the merchant's relationship with the customer as a purchaser of merchandise.

The cost of accepting a third-party credit plan is also a consideration for small merchants. While it is difficult to say whether small retailers can operate their own credit program at less cost than paying a discount to a bank or other outside financing agency, it is clear that once a retailer abandons its in-house operation, it is at the mercy of the outside credit grantor with respect to the discount rate it must pay.

These are the primary factors which motivate small retailers to operate an in-house credit plan, and I think they explain why many small retailers want their own credit plan.

I next want to mention retailing's philosophy regarding the proper allocation of credit costs. Even if retailers do not make a profit on their credit operation, they do at least want to break even on their credit operation. In addition, NRMA's members believe that the cost of credit should be borne by those who utilize credit. This philosophy is grounded in the belief that it is unfair to require the cash customer, who receives no benefit from the extension of credit, to subsidize the credit customer. This principle is particularly compelling when one recognizes that many cash customers are from relatively lower income brackets.

Unfortunately, the climate in which credit is extended today makes it difficult for retailers to finance their credit operation solely on the revenue from those operations. This is so because the cost of operating a credit program are escalating, but the revenues that retailers may generate from their credit operations are limited by State rate ceilings.

Studies undertaken by NRMA and by various State retail associations have demonstrated that existing rates are inadequate to produce sufficient revenues to sustain current credit operations. An NRMA study completed in 1969 concluded that providing credit is a costly undertaking in the retail industry, pointing out that total credit costs substantially exceeded total service charge revenues for the stores included in the study. The NRMA study also found that small stores had larger deficiencies of revenue over costs than did large stores.

A study conducted in New York in 1973 concluded that the lowering of New York's maximum rate of 18 percent per annum on revolving accounts would result in price increases and/or reductions in the availability of credit. I note that this finding was made for a State which has a higher rate than my home State of Pennsylvania where the maximum rate is 15 percent.

Against this backdrop of frozen rates, retailers are faced with increasing credit operation costs. Clearly, the inflation of recent years has played a role in driving up the cost of credit operations. Increases in employee salaries, increased postage expenses, higher prices for supplies and for credit reports, as well as costly new equipment and higher energy costs have all contributed to higher overhead expenses for credit operations.

In addition to these cost increases, retailers, like all creditors, have made substantial expenditures to comply with the formidable array of new Federal, as well as State, statutes and regulations governing consumer credit.

While most small retailers have generally supported in principle the purposes sought to be achieved by the Truth in Lending Act, the Fair Credit Reporting Act, the Equal Credit Opportunity Act and the Fair Credit Billing Act, many small credit grantors are questioning whether the substantial costs to implement these acts are balanced by commensurate benefits for their customers. Small retailers are questioning whether the customers of the honest merchant, who deals fairly with its customers, are really benefiting from these laws. Many small retailers feel that so much regulation actually inhibits the retailer's ability to service its customers, as a result of the further strain these laws place on the merchant's already tight credit budget.

This is a critical issue, because fixed low rates and escalating operating costs have placed many small retailers in a situation where the amount of additional expenses that they can bear is limited. Legislative and regulatory requirements, which mandate form revisions, special notices, extensive recordkeeping, and complicated compliance procedures, have a substantial impact on a small credit operation.

My firm, which has approximately 14,000 open-end accounts, expended several thousand dollars in late 1975 to print new application forms which complied with the Equal Credit Opportunity Act and to print long form billing error notices to be sent to customers under the Fair Credit Billing Act. Additional costs incurred for legal counsel, to training employees, and to establish and carry out the procedures prescribed by the laws.

The impact of the cost of compliance with legislative and regulatory mandates is perhaps brought into perspective when one considers the average finance charge revenues generated by each revolving account. A 1973 study in New York found that the average annual finance charge revenue on revolving accounts was approximately $15 per account. Because my State's maximum finance charge rate is lower than New York's, the annual revenue from a revolving account is likely to be somewhat lower in Pennsylvania. The point is that creditors do not generate substantial finance charge revenues under present rate ceilings and that substantial services must be furnished to the customer out of those revenues.

For example, thousands of purchases, returns, and payments must be processed; statements must be prepared and posted; supplies must be purchased; and credit employees must be paid. Losses on bad debts must also somehow be absorbed by these revenues.

In short, additional expenses imposed by Government regulation must be borne by an already strained financing structure.

Thus, if revenues cannot be increased due to State rate ceilings and if costs, including those attributable to Government regulation, continue to rise, we believe that some or all of the following are likely to occur:

One, credit grantors may reduce credit availability, particularly through the elimination of marginal credit risks, usually low-income consumers, in order to lessen collection expenses and losses.

Two, credit grantors may be compelled to increase prices for goods and services to offset losses incurred in credit operations.

Three, the cost of credit will be increased for some consumers who, unable to obtain retail credit, are forced to seek credit from more expensive sources.

And four, market concentration will increase and the availability of credit sources will decrease. The latter would likely occur when retailers, after reviewing their capital investments and the deficits entailed in operating their credit departments, determine that it is not advisable to maintain their own credit operations and surrender them to bank and other third-party credit grantors.

Clearly, retailers do not believe any of these alternatives are desirable. We want to continue to make credit available to our customers. We do not want to ask our cash customers to subsidize our credit customers, and we are not anxious to leave our customers with no alternative but third-party credit.

We, therefore, urge Congress to exercise judicious restraint when considering new consumer credit laws which may add new costs for credit grantors.

In addition, we believe that before any additional legislation is imposed, the credit-granting community and consumers be given the opportunity to digest and acclimate themselves to the legislation that now exists.

Moreover, we believe that Congress must ask itself, after considering the benefits and the costs, whether a national legislative response and imposition of the overwhelming apparatus of the Federal Bureaucracy is, on balance, worthwhile and necessary for every conceivable problem brought to the Congress' attention in connection with consumer credit.

Thank you for the opportunity to appear this morning.

Mr. ANNUNZIO. Thank you for your very constructive statement and many of the wonderful suggestions that I'm sure the members of the subcommittee will consider very, very carefully, especially the cost factor on legislation that is passed by the Congress of the United States.

Our next witness this morning is Mr. Charles A. Pearce of the National Association of Mutual Savings Banks.

STATEMENT OF CHARLES A. PEARCE, NATIONAL ASSOCIATION OF MUTUAL SAVINGS BANKS; ACCOMPANIED BY JAMES J. BUTERA

Mr. PEARCE. Mr. Chairman, members of the subcommittee, my name is Charles A. Pearce, and I am president of the Quincy Savings Bank in Quincy, Mass.

I am appearing today on behalf of the National Association of Mutual Savings Banks. And I am accompanied by James J. Butera, assistant director-counsel of our National Association's Washington office.

We appreciate the opportunity to appear before this subcommittee.

Mutual savings banks—all State chartered institutions—are the Nation's oldest thrift specialists. The first mutual savings banks in this country were organized in 1816 to provide a safe place for people of modest means to save and earn interest on their savings. Over the years, savings banks have remained oriented to promoting thrift and to meeting the housing and other credit needs of individuals and families. Today, savings banking is a $135 billion industry with institutions located in 17 States, primarily in the Northeast. There are no stockholders of mutual savings bank, which operate solely for the benefit of our depositors and borrowers.

At the outset, I would like to state that savings banks have a strong and longstanding commitment to consumers, both in supporting consumer legislation and in providing innovative consumer services. The National Association of Mutual Savings Banks was the first major trade association within the financial community to endorse truth-in-lending legislation. Our trade association is also on record in favor of the truth-in-savings concept. In the area of consumer services, savings banks in the States of Massachusetts, Connecticut, and New York offer savings bank life insurance at rates well below those available on policies from other sources. Another consumer service identified with our industry is the NOW account. As the members of the subcommittee who were members of Congress in 1973 are aware, mutual savings banks not only originated the NOW account concept but were at one time the sole defenders of this innovative consumer service which is now offered by all types of financial institutions in the New England States.

Mr. Chairman, I have recited these facts for the purpose of establishing credibility for the remainder of my remarks. Credibility is necessary because I hope to convey our growing concern over what we perceive as a disturbing trend toward overregulation in the area of consumer credit.

Since the Truth in Lending Act became effective in 1969, creditors have been subjected to a formidable array of additional consumer credit protection measures. These include the Fair Credit Billing Act, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, and for creditors, such as savings banks who specialize in mortgage financing, we must also add the Real Estate Settlement Procedures Act and the Home Mortgage Disclosure Act.

Undeniably, each of these measures was premised on real and demonstrated problems experienced by at least some individuals seeking credit. Indeed, there are few if any legitimate objections, at least in principle, that can be raised to the basic consumer rights that this type of legislation seeks to protect. The problems arise when one attempts to translate these fundamental consumer rights into specific rules and regulations applicable to the innumerable ways in which goods and services are financed in our complex economy.

The difficulties in drafting precise rules and regulations are certainly real. Truth in lending, for example, seeks to require lenders to disclose to borrowers in a uniform manner the precise finance charges and repayment terms of a particular loan transaction. Yet our consumer financing system has developed a myriad of credit documents to accommodate a myriad of credit needs and it is not always easy to apply uniform principles to each type of transaction.

But even recognizing the difficulties inherent in writing rules for credit practices, it is generally acknowledged that the initial version of regulation B implementing the ECOA was a serious problem for lenders. The regulations were extremely broad in scope, overly detailed, and less than clear in many important aspects. The revision of regulation B represents a considerable improvement, but the scope and substantive impact of the revised regulation remains undiminished. Compliance is difficult and extremely costly. According to a study just published by a Federal Reserve economist, the estimated ECOA compliance costs for all creditor groups will be $293 million each year.

Perhaps even more expensive than the cost of compliance is the cost of error. Given the highly complex nature of the regulations, violations caused by simple misunderstandings and human errors are certain to occur in the course of applying the rules to the broad range of consumer transactions. Civil liability for violations is very harsh. The 1976 ECOA amendments increased the alternative ceiling on class actions from $100,000 to $500,000. We have already learned from truth in lending that litigation will flourish; the Federal Reserve Board reports that there have been approximately 6,100 lawsuits alleging truth-in-lending violations from 1972 to 1975.

These costs, both for compliance and the risk of accidental noncompliance, must be weighed against the purported benefits that this type of legislation seeks to confer. The costs will eventually be borne by those for whose benefit the laws are drafted, and the costs will be more than just monetary.

For example, during the comment period on the revision to regulation B, one banker wrote the Federal Reserve that his institution would soon discontinue the receipt of loan applications at branch offices. His reason was that loan officers at the main office, being more experienced, could better cope with the intricacies of the ECOA procedures governing loan applications and thus reduce the bank's exposure to lawsuits. Other lenders may find alternative forms of investment more attractive than continuing to participate or entering, de novo, the consumer credit market, thereby further increasing the cost of consumer credit.

An even more specific example of a complex and costly regulatory concept with as yet unkown ramifications is the so-called effects test contained in the revised version of regulation B. The effects test would hold a lender's practice, although neutral on its face, to be discriminatory if it has the practical effect of denying credit disproportionately to a particular class or category of credit applicants. We are concerned with what appears to have been a lack of full deliberation of the test's ramifications. Heretofore, the doctrine has been primarily confined to the employment area, and we are very concerned about the impact and implications of attempting to apply this doctrine to the credit-granting process which, by its very nature, is designed to distinguish between those applicants who can afford the loan for which they are applying and those that cannot.

We are certainly not suggesting that creditors be relieved of the responsibility of eliminating unintentional discrimination, but we are suggesting that imposing a major compliance uncertainty in the form of the effects test is unfair in view of the substantial penalty for noncompliance.

NAMSB and numerous other organizations, both public and private, have been working with the Commission on Federal Paperwork in an effort to alleviate the more onerous paperwork burdens. Our investigations reveal that complying with the various disclosure requirements of consumer legislation is a major part of our institution's overall paperwork burden.

The Real Estate Settlement Procedures Act is a good example of why it is necessary to weigh consumer benefits against costs. As originally enacted and implemented, this law was a positive encumbrance to closing a real estate loan. As amended by Congress, the law and regulations are now livable, but we are aware of no evidence that consumers are taking advantage of the RESPA disclosures to increase comparative shopping for settlement services. Our point is that consumer protection laws should not be an exception to the need to analyzé the burdens and the benefits before imposing paperwork or other types of Federal requirements.

We urge this subcommittee to take affirmative steps to address the growing, and we feel legitimate, concern on the part of institutions responsible for compliance with consumer protection laws. We would suggest that these steps include legislation designed to reduce uncertainties in consumer credit regulations. While statutory simplification, particularly in the area of truth in lending, is obviously necessary in our view, part of the problem lies in the prevailing philosophy of agency rule-writing which commonly attempts to stretch the statutory law to its broadest possible implication, regardless of the potential disruptions to business practices. Since the agencies are, in their rule-writing procedures, reacting to what they perceive to be the congressional intent, the need is for the Congress to enact legislation and adopt committee reports which give priority to the need for clarity in the implementing regulations.

We are of the opinion that the penalty provisions of the Consumer Credit Protection Act lend themselves to considerable abuse and could well be reduced without any measurable loss of compliance incentive.

In conclusion, we urge recognition of the fact that every creditor does not routinely retain Washington counsel or even local counsel skilled in interpreting the ever-changing vagaries of Federal regulations. In our view, concise and understandable laws and regulations make more sense than an involved regulatory scheme which unnecessarily jeopardizes those responsible for compliance and further burdens the credit process for the sake of a marginal gain in consumer protection.

I want to thank the chairman and subcommittee members for providing this opportunity for our interests to record our concerns, and I would also like to place on record our willingness to cooperate in whatever way we can as you go through with your further efforts on the committee, for our interest is the same as yours, and that is to provide credit for as many Americans as we possibly can in a fair and equitable way.

Thank you.

[The prepared statement of Mr. Pearce, presented on behalf of the National Association of Mutual Savings Banks, follows:]

Statement of the
National Association of Mutual Savings Banks
before the
Subcommittee on Consumer Affairs
of the
Committee on Banking, Finance and Urban Affairs
House of Representatives
on
Consumer Information
February 10, 1977

Mr. Chairman, members of the Subcommittee, my name is Charles A. Pearce and I am president of the Quincy Savings Bank in Quincy, Massachusetts. I am appearing today on behalf of the National Association of Mutual Savings Banks and am accompanied by James J. Butera, assistant director-counsel of NAMSB's Washington office. We appreciate the opportunity to appear before this Subcommittee.

Mutual savings banks - all state chartered institutions - are the nation's oldest thrift specialists. The first mutual savings banks in this country were organized in 1816 to provide a safe place for people of modest means to save and earn interest on their savings. Over the years, savings banks have remained oriented to promoting thrift and to meeting the housing and other credit needs of individuals and families. Today, savings banking is a $135 billion industry with institutions located in 17 states, primarily in the northeast. There are no stockholders of mutual savings banks which operate solely for the benefit of our depositors and borrowers.

At the outset, I would like to state that savings banks have a strong and long-standing commitment to consumers, both in supporting consumer legislation and in providing innovative consumer services. The National Association of Mutual Savings Banks was the first major trade association within the financial community to endorse truth-in-lending legislation. Our trade association is also on record in favor of the truth-in-savings concept. In the area of consumer services, savings banks in the states of Massachusetts, Connecticut and New York offer Savings Bank Life Insurance at rates well below those available on policies from other sources. Another consumer service identified with our industry is NOW accounts. As the members of the Subcommittee who were Members of Congress in 1973 are aware, mutual savings banks not only originated the NOW account concept but were at one time the sole defenders of this innovative consumer service which is now offered by all types of financial institutions in the New England states.

Mr. Chairman, I have recited these facts for the purpose of establishing credibility for the remainder of my remarks. Credibility is necessary because I hope to convey our growing concern over what we perceive as a disturbing trend toward over-regulation in the area of consumer credit and I want these remarks to be interpreted as constructive comments rather than simply expressions of self-interest.

Since the Truth-in-Lending Act became effective in 1969, creditors have been subjected to a formidable array of additional consumer credit protection measures. These include: the Fair Credit Billing Act, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, and for creditors, such as savings banks who specialize in mortgage financing, we must also add the Real Estate Settlement Procedures Act and the Home Mortgage Disclosure Act.

Undeniably, each of these measures was premised on real and demonstrated problems experienced by at least some individuals seeking credit. Indeed, there are few legitimate objections, at least in principle, that can be raised to the basic consumer rights that this type of legislation seeks to protect. The problems arise when one attempts to translate these fundamental consumer rights into specific rules and regulations applicable to the innumerable ways in which goods and services are financed in our complex economy.

The difficulties in drafting precise rules and regulations are certainly real, and thus RESPA, TIL and ECOA problems cannot be said to be solely the fault of drafting agencies. Truth-in-lending, for example, seeks to require lenders to disclose to borrowers in a uniform manner the precise finance charges and repayment terms of a particular loan transaction. Yet our consumer financing system has developed a myriad of credit documents to accommodate a myriad of credit needs and it is not always easy to apply uniform principles to each type of transaction. Each week the Federal Register brings us new interpretations of, and proposed changes to, Regulation Z, as it becomes apparent that the existing rules and their interpretations still do not cover a particular type of consumer credit transaction.

But even recognizing the difficulties inherent in writing rules for credit practices, it is generally acknowledged that the initial version of Regulation B implementing the ECOA was a nightmare for lenders. The regulations were extremely broad in scope, overly detailed, and less than clear in many important aspects. The revision of Regulation B represents a considerable improvement, but the scope and substantive impact of the revised regulation remains undiminished. Compliance is difficult and extremely costly. According to a study just published by a Federal Reserve economist, the estimated ECOA compliance costs for all creditor groups will be $293 million each year. And necessarily, in mutual institutions such as ours, the costs must ultimately be paid by our customers.

Perhaps even more expensive than the cost of compliance is the cost of error. Given the highly complex nature of the regulations, violations caused by simple misunderstandings and human errors are certain to occur in the course of applying the rules to the broad range of consumer transactions. Civil liability for violations is very harsh. The 1976 ECOA amendments increased the alternative ceiling on class actions from $100,000 to $500,000. We have already learned from TIL that litigation will flourish; the Federal Reserve Board reports that there have been approximately 6,100 law suits alleging TIL violations from 1972 to 1975. The recent increase in the alternative class action ceiling will certainly encourage more of the same.

These costs, both for compliance and the risk of accidental non-compliance, must be weighed against the purported benefits that this type of legislation seeks to confer. As noted, the costs will eventually be borne by those for whose benefit the laws are drafted and the costs will be more than just monetary. For example, during the comment period on the revision to Regulation B, one banker wrote the Federal Reserve that his institution would soon discontinue the receipt of loan applications at branch offices. His reason was that loan officers at the main office, being more experienced, could better cope with the intricacies of the ECOA procedures governing loan applications and thus reduce the bank's exposure to law suits. Unfortunately, but unavoidably, this policy will inconvenience consumers who will no longer be able to conduct their business at the various suburban branches. While it would be unfortunate indeed if a great many lenders adopted such a policy, it cannot be said that this particular banker has over-reacted when you consider the risks of noncompliance. Other lenders may find alternative forms of investment more attractive than continuing to participate or entering, de novo, the consumer credit market thereby further increasing the cost of consumer credit.

An even more specific example of a complex and costly regulatory concept with as yet unknown ramifications is the so-called "effects test" contained in the revised version of Regulation B. The "effects test" would hold a lender's practice, although neutral on its face, to be discriminatory if it has the practical effect of denying credit disproportionately to a particular class or category of credit applicants. We are not certain whether Congress really intended the ECOA regulations to include the "effects test," but in any event, we are concerned with what appears to have been a lack of full deliberation of the test's ramifications. Heretofore, the doctrine has been primarily confined to the employment area and we are very concerned about the impact and implications of attempting to apply this doctrine to the credit granting process which, by its very nature, is designed to distinguish between those applicants who can afford the loan for which they are applying and those that cannot. We are certainly not suggesting that creditors be relieved of the responsibility of eliminating unintentional discrimination, but we are suggesting that imposing a major compliance uncertainty in the form of the "effects test" is unfair in view of the substantial penalty for noncompliance.

NAMSB and numerous other organizations, both public and private, have been working with the Commission on Federal Paperwork in an effort to alleviate the more onerous paperwork burdens. Our investigations reveal that complying with the various disclosure requirements of consumer legislation is a major part of our institutions' overall paperwork burden. An example is a sophisticated cost analysis prepared by one of our banks which concluded that its developmental costs of complying with the recently passed Home Mortgage Disclosure Act were $4,500. I'm sure this Subcommittee is aware that very few consumers are requesting the information that the HMDA requires us to prepare. In fact, many banks tell us that they have yet to receive a single request.

The Real Estate Settlement Procedures Act is another good example of why it is necessary to weigh consumer benefits against costs. As originally enacted and implemented this law was a positive encumbrance to closing a real estate loan. As amended by Congress, the law and regulations are now "livable," but we are aware of no evidence that consumers are taking advantage of the RESPA disclosures to increase comparative shopping for settlement services. Our point is that consumer protection laws should not be an exception to the need to analyze the burdens and the benefits before imposing paperwork or other types of federal requirements.

We urge this Subcommittee to take affirmative steps to address the growing, and we feel legitimate, concern on the part of institutions responsible for compliance with consimer protection laws. We would suggest that these steps include legislation designed to reduce uncertainties in consumer credit regulations in lieu of the present process of resolution mainly through expensive litigation or lengthy administrative procedures. While statutory simplification, particularly in the area of truth-in-lending, is obviously necessary in our view, part of the problem lies in the prevailing philosophy of agency rule-writing which commonly attempts to stretch the statutory law to its broadest possible implication, regardless of the potential disruptions to business practices. Since the agencies are, in their rule-writing procedures, reacting to what they perceive to be the Congressional intent, the need is for the Congress to enact legislation and adopt committee reports which give priority to the need for clarity in the implementing regulations.

Most creditors are willing, indeed anxious, to comply with the requirements of sound consumer protection acts, and it is this fact not extremely high civil penalties, that elicits compliance. We are of the opinion that the penalty provisions of the Consumer Credit Protection Act lend themselves to considerable abuse and could well be reduced without any measurable loss of compliance incentive.

In conclusion, we urge recognition of the fact that every creditor does not routinely retain Washington counsel or even local counsel skilled in interpreting the ever-changing vagaries of federal regulations. In our view, concise and understandable laws and regulations make more sense than an involved regulatory scheme which unnecessarily jeopardizes those responsible for compliance and further burdens the credit process for the sake of a marginal gain in consumer protection.

Mr. ANNUNZIO. Thank you very much for your very excellent statement, Mr. Pearce.

And our last witness will be Mr. Robert B. Evans, National Consumer Finance Association, of which he is vice president and general counsel.

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

Mr. EVANS. My name is Robert B. Evans. I am vice president and general counsel for the National Consumer Finance Association. NCFA was organized in 1916 and is the national trade association of companies engaged in the consumer credit business.

In 1976 these companies made over 30 million extensions of credit exceeding $36 billion.

NCFA greatly appreciates this opportunity to present its views on current consumer regulatory problems, with the accent on regulation.

We have three principal areas of concern to explore with the committee today: Equal credit opportunity, truth in lending, and briefly, the proposed act regulating debt collection practices, H.R. 29.

While the premise of the equal credit opportunity act is correct, the application, in our view, is flawed. Regulation B is unnecessarily complicated; it overachieves. It is not necessary to quarrel with all of the regulation. Wherever Regulation B implements explicit directives of the act or the committee report, it does an excellent job.

But, for an example of what we find troublesome, allow me to examine briefly just one provision, section 202.5, rules concerning applications. Bearing in mind that the act prohibits discrimination on certain prescribed bases, does it follow that the fact of sex, marital status, race, age, and so forth, can never be lawfully known or possessed except under the most tortuously defined circumstances? The permitted inquiry tests of subsection (c) make the mere acquisition of a fact, let's say, divorce, conclusory evidence of discrimination unless that knowledge is acquired for a purpose "permitted in this subsection."

It makes no difference whether the creditor intends to discriminate or not. Yet, although the section speaks of prohibited requests, it is quite obvious that information will often be volunteered or often apparent from the circumstances whether asked for or not.

Additionally, this section makes it clear that relevant information may be requested that may "indirectly disclose" marital status even though a direct request would not be permissible.

Thus, in the ordinary course of events, nonpermitted information will often be in the creditor's possession by inadvertence and indirection.

Moreover, for monitoring purposes, the creditor must request otherwise prohibited information when making loans for the purchase of residential real estate.

Add monitoring to inadvertence and indirection, and one wonders whether any prohibited information will miss scrutiny.

The point is this. Should anyone be punished for possessing information so freely available in other situations and when such information is not used in the decision to grant or deny credit?

Another provision in this section requires a creditor to give a Miranda-like warning to any applicant to the effect that income derived from alimony, child support, or separate maintenance need not be revealed unless the applicant desires to have such income considered in creditworthiness.

Such a gratuitous recitation of the applicant's rights is of doubtful probability, and when given orally over the telephone, may even be considered offensive by many.

Is this requirement really necessary?

Finally, and incongruously, it seems to us, the creditor may not request the sex of an applicant nor other prohibited attributes, even though from personal appearance—white, black, red, female, and so forth, or accent, Hispanic, German, French, and job description, rabbi, priest—one or more of all of the factors may be perfectly evident. May a creditor observe what he can't request, or must he, like the three monkeys, see no evil, hear no evil, speak no evil?

The act doesn't do away with the five senses, but regulatory overkill tries to.

Section 202.5 may serve some purpose, but it will do little to prevent unlawful discrimination. Noncompliance by people in the real world is inevitable. Confusion is assured, and lawyers for disappointed credit rejects will have a field day exploring the technical complexities of the section.

Clearly the real test of wrongdoing should be always whether a creditor has denied credit on a prohibited basis, not because information prohibited by regulation comes into his possession. It would be better and entirely consistent with the act not to place limitations on the information received, but rather to focus on the use to which it is put.

We believe section 202.5 is cumbersome and unfair. In other words, a gigantic catch-22. NCFA feels that it and other procedural pitfalls in regulation B should be discarded.

Moving on to truth in lending, we are inclined to share the increasingly held view that the entire act should be repealed and a modest requirement of five disclosures be enacted in its place. These disclosures would consist of amount financed, finance charge, total of payments, APR, and schedule of payments. Nothing more is needed to assist the buyer in the shopping function.

What has led us to this conclusion? There are many reasons, but the most important one relates to this: the everchanging compliance requirements which are needlessly increasing the cost of extending credit. Most creditors' operations are set up to comply substantially with truth in lending and regulation Z, but constant interpretations are handed down with daily frequency by over 400 Federal courts and several thousand State courts, making compliance hazardous and costly indeed.

Several cases of major impact on the financial community are reviewed in our prepared statement. Time does not permit even a cursory discussion of these cases today.

We believe, however, that substantial harm is being worked on the U.S. consumer through costs imposed on creditors and wasteful litigation. Not only these costs, but all the costs of changing forms and procedures will ultimately be reflected in increased credit charges to the consumer.

The question must be asked, is a corresponding benefit being received? We believe not. Others tend to agree.

Last year, Johnathan M. Landers, professor of law at the University of Illinois College of Law, and visiting scholar from the American Bar Foundation, testified at length before the Subcommittee on Consumer Affairs of the Senate Committee on Banking, Housing, and Urban Affairs on the problems being encountered in truth in lending by consumers and creditors alike.

After summarizing his findings, he said,

> "There is such a thing as too much disclosure, too much for consumers and too much for creditors. From the consumer viewpoint, disclosure reaches this level when more information is given to consumers than they can effectively use in the transaction. From the creditors' point of view, there is too much disclosure when, considering the nature of the transactions involved, creditors of goodwill who attempt to comply face a substantial risk of being held in noncompliance in ordinary and regular transactions.
>
> There is little question that this level has been reached. In my view, Truth in Lending 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.

NCFA agrees. Clearly, truth in lending ought to be more than simplified. Specific legislative relief here and there would be welcome, but experience has shown that this would be a temporary palliative or at best an annual event.

Something more must be done. If the radical surgery proposed earlier, a new act limited to five basic disclosures, cannot be achieved, and we think it is possible to achieve, then in the very least the concept should be adopted in part by limiting penalties, attorney's fees, and class action relief to actions based on a willful failure to comply in the five basic disclosure areas. The remainder of the present disclosure system could be retained, but with the sole remedy being administrative enforcement. This, we submit, would at least stabilize creditors' compliance problems, while insuring that the ordinary consumer receives basic information he needs.

Finally, Mr. Chairman, I would turn to your bill, debt collection practices, H.R. 29. We understand that full hearings will be planned in the near future and therefore we will not comment at length.

We wish, however, to reinforce your determination to include within the purview of the proposal only those persons engaging in a business, the principal purpose of which is the collection of debt. Criticism of last year's bill, H.R. 13720, has been directed in part at its failure to include all persons engaged in the collection of debt, even their own.

The committee report adequately rebuts this criticism, but to it we would like to add the following observations. Most credit extension today is the subject of extensive regulation. Our members who are engaged in the making of direct loans to consumers are licensed, regulated, and periodically examined under State law. They must disclose in accordance with the Truth in Lending Act and regulation Z.

They must also comply with the Fair Credit Reporting Act and with the Equal Credit Opportunity Act.

Today, all States, with the exception of Arkansas, regulate and supervise consumer installment loans, and almost all have comprehensive retail installment sales acts and motor vehicle installment sales acts regulating the extension of credit on the sale of goods and services.

Where those retailers and others who are engaged in open-end installment credit, fair credit billing provides mechanisms to insure proper handling of credit billing and any dispute that may arise therefrom.

In short, these regulatory mechanisms, together with local law enforcement through readily available agencies, place the creditor in a different position from that of the professional collector, who simply is not licensed, regulated, and supervised to anywhere near the same extent as are direct extenders of credit.

NCFA strongly recommends that this distinction be retained.

In conclusion, NCFA feels that the matters we have reviewed today reveal this basic problem. No matter how well-intentioned the Congress may have been in enacting the legislation, those who write regulations implementing the acts can easily thwart these good intentions by attempting to predefine every situation, every procedure, every possible rule of conduct which they feel is required to give full effect to the act.

Further, the courts faced with construing newly created consumer rights, expanded and restated in complex regulations, interpretations, and amendments feel compelled, more often than not, to decide questions of fact and law in favor of the consumer.

Perhaps the approach offered by H.R. 29, in the sense that the legislative purpose is explicitly stated and the rules of conduct described with particularity, may be the best possible solution to the problem.

Mr. Chairman, members of the subcommittee, this finishes my testimony. Thank you for your attention.

[The prepared statement of Mr. Evans, presented on behalf of the National Consumer Finance Association, follows:]

NATIONAL CONSUMER FINANCE ASSOCIATION
1000 SIXTEENTH STREET, N.W., WASHINGTON, D.C. 20036—202 638-1340

STATEMENT OF

ROBERT B. EVANS

VICE PRESIDENT AND GENERAL COUNSEL

NATIONAL CONSUMER FINANCE ASSOCIATION

BEFORE THE

SUBCOMMITTEE ON CONSUMER AFFAIRS

OF THE HOUSE COMMITTEE ON

BANKING, FINANCE, AND URBAN AFFAIRS

ON

CONSUMER INFORMATION

February 10, 1977

My name is Robert Evans. I am Vice President and General Counsel for the National Consumer Finance Association (hereinafter referred to as NCFA)*. Organized in 1916, NCFA is a national trade association of companies engaged in the consumer credit business. In 1976, these companies made over 30 million extensions of credit exceeding 36 billion dollars.

NCFA greatly appreciates this opportunity to present its views on current consumer credit regulatory problems, consumer credit law and implementing regulations.

We have three principal areas of concern to explore with the Committee today: Equal Credit Opportunity, Truth in Lending, and the proposed act regulating Debt Collection Practices (H.R. 29).

EQUAL CREDIT OPPORTUNITY

While the premise of the Equal Credit Opportunity Act is correct, the application is flawed. Reg. B is unnecessarily complicated; it overachieves. It is not necessary to quarrel with all of the regulation; wherever Reg. B implements explicit directives of the Act or the Committee Report it does an excellent job. But, for an example of what we find troublesome, allow me to examine briefly just one provision: Section 202.5 - Rules Concerning Applications. Bearing in mind that the Act prohibits discrimination on certain prescribed bases, does it follow that the fact of sex, marital status, race, age, etc. can never be lawfully known or possessed except under the

* NCFA represents approximately 900 member companies operating more than 17,000 loan and finance offices throughout the United States. The membership of NCFA is diversified, ranging from single small loan offices to substantial nationwide chain organizations engaged in both the business of direct lending and the purchase of sales finance paper on consumer goods.

most tortuously defined circumstances? The permitted inquiry tests of subsection (c) make the mere acquisition of a fact - let's say, divorce - conclusory evidence of discrimination, unless that knowledge is acquired for a purpose "permitted in this subsection." It makes no difference whether the creditor intends to discriminate or not. Yet, although the section speaks of prohibited "requests" it is quite obvious that information will often be volunteered or often apparent from the circumstances, whether asked for or not. Additionally, footnote 5, to subsection (d) (1) makes it clear that relevant information may be requested that may "indirectly disclose" marital status even though a direct request would not be permissible. Thus, in the ordinary course of events, non-permitted information will often be in the creditor's possession - by inadvertence and indirection. Moreover, for monitoring purposes, the creditor must request otherwise prohibited information when making loans for the purchase of residential real estate. Add "monitoring" to "inadvertence and indirection" and one wonders whether <u>any</u> prohibited information will miss scrutiny. The point is this: should anyone be punished for possessing information so freely available in other situations and when such information is not used in the decision to grant or deny credit?

In subsection (d) (2) a creditor must give a "Miranda-like" warning to any applicant to the effect that income derived from alimony, child support, or separate maintenance need not be revealed unless the applicant desires to have such income considered in determining creditworthiness. Such a gratuitous recitation of the applicant's "rights" is of doubtful probity, and, when given orally over the telephone, may even be considered offensive by many. Is this requirement really necessary?

Finally, and incongruously, it seems to us, the creditor may not request the sex of an applicant, nor other prohibited attributes, even though from personal appearance (white, black, red, female, etc.), accent (Hispanic, German, French, etc.) and job description (rabbi, priest, etc.) one or more of all the factors may be evident. May a creditor observe what he can't request? Or must he, like the three monkeys...see no evil, hear no evil, speak no evil? The Act doesn't do away with the five senses, but regulatory overkill tries to.

Section 202.5 may serve some purpose, but it will do little to prevent unlawful discrimination. Non-compliance by people in the "real world" is inevitable; confusion is assured, and lawyers for disappointed credit-rejects will have a field-day exploiting the technical complexities of this Section.

Clearly the real test of wrongdoing should be - always - whether a creditor has denied credit on a prohibited basis, not because information prohibited by regulation comes into his possession. It would be better and entirely consistent with the Act, not to place limitations on the information received, but rather, to focus on the use to which it is put. We believe Section 202.5 is cumbersome and unfair, in other words, a gigantic Catch 22; it and other procedural pitfalls in Reg. B should be discarded.

TRUTH IN LENDING

Moving on to Truth-in-Lending - another area in which regulation has run awry, we are inclined to share the increasingly held view that the entire Act should be repealed and a modest requirement of five disclosures be enacted in its place, at least with respect to closed end credit. These disclosures would consist of Amount Financed, Finance Charge, Total of Payments, APR and Schedule of Payments. Nothing more is needed to assist the buyer in the "shopping" function.

What has led us to this conclusion? Three reasons: 1) experience with TIL has shown that while some consumers may use the APR as a guide to making a credit decision, most are concerned with the number and amount of the periodic payments; 2) very few complaints or suits arise out of TIL violations per se; TIL violations are generally detected by attorneys long after the fact; 3) ever changing compliance requirements are needlessly increasing the costs of extending credit. Most creditors' operations are set up to comply substantially with TIL and Reg. Z, but constant "interpretations" - many contradictory - are handed down with daily frequency by over 400 Federal District Courts and several thousand state courts, making compliance hazardous and costly indeed!

For example, last year three Federal courts handed down decisions of major significance to the consumer finance industry. In the first case, Allen v. Beneficial Finance Co. of Gary, Inc., 393 F. Supp. 1382 (N. D. Ind. 1975), aff'd

531 F. 2d 797 (7th Cir. 1976), cert. denied __ U.S.___ (No. 76-182, Oct. 12, 1976) the court decided that the "meaningful sequence" requirement of Reg. Z [12 C.F.R. §226.6(a)] was no longer served by the time-honored industry practice of "netting down" from the total of payments to the amount financed (subtractional method); one had to "add up" from the latter to the former. Result: Several hundred thousand loan contracts in jeopardy. The second case, Mason v. General Finance Corp. of Virginia, 542 F. 2d 1226 (4th Cir. 1976), is the first to hold - after 7 years of TIL experience - that graduated contract rates expressed as monthly rates and required to be disclosed by state law, were inconsistent state disclosures, and would have to be moved below a solid line, and labeled as such. No one in seven years of experience dealing with millions of loans containing such disclosures, has had difficulty reconciling the two - until the Mason court held otherwise. But to be fair to the Court, it had grounds for its ruling, a ruling it was forced to make by a dubious Reg. Z requirement that calls for shuffling contract terms around to avoid "confusion". Both cases will require loan form changes running into the millions of dollars - for what?

Our "horrible example", Jones v. Community Loan & Investment Corp. of Fulton County, 526 F. 2d 642 (5th Cir. 1976), rev'd and remanded with directions on rehearing, 544 F. 2d 1228 (5th Cir. 1976) is saved for last, because of all the instances of Truth in Lending gone awry, none other comes 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 §226.8(d) and (e) 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 5th Circuit Court of Appeals, in reversing all three, again said it was! Upon motion for rehearing, 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." Thus, the matter awaits further action today: will it be an appeal to the U.S. Supreme Court, or, an amendment to Reg. Z by the FRB, or, one of a parcel of items to be "cured" legislatively by the Congress as part of TIL 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. 45. "[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 Ga. had 59 TIL cases filed that year. For 1973 it was 237 (32% of all U.S. TIL cases); in 1974 the number had soared to 749, representing 45% of all TIL cases filed in the U.S. that year! Source: 1976 ANN. REP. OF THE U.S. CTS. 106.

The conclusion to be drawn from these cases is that substantial harm is being worked on the U.S. consumer through costs imposed on creditors in wasteful litigation. Not only these costs, but all the costs of changing forms and procedures will ultimately be reflected in increased credit charges to the consumer. The question must be asked: is a corresponding benefit being received? We believe not. Others tend to agree.

Last year, Jonathan M. Landers, Professor of Law, University of Illinois College of Law, and Visiting Scholar, American Bar Foundation, on the Consumer Credit Protection Act, testified at length before the Subcommittee on Consumer Affairs of the Senate Committee on Banking, Housing and Urban Affairs on the problems being encountered in Truth in Lending by consumers and creditors alike. He summarized his findings and policy choices as follows [Hearings on Consumer Protection Before the Subcommittee on Consumer Affairs of the Senate Committee on Banking, Housing, and Urban Affairs, 94th Cong., 2d Sess. (1976)].

> These factors suggest the reasons for the TIL explosion of cases. First, the increasing emphasis on contractual term disclosure made it relatively easy to formulate disclosure issues. Second, the judges who had to decide these early cases, had no clear rationale upon which to act, and tended to say that, well of course, this or that might provide some information to someone under the circumstances, or anyway, the consumer might want to know it, and the result was a number of decisions which called into question thousands of credit contracts. Third, with the initial sweep of TIL litigation so successful, attorneys began to scan documents more carefully, and to be willing to bring cases with, perhaps, less obvious violations. Fourth, creditors frequently cooperated by using forms which were either clearly invalid, or sufficiently doubtful to make a successful TIL suit likely. The chances for finding a violation or arguable violation were high indeed...
>
> There is such a thing as too much disclosure--too much for consumers and too much for creditors. From the consumer viewpoint, disclosure reaches this level when more information is given to consumers than they can effectively use in the transaction. Thus, the more information offered, the less capable the consumer becomes of sorting it out, judging what is important, and using that in the credit decision-making process. Persons who are overwhelmed tend to disregard the disclosures entirely. Thus, the objectives of TIL are more compatible with an attempt to provide consumers with the most important information simply stated.
>
> From the creditor's point of view, there is too much disclosure when, considering the nature of the transactions involved, creditors of goodwill who attempt to comply face a substantial risk of being held in noncompliance in ordinary and regular transactions. There is little question that this level has been reached.

> In my view, TIL should return to its original purpose as a credit cost disclosure law, and should be radically simplified to serve this objective. By simplified, I mean both from the point of view of consumer understanding and creditor compliance. We must abandon the notion that TIL is a statute designed to disclose information which a hypothetical consumer might find helpful, or that TIL should be an omnibus litigation tool for consumer grievances. Instead, TIL disclosures should be those which are most useful to the ordinary consumer.

Clearly, TIL ought to be more than "simplified". Specific legislative relief here and there would be welcome, but experience has shown that this would be a temporary palliative...or at best an annual event. Something more must be done. If the radical surgery proposed earlier (new Act limited to five basic disclosures) cannot be achieved (and we think it is possible to achieve) then - in the very least - the concept should be adopted in part by limiting penalties, attorney's fees, and class action relief to actions based on a wilful failure to comply in the five basic disclosures. The remainder of the present disclosure system could be retained, but with the sole remedy being administrative enforcement. Sample forms, even forms approval, could be added to the administrative monitoring function to aid creditors in obtaining substantial compliance. In THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM ANNUAL REPORT TO CONGRESS ON TRUTH IN LENDING (1976) the Board recommends a somewhat similar approach. Id, Appendices C and D.

DEBT COLLECTION PRACTICES

The final subject we wish to comment on is the proposal (H.R. 29) to amend the Consumer Credit Protection Act by adding a new "Title VIII - Debt Collection Practices". We understand that full hearings may be planned on this Bill in the near future and therefore will not comment on the Bill at length. We wish however, to reinforce your determination to include within the purview of the proposal only those persons engaging in a business the principal purpose of which is the collection of debt. Criticism of last year's Bill (H.R. 13720) has been directed in part, at its failure to include all persons engaged in the collection of debt, even their own.

Recently, at least one "horrible example" has been offered as "proof" that all persons attempting to collect debts should be covered (Consumer Reports, February, 1977 at 88)*. But, we believe that there is ample basis upon which to retain the classification presently envisioned. First of all, as the Committee Report to H.R. 13720 points out: "Independent debt collectors represent a separate industry from creditors. Debt collectors' primary business is the collection of debts. Unlike creditors, they do not offer to sell any product or service to consumers...Creditors unlike debt collectors, are usually larger and more stable, therefore if a Federal agency like the Federal Trade Commission takes action against a major creditor, it usually has a deterrent effect throughout the industry. This is not the

* Dunning letter from N.J. publisher to Okla. consumer who claimed to have returned book.

case with the debt collection industry." [H.R. Rep. No. 1202, 94th Cong. 2d Sess. 5 (1976)]

To this we would add the following. Most credit extension today is the subject of extensive regulation. For instance, our members who are engaged in the making of direct loans to consumers are licensed, regulated, and periodically examined under state law. They must disclose in accordance with the Truth in Lending Act and Regulation Z; if they do not, they are subject to action in a state or federal court or by the FTC. They must also comply with the Fair Credit Reporting Act, and with the Equal Credit Opportunity Act.

Today, all states, with the exception of Arkansas, regulate and supervise consumer installment loans, and most have comprehensive Retail Installment Sales Acts and Motor Vehicle Installment Sales Acts regulating the extension of credit on the sale of goods and services. For those retailers and others who are engaged in open-end installment credit, Fair Credit Billing provides mechanisms to insure proper handling of credit billing and any disputes that may arise therefrom.

In short, regulatory mechanisms, together with the fact that many of the laws and regulations are subject to local law enforcement through readily available agencies, place the creditor, whether bank, finance company, or retailer, in a different position from that of the professional collector. Professional collectors are not licensed, regulated, and supervised to anywhere near the same extent as are direct extenders of credit. It simply does not follow then, in our view, that if there is an area of abuse to be cured elsewhere, an additional layer of regulation needs to be imposed upon creditors in general, most of whom are already accountable to multiple agencies at both the state and federal levels. Add to this the consumer's common law remedies and the increasing regulatory activity of the states in this area and it is not unreasonable to conclude that consumers have sufficient recourse to protect themselves from unethical collection practices of creditors.

Even in the "horrible example" offered by Consumer Reports in its February issue, it is probable that the FTC could have acted just as effectively against the offending company under its present jurisdiction, as it is likely to move under the authority conferred upon it by H.R. 29. In the Consumer Information Hearings held by this committee in 1975, Mr. Sheldon Feldman, then Assistant Director for Special Statutes, Federal Trade Commission, responding to Congressman Barrett's question about the ability of any government agency to deal with deceptive debt collection, said: "[V]irtually no legislation has been introduced to cover deceptive debt collection techniques, and there are very few state statutes in this area. You are left with the Federal Trade Commission. Of course the answer is "yes", the practices you describe would clearly be an unfair and deceptive trade practice...The Commission since 1914 has brought literally hundreds of debt collection cases." [Hearings on Consumer Information Before the Subcommittee on Consumer Affairs of the House Committe on Banking, Currency & Housing, 94th Cong. 1st Sess. at 68-69 (1975).]

SUMMARY

The three matters we have reviewed today reveal that - no matter how well intentioned the Congress may have been in enacting the legislation, those who write regulations implementing the acts, can easily thwart these good intentions by attempting to predefine every situation, every procedure, every possible rule of conduct which they feel is required to give full effect to the act. Further, the courts, faced with construing newly created consumer rights - expanded and restated in complex regulations, interpretations, and amendments - feel compelled, more often than not, to decide questions of fact and law in favor of the consumer.

Perhaps the approach offered by H.R. 29 - in the sense that the legislative purpose is explicitly stated and rules of conduct described with particularity - may be the best possible solution to the problem.

Mr. ANNUNZIO. Thank you, Mr. Evans, for your very fine and constructive statement.

Before I call on Congressman Vento, I want to make a statement for your benefit. With regard to your concern that the debt collection bill may be expanded to cover all creditors, let me make a few points.

Last week, a newsletter carried a story that appeared to indicate that a member of my staff had said I would amend the bill to include all creditors. That statement is completely false.

First, it is not my intention to change the bill in that manner. And second, no member of my staff ever talked to anyone from that publication.

As I have said from the beginning, we have found the vast majority of debt collection abuses in the debt collection industry per se; the FTS has reported similar findings.

I will offer an amendment to cover all creditors under debt collection only if and when I have proof that creditors are abusing consumers with debt collection tactics that are unethical.

I hope that this statement on my part for the record will correct the erroneous newsletter account.

Mr. Vento?

Mr. VENTO. Thank you, Mr. Chairman.

I have a number of questions. I found the remarks very interesting and I found some commonalities as I am sure each of you did as you were going through the remarks with regard to some of the acts.

As a new Congressman from Minnesota, I have heard the other side of this story, about let the Federal Government do it. You know, we have to comply with their requirements and the State should not add on additional ones. So, you get pushed back and forth like on a teeter-totter and begin wondering: Does the Federal system have a responsibility to see that things function properly within that framework in terms of services that you are offering, and, of course, our constituents receive?

But, in any event, let's get down to some specifics here. One deals with a concern—and for no specific reason I think I would just like Mr. Butler to answer—regarding the results of continued modifications to the Equal Credit Opportunity Act and regulation B and regulation Z. I think that part of the problem is that, of course, we don't write the specifics of some of these. We pass that responsibility over to various administrative agencies who issue regulations and go through a hearing process. I expect that sometimes the legislative intent gets warped by those rules and regulations.

But the problem, I think, gets to be, too, that we are not dealing with a static commodity. The forms of credit are only limited by the minds of man, and so, I would like your response, Mr. Butler, to that comment.

Would you, or would the credit industry, be willing to become static in terms of the types of loans and so forth that they extend?

Mr. BUTLER. I think that's a rhetorical question, and the answer is no. There is no question that we all participate in the regulatory hearings and attempt to make available to the regulators the same kinds of problems and concerns and the problems we have encoun-

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tered, many of which we could not even anticipate at that time. And I guess I get back to the common theme here of simplicity.

We have found that what perhaps the Congress originally intended, because it's fairly broad in nature and not as specific as it might be, leads the regulators then to attempt to define all possible situations under all circumstances and leads the courts then to interpret individual situations and adds to the complexities of the laws, and in those cases, if we can recognize—and I guess that is perhaps our recommendation here—if we can recognize that what was originally done has some weaknesses and then go back and simplify or correct or amend those weaknesses, we wind up with the result that the Congress originally intended and yet without some of these substantial compliance burdens on the creditors.

Mr. VENTO. Mr. Chairman, I think my point is that the terminology is not static. The types of credit that you extend are not static. They are constantly changing. And I think in some instances that complications are involved in trying to deal with a wide range of different credit forms that are presented to consumers. Therein lies, I think, the problem with regulation, that they have to contend with a myriad of different credit structures and arrangements that occur.

But let's go beyond that question.

Mr. Fisher, I know you've been sitting for a while listening, and we've been waiting to visit with you. I looked at your remarks. I want to assure you that we are willing to cooperate with you as we pursue different consumer interests in this subcommittee and the ability of your industry to cope with them.

But one of the things I was concerned with is legislation dealing with debit cards. Mr. Annunzio has suggested that he is going to introduce legislation on the mailing of unsolicited debit cards. What is your response to that?

I think I agree with him, but I would like to know what your response is to that particular type of limitation.

Mr. FISHER. Mr. Congressman, my response is basically the same response that the Federal Reserve issued about 2 years ago when they indicated that a debit card, so defined but having access to a credit account, must be considered a credit card even though it might first access funds on deposit, and therefore, all of the disclosures and the liabilities associated with a credit account would come into being.

Basically, I think the practice in the industry today, in addition to abiding by that regulation and interpretation, is one in which the customer does in fact solicit a debit card.

I indicated in my testimony that my bank had been issuing a nationally accepted debit card for over a year and a half now, and we do in fact have an agreement with the customer at the time the account is opened to issue that customer a card, and indicate to him the liabilities associated with the use of that card.

In this case, those liabilities are the same for a plastic card as they are for a paper check. So I would believe that the industry, at least as we see it today, is in fact practicing what you are proposing it should practice. It is not, as a practice, issuing unsolicited debit cards.

Mr. VENTO. You would support this legislation, then?

Mr. FISHER. I believe it would be unnecessary. I believe that a debit card is issued as a part of a new checking account or new savings account, and the customer agreements are included in the restrictions at that time.

Mr. VENTO. I think it is interesting. I hope you would think about that and be willing to support that. I think that right now the debit card, the electronic transfer systems that exist are supposedly somewhat experimental, but from the soundings that we have heard, they seem to be almost anything but experimental. And I guess we are concerned about defining some limitations, some safeguards for consumers, within that framework. And we will obviously need your cooperation in terms of doing that.

One aspect that does concern me is the way that these are merchandised in the market. I guess you have had some experience with that.

Does, for instance, a new product like that come on the market—what type of cost analysis and burden do you place upon it in order to demonstrate that it is economically feasible and that the other credit components in that, within the framework that your particular institution may be offering or not carrying it as an overburden?

Mr. FISHER. Well, let me answer your question by citing two projects that have been underway in my bank for some time now. They began somewhat as experimental, as you have indicated, but they have become very real-world recently.

The first project was the introduction of automatic teller machine equipment, which began in our bank in 1970. It has developed consistently over the last 7 years so that in our town and in our bank we served over a million customers last year using automatic equipment. Our most-benefit analysis deals with the displacement of internal costs by being able to supply the capability to the customer to do self-service banking through this equipment. And, therefore, I am able to change my cost of delivering banking services as I have known them in the past, principally through bricks and mortar, and the high cost of the lobby orientation that our industry has today.

So, principally, the cost-benefit analysis has to do with the displacement of existing costs, plus the increased convenience to the customer.

The second project I would like to mention for you has to do with the point-of-sale mechanism we installed in our town last November. Today, in Columbus, we have basically all supermarkets wired up with a point-of-sale system that permits customers to more conveniently have their checks guaranteed—it can be any check—and to also be able to use a credit and a debit card in that supermarket to pay for their groceries and to have cash more easily available than previously.

The cost-benefit analysis to my bank dealt with the revenue streams we would anticipate from the consumer, from the merchant, and the other cost savings that we would anticipate in being able to provide more convenience than we can today with the mechanisms now in place.

Mr. VENTO. Thank you.

Mr. ANNUNZIO. Thank you, Mr. Vento.

Mr. Wylie?

Mr. WYLIE. Thank you, Mr. Chairman.

I am especially impressed with the panel that we have here this morning. I think our testimony has been exceptional, and I personally want to thank each and every one of you for coming here.

Mr. Fisher, I saw a side of you here this morning that I haven't seen before at social gatherings. The beginning of your statement was, what you say, a little bit inflammatory. But I guess if credit card users are junkies, then that makes you a pusher, and I suppose I can understand why you said it.

Mr. FISHER. I will accept that definition.

Mr. WYLIE. We had witnesses here before the panel the last 2 days who have expressed a considerable amount of concern about the information capability being stored in these computer terminals; about people, when they use the debit card system, the fear was raised that if all this information is fed in there to buy an automobile, to buy groceries, to buy clothes for the children, to pay off pediatric expenses, et cetera, et cetera, et cetera, that somebody could get ahold of the secret number, and all of this information would come flowing out so that all of us would be captives of this computer bank, and all of us might have to be apprehensive about how our neighbors would find out information about us.

What is your comment to that?

This was repeated about three of four times during the panel yesterday.

Mr. FISHER. Mr. Wylie, I understand the concern that has been registered here and, obviously, elsewhere in Washington at other similar types of hearings, particularly before the EFT Commission which, as I have indicated, is soon to complete their work.

I think this concern is also a concern of the American Bankers Association and the entire financial industry for obviously, the tradition of our industry is truly based on the customer confidentiality and the protection of the customer's banking business and the records associated with that business. That is true whether we are keeping them on ledger cards or in main computer files.

Basically, I think, the concern that has been registered here is very good speech material, but I really don't believe there are hard facts that support that concern today. I think it is tarring everybody with the same broad brush, and talking about it, I'm certain, does not make it go away. However, I do believe the banking industry, particularly the commercial banking industry, can pride itself on its record of customer protection of information. True in the past, true today, true in the future.

Mr. WYLIE. I noticed an article that you had written for the "American Banker" is response to an article by Slyvia Porter which appeared in syndicated columns over the United States, and Sylvia had suggested that the real reason that you want to put debit cards in the marketplace—or expressed a fear that if debit cards were placed in the marketplace—was that the holders of these credit cards would use them so much that they would try to get an instant loan to avoid overdrafting, and that this might be one of the things they would have to fear, and this might be one of the reasons why the banking industry is trying to get into the debit card business as fast as they are, so that they would have to use the credit card immediately and they would have the 18-percent loan.

Would you comment on that.

Mr. FISHER. Well, as I indicated in my rebuttal to that article, I did not truly believe that that is the thrust behind the development of the debit card systems that our industry is just now beginning. Instead of attempting to, as I believe you are alluding to, put our customer constantly in debt, I believe our industry is attempting truly to meet the needs of the marketplace, and those needs of the marketplace today require a plastic card as a vehicle, not a paper document. This is true today as we move from paper to plastic as it was 60 years ago when we moved from money to checks and 160 years ago when we moved from barter to money.

So I am suggesting here that the development of these plastic systems have to do with improving the capability of our customers to avail themselves of the financial services that we are required and want to provide.

Mr. WYLIE. Thank you.

Mr. Grant, on page 3 of your testimony in the last paragraph, you mention that bankers should be held to the doctrine of substantial reliance before being hit with suits for technical violations of credit laws.

Could you explain your statement there and the doctrine of substantial compliance?

Mr. GRANT. What I'm referring to is that we are in a world of imperfect human beings. Our staffs are not perfect. So we are going to have some technical violations. But when those violations are of a technical nature, where there is no actual harm to the consumer, we don't think that they should receive the importance that has been given them under the stringent civil liability section of the present legislation.

Mr. WYLIE. Well, the truth in lending law was not designed necessarily to provide that so-called substantial compliance as far as consumers are concerned, either. This was basically, I think, a piece of legislation of social reform. The testimony was such that a lot of people who were uneducated and uninformed and so forth can't shop around and are not informed—they can't find out the information the sophisticated, educated person can always find out and will find out. So this was supposed to be a finance and interest disclosure mechanism.

Mr. Evans, I think, suggested that the whole truth in lending law be repealed and we start from scratch. And I guess somebody else suggested that—Mr. Butler, maybe you did, or maybe it was you, Mr. Grant—that we repealed RESPA when we found out we had done a bad thing.

Do you hold to that, Mr. Evans; we should just repeal the whole law and start over?

Mr. EVANS. Yes; I think that would be probably the only way you're going to get out of this morass of law and regulation that we find ourselves in today.

I understand the political problems, but if it were to be repealed and the initial concept of a cost disclosure adhered to, a few very basic disclosures, we think, would serve the purpose.

What we have gotten into, Mr. Wylie, is an investigation into the other terms of the contract, and an ever-growing body of law that says it would be nice for the consumer to know something more. Courts are inventing every day things they think should be disclosed; we have no way to deal with this.

We can comply with truth in lending as it is written, and there is no problem there, but it is the daily changes, the interpretations given by the courts, that make it almost impossible to stay in compliance. It is very expensive—wastefully so—to reprint forms and change procedures with such frequency; it runs annually into many millions of dollars.

Mr. WYLIE. But you do agree with the general philosophy behind the law as stated?

Mr. EVANS. I do.

Mr. WYLIE. Have you given any thought to what we might pass in lieu of the Truth in Lending Act if it were repealed?

Mr. EVANS. Yes; just the five basic disclosures which would relate to the items that consumers——

Mr. WYLIE. The five disclosures you mentioned in your testimony?

Mr. EVANS. Yes; I believe—this is not to say he would not get the rest of the information. It's that the cases would not arise out of a failure—in someone's estimation—of the creditor to phrase it in such a way that it is not meaningful or in the proper sequence, the sort of thing we have covered in the cases included in our prepared statement. We would have that burden removed.

Mr. WYLIE. Thank you.

Ms. Marunyak, you weren't trying to tell us in your statement that retailers do not make money on their credit sales, were you?

Ms. MARUNYAK. I think I was trying to tell you that we do not make money on credit sales.

Mr. WYLIE. Well, you are doing it merely for the convenience of the customer, is that it?

Ms. MARUNYAK. No. What I am saying is, we would like to have enough revenue from our finance charge that would offset the expenditures of the credit office. And this we do not have.

Mr. WYLIE. What interest rates does your store charge on credit sales over 30 days, for example?

Ms. MARUNYAK. 1¼ percent. We are lower than New York State, for instance.

Mr. WYLIE. And you can't make money on that?

Ms. MARUNYAK. No.

Mr. WYLIE. Do you think that cash customers should subsidize the credit customer; is that what you are suggesting that cash customers do?

Ms. MARUNYAK. No. I feel they should not subsidize the credit customer.

Mr. WYLIE. What did you think about my amendment which would allow for discounts on cash sales?

Ms. MARUNYAK. I'm really not that familiar with it, Congressman Wylie, and I don't feel that I could give a good answer to that.

Mr. WYLIE. I offered an amendment that was adopted which would allow 5 percent cash discount on credit sales, and that would not have to be taken into account under the truth in lending law. The problem was that if an item was to be sold for $100, for example, and a retailer wanted to sell it, say, for $94 cash, would that come within the purvue of the truth in lending law or outside the purvue of the truth in lending law? Would that have to be taken into account as a finance charge? In other words, would the $6 difference between the $94 and $100 be included, you see. And my amendment would simply state that you could discount up to 5 percent and not have to disclose in advance.

Ms. Marunyak. We have not gotten into cash discounts, as yet. And so I would not be able to answer that.

Mr. Wylie. Mr. Butler, on page 6 of your statement you mention the Equal Credit Opportunity Act. In the last Congress we passed the Equal Credit Opportunity Act which permitted credit scoring. Now, my friend, the chairman of the subcommittee, was opposed to the credit scoring amendment which I offered in subcommittee and which failed, but when we got to conference it was adopted.

Has that helped you at all?

Mr. Butler. Yes, it has.

The effects test, which was mentioned before, is of great concern to us. We do not now at this point, nor does anyone, know how that's going to develop. We think that credit scoring may ultimately be the only way the creditor can deal with the effects test and defend himself and attempt to do the things that the act provides. So there is no question that was an extremely important amendment, and we were delighted to have it adopted.

Mr. Wylie. Mr. Grant, what is your opinion of the EFTS guideline addition by the Comptroller of the Currency, and has your bank been following those?

Mr. Grant. The guidelines, as I understand it, that have been proposed by the Comptroller of the Currency are reasonable guidelines, considering the state of innovation that electronic funds transfer is in. This is an area I'm not personally too well qualified to discuss, but I do support the concept that is developing with prudence on the part of bankers, to enhance our ability to serve our customers. An EFT system should be developed that will be compatible with the needs of consumers and eliminate their fears concerning privacy.

Mr. Wylie. I have two or three other questions, but I understand Congressman Fauntroy has a meeting at noon, and he has a couple of questions that are pressing, so I yield to the gentleman.

Mr. Fauntroy. I thank the gentleman for yielding, and I want to also commend the members of the panel for the very thorough treatment at this hearing of our concerns on consumer information.

I simply have a couple of questions for Mr. Fisher and one for Mr. Evans, and one which perhaps any members of the panel may answer.

Mr. Fisher, my reading of your statement suggests that you think we should develop the debit card system without the protection for the consumer which now exists in both the present credit card and checking systems, such as the paper proof of purchase or guarantee of the return of defective or shoddy merchandise.

I wonder if you would just care to state why you hold that view.

Mr. Fisher. My suggestion, Congressman, is that the protection does exist today for a debit card transaction simply because the customer has a deposit agreement with the bank. Whether that deposit agreement or deposit account is accessed by a paper check or a debit card, the same protection exists.

In my State, the restrictions are such that the customer must notify the bank in 10 days in the event, in his deposit statement there is a fraudulent piece of paper. My bank happens to practice 14 days rather than 10 days. The protection is there whether or not the customer has used the plastic card or the paper check. In other words, the protection goes to the account relationship and not the vehicle that is being used.

I should also mention that customers using a merchant-accepted debit card do have protection under "disputed item" procedures as required under the Fair Credit Billing Act. NBI, National BankAmericard, Inc., rules and regulations provide for the same protection for disputed items and billing errors for both the credit and debit cards.

Mr. FAUNTROY. In other words, you are or would be prepared in your bank to pursue the customer's complaint or right with respect to shoddy merchandise purchased under the system?

Mr. FISHER. The same for a debit or credit card transaction, yes.

Mr. FAUNTROY. It's also been stated that the electronic methods will be far less expensive than the growing cost of the older paper systems. How do you propose to pass that cost saving on to the customers in the system?

Mr. FISHER. I would suggest that our industry is at the threshold of repricing its products to reward customers who do part of the work. I would suggest that the financial industry is going to adopt the same practice that the retailing industry has adopted over the last 30 years, and that Ma Bell has professionalized. As an example, when I call Columbus today from Washington, if I dial direct, it's about $1. If I go through Ma Bell's operator, it's about $1.30. So if I do the workload, I am rewarded. I think the financial industry is going to reward similarly. Therefore, the cost benefits will be passed on to customers who do self-service banking, just as we do today with self-service retailing and the pumping of self-service gas.

Mr. FAUNTROY. What kind of percentage benefit might you think would be reasonable?

Mr. FISHER. I would think that 10 percent would be the minimum.

Mr. FAUNTROY. Mr. Evans, you suggest in your testimony the possibility of limiting Truth in Lending penalties to attorney fees and class action relief to actions that were based on willful failure to comply with the five areas. The sole remedy for violation of other disclosure requirements, according to your proposal, would be administrative enforcement; is that correct?

Mr. EVANS. Yes; that's true with respect to the modified approach, that is, if we were to retain the entire existing system and restrict the penalties to those principal disclosure areas with which the consumer is most concerned, the APR and the finance charge, the schedule of payments, the amount financed, and so forth.

Mr. FAUNTROY. Given the fact that 90 percent of the creditors fall within the jurisdiction of the Federal Trade Commission, and given the fact that the FTC does not act on individual complaints, don't you think that such reliance on administrative enforcement would be nearly meaningless?

Mr. EVANS. Well, it could be handled in a number of ways, either through the regulatory and examining agencies that are charged with examining the individual creditors. And in the case of the national banks and State banks, their respective agencies could take care of that.

Our industry is largely regulated at the State level. We believe that there could be administrative enforcement in that area.

This is a fallback from the basic assumption that these areas should not require any enforcement at all, that we should restrict our attention only to the primary disclosures.

It's also a proposal which the Federal Reserve Board has suggested. I don't know what they have in mind by way of administrative enforcement. But I believe it could be accomplished.

Mr. FAUNTROY. Mr. Chairman, I want to thank the gentleman from Ohio for yielding to me this time. And at this point I would yield back my time and ask to be able to submit other questions for the record.

Mr. ANNUNZIO. Thank you, Mr. Fauntroy.

Mr. Fisher, please explain to me how a consumer stops payment on a debit card transaction when you have transferred money from the consumer's account to the merchant's account?

You know, what I'm thinking about is the complaint most given to this chairman by consumer groups. They buy a toaster and take the toaster home, and it doesn't work, and they want to stop payment. How do you explain that situation.

Mr. FISHER. In a plastic card transaction today, whether it is a credit card, debit card, or check guarantee transaction, by practice it is a guaranteed transaction to the merchant, and therefore, there is no capability to stop payment, as defined today in the demand deposit agreements with customers.

However, there is the capability for a credit voucher system which has become popular over the last 10 years in the credit card industry and is now being used in the debit card industry, as well. In your example of the toaster, the customer would have the capability of having a credit voucher generated, and therefore, it would back out of his account that transaction, and therefore, he need not suffer the cost.

Mr. ANNUNZIO. Well, that is the important point that has been brought out in the hearings and the question that we get all the time and that you must get in your bank—and that is, where you just can't stop the payment.

Mr. WYLIE. Who suffers the loss if the item is defective? If the consumer is going to pay cash for it or he has a direct relationship with the seller—of course, if he pays by check, he can stop payment on his check.

Mr. FISHER. Mr. Wylie, the merchant must accept the merchandise in return and generate a credit voucher which is then deposited through the banking system as if it were a credit card voucher.

Mr. WYLIE. Do you mean you will have a contract with the seller?

Mr. FISHER. We have contracts today with 1,300,000 merchants in the country for the acceptance of the debit credit voucher that I have just described.

Mr. WYLIE. And what if the seller doesn't? Then you would shut off their terminal?

Mr. FISHER. In some cases we have discontinued the service of the merchant.

We also have, by agreement, the right to charge back disputed items to the merchant. By practice in the credit and debit card world today, after the customer has demonstrated a good faith effort to resolve the issue, the bank then credits the customer's account and charges the merchant's account. The NBI regulation is 2.11.4.

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Mr. Wylie. Thank you.

Mr. Annunzio. I also want to remind the panel that the record will remain open and that the panel members that were here and those not here will probably be writing to you to answer questions for the record. And I'm going to keep the record open for at least 1 week or 10 days in order that we can have full participation from you today.

Mr. Annunzio. Now, Mr. Fisher, you mentioned in a recent newspaper article that customer liabilities associated with using debit cards are identical with the liabilities when using the checking or credit card system. Will you please explain how this can be, since no regulation exists covering debit cards?

Mr. Fisher. Regulations exist, however, covering deposit accounts, and as I tried to indicate earlier, in our interpretation these regulations cover that transaction whether it was generated by a paper check or a plastic card.

The regulation, or the liabilities, which in the demand accounting world are unlimited on the part of the negligent customers are the same whether it was a negligent use of the checkbook or a negligent use of the plastic card.

So, the liabilities and the regulations and the agreements with the customer are based in the account relationship, not based in the access medium.

Mr. Annunzio. Now, in response to your statement in the "American Banker" that it is neither fast nor practical for funds to be transferred by telephone without a signature, we had a witness the other day, Roberta Wieloszynski, who testified that this is already a fact in Syracuse. These are not limited experiences. They are expanding daily.

Would you care to comment on that.

Mr. Fisher. Yes, Mr. Chairman. I think I qualified that statement both here this morning and also in the article to which you are referring by noting that there are limited telephone transfer experiments underway across the country today, basically being conducted by the savings and loan industry and not the commercial bank industry.

I believe there are maybe 18 important projects, including the one alluded to earlier this week by the lady from Syracuse, underway in the country in which a customer is able to handle a bill-paying transaction by telephone. I don't consider the telephone a proper device for the environment we see in the future to provide bill-paying services. We believe that it is likely to be limitedly successful in the next few years, not because it provides a genuine service to the customer but instead because it permits the customer to, in effect, earn interest on demand balances.

Basically, that interest-earning ability is why the telephone bill-paying service has started to wrinkle its way out across the country in the limited fashion it has.

I do, however, believe that eventually financial services will be conducted in the home, not via telephone but by cable television. There is some limited work underway today by some vendors as well as a few entrepreneur banks to attempt to understand the feasibility of bringing about that capability in the early 1980's.

Mr. Annunzio. Mr. Fisher, I have one more question, and then I want my staff director to clarify a point.

Assume that a consumer authorizes a bank to make payments automatically to his insurance company. Now, the computer makes an error; the payment is not sent, and the policy lapses. Who would be liable if the consumer's home burns down or his car is stolen?

Mr. FISHER. I can't answer that, sir.

Mr. ANNUNZIO. Thank you.

Mr. Prins?

Mr. PRINS. Mr. Fisher, forgive me for apparently going over ground that has already been ploughed, but this point, as Mr. Annunzio has pointed out, is probably the most singularly asked question that we get from consumers. I would like to take you step by step through it, not to trip you up, sir, but for our education, and so that we can respond to the consumers. And this once again goes back to the question of stop payments. I would like to take you through the toaster example and see if we can resolve the thing to our satisfaction—or maybe it's just my satisfaction—maybe it's difficult for it to sink into me.

I go to a store in Columbus and I buy a toaster. And I present my debit card. It is accessed at the terminal at the store for $14.95. Now, at that time, does the computer automatically deduct the money from my account?

Mr. FISHER. No, sir, it does not. As I tried to describe in the procedures that we've been following for the last year and a half with our nationally accepted debit card. It is basically identical to the procedures that are now being adopted by NBI, the National BankAmericard Banks, nationwide. That transaction is still rooted in a piece of paper—even though it might be a terminally authorized transaction for $14.95—a piece of paper that you would sign would be deposited by the merchant as if it were a credit card sales draft or a paper check and would be processed and finally posted to your account.

At that time, funds would be, in effect, transferred, but not at the time of the transaction.

In my testimony this morning, I did try to indicate that we believe funds will be transfered directly in the future. But it is premature and it is not a practice that is underway in the country today.

Mr. PRINS. But in order for the system to eliminate the paperwork, hopefully there would have to be an almost instantaneous transaction on the part of the computer.

Mr. FISHER. Probably at least at the end of the day there would be transfers. One of the experiments conducted in our town in 1971 and 1972 did provide data capture at the time of the transaction to a credit card file. We found in that early experimentation that it was necessary to reconcile the merchant, to balance him out, at the end of each processing day. And until that reconciliation was completed, so that we could be assured that we were posting to the card holder account the exact amount of the sale, we could not transfer funds.

Mr. WYLIE. What you're saying, then, is that the only paper elimination will be the writing of the check, actually?

Mr. FISHER. I think that is true. There will be some additional efficiencies in the handling of the paper much as we have learned to do today in the credit card area. And I'm thinking particularly of the transaction of the paper at the first point of entry, the first bank to receive the paper, or in some cases, even the merchant himself will be storing the paper. And it will be retrievable much as we retrieve paper electronically from around the country today.

So, while we may not eliminate a piece of paper at the point of transaction, I believe we will be able to build much more efficient systems that will handle the data that was on the original piece of paper.

Mr. WYLIE. And we will still have pretty much the same recordkeeping devices that we have now?

Mr. FISHER. Yes.

Mr. WYLIE. And that would be included through a terminal facility rather than somebody sitting down, writing it out on a piece of paper?

Mr. FISHER. This is why I have indicated I feel the signature is still going to be the most significant form of customer identification. I don't know that I have truly finalized your concern, Mr. Prins.

Mr. PRINS. I wasn't through, Mr. Fisher.

Mr. FISHER. I would be willing to come back to that issue. As I had indicated to Chairman Annunzio, there is no way that a stop-payment order is available to a plastic card transaction today. As a matter of fact, in my comments to Ms. Porter, in her story that you've alluded to earlier, in many cases probably the majority of the cases, the stop-payment is abused by the consumer as a method of delaying actual payment to the merchant or of saying, "Yes, I am paying my debt, but then in effect not."

This feature of the checking account service is often abused. However, I don't believe that it can be made available through the plastic card mechanism. The credit voucher, and the "deputed item" requirements I think, will suffice to serve the needs of legitimate complaints on the part of the customer.

Mr. PRINS. That's what I wanted to get to, sir. I don't want to get into a disagreement with you on the stop-payment order, whether it is a valid type thing or not. The consumer does feel that the stop-payment, under the existing check procedure, is a consumer tool, good or bad, that they have. It is their prerogative to stop a check.

Now, some banks, for instance—I'll give you an example, I took a dog to a veterinarian 2 weeks ago and the dog was in there for 2 or 3 days and had some expensive work done. We picked the dog up and the vet said, "there's nothing we can do for the dog here that can't be done at home." So we paid quite a substantial bill with a check and took the dog home. The dog walked out of the car and dropped dead.

Now, I stopped payment on the check. Of course, it didn't help the dog any, but——

Mr. FISHER. Well, your dog may be better off today than he was in the past.

Mr. PRINS. But what I'm getting at, finally, on the toaster-type thing, and the problem is now compounded because we're dealing with a system that, as you point out, may not be the same system a number of months from now, so let's talk both ways, both now and the instantaneous transaction.

At the present time, the consumer gets the toaster home and he is unhappy with it. It makes bad toast; it doesn't make toast; it doesn't pop high enough, what have you. He calls you, writes you, whatever your procedure is. Most banks in this area have a call-in service that is good for 7 days and then you have to follow it up with a written statement.

At the present time, is the stop-payment at the consumer's option and is stop-payment guaranteed for *x* number of days?

Mr. FISHER. Under the checking negotiable instrument laws that is true, but under the plastic card description I have given you earlier, there is no stop-payment capability. There is a credit voucher capability.

Mr. PRINS. Excuse me, sir. You're quite right. What I wanted to get to, is the credit voucher at the consumer's option and is it guaranteed? In other words, if he calls in and says, I don't like the toaster, is that all he needs to do?

Mr. FISHER. Well, basically, instead of calling the bank, what he's doing obviously is returning it to the merchant, and virtually 100 percent of the merchants with whom we deal, such as the merchant to my right, are reputable merchants and accept readily that merchandise in return.

There are obviously some minor exceptions to that, and this can eventually lead to discontinuing the plastic card service. We also practice a "disputed item" procedure identical to that used by the credit card industry in recent years.

I think, also, as the banking industry accepts the holder in due course legislation that this legislation would aid the financial industry to be more supportive to the consumer. I believe there will be a differentiation of banks in the future, permitting some banks to say we support the consumer in dealings with the merchant under a new holder in due course concept.

It is not a stop-payment problem. It is a consumer-merchant problem. And in all probability, going forward, the financial organizations will be an intermediary in solving that problem.

Mr. PRINS. Supposing the consumer, instead of going to the merchant with the toaster problem, simply calls the bank and says, I don't like the toaster. Is he directed to the merchant to solve the problem, or is the credit payment automatically handled at that time?

Mr. FISHER. The credit voucher must be handled through the merchant and signed by the customer and deposited, as I have indicated, by the merchant, so it is not handled directly through the bank. It is, again, the merchant-customer relationship that is involved here. The bank, however, should the customer call the bank, in many cases can lever—use some leverage on the merchant in the event that there is a problem with the merchandise.

This leverage can finally take the form, under a merchant bank contract, to credit the customer's account for the price of the toaster and charge the amount to the merchant's checking account. As indicated earlier, these procedures are required for credit cards under fair credit billing and for debit cards issued by NBI banks.

Mr. PRINS. In other words, the consumer does not have complete control—does not have a guarantee of the credit voucher?

Mr. FISHER. I would have to say, there are some rare instances where there could not be a guarantee.

Mr. PRINS. Thank you, Mr. Chairman.

Mr. ANNUNZIO. Mr. Wylie.

Mr. WYLIE. Mr. Pearce, I wanted to get back to your statement a little while ago about the Truth in Lending Act. I just have two more questions.

Are you aware of the so-called advisory opinion process in the truth in lending law so that if you asked for an advisory opinion from the Federal Reserve Board and they give that advisory opinion, that you can rely on that? Doesn't that meet some of your objection to the truth in lending law?

Mr. PEARCE. Yes; it does.

Mr. WYLIE. We did put that in. It's under section 130(f) of the new law. But doesn't that alleviate substantially your compliance difficulties?

Mr. PEARCE. Well, to a degree, that is certainly true, Mr. Wylie. However, there is a time lag involved since the procedure involves some delay in getting that kind of a response from the Federal Reserve, and so you are still in that sort of netherland where you are not fully comfortable whether you are or you aren't in compliance. However, it certainly is a step in the right direction—yes, to be specific, you're right.

Mr. WYLIE. In other words, some doubt might come in your mind as to whether you should put something on a form in the granting of credit, and so you say, we will ask for an advisory opinion from the Federal Reserve; meanwhile, you have to wait or have to decide or take your chances as to whether you're going to grant the credit.

Mr. PEARCE. There is one other factor that provides us some comfort with respect to truth in lending in that, as I'm sure you're aware, Massachusetts has consistently been a leader in this area of Truth in Lending and protection for the consumer, and so we are now exempt in Massachusetts from the Federal law because the Truth in Lending in Massachusetts apparently does the job a little bit more efficiently and, therefore, we have that exemption there, as well as in the Mortgage Disclosure Act. This helps to clarify our position, at least in that area; we know which law applies and we do our best to follow through.

Mr. WYLIE. Now, if we do not use the so-called effects test approach, how are we going to eradicate practices which are not intended to be discriminatory but nevertheless have a discriminatory effect?

Mr. PEARCE. We are not suggesting that an "effects test" approach not be used, but it must be employed selectively in the equal credit opportunity area. To use the old adage—it would seem that the rifle approach is better here than the shotgun approach. The original regulation B permitted, for example, a practice whereby all coowners in a mortgage transaction were required to sign the note. Now it is clear that most coowners are married persons and thus the "effect" of this policy impacted disproportionately on married persons. This being the case, the revised regulation B prohibits such a policy and now provides that in that transaction, if the spouse, or if it's the husband, whichever side it might be, is not needed in order to support the repayment of that debt, then you waive that and you take the signature of the individual who is going to be the one responsible. Now that is clearly defined and we have no problem with that. But there are so many other areas where this effects test could come into play that I am just concerned that it leaves that other big, broad field out there where we can be running into some serious problems.

Mr. WYLIE. Can you think of one example of what you're talking about?

Mr. PEARCE. Let me use this as an illustration. For example, in periods of very tight money, a bank may adopt a policy of only making mortgage loans to depositors of the bank. If the depositors of the bank did not fully reflect the racial makeup of the area then, in my opinion, that might be an area where a neutral practice could provide grounds for someone to just say you are being discriminatory in that. And yet in the practical business judgment of that institution, that might be the course that would be best advisable for them to be pursuing. There are many other examples of this gray area.

Mr. WYLIE. I just have one more question, Mr. Chairman, of Ms. Marunyak.

In your testimony, you indicated that small retailers who grant credit as a result of competitive pressure—are retailers going into EFT systems reluctantly and through competitive pressure, or do you think they are going into this because they think this is the way to grant credit in the future?

Ms. MARUNYAK. We as a small retailer are not into EFTS, Mr. Wylie. And I think that it would take——

Mr. WYLIE. I thought Mr. Fisher said you were.

Mr. FISHER. No. I referred to the lady on my right as an honorable merchant, not a member of the EFTS community.

Mr. WYLIE. Maybe my question is not appropriate then. Do you think you will be going into it?

Ms. MARUNYAK. I don't know. This is something that the small retailer is going to have to take a good, hard look at and determine in each instance whether or not they will be able to benefit from going into it.

At this time, as I say, we have not actually made any investigation into it, and so I would not be able to answer that.

Mr. WYLIE. Do you think that EFTS will put you at a competitive disadvantage or advantage?

Maybe some of the people who have been accustomed to the usual types of credit granting might indeed come to your store rather than go to a store where they have an EFTS terminal. They might be a little apprehensive.

In that connection, I'm going to ask Mr. Fisher to comment on this. Is it true that mostly young people are going into the EFT system and that people who have become use to the traditional forms of credit granting and credit application are kind of steering away from it and a little apprehensive about it?

Mr. FISHER. Well, that, I think, is the conventional wisdom and it might have been in the early days, the early part of the 1970's, the actual development. But more recently, as these procedures begin to mature and customers begin to become more comfortable with the automatic equipment that is now coming into the marketplace, then basically the distribution of customers becomes the common distribution of the customer in the bank. Today, our customers using automatic equipment are basically the same distribution we have using a live teller. We have little old ladies in tennis shoes and we have bright young kids in tennis shoes as well using machines. So our view is that this expanded mechanism will be available and usuable by everyone, not just a few.

Mr. WYLIE. I asked Ms. Marunyak a question and then interrupted for you.

Have you had time to think on my question as to whether you will be going into EFTS as an advantage or disadvantage?

Ms. MARUNYAK. I don't know, because I have not investigated it that thoroughly. I would have to have some more facts at my disposal in order to answer the question.

Mr. WYLIE. If the big chain store on the corner is going into EFTS, maybe some of the customers would come over to your place, since you don't have one. I don't know. Is that a possibility?

Ms. MARUNYAK. It could be a possibility, but it is something that would have to be thoroughly explored.

Mr. WYLIE. Thank you very much.

Mr. ANNUNZIO. Thank you, Mr. Wylie.

Mr. Prins, one more question.

Mr. PRINS. Ms. Marunyak, I should have asked this before as a followup to my dialog with Mr. Fisher.

Last week the National Retail Merchants Association at one of its annual meetings issued a policy statement on the EFTS—it was a rather lengthy document. One of the statements in there was to the effect that any EFT system that would be developed should not contain any stop-payment mechanism.

Now, what bothers me is, if merchants to a large extent install EFTS without stop-payment mechanisms, do we face the possibility that at some point in time, when a person goes in and chooses to pay with a paper check, the merchant says, "I'm sorry, we will not take your paper check, you have to pay through the EFT system"—thereby denying the consumer the possibility of a stop payment?

Now, I realize you are not involved with these things on a day-to-day basis, and you're not a paid staffer of NRMA, but have you heard any talk along that line?

Ms. MARUNYAK. Not particularly along that line. I do know that NRMA has a policy statement on it, and I think, if you were to direct that question to the NRMA office, they would get back to you with an answer.

Mr. PRINS. Thank you very much.

Mr. FISHER. I would add a comment to that question, if it is permissible, Mr. Chairman.

Of course, the merchant does have the ability today to refuse a check. As a matter of fact, the check is not anymore the negotiable instrument that it used to be. We could go around this town or my town or any town in America, find signs in merchant stores, that read no checks accepted. So the stop payment, which I think you have overemphasized is really not a service that is guaranteed to the marketplace today regardless.

Mr. PRINS. I might also add that there are some merchants who don't take cash. And if you try to rent a car with cash, you're not going to get it.

Mr. ANNUNZIO. We have received a statement from the American Retail Federation. Upon unanimous consent, the statement will be inserted in the record at this point.

[The statement referred to follows:]

STATEMENT OF THE AMERICAN RETAIL FEDERATION
SUBMITTED FOR THE RECORD OF THE CONSUMER INFORMATION HEARINGS
OF THE SUBCOMMITTEE ON CONSUMER AFFAIRS
OF THE HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

The American Retail Federation (ARF) deeply appreciates this opportunity to convey to the Subcommittee its observations and recommendation on the current status of federal consumer credit legislation.

Membership in ARF is composed primarily of state and national retail trade associations which, through their members, represent over one million retail establishments. The vast majority of retailers represented through ARF member associations either extend credit or honor third-party credit cards and thus, to varying degrees, are subject to one or more of the federal consumer credit protection laws.

Although federal consumer protection statutes are not new -- indeed, the Sherman Antitrust Act of 1890 was probably the first -- consumer credit protection dates back only to 1968. The original Truth in Lending Act was first introduced in 1960 by the late Senator Paul Douglas (D-Ill) and was signed into law 100 months later, on May 29, 1968. Since that time, businesspersons engaged in extending consumer credit have been nearly inundated by a cascade of consumer protection laws and regulations from Congress, from the Board of Governors of the Federal Reserve System, from the Federal Trade Commission, from the various state legislatures, and from any number of other federal and state agencies.

By way of federal legislation, alone, since the passage of the original Truth in Lending Act, Congress has also enacted (and the President has signed into law) the Fair Credit Reporting Act (1970, effective 1971); the Fair Credit Billing Act (1974, effective 1975); the Truth in Lending Amendments (1974, effective 1974 and 1975); the Equal Credit Opportunity Act (1974, effective 1975); the Equal Credit Opportunity Act Amendments (1976, effective 1976 and 1977); and the Consumer Leasing Act (1976, effective 1977).

During that same period of time, at least six states have enacted some form of Truth in Lending Act; ten states have adopted a Fair Credit Billing law; and some 23 states have passed some type of statute prohibiting discrimination in the granting of credit. And most of these state laws differ from each other. For example, under Connecticut law customers have 30 days from the mailing date of a statement in which to file a notice of billing error, whereas in neighboring Massachusetts there is no limitation on the time in which a billing complaint can be filed. Thus, the Connecticut statute was pre-empted by the Federal Fair Credit Billing Act, but the Massachusetts law was not.

State laws conflict in many other areas. For example, a Pennsylvania statute requires an extender of open end credit to state in the account agreement that a minimum finance charge of 70 cents may be imposed, even though due to certain provisions of the Federal Truth in Lending Act creditors typically impose a 50 cent minimum. In neighboring Ohio, customers must be told that state law permits a one dollar minimum finance charge, even though a creditor does not impose it. Thus, a retailer operating across the state line in both Ohio and Pennsylvania must make different disclosures to customers, both of which are meaningless, since the creditor must also disclose the minimum finance charge <u>actually</u> imposed -- typically 50 cents. And this is but the tip of the iceberg. Scores of other conflicts exist.

Also, during the last nine years, the Federal Trade Commission has promulgated Trade Regulation Rules relating to such matters as door-to-door sales and abrogation of holder in due course defenses, and has proposed additional trade regulation rules further limiting holder in due course defenses and prohibiting a number of widely used contract provisions.

Nor have the states been idle in these areas. Forty-nine states have passed laws providing a "cooling off" period for door-to-door sales many of which differ from the FTC Trade Regulation Rule, and almost half the states have placed some form of restriction on reliance on holder in due course defenses and use of waiver of defense clauses in contracts.

At the federal level, the matter is made more acute by what the Federation considers to be excessively broad delegation of rulemaking authority by Congress. For example, the Truth in Lending Act contains 33 delegations of regulatory authority to the Board of Governors of the Federal Reserve System. Attached is a summary of those 33 citations. Although not all such delegations of authority are overly broad, such delegations as those included in §§127(b)(2), 143(5), 144(b) and 161(b)(6) give the Board open-ended authority to extend the coverage of the act to areas not contemplated by Congress. For example, the authorization for the Board to describe, without limit, "any other error" as a billing error is entirely too broad; it may well be unconstitutional.

Perhaps the best example of regulatory excess occurred in connection with a five-line amendment to the Truth in Lending Act passed in 1974. The Board of Governors of the Federal Reserve System took that five-line statute relating to identification of transactions in open end periodic statements and translated it into eight pages of highly structured and complex regulations which the average small retailer finds difficult, if not impossible to understand.

In sum, the Federation feels that creditors have been subjected to many new laws and regulations, most of which apply across-the-board to all extenders of consumer credit but are so highly technical that creditors are unable to understand and comply with them -- and worse, the vast majority of consumers are unable to comprehend the benefits of their collective "protection."

As the situation now stands, it is the firm opinion of the American Retail Federation that creditors are burdened -- and consumers are confused -- by many laws and regulations enacted by many different governments and governmental agencies, most of which are entirely too complex. ARF feels that the time has come to call at least a temporary halt to the enactment of new or expanded areas of legislation in order to allow time for creditors to assimilate current requirements. We also feel that both the House and the Senate should undertake a comprehensive review of the benefits as well as the shortcomings of existing legislation. Certainly, at a minimum, every effort should be made to prepare a cost/benefit analysis with respect to existing laws and regulations.

In this connection, we note that the National Science Foundation last year awarded two contracts for the research design phase of a study of the benefits and cost of public regulation of the "entire range of consumer financial services." The design phase is to be followed later this year by the actual research under one or more contracts yet to be awarded. By way of recommendation, we urge this Subcommittee to review the design phase of that study, when completed, and upon completion of the final research, to appraise very carefully the need for further legislation in terms of its total cost.

We also recommend that Congress reexamine the existing delegations of regulatory authority in the Consumer Credit Protection Act. In this connection, we urge the Congress to decide what it wants and say what it wants and not delegate broad rulemaking authority to the Board or any other agency. After all, under our constitutional system, it is members of Congress -- not the various regulatory agencies -- that are the representatives of the People; it is the members of Congress who are elected by the People and who are responsible to them. The American Retail Federation recommends that Congress enact the specific laws by which we are regulated, and if rulemaking authority must be delegated, that the Congress delegate it with greater statutory precision than now exists. We also recommend that Congress consider withdrawing those existing delegations of regulatory authority with are overly broad or otherwise excessive.

We further recommend that this Subcommittee undertake systematic simplification of the existing laws, such as the Truth in Lending Act. ARF feels that that act and Regulation Z are already so complex that creditors are finding compliance difficult, if not impossible. And even worse, we feel that credit customers are being given so much information and so many legalistically written "notices" that much of the information is neither understood nor considered in the credit decision-making process. In this connection, we refer you to a study conducted at the Department of Psychological Sciences, Purdue University, relating to limits on the amount of information consumers can effectively use in reaching a decision.[1] Although that study related to food package label information, it is analogous to Truth in Lending disclosures, which are just another form of labeling. The researchers found that the results ". . . suggest that providing substantial amounts of package information can result in poor purchase decisions." The test group on which the study was conducted ". . . reacted to 'too much' information by giving it less attention, i.e., by 'tuning it out'." We feel quite strongly that the amount and complexity of information disclosed under Truth in Lending is resulting in much of it being "tuned out" by consumers.

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[1] Jacob Jacoby, Donald E. Speller, and Carol Kohn Berning, "Brand Choice Behavior as a Function of Information Load: Replication and Extension," Journal of Consumer Research, Vol. 1, June 1974, pp. 33-42.

We also feel that mandatory civil penalties and attorneys' fees for even the most hypertechnical of violations where actual damages are neither alleged nor proven is inequitable. These civil penalty provisions are responsible for escalating litigation and, even worse, for making the Truth in Lending Act and Regulation Z a bludgeon with which to settle disputes having nothing to do with credit. Accordingly, we recommend that this Subcommittee consider amending §130 of the Truth in Lending Act to limit the civil penalty provisions, as recommended by the Board of Governors of the Federal Reserve System, to violations that actually interfere with the consumer's ability to make meaningful comparisons of credit terms [such as] the annual percentage rate, the finance charge, the amount financed, and the repayment schedule," leaving other violations for "administrative remedies."

Finally, we urge this Subcommittee to analyze the interrelationship among the various existing federal statutes. For example, the Equal Credit Opportunity Act is intended to prohibit discrimination against women and to encourage them to establish credit in their own names. Yet, the Fair Credit Reporting Act seriously inhibits the opening of such individual accounts by restricting the availability of credit history information in cases of separation or divorce, and, under a recent proposed Federal Trade Commission interpretation, even during the marriage. Under that proposed interpretation, the credit history of an account carried only in the husband's name cannot be automatically accessed by the wife when applying for credit, even though she may be the family bill-payer and, for that reason, have been responsible for the good credit rating on that account. Clearly, this conflict was not intended, and should be reconsidered by this Subcommittee.

There is also the matter of the interrelationship between existing federal and state laws. For example, the Equal Credit Opportunity Act and Regulation B present formidable compliance questions in states where the age of majority may depend on marital status; that is, where a person is no longer under legal disabilities as a "minor" at age 18, if married, and at age 21, if unmarried. ARF recommends that this Subcommittee consider more definitive preemption provisions in existing federal statutes. In any event, we recommend that Congress abandon the very ambiguous test of "greater protection" to determine whether state or federal law applies. What is perceived to be "greater protection" to one applicant or consumer may not be "greater protection" to another.

All of these ambiguities, conflicts, and complexities need further and detailed study before going forward with any new laws, and we recommend that this Subcommittee undertake just such a study.

Mr. ANNUNZIO. I want to express my appreciation to all of you for being here this morning and part of the afternoon. We started these information sessions at the beginning of the 94th Congress, and they were very successful. We repeated the information sessions at the start of the 95th Congress. On Tuesday, from the consumer groups, I received many bouquets, and compliments. On Wednesday, I received the complaints of the regulators who don't run for office. And Thursday, today, I expected to leave the hearing bloody, but I'm happy that I'm leaving just slightly scratched.

[Laughter.]

Mr. ANNUNZIO. Nonetheless, I'm deeply grateful for your contributions this morning, and I know that your statements and the record will remain open and that we will carefully go over your remarks, as we listened very, very carefully this morning, because we need help. You especially made good points on the paperwork—the burdensome paperwork in the Government. And I'm hoping to add that to my agenda.

So I thank all of you for your efforts, for the help you have extended to the subcommittee. And good afternoon. The meeting stands adjourned.

[The following are written questions submitted by Chairman Annunzio to Mr. Fisher, along with Mr. Fisher's answers:]

Question 1. Doesn't the fact that most banks place a limit on the amount of money which may be withdrawn electronically indicate their fear of the security of electronic systems?

Answer. To some extent, yes. The limit is placed on withdrawal transactions, particularly with off-line machines to limit possible fraud losses and general charge-offs from uncollectable debt. This control feature is similar to the credit card authorization control system and restricted check-cashing practice employed by merchants and banks. Absent positive customer identification and a signed document, limits are a practical solution to controlling losses.

Question 2. It is true that at present banks are limiting the amount of money a person may withdraw electronically daily, but these are solely the limitations of individual banks. What assurance is there that these limitations will exist in the future, especially since no similar limit exists on either credit card or checking transactions?

Answer. There are available balance limits today on the amount of cash that can be made available through the credit card system and since all cash advances must be authorized, the procedure provides a limiting control. Most check cashers exercise restraint in the amount of cash permitted since the check can be returned for non-sufficient funds. These practices seem prudent for the future usage of machines. Unlimited cash withdrawal is not needed by the customer and is too risky for the issuer.

Question 3. You mentioned in a recent newspaper article that customer liabilities associated with using debit cards are identical with the liabilities when using credit card systems. Would you please explain how this can be since Truth in Lending's credit card provisions do not cover debit cards?

Answer. Most debit card issuers, certainly all of those issuing debit cards usable at a merchant's store, have extended the credit card requirements of Truth in Lending to cover the debit card. As a result, debit cards in virtually all cases, and certainly in the case of my bank, are issued only with customer permission; the liabilities are limited to $50 and charges, if any, are spelled out via a card-issuing mailer virtually identical to a credit card. The root of this procedure is the Federal Reserve opinion found in FRB Staff Letter #916 dated August 19, 1975, and Staff Letter #921 dated September 17, 1975.

This opinion is based on the fact or practice that a debit card, since it does not instantaneously debit accounts, must have some credit criteria associated with its issue. Some banks, issuing a transaction card usable in an automatic machine or for identification purposes but not at a merchant's store, issue cards without concern and do not follow the credit card practices.

Question 4. How can you refer to a responsible consumer who pays his bills on time as an *exploiter* of the system—when, in fact, credit cards are, in large part, promoted on the basis of their having a grace period for conscientious consumers?

Answer. My use of the term is relative. A customer who pays off within the 25-day grace period is exploiting the use of funds compared to those unable to do so. While this is permitted, and even encouraged, it does require that someone pay for the cost of money which amounts to about 3¢ per credit card usage for the 25-day grace period. This cost is added to the total cost of operation which in turn must be borne by those who cannot pay off during the grace period. That's why I say—one group of customers exploits the other.

Question 5. We have heard what the banks feel to be the advantages for them in electronic banking. How do you as a banker think the consumer will benefit from EFT systems?

Answer. Both currently and in the future, the principal consumer benefit will be more convenient access to financial accounts. As volume increases, expected cost savings may also be reflected in lower cost to the consumer or improved financial services at present costs. Eventually, the consumer will also have available a greater number of alternatives in bill payment and interest-earning accounts.

Question 6. If a computer error occurs during a telephone purchase or any other electronic transaction and the consumer had no paper proof of transaction, who would be liable for the error?

Answer. The liabilities of the account would not change. The customer could dispute the charge which in turn causes the bank to treat the claim as prescribed under the Fair Credit Billing Act. Incidentally, all telephone purchases require an authorization at the time of purchase, eliminating much of the risk and possible error.

Question 7. Since you assert that those paying beyond 25-day grace periods "subsidize" those who pay within 25 days, are you prepared to state that if such new charges are added to those who pay on time, finance charges will be correspondingly reduced for those not paying within the 25-day grace period?

Answer. No. It could happen but, in all likelihood, the additional income would be used to extend the service to higher risk customers. There could also be a softening of merchant costs as a result, but even that seems too angelic to expect.

[The following are written questions submitted by Congressman Vento to Mr. Fisher, along with Mr. Fisher's answer:]

Question 1. The production of electronic system will be costly. How will these costs be deferred?

Answer. These costs are unknown if you are referring to a national network or national system. The cost for the local installation of electronic systems is deferred through increased market share, displaced internal cost and other operating efficiencies, and through resale of the capability to other financial organizations. As electronic banking matures, more and more financial organizations look upon it as a requirement of doing business. It's no different than providing an asphalt parking lot or drive-in windows. Electronic banking will be a requirement to hold and gain customers.

Question 2. According to the testimony of Roberta Wieloszynski before this Subcommittee earlier this week, financial institutions in Syracuse are already charging new fees for using checks. Isn't it doubtful then that as EFT develops consumers will still be able to use alternate payment methods?

Answer. Charges for the checking system can be justified based on value. Many issuers of the NOW accounts find that they too must charge for the service. All payment systems, whether they are paper or electronic, must be financed by the consumer. The customer will, therefore, continue to have a choice of payment method based on cost and value.

[The following are written questions submitted by Chairman Annunzio to Mr. Grant, along with Mr. Grant's answers:]

Question 1. Will you please document that "almost all" of the Truth in Lending lawsuits are based on unintentional technical violations?

Answer. The statement that "almost all" Truth in Lending lawsuits are based on unintentional technical violations must be taken in the context in which it was made. Specifically, the statement was a reflection of the experience of a commercial banker and not of all institutions required to give Truth in Lending disclosures. Secondly, there is a divergence of opinion on what constitutes an unintentional technical violation. A bank lender considers only the following as a substantive violation: An intentional misrepresentation of either (1) the annual percentage rate (2) the finance charge (3) the amount financed and (4) the number, amount and due dates or periods of payments scheduled to repay the indebtedness. It is these categories which allow a consumer a meaningful disclosure of credit terms on which to compare and ultimately make a decision. Therefore when viewed in terms of the number of times an intentional misrepresentation is made of these important disclosures, it is correct to state that "almost all" Truth in Lending suits are based on unintentional technical violations.

We are unable, however, to provide specific information regarding the number of violations that are technical as compared to substantive both because of the difference in opinion on the correct definitions of those terms and because we are unaware of any source that keeps a specific running tally on information of this nature.

Question 2. Your testimony indicates there is Truth in Lending liability for unintentional technical violations. Isn't it a fact that since Truth in Lending passed in 1968, it has provided an express exemption from civil liability for unintentional bona fide errors where the creditor had procedures reasonably adopted to avoid such errors?

Answer. The liability referred to is the liberal interpretation of the courts of the Truth in Lending Act. As noted in *Mirabal v. G.M.A.C.*, 537 F. 2d 871 (7th Cir. 1976), . . . "courts have noted on numerous occasions the act should be interpreted liberally in favor of the consumer to effectuate its broad remedial purpose". Many lenders have concluded that it creates a "de facto" liability in that significant expense must be incurred in meeting the substantial burden of proof that allows a creditor to avoid civil liability.

Question 3. What proof do you have for your presumption that consumer compliance examinations will reveal only unintentional technical violations? Isn't it a fact that the recent Truth in Lending compliance study by the Comptroller of the Currency of 6 New England States revealed, as Tom Taylor, the Associate Deputy Comptroller for Consumer Affairs, stated, "an alarming degree of substantial noncompliance".

Answer. We are without definitive proof for our assumption that consumer compliance examinations will reveal "largely technical violations". We do know however, that bank lenders are aggressively attempting to gain compliance with both the "letter and intent" of the Consumer Credit Protection Act. It thus seems most reasonable to conclude that this effort will prevent violations other than those mostly technical in nature, if only the criteria (as outlined in response to the first question) is applied.

Without disputing the quote attributed to Associate Deputy Comptroller Taylor in your question, we did note Mr. Taylor's remarks before Chairman Rosenthal's House Subcommittee of the Committee on Government Operations on September 16th where he stated that the results of the New England study "convinced us that there was substantially greater noncompliance with consumer credit protection laws than we had previously thought". We assume this remark to include all instances of noncompliance without reference to "substantial noncompliance" which would be other than technical violations.

We would also encourage the committee to view even this comment in the context of the large number of loans involved as compared to the violations where actual monetary harm to the consumer is involved.

Question 4. I have a question about your proposal for a "cost/benefit analysis" to accompany future consumer legislation: Since the consumer is often in a position of unequal bargaining power in the marketplace, can we put a pricetag on fairness and on the social value of non-discrimination in the marketplace?

Answer. In suggesting that Congress engage in a cost/benefit analysis of consumer legislation, we were not unaware of the monumental task of assessing both elements.

The magnitude of the undertaking should not, however, be a permanent barrier to efforts to try to assess the respective costs and benefits of proposed consumer legislation, even when they must be measured in terms as amorphous as "social value" and "fairness". And for all the difficulty involved, only the Congress has the power to involve all the entities necessary to effect such an evaluation and to then sit in determination of the competing representations. Therefore, in view of the huge costs to lenders, some of which ultimately is reflected in increased borrowing costs, it seems only equitable to all concerned parties that an effort be made to construe the benefits in some manner that will allow a viable comparison to the costs involved. We continue to encourage such an effort.

[The following are written questions submitted by Congressman Vento to Mr. Grant, along with Mr. Grant's answers:]

Question 1. Why should violations of Truth in Lending be "unavoidable" since the Board is now issuing model leasing disclosure forms, considering such forms for the rest of Truth in Lending, and also making available formal staff advisory opinions, which if followed preclude liability?

Answer. The ability to avoid future Truth in Lending violations is still quite uncertain. Any expectation that violations may be avoided in the future turns in large part on the very provisions which are mentioned in the question. Specifically the availability of model forms is a recent and largely untested service of the Federal Reserve Board. Our experience with Truth in Lending to date has involved a wide variety of forms attempting to provide compliance with complex and changing regulations; e.g. Reg. Z and Reg. B.

Lenders are very encouraged by the new provision which precludes liability where there is proof of reliance on formal staff advisory opinions, however a concern exists that the very nature of this provision may cause a reduction in staff advisory letters.

Question 2. Will you please state specifically what you consider technical violations of Truth in Lending?

Answer. A technical violation could be described as a disclosure incorrectly made or omitted that does not affect the consumer's ability to make a credit judgment. And there are many required disclosures that are not necessary for comparison shopping. This highlights the need for a substantial compliance concept which would limit civil liability to a few categories of violations such as: (1) the annual percentage rate; (2) the finance charge; (3) the amount financed, and (4) the number, amount and due dates or periods of payments scheduled to repay the indebtedness. These few categories would allow a consumer to compare the only meaningful credit terms. Therefore, to hold creditors liable for other violations which are technical in nature serve no real consumer protection purpose.

[The following are written questions submitted by Congressman Fauntroy to Mr. Grant,[1] along with Mr. Grant's answers:]

Question 1. You have stated that bankers and other lenders have often found it impossible to avoid technical violations of the Truth in Lending law. At the same time, you doubt the average consumer's ability to comprehend all of the required disclosures. If the consumer *is* unaware of his rights, how do you explain the drastic increase in Truth in Lending related lawsuits?

Answer. This question could be best answered by referring to the testimony of an expert on this subject where the explanation for the increase in Truth in Lending suits is clearly articulated. Jonathan Landers, Professor of Law, University of Illinois and Visiting Scholar, American Bar Foundation in testimony on the Consumer Credit Protection Act before the Consumer Affairs Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs (July 28, 1976) presented in his written statement the following explanation:

TIL litigation.—Although the TIL remedy provisions were designed to enforce the disclosure provisions, they have taken on a far different character. In many jurisdictions, they are the most effective remedy for consumer grievances of any type.

How TIL cases originate.—It should be obvious that few clients come to a lawyer's office with an inkling that they have a TIL claim. To do so would require consumers to know the intricate provisions of the statute and Regulation Z, and except in the case of omitted disclosures, that the TIL statement did not comply. What, then, gives rise to TIL suits?

Four factors account for the predominate number of TIL lawsuits. First, if the credit transaction involves a purchase of goods and services, there is a dispute

[1] The answers to these questions were formulated by staff in consultation with Carl E. Grant of Oklahoma City, Okla.

involving the product or service. For example, the consumer may claim a breach of warranty, breach of contract, failure to service, misrepresentation, failure of consideration, or the like. The consumer frequently responds to such problems by stopping payment of the underlying obligation. When the creditor either sues or threatens suit the consumer seeks legal help and a TIL lawsuit results because there is also a TIL violation and the TIL suit is the most effective remedy. Second, and much less often than the first, the consumer becomes dissatisfied with the credit terms of his contract. For example, the monthly payment may turn out to be higher than he thought, he may look at the contract and find that extra charges have been added, or the like. Again, the result is a TIL suit, although it may be for a TIL violation which is different than the consumer's actual complaint. Third, and perhaps almost important as product related cases, are situations where the creditor is being dunned or sued for a debt and simply cannot pay. He may have lost his job, become sick, become overextended, or the like. He seeks legal advice having heard of bankruptcy or simply to do something to take the pressure off. The lawyer then examines the contracts and determines that one way to take the pressure off—and maybe give a few dollars to the consumer as well as pay his fee—is a TIL action. Thus, an affirmative TIL action is brought instead of a bankruptcy or insolvency proceeding. Fourth, TIL suits may be brought by bankruptcy trustees. A number of courts have held that TIL claims pass to the trustee. Indeed, there is reason to think that trustees have been extremely laggard in pursuing such claims. If trustees started prosecuting these claims with any degree of diligence, there could be several thousand additional cases each year.

It is doubtful that the Congress thought of TIL as a substitute for stated substantive law in consumer transactions, let alone, as a statute to be used by consumers as an alternative to bankruptcy. But this is how it has been used. To be used in this manner, TIL had to be a more effective remedy than state law. In fact, there were strong incentives for plaintiffs to bring TIL suits, and a strong disincentive for defendants to litigate.

Question 2. Do you have any figures to support your concern over the impact of the FTC's holder in due course doctrine on the cost and availability of some types of customer credit?

Answer. It will be difficult to provide hard data supportive of our stated concern over the impact of the FTC holder in due course doctrine until such time as the FTC makes final or dismisses its proposed creditor rule and until the consumer has had time to become aware and exercise the options available under the FTC proposal. It is only after such options are exercised and extensive litigation results will the real impact on consumer credit be felt.

At such time our Association anticipates engaging in surveys which will measure the impact and in turn conveying that information to Congress and other interested parties.

[The following are written questions submitted by Chairman Annunzio to Mr. Butler, along with Mr. Butler's answers:]

Question 1. Who will bear the cost of the development of EFT Systems?

Answer. Before attempting to respond to this issue or the other EFT questions the Subcommittee poses, let me point out that our Association membership consists of the installment loan or consumer credit departments of commercial banks. While we are vitally interested in the credit side of EFT, I sense the thrust of your questions is more toward the debit or deposit side. Our Association is monitoring the deposit side of EFT, but has not taken an active role in hearings on these matters. We assume that the results of the very extensive EFT Commission studies and the subsequent Commission findings will be valuable in charting future legislative or regulatory courses of action.

On the other hand, many of our member banks, such as my own, have combined consumer credit and deposit accountability under a single management. My responses in the EFT area, therefore, will tend to represent my own views and those of associates in the Consumer Bankers Association with whom I have had occasion to discuss these matters, but are somewhat less broadly representative of our entire Association than my responses on consumer credit issues.

I think it is very unclear as to who will bear the EFT cost. As a matter of fact, I think the greater likelihood at this point is that bank stockholders will bear this cost rather than bank customers. These systems are capital intensive and fairly expensive. Their eventual payoff is in operating expense deferment or market share gain. In the absence of heavy consumer demand for the service they are unlikely to command a premium price, but may very well experience some sort of discount pricing to create the utilization that will justify their expense. Unlike the operating expenses associated with consumer credit compliance that can be partially passed along directly to the consumer in the form of a less elastic reaction of rates to money market swings or indirectly via reduced credit availability *at the best rates* for some segments of the market, I think the areas where these capital type costs could be passed are much less apparent.

Question 2. You list only a few disclosure items. Don't you think disclosure as to required credit life insurance or as to a consumer's right to rescind are of value to consumers?

Answer. We have no conceptual problem with the consumer's right to rescind which is a separate notice apart from the truth-in-lending disclosure. As most consumers don't actually execute and return the rescission notice if they decide to rescind but, rather, simply don't pick up their check, we suggest the rescission notice could be greatly simplified and reduced to a positive statement of their rights written in understandable English, and handed to them with explanation but without signature.

As to required credit life insurance, we are not proposing it be eliminated from disclosure entirely. We suggest the four basic items which are of most interest and use to the consumer be clearly and distinctly disclosed at the top of the form and be subject to civil liability. Such other disclosures as Congress deemed appropriate could be indicated on the bottom part of the form and be subject to regulatory review. If those latter disclosures were also simplified, the customer would wind up with the highly visible information he/she needs while the rest of the disclosures would be available for review by customer, regulator and lender. If the disclosures in the body cause the disclosures at the top to be inconsistent, liability would still ensue for non-compliance.

Question 3. If Congress repeals 90 percent of the civil liability provisions of Truth-in-Lending as you suggest, what will persuade creditors to comply with the law?

Answer. I have great difficulty in accepting the apparent thrust of the latter part of this question. Creditors will comply with the law because it is the law. The members of our Association are law-abiding members of our society and are trying to provide valuable services to our customers in a manner profitable to our businesses. The last time I looked that was the essence of the free-market, capitalistic system.

In addition, we are not proposing the elimination of the already severe penalties for improper disclosure of the major four items previously discussed. That liability would remain and, in all probability failure to calculate or treat any other disclosures properly would result in errors in the disclosure of the four key items and produce a violation anyway.

Finally, whatever additional disclosures remain beyond the basic four would be subject to compliance review by a variety of Federal and State agencies. In addition, since Congress, or at least some key elements of that body appear to favor simplification and to agree that many disclosures given today are unnecessary and may be confusing, why would there be a need for severe compliance penalties to enforce superfluous disclosures?

Question 4. Why shouldn't small creditors be able to comply with Regulation B as you claim since formal staff advisory opinions and model forms will be available?

Answer. Regulation B is a much more complex regulation than Regulation Z. Further, we are told that advisory opinions will not be issued as frequently under Regulation B as Regulation Z. The Reg Z opinions most often explained some highly technical provision of the law and were of importance to those creditors whose compliance efforts were far enough along to cause them to identify that a problem existed. Smaller creditors have more basic problems and do not have the resources to continually update forms and procedures for compliance. If the creditor cannot afford assistance with regard to complying with the basic regulations, staff advisory opinions are worse than useless.

Finally, Reg B problems are not resolved by the model forms. The forms merely insure compliance with section 202.5. What assistance does the small creditor have when it comes to evaluating applications, documenting transactions, reporting credit, giving the proper notices in the time limits prescribed and retaining records. With all the foregoing I haven't mentioned even one word about the "effect test".

Question 5. As EFTS develops, do you think consumers should continue to have a choice whether to use EFT systems or paper systems?

Answer. The essence of the capitalistic system is competition. While it is virtually inconceivable that a bank would choose to move entirely to EFT systems, there is no reason to preclude that decision. Other banks will elect to offer both EFT and paper, possibly with pricing differentials, while still others may stay fully paper.

The consumer will have a choice because banks will compete to provide services that attract customers. Regulation would only serve to confuse the issue or restrict the ability of banks to provide innovative and competing services in the market place. Again this is an area that will presumably be addressed by the EFT Commission.

Question 6. Your testimony makes it sound as if a creditor must comply with inconsistent federal and state laws. Isn't it a fact that Truth-in-Lending provides that the federal law prevails if a related state law is inconsistent?

Answer. Generally, the law does provide as you state. The problem is determining when a state law is "inconsistent". For example, I provided the Subcommittee with a copy of our new Home Improvement Installment Contract which contains those notices under Pennsylvania's new Door-to-Door Sales Rule. The notices have to be included whenever a sale of $25.00 or more results from a contact with or call on the buyer at his residence. They have nothing to do with a lien interest acquired by the seller in the buyer's home. However, because the contractor does acquire a lien he is also obligated to give the rescission notice under Regulation Z. Now pursuant to 226.9(d) of Regulation Z, if after the customer rescinds the creditor does not take possession of the property within 10 days after tender by the customer, ownership vests in the customer. Under the new Pennsylvania Law, the seller has 20 days to pick up the goods after the notice of cancellation. If the rescission notice under Regulation Z and the cancellation notice under state law are given to a consumer in the same transaction; the above provisions are not necessarily inconsistent, but the state law seems to give the consumer less rights in certain instances than does Regulation Z. Must the state notice be labeled as an "Inconsistent Disclosure Under State Law" under 226.5(b)? Why should all these notices be given? Shouldn't one notice in easy to understand English suffice?

There is an anomaly, however, Section 171 of Chapter 4 of the Truth in Lending Act provides that the Federal Reserve Board may not determine that a state credit billing law is inconsistent with any provision of Chapter 4 if the Board determines that the state law gives greater protection to the consumer. But if such law is actually inconsistent with Regulation Z, the creditor is in a dilemma. In this particular instance, does the inconsistent state law preempt Regulation Z?

Question 7. Since you feel so strongly that a thorough impact review of current consumer credit laws should be done prior to passage of new laws, wouldn't it be prudent to also delay the so-called "simplification" amendments to Truth in Lending until such a thorough review is done?

Answer. Absolutely! Such a review can do nothing but fully support our positions. We comply with the law and have resources to maintain compliance while the impact study is done. Whether smaller creditors would agree on this issue may be open to question.

Question 8. Have the banks in your Association sent out unsolicited debit cards?

Answer. As noted above we are predominately a consumer credit association. I don't have complete information on this topic. My bank has not done so nor do I have personal knowledge of members of our Association who have. I will raise this issue with the membership and see if I can provide you with a more definitive response.

[The following are written questions submitted by Chairman Annunzio to Ms. Marunyak, along with Ms. Marunyak's answers:]

Question 1. Your problems with the cost of legislative and regulatory compliance seem to ignore the social value of such legislative purposes as insuring the ending of credit discrimination. Would you care to comment on this?

Answer. The primary purpose of NRMA's testimony during these broad-based hearings on consumer credit was to describe the current climate in which retailers offer credit to their customers and particularly to give members of the subcommittee further insight into retailers' motivation and problems in extending credit in today's environment of continually rising costs and increasing state and federal requirements. For this reason, and because we assumed that the record made in numerous previous hearings dealt amply with the social value of such legislation, we did not deal with the purported benefits which are supposed to accrue to consumers from such legislation. Our primary concern at this time is to reemphasize the need to carefully balance the consumer benefits and those purported benefits which are supposed to accrue to consumers—for example, the purported benefits from the required semi-annual or monthly Fair Credit Billing Act notices—against the tremendous costs and compliance burdens imposed upon creditors in connection with any future legislation in the consumer credit area.

Question 2. Paying for purchases by check has become more involved and time-consuming since the growth of credit card sales. If merchants begin accepting these debit cards, won't the use of checks and even credit cards be made increasingly difficult, such as adding service charge for using checks as is now being done in Syracuse, N.Y., until finally the consumer is forced to use the debit card?

Answer. The extent to which the use of checks will be made increasingly difficult because of the advent of debit cards, will depend largely upon the competitive atmosphere which exists among financial institutions rather than retailers. Without presuming to speak for those institutions, we must assume that to the extent that a free competitive market exists, services such as checking accounts will continue to be offered under conditions and at a cost which will motivate consumers to continue to use checks as an alternative payment method.

The retailing industry does not believe that the promotion of debit cards per se will adversely affect the use of credit cards, primarily because we view the debit card as a substitute for currency, and possibly as a substitute for the use of checks, rather than as a substitute for the deferred payment of goods or services by credit cards. To date we have no reason to believe that consumers' continuing demand to use credit cards, both for short and long term deferral of payment, will be threatened by the advent of the debit card. Further, as we pointed out in our testimony, since the primary aim of retailers is to sell merchandise, we would not oppose consummating such sales by the use of debit cards, just as we offer credit cards for that purpose, as long as there are no additional costs imposed in connection with the use of debit cards that are allocated to retailers.

Question 3. Since you feel that credit costs should not be subsidized by cash customers, has this led the 3,500 members of your Association to offer cash discounts?

Answer. Without conducting a survey of our members on this practice, we have no hard data indicating what percentage of NRMA's membership offers cash discounts. We do know that a minority of our members, generally small volume retailers, have on occasion offered cash discounts. As a general rule, however, it is the approach of our members to establish a cash price for merchandise which is "pure". That is, the cash price of our goods and services, to the maximum extent possible, does not include a charge for credit; rather the cost of credit is recouped by imposing finance charges upon those customers that choose to use credit. As we noted during the hearings, however, rising costs and fixed rate structures tend to prevent our members from having self-sustaining credit departments.

[The following are written questions submitted by Congressman Vento to Ms. Marunyak, along with Ms. Marunyak's answers:]

Question 1. I am aware that the National Retail Merchants Association has issued a policy statement opposing the establishment of debit cards which include a stop payment guarantee for the consumer. Why should the debit card be exempt from protection existing in both the credit card system and the checking system?

Answer. Alternative payment methods for the purchase of goods and services, such as currency, checks and credit cards, are expected to remain an important part of our economy for the foreseeable future. When a customer chooses the option of the debit card, however, we believe that this method of payment must be considered as the functional equivalent of currency.

As we testified during the hearings before the National Commission on Electronic Fund Transfers, the concerns of consumers about the loss of float and the ability to stop payment on a check should receive some consideration in a system of pre-authorized electronic payment of bills, but not when debit cards are used. Retailers will oppose adding any element to a debit card which on one hand permits the customer to use it as a substitute for currency, but on the other hand would deprive the retailer of the right to treat the transaction as the equivalent of cash. Having given a customer merchandise upon use of the debit card, we believe it is entirely appropriate that the retailer consider the transaction fully consummated upon presentation of such debit card. If the transaction is to be considered as an equivalent to currency, we believe that the stop-payment feature, which is in reality a function of float, simply cannot be considered a feature of that transaction; it disappears as a natural consequence of the decision to use the debit card.

Question 2. As I understand the NRMA policy statement on EFT, you want no restriction on the compilation or exchange of consumer credit information while at the same time you recognize the need for the consumer to be assured that the information will not be misused . . . How can this assurance be given with no regulations?

Answer. The discussion of our concern about limitations upon the exchange of legitimate credit-related information in the section of NRMA's policy statement on EFT entitled "Availability of Credit", does not stand for the proposition that NRMA opposes any restriction on the compilation and exchange of consumer credit information. Rather, we oppose any restrictions in addition to the restrictions and safeguards under which retailers and others currently are required to operate by virtue of requirements of the Federal Fair Credit Reporting Act. We believe that by virtue of requirements of that Act, consumers can be assured that the information will not be misused.

[The following are questions submitted by Congressman Fauntroy to Ms. Marunyak, along with Ms. Marunyak's answers:]

Question 1. In your testimony you stated that small retailers question whether customers of the honest merchant, who deals fairly with its customers, are really benefiting from consumer credit laws. Are you asserting that there are no dishonest or unfair merchants so consumers don't need any of these protective laws?

Answer. NRMA is not asserting that there are no dishonest or unfair merchants, nor do we assert that there is no need for consumer protection laws in the area of consumer credit. That is not the issue. The question with which we are concerned is the extent to which consumers are in fact benefiting from the laws currently on the books, a concern recently expressed by the very agency responsible for implementing these laws—the Federal Reserve Board. NRMA joins the Board and others in calling for a careful analysis of the extent to which the desired benefits to be achieved by these consumer credit laws are in fact being delivered, in view of the substantial cost to creditors in effectuating compliance.

Question 2. What, if any, guidelines have S. W. Metzler stores [sic] established for the protection of privacy and security with regard to the development of EFT Systems?

Answer. S. W. Metzler Stores at this time has not established guidelines for the protection of privacy and security with regard to the development of EFT systems because S. W. Metzler Stores does not at this time participate in any EFT system. If and when a retailer such as S. W. Metzler Stores does decide to participate with a financial institution or group of financial institutions in an EFT system, NRMA has taken the position in its policy statement on EFT that such retailers should take steps to ensure that the operator of the system protects consumers against the misuse of information, including the unauthorized access to and dissemination of information maintained in files related to their financial activity and protection from loss and theft of funds. We believe that providers of EFT systems must assure consumers that their systems contain reasonable security measures against the loss, alteration of and misuse of personal information.

[The following are written questions submitted by Chairman Annunzio to Mr. Pearce, along with Mr. Pearce's answers:

Question 1. In your testimony you stated that the costs of compliance have to be weighted against the benefits that this type of legislation purports to confer. How do you do a cost-benefit analysis on whether or not to permit credit discrimination against women, minorities, and the elderly?

Answer. This question focuses on one of the great difficulties in analyzing consumer credit laws and regulations from a cost/benefit standpoint, namely, how to place a cost figure on what is essentially a negative factor, e.g., the benefit of not being discriminated against. On the other hand, lender compliance costs are an affirmative factor, and as such can be measured through traditional cost analysis techniques. Several studies, including one being developed by this association, are underway with a view toward resolving this obstacle. In the meantime, problems of this sort should not serve as an excuse for unbalanced law and regulations. It simply requires that we make judgmental estimates on the one side of cost/benefit methodology. It is also important that we ensure that there actually exist instances of widespread discriminatory practices before enacting remedial legislation which necessarily is applicable to all creditgrantors.

Question 2. You mentioned that your association is in favor of the truth-in-savings concept. What benefits would such a concept have for consumers? What impact would it have on your members?

Answer. The basic argument for a truth-in-saving concept is identical to the rationale underlining truth-in-lending legislation, i.e., to allow comparative rate shopping. The impact of such a proposal on creditors would primarily be in the area of bringing about a more uniform system of computing interest payments. To some extent, this could reduce competition, but on balance the proposal would, in our opinion, insure to the best benefit of the consumer by increasing awareness and allowing more intelligent decisions to be made in the market place. Hopefully, such legislation would avoid the over-complexity and resulting creditor uncertainty that now characterizes truth-in-lending.

[The following is a written question submitted by Congressman Vento to Mr. Pearce, along with Mr. Pearce's answer:]

Question. Yesterday there was some discussion by witnesses about the problems involved in maintaining the confidentiality of bank customer records—both under the present system and under an EFT system. What, if any, safeguards do you feel are necessary to protect bank customer privacy at the present and in the future?

Answer. The question of privacy of bank records presents a conflict between two legitimate interests. On the one hand there is the interest of the individual in maintaining the privacy of his or her bank records. At the same time there is the interest of governmental law enforcement agencies in obtaining access to bank records for investigative and/or evidentiary purposes. The only way to resolve this conflict without prejudicing either side is to provide the government with the ability to obtain these records, but only after the individual has had due notice and an opportunity to show cause why the government should not be allowed to examine the requested records. Such protections were recently extended to bank records insofar as IRS summonses are concerned, and the need is to adopt similar procedural safeguards regarding other federal, as well as state, governmental agencies. Legislation to this effect was introduced in the last Congress, (H.R. 214) and was endorsed by this association. We are currently examining similar legislative proposals in the 95th Congress and have every expectation of endorsing them again.

[The following is a written question submitted by Congressman Fauntroy to Mr. Pearce, along with Mr. Pearce's answer:]

Question. You mentioned in your testimony that the recent increase in the truth in lending class action liability ceiling is likely to encourage more lawsuits. Isn't it a fact that class action suits have been severely limited by notification requirements set out recently by the Supreme Court?

Answer. Assuming that your question refers to the recent case in which the Supreme Court interpreted the Federal Rules of Civil Procedures to place a significant notificaton burden on plaintiffs in class action proceedings, it is probably true that the immediate effect of this decision has been to curtail the previous proliferation of class action suits. However, it should also be kept in mind that class action suits in state courts have increased markedly since this decision. Under the Consumer Credit Protection Act, federal penalties apply regardless of whether the state has procured an exemption, and plaintiffs generally have the alternative of proceeding with either a federal or state action in cases alleging violations.

[The following are written questions submitted by Chairman Annunzio to Mr. Evans, along with Mr. Evans' answers:]

Question 1. In your testimony you suggested that approval of forms by the Federal Reserve Board could be added to the administrative monitoring function. Wouldn't this greatly increase the government's cost in supervising Truth in Lending?

Answer. No, most assuredly not! It would increase the Federal Reserve Board budget, but overall costs to the government (and creditors and consumers) would be greatly reduced through greater initial compliance and fewer resultant challenges to the adequacy of form of disclosure. Most challenges to creditor compliance are based on questions of law—the legal sufficiency of the disclosure form itself—as opposed to questions of fact (omission, inaccuracies in figures, etc.). A form previously reviewed, corrected if necessary, and found to be in compliance by the Federal Reserve Board would simply not be an inviting target for a suit based on technical legal construction.

The benefits would be manifold: administrative compliance costs of agencies charged with enforcement would be less; federal courts would—especially in circuits such as the Fifth Circuit—experience a remarkable drop in case load; and finally, creditors would save considerable legal and forms reproduction expense—a deductible expense in which the federal government bears half the burden in lost tax revenues.

The many millions of dollars saved annually would seem to more than justify a modest increase in one agency's budget.

If the subcommittee is concerned that the undertaking would be more than a "modest" one, we (NCFA) would be most willing to provide a suggested methodology, together with proposals to ease the burden of the initial or transitional forms review period. The task need not be an onerous one; shorn of its "mind-boggling" dimensions and broken down into easily managed components, it could be carried out effectively, without time-consuming delay and at no great expense. If this is difficult to believe, please consider that one consumer credit regulatory agency, the California Department of Corporations, has for years accomplished this task with one or two people assigned to it, and has done so in a highly competent manner working with requirements as technically complex as Truth in Lending. In fact, the Department has done an excellent job with the Federal law as well.

Question 2. In suggesting that civil penalties be imposed only where there have been willful failures to comply in the five proposed basic disclosures, aren't you in fact proposing to use a standard of guilt commonly used in criminal law to determine whether there has been a violation of Truth in Lending?

Answer. The concept of willfulness was not offered to indicate that the degree of proof required be that accorded a criminal defendant (beyond a reasonable doubt) as opposed to the test of civil liability (preponderance). Willfulness was used only in the sense that "bona-fide error" relief would not apply to any intentional act of non-compliance.

Question 3. In suggesting that civil penalties be imposed for only willful failures to disclose the amount financed, the finance charge, the total of payments, the annual percentage rate and the schedule of payments, wouldn't this allow a person to willfully not provide credit life insurance disclosures and notice of the right to rescind contract notice without being subject to civil penalties?

Answer. Insurance cost disclosure seems out of place in a credit cost disclosure statute. The premium is obviously for insurance, not credit. The concept of insurance cost disclosure was offered originally as a means of regulating a perceived abuse, i.e., high ratio of insurance coverage to loans made under circumstances of "reverse competition". This problem has been largely diminished through state regulatory action: credit insurance premiums have been reduced drastically since 1968, when the Truth in Lending Act was passed. It should also be considered that insurance cost disclosure was being made long before Truth in Lending came into being and will still be made as a matter of (1) contract, and (2) credit insurance law disclosure requirements. Again, failure to disclose was not the abuse aimed at, premium (reverse competition) and penetration were. Direct premium regulation, not cost disclosure, has done more to correct whatever imbalances existed.

In any event, if a "disclose or be penalized" approach is to be retained, we commend codification of a widely employed (today) creditor practice of offering the insured a "free look" of up to 14 days with a right to terminate (rescind) during such period any or all credit insurance and obtain a full refund of the premium.

The right to rescind liens other than first liens to acquire a dwelling may be some benefit, but on the whole we do not believe that the costs of compliance and the inconvenience to the consumer are warranted by the requirement. Again—this requirement does not relate to cost disclosure, but stems from problems caused by itinerant "home improvement" persons, who took notes secured by second mortgages and discounted them to banks for cash. While no one can be in favor of fraudulent home improvement schemes it would seem that holder-in-due-course limitations would be a sufficient deterrent today to the purchase of such notes or contracts and, hence, would prevent their origination.

[The following are written questions submitted by Congressman Vento to Mr. Evans, along with Mr. Evans' answers:]

Question 1. Doesn't section 130 (f) of the Truth in Lending Act, the new provision which protects from liability anyone relying on an official staff interpretation of the Federal Reserve Board, substantially reduce compliance difficulties? Won't these difficulties be reduced even further if the Board issues model Truth in Lending forms as it has for Truth in Leasing and Equal Credit Opportunity?

Answer. Good faith reliance protection can be helpful, and most creditors are greatly appreciative of the action taken by Congress to extend this additional protection. It is a *limited* protection however and as such does not reach the area of single greatest abuse of the Truth in Lending law; i.e., the ease with which suits may be brought for so-called technical violations of law. As long as TIL is viewed as an instrument of social reform these problems will persist, at an inordinate cost to creditor and consumer alike. Until litigation—or the threat of it—is confined essentially to clear-cut issues of fact (was the required disclosure made or not) Truth in Lending will continue to provide a veritable "no fault" paradise for litigation-oriented attorneys.

It is this simplification in approach—not limitations on disclosure—that we seek to help stabilize the law of Truth in Lending.

Model forms will be helpful to some creditors (small ones), but to the extent that other creditors do not use them, they may have even greater litigious consequences. Either a very broad variety of model forms should be devised (what better than to show numerous examples of actual creditors' forms that do comply?) or none should be given at all. Better yet, the Fed should be given forms review and approval capability.

Question 2. In your testimony you took issue with the approach taken in Regulation B in attempting to prohibit discrimination in the granting of credit. How would you have written the Regulation to achieve the goal of nondiscrimination in the granting of credit?

Answer. Very simply—no regulation should have been written. The most far-reaching legislation of our time, The Civil Rights Act of 1964, had no "implementing regulation." Should a prohibition against credit discrimination require any more elaboration?

The act speaks in plain language—it could have been self-administering.

Even so, Regulation B could have been written so as to ease the compliance burden, not increase it.

The only crime under the Act is discrimination. Regulation B creates a body of adjective law—largely procedural—the violation of which is also a crime. Thus creditors can—and no doubt will—be found guilty of a crime without discriminating.

In our opinion, the purposes of the Act would have been better served by not creating *barriers* to the free flow of information: actual *use* of such information to discriminate is the act which should be penalized.

We respectfully urge the subcommittee—at the appropriate time, possibly the next oversight hearing—to solicit further information from all interested parties to see if some of the needless strictures of Regulation B cannot be eliminated.

[Whereupon, at 12:25, the subcommittee adjourned, subject to the call of the Chair.]

END