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Banking in the Consumer Protection Age

Capital Notes and Debentures

Cyclical Indicators of Economic Activity

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Banking in the Consumer Protection Age: Part I

Protection of the consumer is not a new idea in the United States. As long ago as 1914 the Federal Trade Commission was created with this objective in mind, and even today the FTC remains the principal guardian of the consumer against unfair and deceptive trade practices.

Fundamental changes are now occurring in the way Government seeks to protect the consumer, however. The new Consumer Age dawned for the banking industry in 1968 with passage of the Truth in Lending Act.[1] This was followed two years later by the Fair Credit Reporting Act.[2] A variety of similar bills are pending in Congress, including "Truth in Savings" and "Truth in Billing."[3] Twice within the past three years President Nixon has urged Congress to enact a comprehensive new legislative program aimed at establishing a "Buyer's Bill of Rights."[4] A new Office of Consumer Affairs has been created in the White House itself.

In the past, Government action to protect the consumer was chiefly directed toward suppression of overtly false and deceptive trade practices. The older approach, symbolized by the Federal Trade Commission Act, relied for its effectiveness upon administrative proceedings to correct false, deceptive or misleading practices after they had occurred.

In contrast, the key to the new approach is the requirement of affirmative disclosure of relevant factual information to the consumer, in writing, at a time when possession of the information will enable him to make more rational choices among competing vendors or creditors, or, in the case of Fair Credit Reporting, make it possible for him to eliminate erroneous and harmful adverse information from his credit file.

Both the old and the new methods of protecting consumers are of growing importance to commercial banks. Although banks are exempt from enforcement jurisdiction of the FTC, bank holding companies and their nonbank subsidiaries may not be in light of the particular wording of Section 5 of the FTC Act.[5] Thus, at the very time that banks find themselves subject to many of the new consumer protection laws, the older trade regulation rules enforced by the FTC may be applicable to bank holding companies and their nonbanking subsidiaries as they expand into new nonbanking business areas.

A formidable array of civil, criminal and administrative penalties may be imposed for failure to comply with the broadening spectrum of consumer protection laws. Banks and their affiliates face the added exposure of periodic examinations by Federal and State authorities who are increasingly conscious of their assignment to monitor compliance by the supervised institutions.

Background of Federal Consumer Protection Legislation The FTC was created in 1914 to aid in enforcing the antitrust laws by preventing "unfair methods of competition in commerce." However, until 1938 its effectiveness was impaired by court decisions restricting the power of the FTC to prohibit unfair and deceptive practices causing injury to the public. The leading case was the Supreme Court's 1931 opinion in *F.T.C.* v. *Raladam Co.*,[6] which held that the Commission could not prevent false and misleading advertising of an "obesity cure" even though it found that Raladam's advertising had deceived the public and that the preparation could not safely be used by the public without medical direction. The reason given by the Court for ignoring the harm to consumers was that ". . . there is neither finding nor evidence from which the conclusion legitimately can be drawn that these advertisements substantially injured, or tended thus to injure, the business of any competitor generally . . . ." False statements to the public in and of themselves, and without proof that the falsehoods diverted business from competitors, were thus deemed inadequate to invoke the FTC's jurisdiction.

Refusal of the Court to permit the FTC to protect consumers injured by dishonest business practices was particularly significant in view of the fact that common law remedies for deceit, misrepresentation

[1] Title I, Consumer Credit Protection Act, Public Law 90-321, May 29, 1968, 82 Stat. 145.

[2] Title VI, Consumer Credit Protection Act, Public Law 91-508, October 26, 1970, 84 Stat. 1128.

[3] S. 1848, S. 652 and H. R. 1125.

[4] Statement of the White House, October 30, 1969; Statement of the White House, February 24, 1971.

[5] Section 5(a) of the Federal Trade Commission Act provides, in relevant part:

> The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, *except banks* . . . from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce. (Emphasis added)

38 Stat. 719 (1914), as amended 52 Stat. 111 (1938), 52 Stat. 1028 (1938).

[6] 283 *U. S.* 643 (1931).

or breach of warranty are not effective in many consumer transactions. Sellers have usually been accorded wide latitude for "puffing" the claimed virtues of their products, and even when misrepresentation has been proved, the courts have tended to conclude that the consumer either should not have relied on the claims because they were obviously untrue or did not rely on them as an inducement to purchase. Apart from this, most consumer products are relatively inexpensive, and it is impractical for deceived consumers to hire lawyers to try to recover damages or rescind the transactions. Finally, attempts by the States to regulate business for the benefit of consumers have been spotty, at best.

In an effort to improve the consumer's position, Congress in 1938 adopted the Wheeler-Lea amendment to the Federal Trade Commission Act, adding the words in italics to Section 5 of the FTC Act:

> Unfair methods of competition in commerce, *and unfair or deceptive acts or practices in commerce,* are hereby declared unlawful.[7]

The House Report on the amendment emphasized its purpose of equalizing the consumer's status with that of the businessman in FTC proceedings:

> By the proposed amendment to Section 5, the Commission can prevent such acts or practices which injuriously affect the general public as well as those which are unfair to competitors. In other words, *this amendment makes the consumer, who may be injured by an unfair trade practice, of equal concern, before the law, with the merchant or manufacturer* injured by the unfair methods of a dishonest competitor.[8]

Yet even after Wheeler-Lea, the FTC's ability to protect the public against deceptive business practices has remained limited. One reason is that the Commission has very little power to prevent unfair and deceptive practices at the local level, where most consumer deception occurs, except in Truth in Lending cases. Under Section 5 of the FTC Act, unfair methods of competition and unfair and deceptive acts or practices must actually be "in commerce" —meaning interstate commerce—to be subject to FTC jurisdiction. Purely intrastate transactions, or ones which merely affect interstate commerce but are not "in" such commerce in the sense of crossing state lines in some respect, are beyond the Commission's reach.[9]

Until recently, another factor constricting the Commission's power in deceptive practices cases was the reluctance of courts to permit the Commission to require affirmative disclosures of information. This is illustrated by the Commission's "tired blood" cases. In *Alberty* v. *F.T.C.*[10] the defendant sold Vitamin A Shark Liver Oil, Oxorin tablets and other nostrums, advertising their alleged beneficial effects along the following lines:

> Pep up your blood! Iron * * * A principal factor in Red Blood Cells. * * * The disease Fighting Units of the Blood.
>
> When you are weary, tired, run-down, just dragging yourself around with no ambition left, when every effort you make seems to leave you weak and spent then try Oxorin Tablets, a tonic for the blood.

In fact, the products would not help people who were tired and run-down except where their symptoms were due to simple iron deficiency anemia, and most people with the advertised symptoms did not have iron deficiency anemia. The Commission's remedial order therefore required Alberty to disclose that ". . . the condition of lassitude is caused less frequently by simple iron deficiency anemia than by other causes and . . . in such cases this preparation will not be effective in relieving or correcting it." Alberty objected to this order and the reviewing court refused to require it. The court said:

> In short, the Commission requires that the advertiser tell the public that his product is more frequently valueless than it is valuable.
>
> * * *
>
> The Commission must find either of two things before it can require the affirmative clause complained of: (1) that failure to make such statement is misleading because of the consequences from the use of the product, or (2) that failure to make such statement is misleading because of the things claimed in the advertisement. There is no such finding here.[11]

On occasion the Commission has been able to prove one or both of the two prerequisite items specified above. A recent example is in connection with "Geritol," another heavily advertised remedy for so-called "iron-poor" blood.[12] Yet even here, after ten years of litigation with the maker and its advertising agency in which the Federal court approved an affirmative disclosure order along the lines of the one rejected in *Alberty* years earlier, the Commission was eventually forced to refer the matter to the Department of Justice.[13]

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[7] 52 Stat. 111 (1938).

[8] House Report No. 1613, 75th Cong., 1st Sess. (1937), p. 3 (Emphasis added).

[9] *F. T. C.* v. *Bunte Bros., Inc.*, 312 *U. S.* 349 (1914). Legislative proposals are now pending in Congress to broaden the Commission's jurisdiction to cover transactions that merely "affect" interstate commerce. If one of these proposals becomes law, it is reasonable to assume that few transactions thereafter will be beyond the Commission's jurisdiction.

[10] 182 F.2d 26, *cert. den.*, 340 *U. S.* 818 (1950).

[11] 182 F.2d, pp. 38-39.

[12] *J. B. Williams Co.* v. *F. T. C.*, 381 F.2d 884 (6th Cir., 1967).

[13] In April of 1970 the Department of Justice filed suit in the United States District Court for the Southern District of New York charging the Williams Company and its advertising agency with violations of the Commission's order, originally entered in 1962 and affirmed by the Court of Appeals in 1967. The complaint charged the defendants with continuing to advertise the product in a manner prohibited by the order, and sought civil penalties of $500,000 from each defendant. 458 *Antitrust & Trade Regulation Report*, p. A-22, April 21, 1970.

Ironically, the very success of the FTC in combating overtly false representations has had certain adverse consequences for the consumer. It has, for example, tended to inhibit all representations of fact in advertising. The advertising art has become increasingly successful in getting its message across by the shrewd use of innuendo, ambiguity and suggestion without misstating anything factual at all. As a matter of law, except where affirmative disclosure is specifically required by statute, the vendor or creditor does not have to furnish the consumer with any factual information. The general rule was stated in the House Report on the Wheeler-Lea amendment to the FTC Act as follows:

> It will be observed that it is not mandatory on the advertiser to state anything. The only requirement is in case he does advertise, he shall not make statements that are misleading in a material respect.
> It is incumbent on the advertiser to reveal facts material in the light of representations made in the advertisement.[14]

New Approaches to Consumer Protection A portent of change to come in the rationale of consumer protection legislation was the Automobile Information Disclosure Act of 1958, requiring manufacturers of new automobiles to post a label on the window or windshield of each new vehicle stating its make, model, name and retail price, and itemizing each optional item with its price.[15] The law was enacted because Congress felt that automobile merchandising techniques had reached the stage where most consumers could not determine comparative costs of competing vehicles in a way that would enable them to make informed choices, no matter how diligent their efforts.

Then, in the 1960's, after a heavy barrage of consumer messages and proposed bills from Presidents Kennedy and Johnson, Congress began to make further important inroads into the privilege of sellers, lenders and advertisers to say nothing factual, or at least as little as possible, about their products and services. In 1966 Congress took note that in modern consumer markets, packages themselves are a major promotional device. Because of this, Congress concluded that the package's role as its own best advertisement increasingly conflicted with the function of informing consumers of contents, quantity and price.[16] It was believed that large numbers of consumers were frustrated in trying to determine the contents or comparative cost of the 8,000 or more prepackaged items on the shelves of supermarkets, drug stores and other self-service establishments. The Fair Packaging and Labeling Act of 1966 was the result. Among its requirements, every "consumer commodity" (as the term is defined in the Act) must carry a label identifying the product by name, giving the name and place of business of the manufacturer, packer or distributor, and showing the net quantity of contents.[17]

Different problems confronted consumers in markets for larger, more expensive durables such as automobiles, furniture and appliances, and for home improvements. Credit is needed to finance most of these purchases, yet many consumers felt that it was literally impossible to shop for credit in any effective way. This was because a host of different credit disclosure practices had grown up, in large part to avoid violations of state usury ceilings, and most of the different disclosure methods were not comparable. In determining finance charges, some creditors used an "add on" rate which understated the simple annual interest rate by about 50 percent, while others used monthly rates. Yet a different group added various fees or charges to the stated rates. Many disclosed no interest rates at all, giving instead the cost of credit in dollars and cents. Many more quoted only a weekly or monthly installment charge. A further element of confusion was that no single method of computing interest charges on a simple annual basis was in use, even among creditors who disclosed percentage charges. At least seven different methods may be used to compute simple interest on a per annum basis, each resulting in a somewhat different finance charge, and all were in wide use before 1969. Testimony before Congressional committees indicated that no one segment of the consumer credit industry felt that it could reform itself without risking violations of usury laws and incurring significant competitive disadvantages.[18]

A more fundamental problem, however, was that many consumers buying on credit were utterly unaware that they were in reality shopping in two distinct markets: one for the particular product or service desired, another for funds to finance the purchase. A survey conducted by a private research

[14] House Report No. 1613 on S. 1077, 75th Cong., 1st Sess. (1937), p. 3. Among the important exceptions are the Federal Food, Drug and Cosmetic Act, 52 Stat. 1040 (1938); the Wool Labeling Act of 1939, 54 Stat. 1128 (1940); The Fur Products Labeling Act, 65 Stat. 175 (1951); The Flammable Fabrics Act, 67 Stat. 111 (1953); and the Textile Fiber Products Identification Act, 72 Stat. 1717 (1958). Although the consumer benefited from these laws, in a number of cases they were designed primarily for the benefit of producers such as those who make products from wool or fur, to protect them from less reputable concerns passing off their merchandise as "100 percent wool" or "genuine chinchilla," for example.

[15] Automobile Information Disclosure Act, Public Law 85-506, July 7, 1958, 72 Stat. 325.

[16] Senate Report No. 1186, May 25, 1966, *U. S. Code Cong. and Adm. News* (1966), Vol. 3, p. 4070.

[17] Public Law 89-755, November 3, 1966, 80 Stat. 1296.

[18] *U. S. Code Cong. and Adm. News* (1968), Vol. 2, p. 1970.

firm under contract with the Board of Governors just before Truth in Lending went into effect in July 1969 revealed that large numbers of the respondents, ranging from 26.7 percent on first mortgage loans to 57.7 percent on purchases of furniture and appliances, had no idea what rate of interest they were paying for consumer debt. Equally significant, the evidence indicated that those who *thought* they knew what interest rate they were paying in reality had seriously underestimated the cost of their credit.[19]

Growth of the Consumer Credit Industry Since 1945 the consumer credit industry has been one of the most rapidly expanding segments of the United States economy. Excluding real estate mortgage loans, the amount of consumer credit expanded from about $6 billion at the end of 1945 to almost $100 billion by late 1967, the year before the Truth in Lending law was enacted. Moreover, of the latter amount almost $75 billion consisted of installment credit, the type of credit in which finance charges tend to be highest and least understood by consumers. Automobile paper accounted for over $31 billion of the total, or about 30 percent, while revolving or "open end" credit was almost $6 billion. Although "open end" credit had traditionally consisted primarily of charge accounts of department stores and mail order houses, by 1968 commercial banks were increasingly entering this area. The House Report on the Truth in Lending bill stated that "Currently, American families are paying approximately $13 billion a year in interest and service charges for consumer credit. This is about as great as the Federal Government itself pays for interest on the national debt."[20]

There was no doubt that serious abuses existed in some segments of the consumer credit industry, although no evidence was ever produced showing any such abuses by commercial banks. One study from the files of the Cook County, Illinois (Chicago) Bankruptcy Court revealed that finance charges ran as high as 283.9 percent for used cars, 235 percent for TV and hi-fi sets, 199.6 percent for clothing and 105.2 percent for furniture.[21]

By 1968, Truth in Lending was an idea whose time had come.

Fundamentals of Truth in Lending The basic objective of the Truth in Lending Act is stated in its opening declaration:

> It is the purpose of this title to assure a meaningful disclosure of credit terms so that the consumer will be able *to compare more readily the various credit terms* available to him and avoid the uninformed use of credit.[22]

To achieve its purpose, the Act's coverage is exceedingly broad, and penalties for failure to comply are both severe and varied. Every individual person, partnership, corporation "or any type of organization" must comply with its requirements, provided but one criterion is met: that such person or organization is regularly engaged in extending credit or arranging for its extension to natural persons who use the credit primarily for personal, family, household or agricultural purposes. Even today no one has any very reliable data on the number of creditors subject to the Act, but the number is clearly very large. In 1970 the Board of Governors estimated that between 250,000 and 1,000,000 individuals and organizations were covered.

Two particularly difficult initial problems in achieving compliance with Truth in Lending resulted from the extremely broad definition of consumer creditor. First, many people and organizations were covered who had never previously regarded themselves as engaged in extending consumer credit. Second, the many differing classes of consumer creditors—ranging from banks and department stores to plumbers and dentists—were required to conform their various methods of making disclosures (if, in fact, they were making any prior to Truth in Lending) to the method specified in Regulation Z, using standard terminology to disclose the required information on a comparable basis. These formidable obstacles to compliance were overcome, in the months after the Act was passed, by a massive education program organized and administered by the Federal Reserve System and other Federal agencies with responsibilities for enforcement.[23]

Congress delegated the duty of drafting and publishing a regulation defining the precise requirements of Truth in Lending to the Board of Governors, over its protest that the task should, more

[19] Survey of Consumer Awareness, Appendix to Annual Report, Board of Governors of the Federal Reserve System, 1969. As early as December 1966, the four Federal agencies supervising banks and savings and loan associations (the Board of Governors, the FDIC, the Comptroller of the Currency and the Federal Home Loan Bank Board) began to require their supervised institutions to state interest rates in terms of the simple annual rate of interest.

[20] House Report No. 1040, December 13, 1967, *U. S. Code Cong. and Adm.* News (1968), Vol. 2, p. 1967.

[21] *Congressional Record*, June 14, 1967.

[22] 82 Stat. 146 (1968).

[23] More than 1,300,000 copies of an informational pamphlet prepared by the Board, entitled "What You Ought to Know About Truth in Lending," were distributed to creditors and the public. Visual aids, including a professionally produced filmstrip with accompanying recorded discussion and projection slides, were made available through the Federal Reserve Banks and the Federal enforcement agencies to anyone who expressed interest. Speakers were provided by the Board, other Federal enforcement agencies, and the Reserve Banks. Literally thousands of written and telephone questions regarding the requirements of Regulation Z were answered.

appropriately, be performed by a consumer-oriented agency such as the Federal Trade Commission. The exceedingly broad mandate from Congress authorizes the Board to make "such classifications, differentiations, or other provisions, and . . . provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title to prevent circumvention or evasion thereof, or to facilitate compliance therewith."[24]

All types of consumer credit are divided into two basic classes—"open end" and "credit other than open end" (referred to hereinafter as "closed end"). "Open end" credit is defined as credit that meets three basic requirements: (1) it is extended under a plan pursuant to which the creditor (such as a large department store or credit card issuer) may permit the customer to make purchases or obtain loans from time to time, directly from the creditor or indirectly by use of a credit card, check, or other device; (2) the customer has the privilege of paying the balance in full or in installments; and (3) a finance charge *may be* computed by the creditor from time to time on an outstanding unpaid balance.[25] All other consumer credit falls into the "closed end" category.[26]

A major question has arisen with regard to whether a finance charge must be assessed in order for disclosures to be required. The controversy originates with the very definition of "consumer credit." The term is defined to include credit ". . . for which either a finance charge is or may be imposed or which, *pursuant to an agreement, is or may be payable in more than 4 instalments.*"[27]

The Board of Governors believes that the four-installment rule is necessary to prevent creditors from evading compliance with Regulation Z by simply not imposing a finance charge as such, but instead increasing prices when purchases are to be paid for over a period of time. This reasoning and the four-installment rule itself were approved by the Federal District Court in Chicago in the case of *Strompolos* v. *Premium Readers Service*.[28] The court noted that a seller in any industry selling primarily on long-term credit could easily set a theoretical unitary cash and credit price, knowing no one would pay in less than four installments. By this means it would be possible for such a seller to effectively exempt himself from coverage under the Act if there were no four-installment rule, or one similar to it.

In a more recent decision, however, a United States Court of Appeals has declared the four-installment rule invalid as an improper exercise of delegated authority by the Board, and also on the grounds that it amounts to an unconstitutional "conclusive presumption" violative of the Fifth Amendment.[29] The question whether a direct finance charge must be imposed in order for Truth in Lending disclosures to be required is clouded at this point. In all likelihood, further litigation or legislation will be required before the issue is resolved.

Another unusual feature of Truth in Lending, and one that has been exceedingly troublesome, is the inclusion of discounts for prompt payment in the statutory definition of "credit." This is a traditional practice in some consumer industries, and where such discounts are given, full disclosures required by Regulation Z must be made. This has caused some vendors to simply abolish the discounts.

The two critical disclosure elements in most consumer credit transactions are the annual percentage rate (APR) and the finance charge. Both terms are defined in Regulation Z. The finance charge is the cost of credit in dollars and cents as determined in accordance with detailed procedures set forth in Section 226.4 of the Regulation. The APR is the finance charge converted to a percentage in accordance with specified procedures listed in Section 226.5 of the Regulation. Different methods are prescribed for computing the APR, depending upon whether open end or closed end credit is involved.

The distinction between open end and closed end credit is, in fact, of crucial importance for any creditor seeking to comply with Regulation Z. To be sure, a number of important disclosure requirements apply to both types of consumer credit. There are many differences, however, not only in disclosure requirements but also in connection with the advertising of credit terms, depending upon whether open end or closed end credit is involved. As pointed out in an opinion letter by the staff of the Board of Governors:

> Whether a particular advertisement falls within §226.10(c) *Advertising of open end credit* or §226.10(d) *Advertising of credit other than open end*, . . . depends upon the character of the particular plan being advertised. If that plan meets the definition of open end credit in §226.2(r) the advertisement would be governed by §226.10(c) [of Regulation Z]. If it does not meet that definition it would be subject to §226.10(d). Study of the credit plan itself should reveal whether it meets

[24] 82 Stat. 147 (1968).

[25] Regulation Z, Section 226.2(r), 12 C.F.R. 226.2(r).

[26] Regulation Z, Section 226.8, 12 C.F.R. 226.8.

[27] Regulation Z, Section 226.2(k), 12 C.F.R. 226.2(k).

[28] 4 *Consumer Credit Guide*, ¶99,471 (D. Ill., May 18, 1971).

[29] *Mourning* v. *Family Publications Service, Inc., Antitrust & Trade Regulation Report*, No. 531, September 28, 1971, pp. A-7 and A-8.

the tests of §226.2(r). The fact that a particular customer chooses only to finance a single transaction under the plan would not necessarily affect its characterization. We will be happy to consult with you as to the proper category under Regulation Z applicable to a particular plan.[30]

The Right to Rescind Cutting across the entire fabric of Truth in Lending is the right of rescission, a new consumer right created by the Truth in Lending Act. Its purpose is to give the consumer a "cooling off" period to reflect on the possible loss of his family's residence as a consequence of his impulse purchase on credit.

Two *separate* and equally significant consequences flow from the right to rescind. First, where the right exists, additional disclosure requirements are imposed on the creditor in order that the consumer may be notified of this right and informed how to exercise it. Second, failure to make all the required disclosures, including how and when one may rescind, leaves the consumer with a continuing power to rescind the transaction until the disclosures are actually made, regardless of how far in the future this event may occur.

The right to rescind a consumer credit contract arises when a creditor retains a security interest in real property used or intended to be used by the consumer as his principal residence. This absolute right continues until midnight of the third business day following consummation of the transaction in which the security interest was acquired or retained by the creditor, *or until delivery of the required disclosures to the consumer,* whichever is later. As indicated above, if the creditor fails to make the required disclosures either through oversight, error or by design, the right continues indefinitely.[31]

When a consumer rescinds, he is not liable for any finance or other charge, and any security interest he has given becomes void. Within ten days after receipt of the notice of rescission, the creditor must return to the consumer any down payment or earnest money and ". . . take any action necessary or appropriate to reflect the termination of any security interest created under the transaction." In addition, the consumer is permitted to retain any property delivered to him until the creditor performs his duties. Thereafter, the consumer must tender such property to the creditor, but may do it at his residence or at the location of the property, whichever the consumer chooses. If the creditor fails to take possession of the property within ten days, title vests in the consumer.

The varied consequences of rescission for creditors have caused many to seek to prevent the right from arising by waiving all security interests in residential real property of consumers. Two particular problems are encountered in attempting to waive the right. One is that some security interests arise by operation of law—for example, mechanics and materialmen's liens—regardless of what the creditor wants to do. To illustrate the point, installation of wall-to-wall carpet may under some State laws create a security interest in the real estate for the benefit of the workmen, even if the seller of the carpet acquires no interest for his own benefit.[32]

The second problem concerns confession of judgment clauses in promissory notes signed by consumers. Such clauses frequently authorize creditors to create a lien on a consumer's residence in the event of default. In order to prevent circumvention or evasion of the consumer's right of rescission, the Board of Governors has ruled that all liens which may be entered against the consumer without notice and an opportunity for hearing, whether or not recorded, are included in the term "security interest."[33] However, such clauses are *excluded* from the definition of security interest in those states where the obligor is entitled to notice of the pending action and is afforded an opportunity to enter defenses *before* a lien may be recorded on his residence.[34]

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[30] 4 *Consumer Credit Guide,* ¶30,185 (October 16, 1969).

[31] There is one significant exception to the right to rescind: it does not apply "to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling." Perplexing questions arise in determining when this exception applies. The confusion stems from the fact that the term "residence" is used in creating the right, while "dwelling" is used in defining the exception; and the definitions of these terms are not the same. "Residence" means real property in which the customer "resides or expects to reside," and includes ". . . a parcel of land on which the customer resides or expects to reside. . ." regardless of whether there is a dwelling. The term "dwelling" is defined as ". . . a residential-type structure which is real property and contains one or more family housing units, or a residential condominium unit wherever situated." Accordingly, the right to rescind arises where a first mortgage is given on an unimproved lot which may be the customer's "residence" in the future, but not where the first lien is given in connection with the acquisition of a "dwelling" in which the consumer resides or expects to reside.

[32] See, e.g., 4 *Consumer Credit Guide,* ¶30,061; 12 *C.F.R.* 226.901.

[33] 4 *Consumer Credit Guide,* ¶30,064.

[34] 4 *Consumer Credit Guide,* ¶30,001; 30,064; 30,193; 30,422; 30,450; 30,462; 30,473; 30,527.

Part II, to appear next month, discusses the current status of criminal and civil enforcement of Truth in Lending and comments on the special compliance problem involved in discounting dealer paper by banks and other financial institutions. It also reviews the regulation of consumer credit advertising under Truth in Lending.