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Statement by

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before the

Subcommittee on Consumer Affairs

of the

Committee on Banking and Currency

U.S. House of Representatives

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I greatly appreciate the opportunity to appear before this Subcommittee on Consumer Affairs to offer the views of the Board of Governors on the "Equal Credit Opportunity Act," H.R. 14856 which you introduced, Madam Chairman, and which was cosponsored by other members of this Subcommittee. The Board of Governors fully supports the objectives that your Subcommittee seeks to attain through enacting of this legislation. Following Vice Chairman Robertson's retirement about one year ago, Chairman Burns assigned to me the responsibility for overseeing the Board's Truth in Lending and related activities. Since that time, I have become involved in these matters, and I hope to continue the outstanding record set by my predecessor.

Today, my remarks will cover the general scope of H.R. 14856 and the role foreseen by the Board of Governors in implementing the purposes of the Bill. Many of my comments will be equally applicable to H.R. 14908, introduced by Mr. Burgener and Mr. Widnall, which would prohibit discrimination in the extension of credit but only on the grounds of sex or marital status. To supplement my statement today, the Board will submit technical comments in the near future on various provisions of both Bills. I hope that the Committee will find my general remarks and the written technical comments helpful in its deliberations.

The Board favors the elimination of discrimination in credit extensions. There is no constitutionally protected right to receive credit, but a great deal can be done to insure that access to credit is made available on a just and fair basis to equally creditworthy people. The denial of credit based upon group identification, rather than upon factors specifically related

to an individual's creditworthiness, works to the economic disadvantage of applicants and creditors alike.

Discrimination in credit granting is often the result of traditional, but short-sighted, business practices, rather than a concerted effort to deny credit to certain groups. These business practices are partially due to local laws that are outdated in their treatment of personal property rights. In many cases, the statutes are based on historical concepts which lag behind the prevailing attitudes.

As this Subcommittee well knows, the refashioning of law to reflect changing social attitudes is a difficult task. Personal as well as corporate behavior is molded in conformity to traditional legal standards and, frequently, these molds are hard to break. The difficulties encountered in adapting to new legal standards are compounded when they involve the elimination of discriminatory conduct.

In the Board's deliberations on this issue, my colleagues and I have been impressed by the need to insure that the adjustment to a new Federal anti-discriminatory standard is accomplished in a prompt and orderly manner. Thus, we have reached the conclusion that, at least initially, the proposed legislation should provide for self-enforcement through the courts rather than regulatory rule writing. Our reasons for this preference are the following:

1. From our perspective at the Board, it would appear that no Federal agency possesses the thorough understanding of State law which we believe will be essential to the effective implementation of this legislation. The Board itself has had little opportunity to develop the level of expertise

necessary to determine the extent and character of discrimination as it may be encountered in the credit field, aside from experience gained in enforcing Title VIII of the Civil Rights Act of 1968 among State member banks.

2. Our limited experience in this area does nevertheless suggest that there is a serious question as to whether a statute prohibiting discrimination in credit lends itself to a centralized scheme of Federal regulations. We reach this conclusion primarily because, in our present judgment, regulations, no matter how detailed, will prove too insensitive an instrument for determining whether creditor conduct is discriminatory in particular circumstances.

We, therefore, recommend for the Congress' consideration that this Act be made effective upon enactment and be self-enforcing. We further suggest that a Federal agency be given at least one year to study the feasibility of regulatory enforcement. The Board is prepared to undertake such a study and report its findings to the Congress.

Let me further explain some of the reasons for the conclusions I have just stated. As in the case of the Truth in Lending Act, both H.R. 14856 and H.R. 14908 call upon the Board to develop regulations to implement their objectives. To date, the Truth in Lending Act has been regarded by many as achieving a high degree of creditor cooperation and compliance. The regulations developed in connection with the Act may have assisted in this process.

While considering implementation of the Equal Credit Opportunity Act, comparisons have been made with experiences under the Truth in Lending Act. There are certain similarities between the scope and impact of the two Acts. Both measures seek to alter creditor behavior; both superimpose a Federal

standard upon a firmly established body of State law. However, there are also significant differences between the two measures which lead to our conclusion regarding the manner in which these objectives can best be implemented.

Truth in Lending is a disclosure statute. Its principal purpose is the creation of a uniform method of disclosing credit costs so that borrowers can make intelligent choices among alternative sources of credit. The affirmative duty which the Act imposes upon creditors is to categorize, calculate and publicize credit costs in a uniform manner. Thus, its purpose is well suited to the precision that is the ideal product of regulation. In accomplishing its regulatory task under the Truth in Lending Act, the Board has dealt with specific and objective features of credit transactions; its end product is information written in specific terms and presented in a standard form.

By contrast, the Equal Credit Opportunity Act seeks to eliminate from creditor behavior certain considerations that are judged to be improper. These improper considerations are often subjective and are, in an economic sense, totally irrelevant to the credit decision. We seriously question whether sanctions forbidding the use of such considerations lend themselves to specific rules. Telling creditors how to disclose their charges is straightforward in comparison to categorizing as permissible or discriminatory all of the possible types of inquiries involved in a credit application.

It would appear to be extremely difficult to assess whether given conduct is discriminatory without having a specific context in which to measure the intent of the participating parties. For example, an inquiry of

a credit applicant's address, while seemingly innocent in the abstract, may take on a discriminatory flavor when the applicant resides in an area which has traditionally been categorized as "high-risk" by certain local creditors. Similarly, the specific questions used by a creditor in ascertaining the dependability of a married woman's income may suggest a discriminatory practice.

Another of our concerns involves the interaction between a proposed Federal standard and State law. A Federal agency formulating regulations under the Equal Credit Opportunity Act would have to contend with the laws of 50 states, while attempting to develop nationally applicable rules.

Perhaps the point can be illustrated in terms of discrimination based on marital status. Under either H.R. 14856 or H.R. 14908, a creditor is entitled to ask a woman who applies for credit whether she is married, and to take into consideration the impact of State property laws on the extent and kind of assets he will be able to reach if she were to default on a loan. In a community property state, such as Louisiana or California, he will have to ask fairly detailed questions in order to determine whether her assets or income are -- or may become -- part of the community. If this has occurred, he may be entitled to require that her husband join in signing a note before extending credit to her.

The creditor may not, however, ask any questions that are unnecessary for this purpose. If he requires more information than he needs under local law to secure himself, or if he asks for signatures, releases or guarantees that are not actually necessary for the protection of the credit, he may not only open himself to the charge of discrimination, he may well in fact be discriminating. Not only does statutory law vary widely from state to state, but judicial interpretations of it are constantly changing. A single Federal

regulation would have to be written in such terms as to take account of all these variations, and if it is to be written adequately and fairly would require at the least an extensive preliminary investigation of local law.

In enacting the Truth in Lending legislation Congress took great pains to avoid intruding upon the traditional State law domain of interest rates and creditor rights and remedies. Under Truth in Lending a creditor is only required to translate the charges connected with a loan into uniform terms. The Act does not tell him what rate of interest he may charge or require him to make a judgment as to his rights and remedies under State law.

All of these considerations suggest to the Board that the Equal Credit Opportunity Act may be most effectively implemented by the courts, at least in its initial stages. The very individualized nature of the issue of discrimination leads us to conclude that local judges, well-versed in the scope and intricacies of State law, may be better able to implement the Act than a Federal agency. Furthermore, the procedures of the judicial process are uniquely equipped to resolve matters of law based on facts of a specific case within a local context.

Earlier we expressed concern regarding the level of expertise necessary to determine the extent on a character of discrimination as it may be encountered in the credit field. The Board is presently participating with the FDIC, the Comptroller of the Currency, and the Federal Home Loan Bank Board in a pilot program for collecting racial and ethnic data related to the granting of mortgage credit. The data are being collected and reported by banks and savings and loan associations in 18 urban areas throughout the country. The product of this program could prove helpful to the purposes of this legislation.

Needless to say, mortgage credit is but one aspect of this potential field for regulation that merits careful study. In the area of sex and marital status discrimination, we understand that various State banking agencies are engaged in developing programs to end discriminatory credit practices. Some 14 States have enacted legislation prohibiting discrimination in credit. It is our understanding that many of these States are now attempting to reconcile discriminatory features in their property and family law codes. Certainly, the approaches taken by these States could prove instructive to the implementation of similar legislation at the Federal level.

Finally, H.R. 14856 includes additional categories of prohibited discrimination--namely, race, color, religion, national origin, and age. We favor their inclusion, but we are concerned that there may be many unexplored problem areas related to these categories which deserve the same careful analysis that has already been given sex and marital status in its consideration by Congress. Since H.R. 14856 was only introduced on May 16, the Board has not had sufficient time to explore possible questions relating to these additional categories.

A study of these and the other problems mentioned above could prove extremely helpful. With the findings of such a study before it, the Congress could make a more informed determination as to the need for and feasibility of a Federal regulatory structure in implementing the objectives of the Act.

The Board appreciates the urgency of ending discrimination in the granting of credit, and that is why we favor immediate enactment of a self-enforcing statute. However, we are convinced that the interests of borrowers and creditors alike will best be served if sufficient time is allowed to study the basis upon which any Federal regulatory structure would have to be founded. Our experience with rule writing under Truth in Lending demonstrated

that a year to develop regulations was barely adequate. The Board's task there was to construct rules dealing with a quantifiable subject matter basically familiar to it. At least as much time will be needed to investigate the difficult task of developing regulations relating to the very subjective and judgmental nature of discrimination in credit granting. In the interim, the Board is, of course, prepared to do a vigorous job of assuring compliance with the Act's provisions among State member banks.

In conclusion, allow me to reiterate the Board's support for the purposes of this legislation. There is no room for discrimination in a society or a financial system such as ours. History teaches us that this nation's social and economic growth was made possible by contributions from all segments of its diverse citizenry. Our Constitution demands that the furtherance of individual dignity and human rights shall remain our continual goal. The Board applauds this Subcommittee's efforts to fashion practical legislation that will help to achieve these ideals in the credit field.

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