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[Truth in Lending Act]

Statement by
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Comptroller of the Currency
before the
Subcommittee on
Consumer Affairs
of the
House Committee on Bank
and Currency

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Madam Chairwoman and members of this distinguished Committee, I am pleased to appear before you today to testify on the Truth in Lending Act and related consumer protection issues. In July 1969, the Truth in Lending Act became effective and for the first time in the history of our country consumer credit, or one aspect of consumer credit (disclosure), came under the aegis of federal control and regulation. Since 1969, Truth in Lending has been amended twice with the addition of two new major sections relating to credit cards and the reporting of information on consumers -- The Fair Credit Reporting Act. Under consideration by the Congress is a "Truth in Savings Act" and a "Fair Credit Billing Act."

Certainly one of the legitimate areas of inquiry by Congress and specifically this Committee, is who should regulate this important field. Should all consumer matters be turned over to a single agency or bureau as suggested in the Report of the National Commission on Consumer Finance? Or do the banking agencies, the Federal Trade Commission and other regulatory agencies have a legitimate and primary role to play in this field? Can these agencies adequately protect the interests of consumers, or are they truly captives of the industries they regulate,

as has been suggested on a number of occasions, not only in the press, but in testimony before the Congress? These are certainly important questions which require straightforward answers and I appreciate this opportunity to share with you a few thoughts on these matters.

I would like to begin my testimony today with a discussion of some of our recent efforts to safeguard the interests of consumers who deal with national banks. This is a particularly relevant topic, not only because the National Commission on Consumer Finance has recommended the creation of a Consumer Protection Agency with authority to supervise all examination and enforcement functions under the Consumer Credit Protection Act, but also because I have a strong personal interest in protecting consumers from unfair and deceptive practices.

Let me start by describing our present procedures for handling consumer complaints. All written complaints addressed to the Washington Office are reviewed by a supervisory-level attorney. Each complaint is then assigned to a staff attorney for investigation or to one of our fourteen regional offices. In either case, all letters from consumers are acknowledged promptly with an assurance of a definite response upon completion of our investigation.

The next step is to ask the bank involved for a full explanation in writing. Our request to the bank is often accompanied by specific questions which we believe may be important in obtaining a complete picture of the facts surrounding a particular complaint. If we ultimately decide that the bank's position is correct, we inform the

consumer by letter and provide a detailed explanation. On the other hand, if we believe the bank has erred, we request that restitution be made or an accommodation reached that is satisfactory to both parties. In nearly every instance, cooperation on the part of the bank is forthcoming immediately.

In more difficult cases involving disputed questions of fact or law, the Office may send a national bank examiner to the bank to make a special on-the-spot investigation of the consumer's complaint. We do not hesitate to insist that the bank furnish us with a comprehensive legal opinion from its attorneys if the situation warrants it.

We recognize, of course, that consumer protection involves more than responding to consumer-generated complaints. A conscientious effort must also be made to uncover, during our examination, violations of consumer protection laws. To this end, national bank examiners devote considerable time to scrutinizing individual bank installment and real estate loan departments, where violations of federal and state consumer protection laws are most likely to be found.

The process of educating the examiner in the requirements of consumer protection acts is a matter which now receives special attention. All new examiners are given instruction in this area, usually by a qualified attorney. In addition, regional staff conferences attended by all examiners in a particular region frequently feature a lecture by an attorney familiar with consumer protection laws. Recently, for example, all national bank examiners

in the Twelfth National Bank Region (Arizona, Colorado, Utah, New Mexico and Wyoming) received instruction in the Uniform Consumer Credit Code from a lawyer formerly associated with the National Conference of Commissioners on Uniform State Laws. In Kansas, our regional office is currently conferring with state officials to determine the best means of educating state and national bank examiners in the provisions of the UCCC, which becomes effective in that state on January 1, 1974. In fact, enforcement of the UCCC will be further explored at a meeting scheduled for November 15 between representatives of our Washington Office and the state administrators of the Uniform Consumer Credit Code.

We believe that our present efforts on behalf of the consumer are effective. Nevertheless, the Comptroller's staff is presently restudying our entire approach to consumer problems to determine if we are doing all that we can. Consideration is being given to the establishment within the Office of a division of consumer affairs and to the training of examiners who will serve as specialists in the field of consumer credit. We also contemplate increased liaison with state banking supervisors and administrators of state consumer protection acts.

In speaking appearances throughout the nation, I am emphasizing that the Comptroller's Office does not and will not treat the consumer's interest lightly. Recently, before the annual convention of the American Bankers Association, I announced our intention to intensify consumer protection enforcement and advised that our Office is going to insist

that all national banks serve their customers in an equitable and nondiscriminatory manner. Deceptive practices have no place in our system, and we do not intend to allow them to exist.

In view of our substantial undertaking and interest in safeguarding consumer interests, we cannot agree with the assumption of the National Commission on Consumer Finance that this Office is unwilling or unable to act in this area. We strongly oppose the Commission's recommendation that the proposed Consumer Protection Agency be authorized "to issue rules and regulations and supervise all examination and enforcement functions" against banks under the Consumer Credit Protection Act. In our view, the Commission's recommendation will yield less protection rather than more to the consumer, and will inevitably result in duplication of our present efforts, accompanied by an unnecessary proliferation of government agencies responsible for bank regulation.

Let me elaborate upon this point for just a moment. Banking, as you know, is one of the most highly regulated industries in this country. As a result, the bank regulatory agency has an unusual degree of leverage over its constituent banks. Our constant supervision is emphasized by frequent on-site inspections at the bank, where bank officers are available to discuss consumer problems. Purely from a practical standpoint, bankers simply are not willing to jeopardize their relationship with the regulatory agency by refusing to correct mistakes or make restitution. Not surprisingly, then, we uniformly receive cooperation from bankers in resolving consumer complaints, which convinces us that a consumer is more likely to obtain a satisfactory and speedy resolution of his problem

through a bank regulatory agency then through a nonbanking agency that has no contact with banks other than in the consumer area.

The second point to be made is that administrative enforcement powers pertaining to banks should be assigned to the bank regulatory agencies. There is already a serious question whether bank regulation has not become entirely too fragmented. National banks, for example, must adhere to rules and regulations of three Federal banking agencies. In addition, numerous other government agencies including the Securities Exchange Commission, Department of Justice, Equal Employment Opportunity Commission, National Labor Relations Board, Federal Housing Administration, and Veteran's Administration influence a banker's everyday decisions. If the enforcement function is diffused further, to the proposed Consumer Protection Agency, as recommended by the Commission, efforts to simplify and consolidate the responsibilities of the present multitude of regulatory entities will be made increasingly more difficult.

Finally, I believe that as a general proposition Congress should avoid granting to any one agency broad rulemaking powers in the consumer area. Compared with the complexities of regulation in the securities or communications industries, where the task of government supervision must be assigned to highly specialized agencies, consumer protection is a relatively straightforward concern which has now become an instinctive part of our daily life. Since this awareness has been carried over into the conduct of our government agencies, it is unnecessarily duplicative of present efforts to give carte blanche to a single agency to write

rules in this area applicable to all. A sounder approach would be for Congress to stipulate the practices that it believes are detrimental to consumers and then to direct the regulatory agencies to proceed with effective enforcement in these problem areas.

Turning now to our responsibilities under the Truth in Lending Act, we are pleased to report that compliance by national banks with the Act and with the Federal Reserve Board's Regulation Z has been excellent. While there were some initial difficulties in adapting loan forms to the requirements of the Regulation, these problems have been overcome now that bankers and lawyers have gradually mastered the Regulation's complexities.

While we are pleased with overall compliance with the Act, one area continues to be a source of difficulty. Bankers still have a tendency to quote the add-on or discount rate rather than the annual percentage rate when responding to telephone inquiries from consumers. Despite an advisory from our Office in July 1971 that "no use should be made in advertising or in other communications with consumers of the add-on or discount rate," national banks have not been entirely successful in training their employees to eliminate the traditional add-on or discount rate in favor of the annual percentage rate. Our staff is now working on a joint communication with the Federal Deposit Insurance Corporation and Federal Reserve, which will be sent to all commercial banks calling to their attention this prohibited practice.

In other Truth in Lending areas, we favor an exemption from the Act's disclosure requirements for agricultural credit transactions in excess of \$25,000. Considerable additional clarification is needed in the civil liability provisions, notably in the liability that will

be incurred by an assignee of consumer paper; a creditor's liability to a single consumer for multiple failure to disclose essentially the same information; and the liability that a creditor will suffer for any action done or omitted in good faith reliance upon an administrative interpretation of the Act. It is also our view that a time limit should be placed upon the exercise of the borrower's right of rescission, notwithstanding any failure by the creditor to comply with the Act, and that all closing costs in connection with a real property transaction should be disclosed at the time of the loan commitment. While we would prefer to put off further comment on matters covered by S. 2101 until such time as this subcommittee formally considers that bill, we are generally in favor of the provisions in Title II of the bill which deal with the areas just mentioned.

The Fair Credit Reporting Act became effective on April 25, 1971. The experience of the Comptroller's Offices indicates only a few problems under this legislation. In most cases, these problems were based on an erroneous understanding of the Act's requirements on the part of the complainant. In a few instances, our examiners did find that technical violations had occurred which were remedied by subsequent proper disclosure. However, the number of complaints received in this area has been exceedingly small amounting to less than a dozen.

It has been our experience that national banks have had little difficulty complying with the disclosure requirements of the Act imposed on users of consumer reports. We believe that difficulty was avoided because shortly after the Act became effective, this Office in conjunction

with the other bank regulatory agencies issued a 29-page booklet entitled, Financial Institutions and the Fair Credit Reporting Act. This booklet was distributed in May 1971 to all institutions under the jurisdiction of the Federal Reserve Board, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board and the Comptroller of the Currency. The pamphlet contains the text of the Act and questions and answers explaining the Act's applicability to the operations of a financial institution. It was prepared to inform financial institution examiners of the principal statutory requirements of the Act, and to serve as a guide for its enforcement. It was also designed to assist financial institutions in developing a working knowledge of the Act and its requirements.

In those few instances when close questions of interpretation of the Act's provisions have arisen, we have sought the informal opinion of the other regulatory agencies. This procedure has helped to establish a uniformity of interpretation. We have, however, found no difficulty in enforcing the provisions of this Act insofar as the national banks are concerned; rather our experience has revealed an attitude of cooperation on the part of the banks under our jurisdiction.

The Act of October 26, 1970 (P.L. 91-508) added to the Truth in Lending Act certain provisions which prohibit the issuance of unsolicited credit cards. In the late 1960s, some large banks, upon initial entry into the credit card field, mailed large numbers of unsolicited credit cards to customers and noncustomers. A number of these valid but unsigned cards found their way into the hands of persons other than those to whom

the cards had been mailed. In most cases, the cards had been stolen from the mails. The cards were signed and thereafter used to fraudulently obtain goods and services. In order to prevent this practice and the resultant possible liability of innocent consumers for the unauthorized use of an unaccepted or stolen credit card, the provisions of Public Law 91-508 were added to the Consumer Protection Act.

The fact that it is illegal to issue credit cards without request now appears to be widely known to the public. From time to time, the Office receives complaints from members of the public that an unsolicited credit card has been received through the mail. We acknowledge each of these complaints and investigate the circumstances under which the card was issued. Upon completion of this investigation, a report is made to the individual concerning our findings. Where necessary, recommendations are made to the bank to prevent a similar occurrence.

The only suggestion we might offer concerning possible amendment to the statute would be a provision requiring each bank-issued credit card to bear the name, in a conspicuous fashion, of the issuing or account bank. We have noted that often consumers holding bank credit cards are unaware of the name of the bank handling the credit card account. Such information will eliminate confusion when the consumer needs to go directly to the bank to adjust any problems.

Let me turn now to another matter of vital interest and concern to all of us -- discrimination in lending. I wish to make it clear that the Comptroller's Office favors an end to discrimination by lenders on the basis of sex or marital status. As the regulatory agency for

national banks, we realize that the best interests of those banks are served when loan demand is strong and creditworthy customers are plentiful. That women no matter what their marital status, who are creditworthy, should not be denied credit simply because of their sex or marital status should no longer be a matter for debate. Discrimination against women in the credit fields, however, has been well documented by the National Commission on Consumer Finance. I applaud the efforts of this subcommittee in considering legislation that would outlaw such practices.

Let me offer a few comments on the fifteen bills recently introduced as they pertain to the subject at hand. Twelve of the bills (H.R. 247, 4734, 5414, 8163, 9388, 9996, 10162, 10603, 10109, 10142, 10675, and 10737) would amend the Consumer Credit Protection Act and would prohibit discrimination by any creditor on the basis of sex or marital status. Since the Federal Reserve Board has rule-making authority by virtue of that Act, all of the enforcing agencies would be governed by uniform Federal Reserve Board regulations promulgated to enforce the prohibition through record-keeping and reporting requirements.

H.R. 10674 prohibits sex and marital status discrimination but applies only to Federally insured financial institutions and credit card issuers. It does not amend the Consumer Credit Protection Act although it would give the Federal Reserve Board rule-making powers and the enforcing structure would be similar to that of the Consumer Credit Protection Act. Its recordkeeping and reporting requirements are onerous and duplicative. Under this bill, each creditor must file reports with its regulatory agency reporting whatever loan information is required under the Federal Reserve Board's regulations. The

agencies then report to Congress annually. In addition, as a "party" to a Federally-related mortgage transaction, Federally-insured financial institutions must report to HUD all terms and information on every mortgage loan refused or denied.

H.R. 246 is similar to 10674 although it is confined to prohibiting sex and marital status discrimination in Federally-related mortgage transactions. We do not feel that this bill is broad enough in scope to remedy the problem of discrimination. We recommend against the passage of H.R. 10674 and H.R. 246.

H.R. 8246 prohibits sex and marital status discrimination and also requires lenders to take into account the combined incomes of husband and wife if both are obligated. It does not amend the CCPA and gives rule-making authority to each regulatory agency mentioned. We feel the "combined incomes" provision is unnecessary and we would prefer that anti-discrimination regulations should be uniform. Therefore, we recommend against passage of this bill.

The anti-discrimination provisions contained in the other bills are virtually identical in scope and would bar discrimination in lending on the basis of sex or marital status by any creditor covered by the Act. This Office is in favor of passage of such a provision to amend the Consumer Credit Protection Act. Our Agency has the capacity for enforcing anti-discrimination legislation. We have seen that the structure for implementing Truth in Lending is workable: the Federal Reserve Board issues regulations and each enforcing agency carries them out in a generally uniform manner. We have every reason to believe that the same technique for enforcing anti-discrimination provisions would be successful.

One final comment concerning anti-discrimination statutes. Other statutory provisions, such as Title 8 of the Civil Rights Act of 1968, contain anti-discrimination requirements that are applicable to lenders. This Office and the other bank regulatory agencies have been working on the formulation of regulations that would assist the enforcement of the prohibition of discrimination in housing-related lending on the basis of race, color, religion, or national origin. Again, to assist in effective enforcement and to avoid unnecessary difficulties in compliance, we urge that all existing anti-discrimination provisions be amended to provide for uniform goals and uniform administrative enforcement, as well as uniform liabilities and remedies.

Finally, let me add a word or two about Senate Joint Resolution 160 recently passed by the Congress. This resolution directs the various bank regulatory agencies to impose a rate ceiling on the so-called "wild card" consumer certificates of deposit. The avowed purpose of this resolution is to assure a flow of funds into thrift institutions so that home mortgage loans can be maintained at reasonable rates of interest.

I am sorry that in its rapid consideration of the Resolution, the Congress did not obtain the full benefit of hearings or recommendations from this subcommittee and of other committees charged with protection of the consumer's interest. I would have expected that a measure so directly affecting the consumer would have been preceded by some evaluation of its overall impact by a consumer affairs committee.

In the past, interest rate ceilings on savings accounts have not achieved their objectives. Contrary to expectations, they have not protected the liquidity of thrift institutions by preventing an outflow of funds during periods of tight money.

Thank you.