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SUPPLEMENTAL STATEMENT

*[on discrimination based on sex or marital status in the granting of consumer credit]*

by

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before the

Subcommittee on Consumer Affairs  
of the Committee on Banking and Currency

House of Representatives

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As requested, I would like to supplement my basic statement, copies of which were delivered to the Subcommittee last Friday, by elaborating to some extent on the proposed legislation to prohibit discrimination based on sex or marital status in the granting of consumer credit. First, I shall briefly describe the substantive provisions of various bills which have been introduced in this area.

Title III of S. 2101 would prohibit discrimination on the basis of sex or marital status in the extension of consumer credit and would incorporate the civil liability penalties of the Truth in Lending Act. Many bills prohibiting sex discrimination in varying degrees have been introduced in the House. H.R. 247, 4734, 5415, 8163, 9388, 9996 and 10674 would all amend the Truth in Lending Act to prohibit discrimination on account of sex or marital status in consumer credit transactions. In addition, H.R. 8163 would require each creditor and credit card issuer to clearly disclose in writing to any person whose credit application has been denied the specific basis for such denial. H.R. 10674 would prohibit sex discrimination in credit transactions by federally-insured financial institutions, insurance companies engaged in interstate commerce, and businesses issuing credit cards and would vest rulemaking authority in the Federal Reserve, with enforcement authority in the appropriate Federal regulatory agencies. Another bill, H.R. 8246, would prohibit federally-insured

financial institutions and all other creditors from discriminating on the basis of sex or marital status and would authorize enforcement of the prohibition by the Federal agencies regulating financial institutions, in the case of such institutions, and by the Federal Trade Commission with respect to all other creditors. Finally, H.R. 246 would prohibit discrimination on the basis of sex or marital status in connection with any "federally related mortgage transaction," including mortgage loans by any financial institution whose deposits are federally-insured.

As I see it, the proposed legislation on sex discrimination poses four fundamental questions:

- (1) Is there a need for such legislation?
- (2) If so, should its scope be limited to discrimination based on sex or marital status or should it be expanded to cover discrimination based on race, color, religion or national origin?
- (3) Would a Federal ban on sex discrimination in the granting of consumer credit conflict with certain State property laws and, if so, how should such conflicts be reconciled?

- (4) What would be the most effective regulatory mechanism for implementing and enforcing prohibitions on discrimination in granting consumer credit?

As to need, evidence seems to be accumulating from many sources to the effect that women have in fact suffered unjustifiable discrimination in their efforts to obtain credit. At the hearings held in May of 1972 by the National Commission on Consumer Affairs substantial evidence was presented to the effect that --

1. Single women have more trouble obtaining credit than single men.
2. Creditors generally require a woman upon marriage to reapply for credit, usually in her husband's name.
3. Creditors are often unwilling to extend credit to a married woman in her own name.
4. Creditors are often unwilling to count the wife's income when a married couple applies for credit.

5. Women who are divorced or widowed have trouble reestablishing credit. Women who are separated have a particularly difficult time, since the accounts may still be in the husband's name.

The Commission recommended that States review their laws to determine to what extent they inhibit the granting of credit to credit worthy women and amend them, where necessary, to assure that credit is not restricted solely because of a person's sex. We believe the Commission's suggestion has merit, but we also believe that Congress should provide an incentive for the States to conduct such a review of their laws by enacting a Federal prohibition against unjustifiable discrimination in the granting of consumer credit.

In addition, we believe that careful consideration should be given to expanding the scope of any prohibition enacted in the credit area so as to include other bases of discrimination such as race, color, religion, and national origin. Ira Millstein, former Chairman of the National Commission on Consumer Finance, indicated in his July 30, 1973 testimony before this Subcommittee, for example, that women are not the only ones discriminated against in the consumer credit field. It is also clear, from the comments which the FDIC received on various proposals to expand, clarify and amend its 1972 Proposed Regulation on Fair Housing

Lending Practices, that the Federal regulatory agencies which desire to move on such a Regulation would be substantially aided by having a clear and specific Congressional mandate to implement such a nondiscriminatory policy applicable to all forms of bank credit. This would not force them to rely exclusively on the Civil Rights Act of 1968 and the evolving case law under the Equal Protection Clause of the Constitution.

The third area of concern involves potential conflicts with State laws. There are undoubtedly problems involved in banning discrimination at the Federal level if State property laws might in some circumstances legitimately be regarded as the cause of certain discriminatory practices. A specific problem that comes readily to mind might be the inability of married women in community property States to hypothecate or dispose of their interests in community property. Our recommended approach for resolving such conflicts would be to grant general substantive rulemaking power to a Federal agency not only to implement the discrimination prohibitions but also to exempt from the prohibition against discrimination based on sex or marital status certain specific practices that the agency considers to be necessitated by State law. Such exemptions should, we believe, be granted only on a temporary basis in order to allow the States time to review and modify the laws which necessitate such discrimination. After a suitable transition period (five years, for example), the Federal legislation could make clear that

the Federal ban on discrimination would preempt State laws. During the five-year transition period, Congress could also, of course, adopt permanent exemptions if it became convinced of their desirability.

Finally, it would be our recommendation that only one Federal agency be given exclusive substantive rulemaking authority to implement the Federal legislation in this area, with enforcement of the law and the regulations adopted to be the responsibility of the various Federal regulatory agencies presently having supervisory jurisdiction over grantors of consumer credit (comparable to the present procedures for enforcing the Truth in Lending Act).

If desired, we would be happy to work with the Subcommittee and the staff in drafting legislative language to implement the foregoing recommendations.