For release on delivery

Statement of J. L. Robertson, Vice Chairman

Board of Governors of the Federal Reserve System

before the

Subcommittee on Consumer Affairs

of the

House Banking and Currency Committee

on

the Truth in Lending Act and

Federal Reserve Regulation Z

March 22, 1972

Madam Chairman, it is a pleasure to appear before the Subcommittee on Consumer Affairs. I have with me Frederic Solomon, Director of our Division of Supervision and Regulation, Griffith L. Garwood, Chief of the Truth in Lending Section, and Jerauld C. Kluckman, Accountant-Analyst with that section.

Today I intend to discuss four major topics relating to Truth in Lending. These can be identified as the Board's administrative experience, creditor compliance, recommendations for legislative changes, and areas for further study.

ADMINISTRATIVE EXPERIENCE

While the Act delegates rule-making authority to implement its provisions solely to the Board of Governors of the Federal Reserve System, actual enforcement of these rules (Regulation Z) is delegated to nine separate Federal agencies, including the Board. For the most part, Federal agencies with general supervisory authority over a particular group of creditors were also given Truth in Lending enforcement responsibility over those creditors. Enforcement for all remaining creditors, except in those States which have an exemption from the Act, is the responsibility of the Federal Trade Commission.

While some doubt was expressed before the Act was passed whether this multiple agency structure would be workable, our experience to date has been favorable. We believe Truth in Lending is being enforced evenhandedly and vigorously by all of the enforcement agencies in conformance with Regulation Z and the Board's interpretations of it. The predicted interagency conflicts in interpreting the law, with corresponding confusion and inequitable enforcement, have simply not materialized.

This has been due in large part to the cooperative attitude of the various agencies involved. We are anxious to acknowledge the considerable contribution of these agencies to the general success of the administration of Regulation Z, which has extended beyond their enforcement efforts with respect to their particular class of creditors. This is particularly true of the Federal Trade Commission which has had the task of carrying the bulk of the enforcement responsibility under a Regulation drafted and administered by another agency.

With this as background I would like to summarize what the Board has done to administer its functions under the Act since I appeared before this Subcommittee on March 6, 1969. At that time, you may recall, the final version of Regulation Z had been approved by the Board and published, but the effective date, July 1, 1969, still lay ahead. Since that time, there have been necessary adjustments, interpretations and explanations of the Regulation to maintain it as a workable and useful tool in implementing the Truth in Lending Act.

The Board has found it necessary to amend Regulation Z 11 times. In addition, the Board has issued 49 formal interpretations of Regulation Z which are intended to clarify or further explain certain provisions of the Regulation. These amendments and interpretations (which are listed in Appendix A) have been required from time to time to solve specific problems which arose as we attempted to apply the concept of Truth in Lending to the complex and changing pattern of consumer credit.

Amendments to Regulation Z

At an early date, the Board became aware that, without some adjustments in the regulatory requirements, the application of Truth in Lending to agricultural credit was overly burdensome to creditors and of little or no real benefit to agricultural consumers. Consequently, it rewrote the section of Regulation Z (§ 226.8(o)) dealing with discounts for prompt payment, modified the rescission requirements as they applied to agricultural credit (§ 226.9(c) and (g)) and added a section (§ 226.8(p)) to cover credit with indefinite advances and payments, common in agricultural credit transactions. These amendments were accompanied by Board interpretations (§ 226.301 and § 226.812 of Title 12, Code of Federal Regulations) which also sought to clarify and improve the application of Truth in Lending to the unique characteristics of agricultural credit. While these adjustments have gone a long way toward solving the agricultural credit problem, the Board believes that additional relief is needed as I will discuss later.

It also became evident that the Regulation's prior disclosure requirements in open-end credit (§ 226.7(e)) could impede changes by creditors in their open-end credit plans which were beneficial to customers. In response to this problem, the Board adopted relaxing amendments.

Likewise, it became evident that the requirements regarding advertising mortgage credit, as they applied to so-called "Section 235 FHA programs" (designed to provide home ownership for lower income families) were actually inhibiting the informative advertising of properties to which this financial assistance relates. The Board added a section (§ 226.10(e)) to the Regulation to resolve this problem. Similar adjustments were made

with respect to the application of the right of rescission to the sale of vacant lots expected to be used as the customer's principal residence (§ 226.9(b)), the effect of the new Federal holiday schedule on the rescission period (§ 226.9(a)), the effect of leap year on preprinted disclosures (§ 226.6(1)), and the continued applicability of the Federal civil liability provisions after the issuance of a State exemption (§ 226.12).

Interpretations

A number of Board interpretations of Regulation Z have been necessitated by the existence of specialized credit practices to which the Regulation had to be matched - for example, certain layaway plans, vendor's single interest insurance, seller's points, assumptions of existing loans, variable rate obligations, renewals of notes, multiple advance loans, and demand loans.

The point I want to make is that the Regulation, to a certain extent, is a fluid document which the Board has found necessary to adjust from time to time in the light of specialized creditor practices of which we became aware and in response to new developments in the methods of extending credit. Where requirements have been overly burdensome or where disclosures have proven misleading or confusing to customers, the Board has attempted to adjust the Regulation's requirements to make them as workable as possible. We have been assisted in this task by the fine help of our public-spirited Advisory Committee on Truth in Lending, composed of 20 individuals whom we consider to be knowledgable, nationwide representatives of the public - both creditors and consumers. We have relied heavily on the members of the Committee in coping with difficult problems

and their advice has been sound and helpful. Attached as Appendix B is a list of the Committee members, both former and current.

Staff Letters

In addition to preparing amendments and interpretations of the Regulation for the Board, our staff has responded to an enormous volume of written and telephone inquiries. We have not kept count of all of the correspondence we have written relating to Truth in Lending, but to give you some idea of the volume, we responded to approximately 1,000 letter inquiries during 1971. Many of the staff's letters have been given wide distribution by commercial publishers.

In an effort to maintain uniformity of view among the various enforcement agencies, indexed copies of our staff letters treating new or unusual subjects have been provided to the 12 Federal Reserve Banks, the eight other Federal enforcement agencies, and the four States that have received an exemption from the Federal Act on the basis of substantially similar State law.

Education

We have devoted considerable effort to educational programs for both consumers and creditors.

Our first creditor-oriented educational tool was the pamphlet, What You Ought to Know About Truth in Lending. This pamphlet contains the text of the Act and the Regulation, questions and answers about Truth in Lending, and sample disclosure forms. Nearly one and one-half million of these pamphlets have been distributed to creditors and other interested persons. A filmstrip designed to explain Truth in Lending from a creditor's point of view was prepared and distributed. These filmstrips

(there are 650 of them) can be purchased or borrowed free of charge. The staff of the Board, the Federal Reserve Banks and the other enforcement agencies have participated in numerous meetings and seminars regarding Truth in Lending. Much of the creditor education program took place during the initial implementation of the Regulation, when the thirst for information on how to comply was almost insatiable. The demand for creditor education subsided as time passed and creditors gained more experience under the Regulation.

I should not conclude my discussion of the creditor educational program without mentioning the admirable work of many trade associations in providing information to their members.

At the outset, the Board emphasized information for creditors, since the success of Truth in Lending depends upon their understanding the requirements. However, if the purposes of the Act are to be fully achieved, the consumer must be able to utilize effectively the information provided to him. Consequently, the Board has developed several consumer-oriented educational tools.

The first is a filmstrip that explains Truth in Lending from the consumer point of view. Over 1,200 filmstrips have been distributed. They may be purchased or borrowed. We are pleased to note that many of the users have been school systems.

The second major consumer tool is a leaflet entitled, What Truth in Lending Means to You. This leaflet explains in simple terms the basic facts about Truth in Lending. Many methods and sources have been used to distribute, free, more than two and one-half million copies of this leaflet.

The Board's most recent consumer-oriented educational release also looks as if it will be a best-seller. This is a Spanish translation of the leaflet, What Truth in Lending Means to You.

State Exemptions

Pursuant to the provisions of the Statute (§ 123), the Board has granted exemptions from the disclosure and rescission provisions of the Federal Act to the States of Connecticut, Maine, Massachusetts and Oklahoma. The exemptions granted generally pertain to all consumer credit transactions within the exempt State, except for those transactions in which a Federally chartered institution is a creditor. An exemption can be granted to any State that has law substantially similar to the Federal Truth in Lending Act (including implementing regulations) and adequate provision for enforcement.

The Board maintains close liaison with each exempt State. We believe that each of them is conscientiously implementing its own Truth in Lending law in a manner consistent with the Federal Act.

Preliminary applications for exemption have also been received from the States of Kansas and Wyoming. These are currently being reviewed to assure their completeness prior to publishing official notice of their receipt in the Federal Register.

Litigation

In its annual report on Truth in Lending for 1971, the Board indicated that it was aware of 71 civil actions which have been brought under § 130 of the Act. It is likely that additional suits have been instituted. I will not discuss these suits, except to mention that they cover the waterfront - disclosures under open-end credit as well as other credit plans, the right of rescission, and even advertising.

COMPLIANCE

With respect to creditor compliance with the Truth in Lending Act, let me say that the Federal agencies with general supervisory authority over their creditor-groups, such as the Board, the Comptroller of the Currency, the Federal Home Loan Bank Board and the National Credit Union Administration, seem to have experienced no significant problems in the enforcement of Regulation Z. These agencies inform us that the level of compliance is high, and that the errors that are found usually result from misunderstanding or clerical error, rather than an attempt to evade the Act. For the most part, compliance is determined by these agencies during the regular periodic examinations of the institutions.

The Federal Trade Commission has conducted two surveys in an attempt to determine the extent of compliance by creditors under its jurisdiction, such as finance companies, automobile dealers, and jewelry stores - creditors which are not regularly supervised by a Federal agency. The results of these two surveys were reported by the Commission in an April 1971 release entitled Federal Trade Commission Report on Surveys of Creditor Compliance with the Truth in Lending Act. The release revealed that 86 percent of all creditors surveyed were using contracts which were in either total or substantial compliance. Also, a vast majority of the larger creditors - those whose sales volumes are $1 million or more - were in total or substantial compliance. The results indicate that not only are most creditors under the Commission's jurisdiction in total or substantial compliance, but also most disclosures made to consumers were in total or substantial compliance. These surveys identified for the Commission the types of creditors and the geographic areas to which its enforcement efforts should be principally directed. The results were of assistance to the Commission in planning its enforcement program.

It also appears that substantial compliance by creditors under their jurisdiction is being achieved by each of the four exempt States.

Based upon the reports of all enforcement agencies, including the exempt States, it is the Board's belief that substantial compliance with Truth in Lending is being achieved.

RECOMMENDATIONS FOR LEGISLATIVE CHANGES

The Board's most recent recommendations for legislative changes have been presented as part of its Annual Report on Truth in Lending for 1971. Since then the Chairman of the Subcommittee on Financial Institutions of the Senate Committee on Banking, Housing and Urban Affairs has asked the Board to provide drafts of legislation to implement the recommendations, and the Board has done so by letter dated February 28, 1972, a copy of which is attached as Appendix C.

Civil Liability

One area in which legislative changes are needed relates to civil liability under the Act. Many creditors have been extremely concerned over their possible exposure to class action suits and the possible ruinous liability which might result. Their concern was prompted largely by Ratner v. Chemical Bank New York Trust Company, a case in which a U.S. District Court held the bank in violation of the Act for failure to disclose the nominal annual percentage rate on open-end credit billing statements that showed an outstanding balance but no finance charge yet incurred. The reported $13 million potential liability of the bank in the Ratner case led many creditors to fear that similar suits filed against them could seriously threaten their

solvency. The court ultimately held in Ratner that a class action was not sustainable, but other class action cases relating to alleged Truth in Lending violations are pending.

I believe that this almost unlimited class action exposure may be detrimental to consumer interests and, in fact, may be an impediment to effective private enforcement of Truth in Lending through class actions. By this I mean that the courts, which are given a good deal of discretion in determining whether or not to allow class actions, may be inclined to disallow them simply because of the seemingly unreasonable magnitude of the class action recovery. Consequently I believe it is important to suitably limit this exposure while at the same time maintaining class actions as a viable remedy for violations of the Act and Regulation Z. Others more qualified than I may suggest specific solutions to the problem, but I would hope class actions would not be prohibited or unduly limited because they provide the most effective sanction by which compliance is achieved.

At least one step in solving this problem may be the insertion of a "good faith" provision in the statute. The Act's civil liability section does not necessarily preclude liability even when a creditor has acted in "good faith" reliance on Regulation Z or the Board's interpretations thereof. The Board has recommended inserting in the Act a "good faith" provision, such as that in the Securities Exchange Act of 1934, which would apply to both the Board's Regulation Z and its interpretations of it. The following wording was furnished to the Senate Subcommittee for insertion in the civil liability provisions:

> "No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation or interpretation thereof by the Board, notwithstanding that such rule, regulation or interpretation may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason."

Another problem relates to the minimum recovery provision of the statute. Section 130 of the Act makes a creditor liable for a minimum of $100 for failure to make proper disclosure "in connection with any consumer credit transaction." There is some uncertainty as to the meaning of the word "transaction" when applying § 130 to multiple errors - for example, to an error on a periodic statement, which is sent repeatedly in connection with an open end account. It might be contended that each separate purchase for which a credit card is used constitutes a separate "transaction" for purposes of § 130, or that each periodic statement is a separate transaction. In our view, the opening and use of the account should be considered as a single transaction. We believe that Congress should clarify the meaning of the very important term "transaction" and have suggested the following wording:

> "The multiple failure to disclose to any person any information required under this chapter to be disclosed in connection with a single account under an open end consumer credit plan, other single consumer credit sale, consumer loan or other extension of consumer credit, shall entitle the person to a single recovery under this section."

The new provision is designed to make certain that although there may have been multiple failures to disclose required information on an account or in connection with a single credit transaction, for example, where an omission occurs in a series of periodic billing statements, the minimum recovery to a consumer would be a single $100, not a multiple of that amount.

Rescission

The right of rescission is another area which the Board believes merits legislative changes.

Section 125 of the Act, implemented by Regulation Z (§ 226.9) provides that in certain credit transactions in which a security interest in the customer's residence is involved, the customer has three business days in which to rescind the transaction. The creditor must notify the customer of this right and provide a form which may be used to exercise that right. The law does not limit the period for which the right continues where the creditor has failed to notify the customer of his right - the three-day period never begins to run. Also, even though the required notice is given, there is a question as to whether the rescission period also continues indefinitely if other required disclosures have not been made. The titles to many residential properties might become clouded by uncertainty arising from these rights of rescission. The Board recommends that Congress amend the Act to provide a three year limit on the time the right of rescission may run, where the creditor has failed to give proper disclosures.

An additional recommendation results from two legal actions that have been brought against the Board by home improvement contractors alleging that the Board exceeded its authority by providing in Regulation Z (§ 226.2(z) and § 226.9(a)) that the right of rescission applies to consumer credit contracts secured by a mechanic's or materialman's lien on the customer's home, even though no mortgage or deed of trust is executed by the customer. In one case, summary judgment was granted in favor of the Board. In the other, the court held that the provision (§ 226.9(a)) was null and void as it relates to liens which may come into existence by operation of law. Appeals have been filed in both cases.

The right of rescission was designed to allow homeowners a "cooling-off" period before being irrevocably bound by credit transactions involving security interests in their homes, and to reduce the danger of

homeowners being overreached by unscrupulous home improvement contractors. The Board believes that accomplishment of this goal necessitates the coverage under the right of rescission of all consumer credit transactions in which a customer's home may be lost through foreclosure, whether by mortgage, deed of trust, or other lien rights. The Board recommended that Congress amend the Act to remove any doubt as the coverage of these transactions under section 125 by adding wording that specifically includes security interests that arise by operation of law under that section.

More-than-four-instalments rule

Our Annual Report also recommends that Congress expressly declare that the Act covers transactions involving more than four instalments without an identifiable finance charge. By providing in Regulation Z that Truth in Lending encompasses transactions payable in more than four instalments, the Board gave notice to vendors who may have considered concealing finance charges in the price of goods to evade the Act's requirements (as well as the so-called "no-charge-for-credit" sellers already operating in low income markets) that the Board considered them subject to the Act's requirements. The Board did this to insure that they would make certain important disclosures required by Truth in Lending, even when no finance charge or annual percentage rate was disclosed.

The Board's more-than-four-instalments rule was based on the economic fact that instalment contracts of more than four instalments typically include some component to compensate the creditor for the cost involved in allowing deferred payment, even though that cost may not be separately identified as a finance charge. The Board believes the rule is both within the scope of its authority and necessary to prevent evasion of the Act.

However, in Mourning v. Family Publications Service, Inc., the court declared the rule invalid, although the rule has been upheld in other courts. Should the adverse decision be allowed to stand, many creditors would not only escape the requirement of making important Truth in Lending disclosures prior to consummation of their contracts, such as the number, amount, and due dates of payments and the total amount of the consumer's obligation, but would also be free of the Act's prohibitions against "bait" credit advertising. Since they would not be subject to the advertising requirements, they would be able to advertise "no down payment" or the amount of the payments without further information, which is prohibited for creditors subject to the Act.

In addition, home improvement contractors might avoid giving customers the right of rescission, even where they obtained a second mortgage on the customer's home, simply by "burying" the finance charges in the price.

In short, the Board is convinced that invalidation of its "more-than-four-instalments" regulation could seriously impair the effectiveness of the legislation. We believe that Congress should amend the Act to remove any possible doubt about its coverage of transactions payable in more than four instalments and has suggested language for such legislation.

Agricultural Credit

The inclusion of agricultural credit under the coverage of the Act has stirred a great deal of controversy, and has created numerous problems, as I mentioned earlier.

Some creditors have argued that the very nature of many agricultural credit transactions (which frequently involve advances and payments

for which both time and amount are unknown at the time of consummation of the transaction) makes them unsuited for meaningful disclosure. Furthermore, it has frequently been argued that since agriculture is a business, it should be exempt from coverage of the Act, just as other business credit is exempt. In spite of the amendments to Regulation Z designed to make disclosures easier for agricultural creditors and more meaningful for farmers,the problems have not been completely solved.

Knowing the general view of creditors that credit for agricultural purposes should be exempt, the Board's staff contacted a number of agricultural associations in an effort to determine the views of the persons who actually use agricultural credit. While the majority of the associations that responded indicated that agriculture should be exempt, two of the largest representing general agricultural interests (the Farmers Union and the National Grange) supported continued coverage. In addition, a poll of a number of agricultural economists indicated a 3 to 1 response in favor of continuing coverage. In a poll of directors of farmer cooperatives, which has been reported to the Board, 55 percent said that Truth in Lending disclosures assisted them in determining credit costs, while 42 percent indicated that the disclosures were of no assistance. Furthermore, 45 percent indicated that Truth in Lending made little change in their credit buying habits.

All of this suggests that a strong case cannot be made for either complete coverage or complete exemption of agricultural credit under Truth in Lending. However, it tends to reinforce the reasons for the Board's continuing to recommend that credit primarily for agricultural purposes in excess of an appropriate amount (we have suggested $25,000) be exempted from the provisions of the Act, whether nr not secured by real

property. This action by Congress would remove from coverage the larger credits which are generally extended to more sophisticated borrowers who are less in need of the disclosures, while still providing the benefits of disclosure to the smaller borrowers. Such an amendment would benefit creditors by eliminating the need for disclosures in some large and complex credit situations.

Administrative Enforcement

Finally, the Board has recommended that the enforcement responsibility relating to Federal land banks, Federal land bank associations, Federal intermediate credit banks and production credit associations be transferred from the Federal Trade Commission to the Farm Credit Administration, the agency with general supervisory authority over those creditors. Both agencies concur in this suggestion.

AREAS FOR FURTHER STUDY

There are some remaining areas for further study in Truth in Lending which concern the Board. We are studying these areas to determine whether there is a need for further action either by the Board or by the Congress.

Discounts

One area of study relates to discounts. The initial disclosure requirements relating to discounts for prompt payment posed serious compliance problems. The apparent effect of treating the offering of discounts

as involving finance charges has caused some discontinuance of the discount practice, to the detriment to those consumers who pay early. An August 1969 amendment to Regulation Z alleviated, but did not entirely solve the problem. We are giving the problem further study.

Disclosures in Foreign Language

Another area of inquiry involves the desirability of requiring disclosures in foreign languages. In order to provide uniformity in disclosure of credit terms, Regulation Z requires certain English terminology to be used. However, such disclosures may be of little value to consumers who do not understand English. Although disclosures must be given before consummation of a credit transaction and, theoretically, a consumer can obtain an explanation or a translation of the disclosures before committing himself, this is not likely to happen in actual practice. A number of possible solutions to this problem have been considered, but none that we have explored appear feasible. As I have mentioned, the Board has taken a step toward alleviation of the problem by publishing a Spanish version of the consumer leaflet, What Truth in Lending Means to You. The initial demand for this leaflet has been encouraging.

Advertising

A third area of study relates to the lack of advertising of specific credit terms. The inclusion of specific credit terms in credit

advertising appears to be continuing at a level substantially lower than desirable to enable consumers to use advertising effectively as a means to shop for the best credit terms available. However, there are indications of increased use of more specific advertising. Creditor complaints against the advertising restrictions have diminished. We are reviewing this area to determine whether changes can be made in the Regulation or the Act to encourage greater inclusion of specific credit terms in credit advertising.

Complexity

Regulation Z is complex. Truth in Lending disclosures are complex. A goal to which we are continually working is simplification of both the Regulation and the disclosures. Unfortunately, given the complexity of credit transactions, much of it the product of complex State legislation, there seems to be little hope of significantly reducing the intricacy of Truth in Lending. Nevertheless, that is our goal and we will continue to adjust the requirements of Regulation Z as best we can to meet this goal.

By mentioning these problem areas, I do not suggest that no other provisions of the Act and Regulation Z raise difficult questions. Such questions seems to arise every day. Fortunately, we have been able to resolve most of them. We believe, despite all the problems, Truth in Lending is serving the public well.

CONCLUSION

The real test of the worth of this law is whether it is achieving its purpose which as stated in the Act is "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 thereby avoid the uninformed use of credit." To obtain some indications, the Board has conducted two Surveys of Consumer Awareness of Finance Charges and Interest Rates.

The first survey was conducted in June 1969, and was designed to serve as a benchmark of consumer awareness prior to the advent of Federal Truth in Lending. The second took place during September and October 1970. The results were compared to the first survey's results to determine changes in consumer knowledge since Federal Truth in Lending became operative.

The surveys yielded these three major findings:

1. The proportion of consumer-borrowers with no knowledge of the annual percentage rates they were paying has declined substantially.

2. A greater proportion of those borrowers who believe they know the annual percentage rates they are paying reported rates in line with prevailing rates for the types of credit involved.

3. In spite of the general improvement in consumer awareness, there remains a large proportion of consumer-borrowers who are not aware of the annual percentage rate they are paying.

The results, then, are mixed but encouraging. The problems have not been insoluble, as claimed by some of Truth in Lending's early opponents, but neither has the public's confusion over credit costs been completely eradicated, as hoped for by some supporters of the Act. In summary, the public is better informed than before enactment of Truth in Lending, the major problems in implementation have been solved, and with

continued education the benefits to the public will increase.

I appreciate having had the opportunity to appear before this Subcommittee.

APPENDIX A

AMENDMENTS

§ 226.6(1) GENERAL DISCLOSURE REQUIREMENTS--
Leap Year (11/26/71)

§ 226.7(e) OPEN END CREDIT ACCOUNTS--SPECIFIC DISCLOSURES--
Change in terms
(10/23/70, reamended 4/5/71)

§ 226.8(o) CREDIT OTHER THAN OPEN END--SPECIFIC
DISCLOSURES--
Discount for Prompt
Payment of Sales
Transactions (8/11/69)

§ 226.8(p) CREDIT OTHER THAN OPEN END--SPECIFIC
DISCLOSURES
Agricultural Credit--
Information Not Determinable (11/6/69)

§ 226.9(a) RIGHT TO RESCIND CERTAIN TRANSACTIONS--
Footnote 14--Specification of business days
(10/1/71)

§ 226.9(b) RIGHT TO RESCIND CERTAIN TRANSACTIONS--
Notice of Opportunity to Rescind (4/5/71)

§ 226.9(c) RIGHT TO RESCIND CERTAIN TRANSACTIONS--
Delay of Performance (4/5/71)

§ 226.9(g)(4) RIGHT TO RESCIND CERTAIN TRANSACTIONS--
Exceptions to General Rule (11/6/69)

§ 226.10(e) ADVERTISING CREDIT TERMS--
Advertising of FHA Section 235 Financing
(4/5/71)

§ 226.12 EXEMPTION OF CERTAIN STATE REGULATED TRANSACTIONS
(3/12/70)

CREDIT CARD AMENDMENTS (1/25/71)

§ 226.1 AUTHORITY, SCOPE AND PURPOSE

§ 226.12 EXEMPTION OF CERTAIN STATE REGULATED TRANSACTIONS

§ 226.13 CREDIT CARDS--ISSUANCE AND LIABILITY

INTERPRETATIONS

I. Section 226.2--Definitions and Rules of Construction

§ 226.201 Layaway Plans as extensions of credit (5/5/69)

§ 226.202 Security interest--confession of judgment--cognovit notes (5/26/69)

§ 226.203 Open end credit distinguished from other credit (5/26/69)

II. Section 226.3--Exempted Transactions

§ 226.301 Agricultural purposes--when exempt from the Regulation (5/26/69)

§ 226.302 Credit for business or commercial purposes--more than 4 family units (1/28/70)

III. Section 226.4--Determination of Finance Charge

§ 226.401 Service charges on accounts not paid within a given period of time (4/22/69)

§ 226.402 Term of insurance coverage (5/5/69)

§ 226.403 Disclosure of cost of property insurance when not obtainable from or through the creditor (5/26/69)

§ 226.404 Premiums for vendor's single interest insurance required by creditor (amended 1/28/70)

§ 226.405 Property insurance written in connection with a transaction--obtained from or through the creditor (amended 9/11/69)

§ 226.406 Sellers points and discounts under Regulation Z (10/23/70)

§ 226.407 Charges for membership in open end credit plan (8/12/71)

IV. Section 226.5--Determination of Annual Percentage Rate

§ 226.501 Use of ranges or brackets to determine periodic rate of finance charge on open end accounts (4/2/69)

§ 226.502 Annual percentage rate on single add-on rate transactions (5/26/69)

§ 226.503 Minor Irregularities--Maximum irregular period limits (6/10/69)

§ 226.504 Treatment of "Pick-Up Payment" in an instalment contract (9/11/69)

§ 226.505 Application of the minor irregularities provisions in determining the amount of the finance charge (9/11/69)

V. Section 226.6--General Disclosure Requirements

§ 226.601 Overstatement of annual percentage rate (4/2/69)

§ 226.602 Transition Period--Using existing forms, suitably altered or supplemented (4/2/69)

§ 226.603 Disclosures in transaction involving multiple customers (4/2/69)

§ 226.604 Inconsistent State requirements (4/22/69)

§ 226.605 Rate charts and tables unavailable (6/20/69)

VI. Section 226.7--Open End Credit Accounts--Specific Disclosures

§ 226.701 Periodic Statements--Finance charge resulting from more than one periodic rate (4/2/69)

§ 226.702 Location of statement of how the balance was determined (4/22/69)

§ 226.703 Finance charge based on average daily balance in open end credit accounts (5/5/69)

§ 226.704 Annual percentage rate computation where transaction charges are imposed on open end credit accounts (5/5/69)

§ 226.705 Open end credit--change in the method of determining the balance on which finance charges are computed (7/29/71)

VII. Section 226.8--Credit Other Than Open End--Specific Disclosures

§ 226.801 Location of disclosures when contract, security agreement, and evidence of transaction are combined in a single document (4/22/69)

§ 226.802 Disclosures on mail or telephone orders (5/5/69)

§ 226.803 Disclosures when discounts apply for prompt payment (5/5/69)

§ 226.804 Series of sales--content of agreement (5/5/69)

§ 226.805 Series of sales as distinguished from refinancing, consolidating or increasing (5/26/69)

§ 226.806 Deposit balances applied toward satisfaction of customer's obligation (5/26/69)

§ 226.807 Assumption of an obligation--disclosures (6/10/69)

§ 226.808 Disclosure of amount of scheduled payments (6/10/69)

§ 226.809 Disclosures for certain student loans (6/10/69)

§ 226.810 Disclosures--variable interest rates (6/20/69)

§ 226.811 Renewals of notes by mail (amended 1/28/70)

§ 226.812 Advances under open end real estate mortgages for agricultural purposes (11/6/69)

§ 226.813 Disclosures on multiple advance loans (1/28/70)

§ 226.814 Premiums for insurance added to an existing balance (1/28/70)

§ 226.815 Disclosure for demand loans (1/28/70)

§ 226.816 Mortgages with demand features (1/28/70)

§ 226.817 Reduction in annual percentage rate (3/31/70)

VIII. Section 226.9--Right to Rescind Certain Transactions

§ 226.901 Waiver of security interests--effect on the right of rescission (5/26/69)

§ 226.902 "Customers" and joint owners of property under the right of rescission (5/26/69)

§ 226.903 Refinancing and increasing--disclosures and effects on the right of rescission (amended 1/28/70)

IX. Section 226.10--Advertising Credit Terms

§ 226.1001 Advertising of credit terms in other than open end credit (4/22/69)

§ 226.1002 Catalogs--Tables or schedules of credit terms (4/22/69)

APPENDIX B

ADVISORY COMMITTEE ON TRUTH IN LENDING

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APPENDIX C

February 28, 1972

The Honorable William Proxmire, Chairman
Subcommittee on Financial Institutions
Committee on Banking, Housing and
Urban Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

In response to your request of January 12, 1972, that the Board supply specific language to implement its recommendations to Congress for amendments to the Truth in Lending Act contained in its 1971 Annual Report on Truth in Lending, we are pleased to submit the following suggestions for your consideration. Where language has been added to existing provisions it has been underlined, and deletions are shown.

Civil Liability

The Board recommended that the Act's civil liability provisions in § 130 be amended to provide for a "good faith" defense similar to one contained in § 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a)). The Board suggests that the present § 130(d) be redesignated § 130(e) and a new § 130(d) be inserted as follows:

> § 130(d) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation or interpretation thereof by the Board, notwithstanding that such rule, regulation or interpretation may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

To deal with the problem of uncertainty about the scope of the definition of "transaction" under § 130(a), to which the $100 minimum recovery of that section applies, the present § 130(e) should be redesignated § 130(g) and a new § 130(f) added. The new provision is designed to insure that although there may have been multiple failures to disclose required information on an account or in connection with a single credit transaction, for example, where an omission occurs in a series of periodic billing statements, the minimum recovery to a consumer would be a single $100.

> § 130(f) The multiple failure to disclose to any person any information required under this chapter to be disclosed in connection with a single account under an open end consumer credit plan, other single consumer credit sale, consumer loan or other extension of consumer credit, shall entitle the person to a single recovery under this section.

Right of Rescission

The following addition to § 125 is suggested to set an outside limit on the time the right of rescission may run. The recommendation is made to avoid clouds on the title to residential real estate, since under the present language of the Statute, the rescission right might run indefinitely under certain circumstances. The following addition is recommended:

> § 125(f) A customer's right of rescission shall expire three years after the date of consummation of the transaction, notwithstanding the fact that the disclosures required under this section or any other material disclosures required under this chapter have not been delivered to the customer.

To clarify the fact that the rescission right under § 125 is applicable to cases in which customers may lose their homes through foreclosure under lien rights as well as under mortgages or deeds of trust, the following indicated additions to the first sentences of § 125(a) and (b) are suggested:

> § 125(a) Except as otherwise provided in this section, in the case of any consumer credit transaction in which a security interest, including any arising by operation of law, is or will be retained or acquired. . ." etc.
>
> (b) When an obligor exercises his right to rescind under subsection (a), he is not liable for any finance or other charge, and any security interest given by the obligor, including any arising by operation of law, becomes void upon such a rescission.

These changes are suggested in response to the opinion of the court in N. C. Freed Company, Inc. v. Board of Governors, U.S.D.C., W.D.N.Y. Sept. 29, 1971, 4 CCH Consumer Credit Guide ¶ 99,356, which held that § 226.9(a) of Regulation Z, which implements § 125 of the Act, is "invalid and null and void, and in excess of the power of the Board granted to it by Congress, and not within the scope of Section 125(a) .insofar as it relates to liens which may come into existence by operation of law after midnight of the third business day following the date of consummation of the credit transaction." The Board previously obtained a summary judgment in its favor in a similar suit in the United States District Court for the District of Columbia. Gardner and North Roofing and Siding Corp. v. Board of Governors, Jan. 6, 1971, 4 CCH Consumer Credit Guide ¶99,621.

More-than-four-instalment rule

To clarify the Act's application to transactions involving more than four instalments where no separately identifiable finance charges are shown, the following indicated amendments to § 103(f) and § 121(a) are suggested:

> § 103(f) The term "creditor" refers only to creditors who regularly extend, or arrange for the extension of, credit which is payable by agreement in more than four instalments or for which the payment of a finance charge is required, whether in connection with loans, sales of property or services, or otherwise. The provisions of this title apply to any such creditor, irrespective of his or its status as a natural person or any type of organization.
>
> § 121(a) Each creditor shall disclose clearly and conspicuously, in accordance with the regulations of the Board, to each person to whom consumer credit is extended, ~~and upon whom a finance charge is or may be~~ imposed the information required under this chapter, where
>
> > (1) a finance charge is or may be imposed, or
> > (2) the extension of credit is payable by agreement in more than four instalments.

These suggestions are in response to the opinion of the United States Court of Appeals for the Fifth Circuit in Mourning v. Family Publications Service, Inc., Sept. 27, 1971, 4 CCH Consumer Credit Guide ¶99,337 which held that the Board exceeded its authority in specifically defining "consumer credit" to include transactions payable by agreement in more than four instalments. This opinion was contrary to the court's holding in Strompolos v. Premium Readers Service, U.S.D.C., N.D.Ill., May 18, 1971, 4 CCH Consumer Credit Guide ¶ 99,471. In that case the court concluded that "the four instalment rule falls squarely within the scope of the Act's provision authorizing the Board to promulgate regulations that are proper or necessary to prevent circumvention or evasion of the Act."

Agricultural Credit

The Board recommended that agricultural credit above an appropriate amount be excluded from the Act's coverage. The report details the lack of uniformity of view among the users of agricultural credit as to whether it should be covered at all, or what limit might properly be placed on its coverage. Nevertheless the Board believes that the responses received reinforce its view that some agricultural credit should be exempt from coverage. While the Board is happy to suggest language for the exclusion, and believes an exclusion of transactions above $25,000 would alleviate the problem, it is aware that opinions legitimately may vary about the appropriate amount.

> § 104(5) Credit transactions primarily for agricultural purposes in which the total amount to be financed exceeds $25,000.

Administrative Enforcement

To implement its recommendation for the transfer of certain enforcement jurisdiction from the Federal Trade Commission to the Farm Credit Administration, the Board suggests the following addition to § 108:

> § 108(a)(7) the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

We hope these suggestions will assist you in implementing the Board's recommendations.

Sincerely,

J. L. Robertson