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Testimony by

Martha R. Seger

Member, Board of Governors of the Federal Reserve System

before the

Subcommittee on Consumer Affairs and Coinage

of the

Committee on Banking, Finance and Urban Affairs

of the

U. S. House of Representatives

May 16, 1989

Thank you for the opportunity to offer the comments of the Board of Governors on H.R. 736, the "Truth in Savings Act." H.R. 736 would require that certain information be provided to existing or potential deposit account holders regarding the terms of a deposit account. Depository institutions would have to disclose rate and cost information in advertisements, to provide more detailed rate and cost information in a schedule, and to inform account holders when terms are changed. The Board would be required to write rules to implement these requirements.

The Board is mindful of the interest in ensuring that account holders have adequate information on which to base their savings decisions, and fully supports that concept. In fact, the Board's Regulation Q has, for many years, required disclosure of account terms in advertisements, and institutions have been encouraged to make schedules of their fees available to their account holders.

It appears that the industry recognizes the value of full disclosure as well. Our experience in examining State member banks tells us that the majority of our institutions already provide comprehensive written disclosures outlining their fees and the terms of their accounts. Further, consumer surveys conducted by the Board reflect that most depositors believe that they are receiving adequate information.

With this as background, the Board is ambivalent about H.R. 736. On the one hand, the goal of the legislation is consistent with the Board's objectives, and with general banking

practice. On the other hand, any set of complex rules of the type that will be required by this legislation will increase an already heavy regulatory burden. Particularly for small institutions, the cumulative effect of individual regulations, each well-intentioned in its purpose to address a specific problem, can be overwhelming. For example, just since the beginning of last year, extensive new requirements have been mandated relating to funds availability, adjustable rate mortgages, credit and charge card solicitations, and home equity lines. Each of these new regulations has required institutions to revise or create printed forms, adopt conforming policies and procedures, provide training for personnel, and, particularly in the case of funds availability, make extensive data processing system changes. And, of course, these additional requirements are over and above the ongoing regulatory burdens financial institutions bear.

Because of our experience with these recent laws--as well as with numerous other consumer statutes for which we have rule-writing authority--we know first hand that simple concepts invariably result in complex regulations. For example, the concepts of improved funds availability and uniform consumer credit disclosures appeared to be simple and straightforward. Yet, as history has shown, to encompass the diversity of business practices and products among financial institutions, the implementing regulations of necessity are intricate and voluminous. Moreover, we have learned that even rules which are

not designed to affect the number or diversity of products--such as simple disclosure requirements--may have the practical effect of standardizing products. If fewer options are available, consumers may be deprived of the benefits of variety. Consequently, we believe that a compelling need should be demonstrated before new legal requirements are added to the array of existing rules.

In the case of account disclosures, our best information suggests that by and large institutions are providing the information, which depositors say they need, either voluntarily or as a result of existing account advertising regulations such as Regulation Q. We would, therefore, question the need for H.R. 736 at this time, particularly because of the additional regulatory burden it would impose on depository institutions.

If the Congress nevertheless decides to go forward with legislation, H.R. 736 should be carefully tailored to avoid unnecessary complications and burdens. In particular, we recommend the following actions.

H.R. 736 would require the disclosure of an "effective percentage yield" on accounts with maturities of less than one year, in addition to the annual percentage yield (APY) that must be disclosed for all accounts. Requiring a yield relating to a portion of a year would directly conflict with the notion of APY, and would tend to confuse the consumer about the return on the account. Consumers have become accustomed to the concept of annual percentage figures through the "annual percentage rate"

disclosed in consumer credit transactions pursuant to the Truth in Lending Act. The Board recommends that disclosures in advertisements and account schedules for a rate other than an APY on accounts with maturities of less than one year be deleted from H.R. 736; alternatively, a statement could be appended to the APY which discloses that the "yield assumes that the funds are on deposit for a full year."

The bill would require depository institutions to send "in a regular mailing" schedules of terms and conditions to existing account holders no later than 90 days following the effective date of regulations implementing the Act. The Board believes that 90 days is too brief a period for depository institutions to review the new regulation, effectively reexamine their entire deposit product line, and prepare, print and mail account schedules to existing customers. In our view an appropriate minimum time period for mandating compliance is 180 days after the effective date of the regulation. Also, depository institutions should be given flexibility to decide in what manner to mail the required schedule to their existing customers. For example, if a depository institution wished to send its schedule in a special mailing, it should be permitted to do so. Language requiring the schedule to be included in a "regularly scheduled" mailing should be deleted.

We note that the civil liability provisions of this bill are quite sweeping, and, in covering advertising, are broader than those in other consumer disclosure laws such as the Truth in

Lending Act. A violation of the advertising provision of H.R. 736 would be subject to statutory penalties which would allow an individual to recover a minimum of $100 and allow class actions with the potential for recoveries far out of proportion to any actual harm. Further, suits could be brought by individuals who have no relationship with the financial institution or its consumer deposit products other than having viewed a newspaper advertisement. Particularly since financial institutions will be examined for compliance by federal regulatory agencies, the Board believes that the Congress can achieve the purposes of the legislation without subjecting institutions to costly litigation by the public at large.

To clarify coverage, H.R. 736 should expressly provide in its definition of "account" that the Act applies only to consumer deposit accounts, and not to business purpose accounts. This would reduce the compliance burden somewhat and would focus the disclosures on the class of depositors who might most need them. In addition, H.R. 736 should make clear that the requirement to notify account holders of a change in a term that "may reduce the yield" is not intended to govern a decrease in yield in accordance with a variable rate term previously disclosed. This will avoid institutions having to mail a "change in term" notice when yields vary as a result of routine rate adjustments.

H.R. 736 would preempt state laws relating to the disclosure of deposit account information to the extent the state law is inconsistent with the new federal law. H.R. 736 does not,

however, provide a mechanism for determining if a given state law is preempted. Similarly, the bill would allow depository institutions to rely on rules issued by the Board, but does not provide a means for interpretation of formal Board actions. To ease compliance burdens by alleviating uncertainty, and to promote greater uniformity of enforcement of H.R. 736, the Board recommends that the Board be given the express authority both to determine if state laws are preempted under the Act and to authorize an official to issue interpretations of the regulation. This follows the approach taken in other consumer financial services legislation such as the Truth in Lending Act and the Electronic Fund Transfer Act. We have found that such provisions allow us to provide greater certainty about disclosure requirements in an efficient and flexible manner.

Finally, while the focus of our comments has been on reducing the burden of regulatory compliance, we note that accounts of depository institutions are being advertised by organizations which are not subject to H.R. 736. For example, national brokerage firms offer certificates of deposits of selected depository institutions to consumers in conjunction with some of their accounts. While we have reservations about the need for the bill, as a matter of equitable coverage we encourage the Congress to consider whether consumers should be afforded the same protections under the Act whether they deal directly with the institution of account or through an intermediary.

We appreciate the opportunity to offer our views on the proposed legislation and hope that they will be helpful to you.

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