90TH CONGRESS
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HOUSE OF REPRESENTATIVES

REPORT
No. 1040

CONSUMER CREDIT PROTECTION ACT

DECEMBER 13, 1967.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PATMAN, from the Committee on Banking and Currency, submitted the following

REPORT

together with

SUPPLEMENTAL AND MINORITY VIEWS

[To accompany H.R. 11601]

The Committee on Banking and Currency, to whom was referred the bill (H.R. 11601) to safeguard the consumer in connection with the utilization of credit by requiring full disclosure of the terms and conditions of finance charges in credit transactions or in offers to extend credit; by restricting the garnishment of wages and by creating the National Commission on Consumer Finance to study and make recommendations on the need for further regulation of the consumer finance industry, as well as consumer credit transactions generally, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows (page and line numbers refer to the bill, as reported):

Page 2, line 7, strike "section" and insert "sentence".

Page 2, after line 8, insert the following:

"SECTION 1. SHORT TITLE AND DEFINITIONS

Page 2, line 10, strike "SECTION 1.".

Page 2, line 20, strike "(a)".

Page 3, line 2, strike "Significant" and all that follows down through "currency." in line 12.

Page 3, strike lines 18 through 23.

Page 5, line 1, after "all the", insert "mandatory".

Page 5, line 17, after "transaction" insert

, or the premium, not in excess of those fees and charges, payable for any insurance in lieu of perfecting the security.

Page 6, line 20, strike "203(b) and 203(c)," and insert "203(b), 203(c), and 203(d),".

Page 6, line 22, strike "For purposes" and all that follows down through line 12 on page 7.

Page 8, after line 9, insert the following:

(h) "installment open end credit plan" means an open end credit plan which has one or more of the following characteristics: (1) creates a security interest in, or provides for a lien on, or retention of title to, any property (whether real or personal, tangible or intangible), (2) provides for a repayment schedule pursuant to which less than 60 per centum of the unpaid balance at any time outstanding under the plan is required to be paid within twelve months, or (3) provides that amounts in excess of required payments under the repayment schedule are applied to future payments in the order of their respective due dates.

Page 8, line 21, strike "h" and insert "i".

Page 8, strike line 24 and all that follows down through line 13 on page 9.

Page 10, line 17, after "percentage rate", insert the following:

, unless the finance charge does not exceed $10, and in ascertaining the applicability of this paragraph, a creditor may not divide a consumer credit sale into two or more sales to avoid the disclosure of an annual percentage rate pursuant to this paragraph.

Page 12, line 2, after "rate", insert the following:

, unless the finance charge does not exceed $10, and in ascertaining the applicability of this paragraph, a creditor may not divide an extension of credit into two or more transactions to avoid the disclosure of an annual percentage rate pursuant to this paragraph.

Page 13, line 12, strike "annual".

Page 13, line 13, after "rate" insert "per period".

Page 14, lines 10 and 11, strike "the finance charge expressed as an annual percentage rate" and insert the following:

the rate, if any, used in computing the finance charge and, in the case of an installment open-end credit plan, the equivalent annual percentage rate.

Page 14, line 16, after "determined", insert a period and the following:

If such a balance is determined without first deducting all payments during the period, that fact and the amount of such payments shall also be disclosed.

Page 15, after line 4, insert the following:

(5) Any creditor under an open end credit transaction shall furnish any party to the transaction with a written estimate of the approximate annual percentage rate of

the finance charge on the transaction determined in accordance with regulations issued by the Board, if the party making the request specifies or identifies the repayments schedule involved and such other essential credit terms as may be prescribed in the regulations issued by the Board.

Page 16, strike line 19 and all that follows down through line 19 on page 18, and insert the following:

(i) If a creditor, in order to aid, promote, or assist directly or indirectly, any consumer credit sale, loan, or other extension of credit subject to the provisions of this section, other than an open end credit plan, states or otherwise represents in any advertisement

"(1) the rate of the finance charge, the advertisement shall state the rate of the finance charge expressed as an annual percentage rate; or

"(2) the amount of an installment payment or the dollar amount of finance charge, the advertisement shall state:

"(A) the cash price or the amount of the loan, as applicable;

"(B) the downpayment, if any;

"(C) the number, amount, and due dates or period of payments scheduled to repay the indebtedness if such credit were extended; and

"(D) the rate of the finance charge expressed as an annual percentage rate.

The provisions of this subsection shall not apply to advertisements of residential real estate except to the extent that the Board may by regulation require."

(j) No creditor, in order to aid, promote, or assist, directly or indirectly, the extension of credit under an open end credit plan may state or otherwise represent in any advertisement any of the specific terms of that plan unless the advertisement clearly and conspicuously sets forth

"(1) the conditions under which a finance charge may be imposed, including the time period, if any, within which any credit extended may be repaid without incurring a finance charge;

"(2) the method of determining the balance upon which a finance charge will be imposed;

"(3) the method of determining the amount of the finance charge (including any minimum or fixed amount imposed as a finance charge), and the annual percentage rate; and

"(4) the conditions under which any other charges may be imposed, and the method by which they will be determined."

(k) No creditor may state or otherwise represent in any advertisement

"(1) that a specified periodic credit amount or installment amount can be arranged, unless the creditor usually and customarily arranges credit payments or installments for that period and in that amount; or

"(2) that a specified downpayment is required, unless the creditor usually and customarily arranges downpayments in that amount."

(l) For the purposes of subsections (i), (j), and (k), a catalog or other multiple-page advertisement shall be considered a single advertisement if the catalog or other multiple-page advertisement clearly and conspicuously displays a credit terms table on which the information required to be stated by subsections (i), (j), and (k) is clearly set forth.

(m) The prohibitions and requirements of subsections (i), (j), (k), and (l) of this section shall apply only to a creditor or his agent directly or indirectly causing the publication or dissemination of an advertisement and not to the owner, employees, or distributors of the medium in which the advertisement appears or through which it is disseminated.

Page 21, strike lines 7 through 16.

Page 24, line 15, strike "conduct" and insert "consult".

Page 26, line 6, after "section 203", insert "(except sections 203(i), 203(j), and 203(k))".

Page 28, strike line 9 and all that follows down through line 6 on page 37 and insert the following:

ADMINISTRATIVE ENFORCEMENT

SEC. 207. All of the functions and powers of the Federal Trade Commission are applicable to the administration and enforcement of this title to the same extent as if this title were a part of the Federal Trade Commission Act, and any person violating or threatening to violate any provision of this title or any regulation in implementation of this title is subject to the penalties and entitled to the provisions and immunities provided in the Federal Trade Commission Act, except as follows:

"(1) The exceptions stated in section 5(a)(6) of the Federal Trade Commission Act (15 U.S.C. 45(a)(6)) are not, as such, applicable to this title.

"(2) No bank or thrift institution is subject to the jurisdiction of the Federal Trade Commission or to the provisions of the Federal Trade Commission Act with respect to this title if the bank or institution is subject to section 5(d) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)), section 407 of the National Housing Act (12 U.S.C. 1730), or section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818). The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation) shall enforce this title and regulations in implementation thereof with respect to banks and other institutions under their respective jurisdictions.

"(3) No common carrier subject to the acts to regulate commerce is subject to the jurisdiction of the Federal Trade Commission or to the provisions of the Federal Trade Commission Act with respect to this title. The

Interstate Commerce Commission shall enforce this title and regulations in implementation thereof with respect to such carriers.

"(4) No air carrier or foreign air carrier subject to the Federal Aviation Act of 1958 is subject to the Federal Trade Commission or to the provisions of the Federal Trade Commission Act with respect to this title. The Civil Aeronautics Board or the Federal Aviation Administration, as may be appropriate, shall enforce this title and regulations in implementation thereof with respect to any such carrier.

"(5) Except as provided in section 406 of the Act of August 15, 1921 (7 U.S.C. 227)—

"(A) no person, partnership, or corporation subject to the Packers and Stockyards Act, 1921 is subject to the jurisdiction of the Federal Trade Commission or to the provisions of that Act with respect to this title, and

"(B) the Secretary of Agriculture shall enforce this title and regulations in implementation thereof with respect to persons, partnerships, and corporations subject to the Packers and Stockyards Act, 1921."

Page 39, line 14, strike "210" and insert "208".

Page 40, line 2, strike "211" and insert "209".

Page 40, line 3, strike "July 1, 1968" and insert the following:

on the first day of the ninth calendar month which begins after the date of enactment of this title, except that section 204 shall take effect immediately.

Page 40, line 6, strike "PROHIBITION" and insert "RESTRICTION".

Page 40, strike lines 13 through 19 and insert the following:

SEC. 202. (a) Except as provided in subsection (b) of this section, not more than 10 per centum of the excess over $30 per week, or its equivalent for any pay period of a different duration, of any wages, salary, or earnings in the form of commission or bonus as compensation for personal services may be attached, garnished, or subjected to any similar legal or equitable process or order. No court of the United States or of any State may make, execute, or enforce any order or process in violation of this section.

(b) The prohibition contained in subsection (a) of this section does not apply in the case of any debt due—

(1) under the order of any court for the support of any person; or

(2) for any State or Federal tax.

(c) The Secretary of Labor is authorized to make such regulations as may be necessary to carry out the purposes of this section. Whoever willfully and knowingly violates any regulation issued under authority of this section shall be fined not more than $1,000, or imprisoned not more than one year, or both.

(d) The Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor, shall enforce the provisions of this section.

SEC. 203. (a) No employer may discharge any employee by reason of the fact that, on one occasion, wages or other compensation due the employee for personal services have been subjected to attachment, garnishment, or any similar legal or equitable process.

(b) The Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor, shall enforce the provisions of this section.

(c) Whoever willfully violates subsection (a) of this section shall be fined not more than $1,000, or imprisoned not more than one year, or both.

SEC. 204. This title shall not be construed to annul, alter, or affect, or to exempt any creditor from complying with, the laws of any State relating to the garnishment of wages, salary, or earnings in the form of commission or bonus, as compensation for personal services in connection with credit transactions, where such laws—

(1) prohibit such garnishments or provide for more limited garnishments than are provided for in section 202(a) of this title, or

(2) prohibit the discharge of any employee by reason of the fact that, on any occasion, wages or other compensation due the employee for personal services have been subjected to attachment, garnishment, or any similar legal or equitable process.

Page 44, line 6, after "industry" insert ", as well as consumer credit transactions generally".

Page 44, line 11, strike "financing" and insert "credit".

Page 44, line 14, after "practices" insert ", and insure the informed use of consumer credit".

Amend the title so as to read:

A bill to safeguard the consumer in connection with the utilization of credit by requiring full disclosure of the terms and conditions of finance charges in credit transactions or in offers to extend credit; by restricting the garnishment of wages; and by creating the National Commission on Consumer Finance to study and make recommendations on the need for further regulation of the consumer finance industry; and for other purposes.

[It should be noted that amendments adopted by the committee delete from the bill provision for an 18-percent ceiling on consumer credit transactions, the prohibition of confessions of judgment, standby consumer credit controls, and the regulation of margins on commodity futures trading.]

1. A Brief Statement of the Purposes of the Bill

As set forth in its three substantive titles, the Consumer Credit Protection Act has three fundamental purposes: Title I is intended to provide the American consumer with truth-in-lending and truth-in-credit advertising by providing full disclosure of the terms and conditions of finance charges both in credit transactions and in offers to extend credit. Title II restricts the garnishment of wages, which the committee finds to be a frequent element in the predatory extension of credit, resulting, in turn, in a disruption of employment, production, and consumption. Title III establishes a National Commission on Consumer Finance to study and make recommendations to the Congress and to the President on the functions and structure of the consumer finance industry, as well as consumer credit transactions generally.

DISCLOSURE OF CREDIT TERMS

Title I, the truth in lending and credit advertising title, neither regulates the credit industry, nor does it impose ceilings on credit charges. It provides for full disclosure of credit charges, rather than regulation of the terms and conditions under which credit may be extended. It is the view of your committee that such full disclosure would aid the consumer in deciding for himself the reasonableness of the credit charges imposed and further permit the consumer to "comparison shop" for credit. It is your committee's view that full disclosure of the terms and conditions of credit charges will encourage a wiser and more judicious use of consumer credit.

ADVERTISING

Since advertisement is most frequently the primary, if not the principal inducement to consumer purchases, your committee believes that the comparable standards of full disclosure should be applied to the advertisement of credit transactions. Thus, your committee's bill applies the standards of specific credit transaction. Title I of your committee's bill would provide consumers with greater knowledge of the full cost of credit to assist many families in a more satisfactory management of their credit.

GARNISHMENT

While consumer credit has enjoyed phenomenal growth over the past 20 years, so have personal bankruptcies. Title II of your committee's bill, restricting the garnishment of wages, will relieve many consumers from the greatest single pressure, forcing wage earners into bankruptcies.

CONSUMER FINANCE COMMISSION

Title III of the bill, establishing the Consumer Finance Commission, to insure that Congress will be informed with regard to other aspects of the consumer credit industry that your committee has not had an adequate opportunity to study. We are all equally aware of problems in the consumer credit field needful of such further investigation but which are currently insufficiently understood to provide a sound basis for legislative determination. The proposed Commission will provide the Congress with information it needs to be adequately informed in the vital and rapidly growing field of consumer credit.

2. Legislative Action

H.R. 11601 and companion bills have been cosponsored by 26 Members of the House. Some 35 bills dealing with varying aspects of consumer credit protection have been referred to the House Banking and Currency Committee in the current Congress.

The Consumer Affairs Subcommittee of your House Banking and Currency Committee held morning and afternoon hearings on H.R. 11601, from Monday, August 7, through Friday, August 18, 1967, at which time testimony was received from Under Secretary of the Treasury Barr; Secretary Weaver, Department of Housing and Urban Development; Secretary Wirtz, Department of Labor; Secretary Trowbridge, Department of Commerce; the Honorable Sargent Shriver, Director of the Office of Economic Opportunity; the Honorable James L. Robertson, Vice Chairman of the Board of Governors of the Federal Reserve System; Mr. Royal E. Jackson, Chief, Bankruptcy Division, Administrative Office, U.S. Courts, accompanied by Mr. James E. Moriarty, Referree in Bankruptcy, U.S. District Court, Central District of California; Mr. Clive W. Bare, Referee in Bankruptcy, Eastern District of Tennessee; Mr. Estes Snedecor, Referee in Bankruptcy, U.S. District Court, Portland, Oreg.; and Mr. Elmore Whitehurst, Referee in Bankruptcy, Northern District of Texas, Dallas, Tex.; and from the Honorable Betty Furness, Special Assistant to the President for Consumer Affairs. In addition to these public witnesses, representatives from the banking industry, retail merchants groups, trade unions, consumer groups, as well as economists and other academicians, appeared and submitted testimony. Additional statements were received and printed in the record of the hearings from Members of Congress and various private interest groups.

The full committee met in executive sessions on November 20, 21, and 22, and on November 28, 1967, ordered H.R. 11601, as amended, reported favorably to the House.

In the other body hearings on S. 5, the truth-in-lending bill, took place on various dates in April, May, and June 1967. The Senate bill was reported to the Senate on June 28, 1967; passed the Senate on July 11; and was referred to the House Committee on Banking and Currency on July 12, 1967.

3. Need for the Legislation

The need for consumer credit protection legislation is well documented in the 7 years of hearings courageously pioneered by former Senator Paul H. Douglas of Illinois. Your committee believes that the 2 weeks of comprehensive hearings held by the Consumer Affairs Subcommittee of the House Banking and Currency Committee added substantially to the weight of the evidence demonstrating the need for full disclosure of the terms and conditions of credit, as well as the additional consumer credit protection provisions included in H.R. 11601.

President Johnson's message on American consumer protection, of February 16, 1967, and on urban and rural poverty, of March 15, 1967, add significant and eloquent testimony to the need for this legislation. In his American consumer protection message, the President stated:

TRUTH IN LENDING

> Consumer credit has become an essential feature of the American way of life. It permits families with secure and growing incomes to plan ahead and to enjoy fully and

promptly the ownership of automobiles and modern household appliances. It finances higher education for many who otherwise could not afford it. To families struck by serious illness or other financial setbacks, the opportunity to borrow eases the burden by spreading the payments over time.

Because of these benefits, consumers rely heavily on credit. Outstanding consumer credit today totals $95 billion; $75 billion takes the form of installment credit. The interest costs on consumer credit alone amounted to nearly $13 billion in 1966.

The consumer has the right to know the cost of this key item in his budget just as much as the price of any other commodity he buys. If consumers are to plan prudently and to shop wisely for credit, they must know what it really costs.

In many instances today, consumers do not know the costs of credit. Charges are often stated in confusing or misleading terms. They are complicated by "add-ons" and discounts and unfamiliar gimmicks. The consumer should not have to be an actuary or a mathematician to understand the rate of interest that is being charged.

As a matter of fair play to the consumer, the cost of credit should be disclosed fully, simply, and clearly.

Now that the right of consumers to be fully informed is protected when they shop in the supermarkets, the time has come to protect that right for shoppers who seek credit.

I recommend the Truth-in-Lending Act of 1967 to assure that, when the consumer shops for credit, he will be presented with a price tag that will tell him the percentage rate per year that is being charged on his borrowing.

We can make an important advance by incorporating the wisdom of past discussions on how the costs of credit can best be expressed. As a result of these discussions, I recommend legislation to assure—

Full and accurate information to the borrower; and

Simple and routine calculations for the lender.

This legislation is urgently needed to—

Close an important gap in consumer information.

Protect legitimate lenders against competitors who misrepresent credit costs.

The Truth-in-Lending Act of 1967 would strengthen the efficiency of our credit markets, without restraining them. It would allow the cost of credit to be freely determined by informed borrowers and responsible lenders. It would permit the volume of consumer credit to be fully responsive to the growing needs, ability to pay, and aspirations of the American consumer.[1]

In his message on urban and rural poverty, the President stated with regard to the problem of wage garnishment:

WAGE GARNISHMENT

Hundreds of workers among the poor lose their jobs or most of their wages each year as a result of garnishment

[1] Message from the President of the United States transmitting recommendations for consumer protection in the fields of credit, investments, health, meat inspection, hazards in the home, electric power reliability, and natural gas pipeline safety, 90th Cong., first sess., H. Doc. No. 57, pp. 3–4. (February 16, 1967.)

proceedings. In many cases, wages are garnished by unscrupulous merchants and lenders whose practices trap the unwitting workers.

I am directing the Attorney General, in consultation with the Secretary of Labor and the Director of the Office of Economic Opportunity, to make a comprehensive study of the problems of wage garnishment and to recommend the steps that should be taken to protect the hard-earned wages and the jobs of those who need the income most.[2]

In reporting H.R. 11601, the Consumer Credit Protection Act, your committee believes it is recommending a reasonable bill designed to meet these urgent needs. It is a bill both practicable and workable to the credit and retail industries, while, at the same time, providing consumers with needed protection in their credit transactions.

4. What the Bill Would Do

As previously indicated, the bill reported by your committee contains three substantive titles: Title I deals with truth-in-lending and truth-in-credit advertising; title II is concerned with mitigating the harsh and burdensome effects on both employers and employees of the garnishment of employees' wages; and title III would establish a National Consumer Finance Commission.

TITLE I—TRUTH IN LENDING AND CREDIT ADVERTISING

SIZE OF CONSUMER CREDIT

The growth of consumer credit since 1945 has been at a rate of 4½ times greater than the growth rate of our economy as a whole. At the end of 1945 consumer credit amounted to $5.6 billion. As of March of 1967, the total amount of consumer credit was estimated to have climbed to $92.5 billion. As of September 1967, total consumer credit had jumped to $95.886 billion. Thus, today the size of total consumer debt is over 17 times as great as it was in 1945.

Of this $95.8 billion, $76 billion is represented by installment credit. The largest single element consists of over $31 billion in automobile paper, which accounts for over 30 percent of consumer credit.

Another rapidly growing form of credit consists of open end or revolving credit. Open end credit plans include those plans whereunder credit transactions are entered into from time to time, payments are made from time to time, and finance charges are computed periodically on the unpaid balance. Approximately $3.5 billion in revolving credit was estimated as outstanding in March of 1967. As of September 1967, the Federal Reserve Board estimates that revolving credit has reached $5.3 billion. The great bulk of this is represented by department store and mail-order revolving credit charge accounts, although recently an ever-increasing number of commercial banks have moved into the revolving credit field.

Currently, American families are paying approximately $13 billion a year in interest and service charges for consumer credit This is about as great as the Federal Government itself pays for interest on the national debt.

The following tables will illustrate the present size of consumer credit and its growth over the last 30 years:

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[2] Message from the President of the United States transmitting recommendations on urban and rural poverty, 90th Cong., first sess., H. Doc. No. 88, p. 10. (March 15, 1967.)

TABLE 1.—TOTAL CONSUMER CREDIT

[In millions of dollars]

End of period	Total	Installment					Noninstallment			
		Total	Automobile paper	Other consumer goods paper	Repair and modernization loans [1]	Personal loans	Total	Single-payment loans	Charge accounts	Service credit
1939	7,222	4,503	1,497	1,620	298	1,088	2,719	787	1,414	518
1941	9,172	6,085	2,458	1,929	376	1,322	3,087	845	1,645	597
1945	5,665	2,462	455	816	182	1,009	3,203	746	1,612	845
1960	56,028	42,832	17,688	11,525	3,139	10,480	13,196	4,507	5,329	3,360
1961	57,678	43,527	17,223	11,857	3,191	11,256	14,151	5,136	5,324	3,691
1962	63,165	48,034	19,540	12,605	3,246	12,643	15,130	5,456	5,684	3,990
1963	70,461	54,158	22,433	13,856	3,405	14,464	16,303	6,117	5,871	4,315
1964	78,442	60,548	25,195	15,593	3,532	16,228	17,894	6,954	6,300	4,640
1965	87,884	68,565	28,843	17,693	3,675	18,354	19,319	7,682	6,746	4,891
1966	94,786	74,656	30,961	19,834	3,751	20,110	20,130	7,844	7,144	5,142
1967 (March)	92,519	73,591	30,527	19,369	3,648	20,047	18,928	7,769	5,809	5,350
1967 (September) [2]	95,886	76,039	31,269	19,914	3,742	21,087	19,847	8,179	6,387	5,281

[1] Holdings of financial institutions; holdings of retail outlets are included in "other consumer goods paper."

[2] September 1967 figures are estimates supplied by the Board of Governors of the Federal Reserve System.

Note.—Consumer credit estimates cover loans to individuals for household, family, and other personal expenditures, except real estate mortgage loans. For back figures and descriptions of the data, see "Consumer Credit," sec. 16 (new) of "Supplement to Banking and Monetary Statistics," 1965, and May 1966 Bulletin.

Source: Federal Reserve Bulletin, p. 834 (May 1967).

TABLE 2.—INSTALLMENT CREDIT

[In millions of dollars]

End of period	Total	Financial institutions						Retail outlets					
		Total	Commercial banks	Sales finance companies	Credit unions	Consumer finance [1]	Other [1]	Total	Department stores [2]	Furniture stores	Appliance stores	Automobile dealers [3]	Other
1939	4,503	3,065	1,079	1,197	132	----------	657	1,438	354	439	183	123	339
1941	6,085	4,480	1,726	1,797	198	----------	759	1,605	320	496	206	188	395
1945	2,462	1,776	745	300	102	----------	629	686	131	240	17	28	270
1960	42,832	37,218	16,672	11,472	3,923	3,670	1,481	5,615	2,414	1,107	333	359	1,402
1961	43,527	37,935	17,008	11,273	4,330	3,799	1,525	5,595	2,421	1,058	293	342	1,481
1962	48,034	41,782	19,005	12,194	4,902	4,131	1,550	6.252	3,013	1,073	294	345	1,527
1963	54,158	47,405	22,023	13,523	5,622	4,590	1,647	6,753	3,427	1,086	287	328	1,625
1964	60,548	53,141	25,094	14,762	6,458	5,078	1,749	7,407	3,922	1,152	286	370	1,677
1965	68,565	60,273	29,173	16,138	7,512	5,606	1,844	8,292	4,488	1,235	302	447	1,820
1966	74,656	65,565	32,155	16,936	8,549	6,014	1,911	9,091	(4)	(4)	(4)	490	(4)
1967 (Mar.)	73,591	65,006	32,068	16,593	8,485	5,951	1,909	8,585	(4)	(4)	(4)	486	(4)
1967 (Sept.) [5]	76,039	64,376	33,637	16,701	9,026	6,067	1,945	8,663	(4)	(4)	(4)	507	(4)

[1] Consumer finance companies included with "other" financial institutions until 1950.
[2] Includes mail-order houses.
[3] Automobile paper only; other installment credit held by automobile dealers is included with "other" retail outlets.
[4] Not available.
[5] September 1967 figures are estimates supplied by the Board of Governors of the Federal Reserve System.

See also note to table above.

Source: Federal Reserve bulletin, p. 834 (May 1967).

PRESENT DISCLOSURE PRACTICES

Today the consumer is faced with a number of credit disclosure practices, most of which are not directly comparable to one another. With respect to rate, some creditors employ an "add on" rate, which is based on the original balance of the obligation as opposed to the declining balance. This has the effect of understating the simple annual rate by approximately 50 percent.

Other segments of the credit industry, such as credit unions and small loan companies employ monthly rates. Although for some it is a simple matter to multiply the monthly rate by 12, the evidence before the committee indicates that many people are not aware of the true cost of credit when it is expressed on a monthly basis.

Other creditors add a number of additional fees or charges to the basic finance charge, such as credit investigation fees, credit life insurance, and various "service" charges. This permits a creditor to quote a low rate while actually earning a higher yield through the additional fees and charges.

Other creditors make no disclosure of a rate. In this case the consumer would have to compute the actual rate himself if he desired to compare the credit with other alternative sources of credit. Although most creditors do disclose the dollar cost of credit, testimony before the committee has revealed that there are many creditors who quote only a weekly or monthly installment charge. When this is done the consumer has absolutely no idea of the amount of the finance charge or the rate.

The end result of these inconsistent and noncomparable practices is confusion in the public mind about the true costs of credit. A recent survey asked 800 families to estimate the rate of finance charge they were paying on their consumer debts.[1] The average estimate was approximately 8 percent, although the actual average rate paid was almost 24 percent or nearly three times higher.

In large part, these different practices have arisen out of historical circumstances. Although many of these early difficulties with laws have been overcome, the devices originally designed to get around the usury problem have now become imbedded in industry practice. Significantly, no one segment of the industry feels it can afford to reform itself by disclosing an annual percentage rate without incurring a competitive disadvantage. Clearly, the only solution is to require by legislation that all creditors use the same method in computing and quoting finance charges including a statement of the appropriate percentage rate.

The committee believes that by requiring all creditors to disclose credit information in a uniform manner, and by requiring all additional mandatory charges imposed by the creditor as an incident to credit be included in the computation of the applicable percentage rate, the American consumer will be given the information he needs to compare the cost of credit and to make the best informed decision on the use of credit.

TWO EXCEPTIONS TO ANNUAL RATE DISCLOSURE

Two exceptions to annual rate disclosure in credit transactions are incorporated in amendments to H.R. 11601 adopted by the committee.

[1] Juster and Shay, "Consumer Sensitivity to Finance Rates: An Empirical and Analytical Investigation" (1964).

Revolving credit

Since revolving credit was the most discussed subject under consideration by the committee, it is singled out in this report for special treatment. The basic disclosure concept contained in the proposed legislation is to require lenders and merchants to provide consumers with a statement of the "finance charge" imposed by the creditor in connection with the particular consumer credit transaction. In addition to the statement of the finance charge in dollars, the creditor is generally required to state the finance charge as an annual percentage rate; however, your committee believes, with regard to "open-end credit plans" or "revolving charge accounts" as they are more commonly known, that the statement of an annual percentage rate would not accurately reflect the credit charges actually imposed upon such transactions. Your committee believes that while the monthly rate applied to a revolving charge account may be 1.5 percent a month, the particular schedule of payments and purchases, combined with the so-called free ride, does not justify the expression of that monthly rate as an annual rate of 18 percent per year. Revolving charge accounts most frequently contain a "free ride" during which no finance charge is imposed. This period may vary from 30 to 60 days. This type of plan was originally created to meet the requirements of various segments of the retail industry. It permits a customer a wide variety of options in the use of his account including: (1) Whether he will take advantage of the "free ride," (2) over what period of time the account will be paid, and for the most part the amount paid during a given period, (3) the amount and number of additional purchases that can be added to the account at any time.

The committee discussed at length the view that the revolving credit exemption is premised on confusion of the concepts of *yield* as opposed to *rate*. This view suggests if the nominal monthly rate applied is 1.5 percent, the nominal annual rate applied must be 18 percent, although the yield to the creditor may be more or less than the nominal annual rate. In this view disclosure of the nominal annual rate is necessary to assist the consumer in "comparison shopping" for credit under a revolving charge account, as opposed to other forms of credit transactions.

The amendment adopted by your committee, nevertheless, requires the disclosure of the periodic or monthly rate in connection with revolving charge account transactions.

Although the committee could not come to a unanimous conclusion on this issue, they did agree that safeguards should be provided to insure that existing forms of installment credit will not be induced to convert to a revolving credit merely to escape the disclosure of an annual percentage rate. The committee also felt that stores using revolving credit to merchandise large purchases should not be given a competitive advantage over firms which sell similar items on an installment contract basis and are subject to the annual rate disclosure provisions of the act.

For these reasons, your committee recommends that those forms of revolving credit plans which are similar to installment contract type credit are subject to the annual rate disclosure requirement while ordinary revolving credit plans are exempted from the annual rate disclosure requirement.

The installment type credit plan would be defined on the basis of the maintenance of a security interest, or the time required to discharge the obligation, or the extent to which advance payments can be applied to future payments. A more detailed description of the definition of installment open-end credit can be found in the section-by-section summary.

The committee is hopeful that this distinction will provide comparability in the area of credit where it is most needed and meaningful and will prevent any wholesale conversion of installment credit to open-end credit in order to avoid disclosure of an annual percentage rate.

One of the criteria used to distinguish an installment credit plan from an open end credit plan deals with the time required for repayment. The amendment provides that if less than 60 percent of the debt is payable in 1 year the plan should be considered to be an installment open end credit plan subject to annual rate disclosure. This provision would exempt most short term revolving credit plans from the annual rate disclosure provisions but would include longer term revolving credit plans. The committee recognized the 60-percent provision will require some existing forms of revolving credit to disclose an annual percentage rate. It is the best judgment of the committee that 60 percent represents a reasonable division between extended-payment and short term revolving credit.

With the cutoff point at 60 percent, a creditor would have to require that approximately one-tenth of the preceding month's ending balance be repaid each month in order to avoid annual rate disclosure. For example, where you have a beginning balance of $500, a requirement that 10 percent of the preceding month's ending balance be paid each month, and a monthly finance charge rate of 1.5 percent to be applied to the account balance after the monthly payment has been deducted, the outstanding balance in the account would be reduced by $331.18, or 66.2 percent of the beginning balance, during a 12-month period, a follows:

	Monthly payment (10 percent of preceding month's ending balance)	Balance after monthly payment	Finance charge (1½ percent of balance after monthly payment	Ending balance
1st month	$50.00	$450.00	$6.75	$456.75
2d month	45.68	411.07	6.17	417.24
3d month	41.72	375.52	5.63	381.15
4th month	38.12	343.03	5.15	348.18
5th month	34.82	313.36	4.70	318.06
6th month	31.81	286.25	4.29	290.54
7th month	29.05	261.49	3.92	265.41
8th month	26.54	238.87	3.58	242.45
9th month	24.25	218.20	3.27	221.47
10th month	22.15	199.32	2.99	202.31
11th month	20.23	182.08	2.73	184.81
12th month	18.48	166.33	2.49	[1] 168.82
Total for 12 months	382.85		51.67	

[1] Reduction in outstanding balance is $331.18 ($500 minus $168.82).

If the creditor required fixed payments which were determined by their relationship to the original amount of credit, the creditor would have to require that slightly more than 6 percent of the original balance (the total amount of the credit granted) be repaid each month if the plan were to escape annual rate disclosure. This would provide for a payment term of approximately 19 months. For example, where you have a beginning balance of $500, a requirement that 6.1 percent thereof be paid each month, and a monthly finance charge rate of 1.5

percent to be applied to the account balance after the monthly payment has been deducted, the outstanding balance in the account would be reduced by $305.91, or 61.2 percent of the beginning balance, during a 12-month period, as follows:

	Monthly payment (6.1 percent of $500)	Balance after monthly payment	Finance charge (1½ percent of balance after monthly payment)	Ending balance
1st month	$30.50	$469.50	$7.04	$476.54
2d month	30.50	446.04	6.69	452.73
3d month	30.50	422.23	6.33	428.56
4th month	30.50	398.06	5.97	404.03
5th month	30.50	373.53	5.60	379.13
6th month	30.50	348.63	5.23	353.86
7th month	30.50	323.36	4.85	328.21
8th month	30.50	297.71	4.47	302.18
9th month	30.50	271.68	4.08	275.76
10th month	30.50	245.26	3.68	248.94
11th month	30.50	218.44	3.28	221.72
12th month	30.50	191.22	2.87	[1] 194.09
Totals for 12 months	366.00		60.09	

[1] Reduction in outstanding balance is $305.91 ($500 minus $194.09).

An amendment adopted by the committee, intended in part to mitigate the annual rate disclosure exemption for revolving credit, provides that upon the request of the consumer, the creditor must supply an approximate annual percentage rate of the finance charge on open-end credit transactions. Such information would be supplied by the creditor in writing to the consumer when the consumer requesting the informations specifies or identifies the repayment schedule involved and other essential credit information. Your committee expects the appropriate Federal agencies, in devising regulations to implement this amendment and in enforcing it, to assure the widest feasible availability to consumers of information about their right to obtain a statement of their finance charges expressed as an annual percentage rate.

While it is hoped that the provisions for disclosing the annual rate on installment open-end credit plans will be adequate to provide the consumer with sufficient disclosure information in connection with future developments in the fields of revolving credit, your committee is equally aware that revolving credit outstanding at the present time has reached $5.3 billion and has climbed to slightly more than 5.5 percent of all consumer credit. Continued surveillance of this aspect of consumer credit will be required in assessing the effectiveness of the legislative scheme provided for in the proposed bill.

Ten dollar finance charge exemption

The committee adopted an amendment exempting from annual rate disclosure non-open-end transactions where the finance charge does not exceed $10. The subject amendment would exempt from annual rate disclosure consumer credit transactions where the nominal annual rate was 18 percent and the amount of the credit involved was approximately $100 or less. It is the view of the majority of your committee that this exemption would relieve small merchants from the burden of providing annual rate disclosure in connection with relatively small and insignificant credit transactions. Similarly, it is the committee's view that small accommodation loans are made by lenders where the fixed expenses of the loan, if required to be disclosed at an annual percentage rate, would reflect so high a rate as to discourage lenders from making such loans. The amendment is intended to preserve that type of credit for the class of consumers obtaining such accommodation loans.

TRUTH-IN-CREDIT ADVERTISING

A distinctive feature of the bill is the establishment of criteria to insure truth-in-credit advertising. The advertising sections of the bill are basically geared to provide full disclosure where representation of credit terms are made in advertising in connection with a consumer credit transaction. The basic premise of the application of disclosure standards to credit advertising rests in the belief that a substantial portion of consumer purchases are induced by such advertising and that if full disclosure is not made in such advertising, the consumer will be deprived of the opportunity to effectively comparison shop for credit.

In the case of consumer credit transaction advertisements of other than open-end credit plan transactions, finance charges may not be stated as rates unless they are expressed as annual percentage rates. Where the amount of an installment payment or the dollar amount of a finance charge are advertised, the cash price or the amount of the loan, the downpayment, specifics of the payment schedule, and the finance charge expressed as an annual rate must also be furnished. These requirements, however, do not apply to the advertisement of residential real estate unless regulations of the Board of Governors of the Federal Reserve System should otherwise provide. It is your committee's view that the Board in consideration of the issuance of regulations under this provision, should give equal consideration to the home buyer and his needs regarding full disclosure, as well as meeting the problems of real estate developers in advertising the sale of residential real estate.

In connection with advertisement under an open-end credit plan, a creditor advertising any of the specific credit terms of that plan must set forth the conditions under which a finance charge will be made, including a statement of the "free ride" period, together with the method used in determining the balance upon which a charge will be imposed, as well as the amount of the charge in dollars and expressed as an annual percentage rate. These and other requirements of the advertising disclosure provisions apply only to the creditor and his agents and not to the media in or through which the advertisement is disseminated.

The advertising standards provided for in the committee bill are intended to be minimal. Sellers and lenders who wish to go beyond what is called for in the bill and explain their terms in more detail are encouraged to do so, provided that the details they supply are accurate and in no way misleading. Detailed explanation is particularly to be desired in the case of revolving credit plans, where differing billing methods have as much impact on consumer charges as differing rates.

Once every lender and seller is required to make the basic facts available in his advertising, those who wish to go into such additional details as average yields for all accounts will be able to do so in an atmosphere of greater consumer understanding.

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REGULATIONS AND ADMINISTRATION ENFORCEMENT

All substantive regulations in connection with the full disclosure of the terms and conditions of finance charges in credit transactions or in the advertisement of credit transactions shall be issued by the Board of Governors of the Federal Reserve System. No one can deny their experience and expertise in these matters. Accordingly, it is the view of your committee that, for uniformity of application to all affected segments of the industries concerned, a single set of comprehensive regulations should be issued. Your committee anticipates that the Board of Governors will hold full and open hearings on proposed regulations providing all parties having a legitimate interest therein an adequate opportunity to present their testimony to the Board. Since administrative enforcement of the regulations will be allocated among various Federal agencies already having regulatory responsibilities over industries affected by the credit disclosure requirements of the bill, the Board should similarly provide each of these agencies with an opportunity to present its respective point of view concerning such substantive regulations. Your committee is particularly concerned that the Board afford a full and fair opportunity for testimony and comment to representatives of all affected industries and consumer groups.

Your committee believes that administrative enforcement of the credit disclosure features of the bill is fundamental to its legislative purpose. This aspect of the bill is designed to provide consumers with basic information in connection with their credit transactions so that they may effectively "comparison shop" for credit in order to obtain credit on the most favorable terms available in the marketplace. For the relatively unsophisticated consumer, particularly those of modest means, administrative enforcement will provide their only protection against unscrupulous merchants or lenders. Such consumers neither will have the means for instituting their own civil suits, nor adequate knowledge or experience to enable them to file a complaint through proper channels to obtain redress through the Attorney General in a criminal action. Administrative enforcement can provide the broad and effective application of the principle of disclosure called for in the bill. These provisions not only will protect the consumer, but will further protect the honest businessman from unethical forms of competition engaged in by some unscrupulous creditors who prey upon the poor through deceptive credit practices. Effective administrative endorcement will protect the honest merchant and insure that he is not penalized in the marketplace when he states the full cost of his credit in dollars and as an annual percentage rate.

In establishing procedures for administrative enforcement, the bill takes care not to disturb the existing lines of responsibility presently drawn within the Federal Establishment. Thus, the Federal Home Loan Bank Board will be responsible for the administration of regulations affecting savings and loan institutions; the Comptroller of the Currency for national banks; the Federal Reserve Board itself for State banks which are members of the Federal Reserve System; and the Federal Deposit Insurance Corporation for federally insured State nonmember banks. Similarly, the Civil Aeronautics Board or the Federal Aviation Agency, the Interstate Commerce Commission and the Department of Agriculture will exercise their traditional jurisdiction in this area, with the Federal Trade Commission covering the remainder. Your committee believes there are sound and logical reasons for this division of responsibility. The Board of Governors of the Federal Reserve System is to be the central single agency for issuing all regulations on credit disclosure or on the advertising of credit to insure a single set of overall standards applicable for all forms of consumer credit, while agencies already having expertise in the affected industries will be responsible for the application of such regulations to each of those industries.

CIVIL AND CRIMINAL PENALTIES

While primary enforcement of the bill would be accomplished under the administrative enforcement section discussed above, further provision is made for the institution of civil action by an aggrieved debtor. Any creditor failing to disclose required information would be subject to a civil suit with a penalty equal to twice the finance charge, with a minimum penalty of $100 and a maximum penalty not to exceed $1,000 on any individual credit transaction. However, the bill specifically exempts credit advertising from the application of civil penalties. This exemption has been written into the bill by your committee to avoid the possibility that anyone, not a party to an actual transaction, seeing an advertisement not complying with the disclosure requirements of the bill would attempt to seek civil penalties.

The U.S. Attorney General is granted authority under the bill to institute criminal actions in cases where there is knowing and willful presentation of false or inaccurate information required to be disclosed under the bill. However, no person may be subject to punishment or penalty by virtue of the erroneous disclosure of a finance charge or a percentage rate greater than the amount required to be disclosed.[1]

EFFECTIVE DATE

The effective date established by your committee for full disclosure of the terms and conditions of credit, including provisions applying to credit advertising, is 9 months after enactment. The Massachusetts Truth-in-Credit Act, more farreaching than title I of H.R. 11601, took effect 90 days after enactment, as did the Department of Defense credit directive requiring credit disclosure for servicemen. Nine months should provide adequate time for the Board of Governors of the Federal Reserve System to draft proposed regulations, hold appropriate hearings, and promulgate the substantive regulations so necessary for effective enforcement. Similarly, it should provide other affected Federal agencies with an appropriate period of time in which to make the necessary adjustments for their full participation in the enforcement of such regulations.

Serious questions have been raised and concern expressed with regard to the effect of this title of the bill upon State law. Section 205 of the bill clearly establishes the basic congressional policy that the bill does not preempt State consumer credit legislation unless the State laws concerned are inconsistent with the Federal law, and then only to the extent of such inconsistency. Of paramount significance is the fact that your committee has included language in the bill to make it absolutely clear that the annual percentage rate required to

[1] Provision is also made for reasonable tolerances with regard to an understatement of material required to be disclosed.

be disclosed under section 203 of the bill is not an interest rate within the meaning of the various State usury laws. The definition of the term "finance charge" includes all mandatory costs imposed by the creditor as incident to the extension of credit, including interest and various other charges incident to the extension of such credit.

In most States the legal definition of interest is substantially less extensive than the definition of finance charge under section 202 of the bill. Your committee, therefore, wishes to reiterate and reemphasize that the annual percentage rate defined in section 202 of the bill is not equivalent to the legal definition of an interest rate, but is rather a composite rate including all charges incident to credit, only one of those charges being interest.

Your committee's view in this respect is reaffirmed by the testimony of Under Secretary Barr in the course of hearings on the bill before the Consumer Affairs Subcommittee. At that time Secretary Barr stated:

> There also is no justification for the claim that the annual rate disclosure requirement would prejudice lenders under State usury laws. The disclosure provisions of H.R. 11601 deal only with the annual rate of finance charges, not with interest rates. In fact, the finance charge is defined to include many charges which clearly cannot be classified as "interest." In addition, the disclosure requirements would not change the legal status of existing credit charge practices. Credit charges which now are lawful under State usury laws would not become unlawful simply by reason of being disclosed to the consumer.

TITLE II—RESTRICTION ON GARNISHMENT

Your committee finds that the garnishment of wages is frequently an essential element in the predatory extension of credit resulting in a disruption of employment, production, as well as consumption.

As originally introduced, this title of the bill would have provided for a blanket prohibition against the garnishment of wages. However, testimony received by your committee has shown that a total prohibition would unduly restrict honest and ethical creditors. while permitting those fully capable of paying just debts to escape such responsibilities. Accordingly, your committee has adopted an amendment to this title that would restrict garnishment to 10 percent of earnings above $30 per week, while prohibiting an employer from discharging any employee by reason of a single garnishment of the employee's wages. Enforcement of these provisions is vested in the Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor.

The restriction on garnishment provided for in the bill does not apply to any debt due to a court order for the support of any person (domestic relations cases) or for State or Federal taxes.

Levels of personal bankruptcies have risen at truly alarming rates. While such bankruptcies were at a level of 18,000 per year in 1950, for the fiscal year ending June 30, 1967, personal bankruptcies had risen to 208,000. Personal debts canceled by virtue of such consumer bankruptcies reached approximately $1.5 billion in that year. Testimony and evidence received by your committee clearly established a causal connection between harsh garnishment laws and high levels of personal bankruptcies. Statistics obtained from the Bankruptcy Division of the Administrative Office of the U.S. Courts further corroborate this conclusion. In States such as Pennsylvania and Texas, which prohibit the garnishment of wages, the number of nonbusiness bankruptcies per 100,000 population are nine and five respectively, while in those States having relatively harsh garnishment laws, the incidents of personal bankruptcies range between 200 to 300 per 100,000 population.

Eloquent testimony on the relationship between harsh garnishment laws and levels of personal bankruptcies was received from four U.S. referees in bankruptcy: Referee James E. Moriarty, of Los Angeles, Calif.; Referee Clive W. Bare, of Nashville, Tenn.; Referee Elmore Whitehurst, of Dallas, Tex.; and Referee Estes Snedecor, of Portland, Orego. Each of these experienced referees in bankruptcy endorsed the need for restricting the garnishment of wages. Referee Snedecor, having served 31 years as a referee in bankruptcy and having been a member of the legal profession for some 57 years at the time of his testimony, stated with regard to the garnishment provisions of the bill:

> I think this is the most important part of your bill. I think it would be a godsend if something can be done about it.

Endorsement of the limitations on the garnishment of wages was further received from both trade union and industrial groups. I. W. Abel, president of the United Steelworkers of America, and Pat Greathouse, vice president of the United Automobile Workers of America, speaking for the UAW and the Industrial Union Department of the AFL-CIO, testified in support of the limitations on the garnishment of wages. Further endorsement has been received from the Inland Steel Corp., the United States Steel Corp., and the Republic Steel Corp.

The limitations on the garnishment of wages adopted by your committee, while permitting the continued orderly payment of consumer debts, will relieve countless honest debtors driven by economic desperation from plunging into bankruptcy in order to preserve their employment and insure a continued means of support for themselves and their families.

TITLE III—COMMISSION ON CONSUMER FINANCE

This title of your committee's bill provides for the establishment of a bipartisan National Commission on Consumer Finance, to be composed of nine members: Three members from the Senate appointed by the President of the Senate; three members of the House appointed by the Speaker; and three public members to be appointed by the President of the United States. The Commission is called upon to study the structure and functioning of the consumer finance industry, as well as consumer credit transactions generally, and report its findings, recommendations, and conclusions to the Congress and the President by December 31, 1969. The Commission is specifically called upon to include within the scope of its report and recommendations a discussion of—

(1) The adequacy of existing arrangements to provide consumer credit at reasonable rates.

(2) The adequacy of existing supervisory and regulatory mechanisms to protect the public from unfair practices, and insure the informed use of consumer credit.

(3) The desirability of Federal chartering of consumer finance companies, or other Federal regulatory measures.

This list of stated topics is not intended to be exhaustive or exclusive of other topics and considerations falling within the scope of the Commission's concern. Your committee anticipates that the Commission's report would provide both a retrospective view of the effectiveness of the proposed bill, H.R. 11601, and a prospective view for possible future legislative action in the field of consumer credit protection.

Section-by-Section Summary

TITLE I OF THE BILL

Title I of the bill contains all of the provisions relating to the advertising of credit and the disclosure of finance charges. It is cast in the form of an amendment to the Federal Reserve Act which redesignates that act as title I and inserts at the end thereof a new title II which is entitled "Credit Transactions." The section numbers in that title, as reported by the committee, run from section 201 through section 209.

Section 201. Declaration of purpose

Declares that economic stabilization would be enhanced and that competition would be strengthened by the informed use of credit resulting from an awareness of credit costs on the part of consumers. States that the purpose of title I of the bill is to assure meaningful disclosure of credit terms to enable the consumer to compare alternative sources of credit available to him.

Section 202. Definitions

Section 202(a)—Definition of "Board."—Refers to the Board of Governors of the Federal Reserve System.

Section 202(b)—Definition of "credit."—Credit is defined as "the right granted by a creditor to defer payment of debt or to incur debt and defer its payment." The definition also makes clear that consumer credit means debt contracted by persons for personal, family, household, or agricultural purposes. The definition also makes it clear that credit means those bailment lease situations described further in section 202(c).

Section 202(c)—Definition of "consumer credit sale."—Defines credit sales whose disclosure provisions come under section 203(b) as opposed to direct loans which come under section 203(c). The definition makes it clear that the act covers only those creditors who regularly extend credit.

The definition of credit sale is also limited to include leases only if they are, in essence, disguised sale arrangements. The language covering disguised leases is nearly identical to the language used in the Uniform Conditional Sales Act and in many State retail installment sales acts to distinguish between "true" leases and other leases.

Section 202(d)—Definition of "finance charge."—Defines a finance charge as all mandatory charges imposed by a creditor and payable by an obligor as an incident to the extension of credit.

Official fees, relating to security (or premiums in lieu thereof), and taxes would not be considered part of the finance charge to be calculated in the annual rate. In addition, the definition lists those typical real estate closing costs which would be excluded.

Section 202(e)—Definition of "creditor."—Covers only those who regularly engage in credit transactions. Thus a small retailer who extended credit and charged for it in an isolated instance to accommodate a particular customer would not be covered.

Section 202(f)(1)—Definition of "annual percentage rate."—Provides that the actuarial method shall be used for determining an annual rate. This is a well-recognized term in the mathematics of finance and has also a long judicial history under the U.S. rule (*Story* v. *Livingston* (38 U.S. 359) 1839).

There are at least seven methods for computing the "simple" annual rate on the declining balance and though they all produce nearly similar results, the actuarial method is considered to be the most accurate. This method assumes that a uniform periodic rate is applied to a schedule of installment payments such that the principal is reduced to zero upon completion of the payments. The annual actuarial rate is such periodic rate multiplied by the number of periods in a year.

Section 202(f)(2)—Other methods.—The Board is also given the power to prescribe other methods for determining the annual percentage rate. For example, the constant-ratio method, which is in the Massachusetts law, could be used for highly irregular contracts. It is possible to develop formulas or other shortcut procedures based on the constant-ratio method which would be much simpler than the actuarial method.

Section 202(f)(3)—Annual rate on open-end credit.—The "equivalent annual percentage rate" on open-end or revolving credit is defined as the periodic rate times the number of periods in a year. This is exactly equivalent to the actuarial rate.

Section 202(f)(4)—Bracket rates.—The definition makes it clear that creditors who determine their finance charges on the basis of a bracketed amount of credit can compute the annual percentage rate on the basis of the midpoint of the bracket. For example, assume a mail-order house charges a flat $20 for purchases ranging between $140 and $150. A creditor could compute the rate for $145 and disclose it for all transactions within the bracket, whether they were $140.01 or $149.99.

Section 202(g)—Definition of "open-end credit."—This definition of open-end credit is similar to the language used in many State retail installment sales acts. The essential characteristics of open-end credit are that credit transactions are entered into from time to time, payments are made from time to time, and finance charges are computed on the unpaid balances from time to time. The definition is intended to include all plans permitting credit transactions from time to time, such as charge accounts and credit card accounts, even though the creditor does not normally compute a finance charge on the outstnading unpaid balance.

Section 202(h)—Definition of "installment open-end credit."—This definition is necessary in view of the treatment of open-end credit plans under section 203(d).

Open-end or revolving credit plans would be exempt from the annual rate requirement except for "installment open-end credit plans." Such plans are distinguished from ordinary revolving credit by the extended length of time permitted for repayment or the maintenance of a security interest in the merchandise. Such plans would be covered if 60 percent or less of any amount of credit was payable in 1 year, or if the seller maintained a security interest, or if accelerated payments are applied to future payments.

Section 202(i)—Definition of "organization."—Defines an organization as a "corporation, government or governmental subdivision or agency, business or other trust, estate, partnership, or association." Credit to such entities would be excluded from the provisions of the bill.

Section 202(j) defines "State" as including Puerto Rico and the District of Columbia.

Section 203. Disclosure of finance charges; advertising

Section 203(a)—Requirement to disclose.—This is a prefatory section setting forth the basic requirement to disclose. Disclosure need only be made to persons "upon whom a finance charge is or may be imposed." Thus, the disclosure requirement would not apply to transactions which are not commonly thought of as credit transactions, including trade credit, open-account credit, 30-, 60-, or 90-day credit, etc., for which a charge is not made.

Section 203(b)—Disclosure on retail credit.—Retail and lender credit are treated in different subsections, 203(b) and 203(c), to emphasize the fact that Congress recognizes the difference between these two forms of credit and does not deny the validity of the time-price doctrine upon which most retail credit is legally justified. This should prevent the act from being used as an argument in any litigation challenging the time-price doctrine.

Section 203(b) requires disclosure of the cash price, the downpayment (including any trade-in), the difference between the two, and all other charges that are included in the credit but are not part of the finance charge. These other charges must be individually itemized. The finance charge must be disclosed, both in dollars and cents and, if it exceeds $10, as an annual percentage rate. Specific provisions are included to prohibit splitting of sales to take advantage of the $10 exemption. The number, amount, and due dates of the payments must also be disclosed, as well as any penalties for late payments.

Disclosure must be made before the credit is extended; this may be done on the contract or other document to be signed by the customer, thereby obviating any need for disclosure on a separate piece of paper. For mail or telephone sales, where there has been no personal solicitation, disclosure need not be made until the date of the first payment, if the deferred payment price and financing terms, including the annual percentage rate, are disclosed in printed material distributed to the public.

Section 203(c)—Disclosure on lender credit.—This subsection covers loans and any other form of credit other than retail credit (covered by section 203(b), just discussed) and open-end credit (to which section 203(d) applies). Financial institutions such as credit unions, savings banks, savings and loan associations, industrial banks, and consumer finance companies would fall under this subsection. Consumer loans by banks would also be covered, although bank credit card plans would come under section 203(d). The disclosure requirements for loans are essentially the same as discussed above for retail credit, but, of course, the figures to be disclosed are based on the amount of the loan instead of cash purchase price.

Section 203(d)(1)—Disclosure of open-end credit.—This subsection applies to open-end credit plans.

Section 203(d)(2)—Disclosure when the account is opened.—This provision outlines the disclosures to be made when the account is opened.

Section 203(d)(2)(A)—Conditions of plan.—This provision requires the disclosure of the basic conditions of the plan, including the time period, if any, during which no finance charge will be levied for avoiding finance charges.

Section 203(d)(2)(B)—Billing system.—There is a substantial difference in dollar cost between the opening-balance method and the adjusted-balance method of billing. This paragraph would require the disclosure of whatever method was followed.

The opening-balance method charges on the opening balance unless paid in full within 30 days, with no credit given for payments made during the month. The adjusted-balance method charges on the basis of the opening balance less any payments and returns during the month.

Section 203(d)(2)(C)—Method of determining the finance charge.—This paragraph requires disclosure of the complete method for determining the finance charge including the imposition of any fixed or minimum fees.

Disclosure of the periodic rate is also required. In addition, installment open-end credit plans, as defined by section 202(h), would disclose the annual percentage rate which would be 12 times the monthly rate.

This provision thus exempts open-end credit plans from annual percentage rate disclosure, but does not exempt installment open-end credit plans, which are distinguished from ordinary revolving credit by the extended length of time permitted for repayment or the maintenance of a security interest in the merchandise. Such plans would be covered if less than 60 percent of any amount of credit was payable in 1 year, or if the seller maintained a security interest, or if accelerated payments are applied to future payments.

The purpose of this distinction is to eliminate any incentive to convert closed-end installment credit to revolving credit merely to escape annual rate disclosure. It also provides greater comparability between installment open-end credit plans and installment closed-end credit plans.

Section 203(d)(2)(D)—Other charges.—This paragraph requires that if any charges may be imposed in addition to the finance charge, then the conditions under which they may be imposed and the method of determining them must also be disclosed.

Section 203(d)(3)—Disclosure on periodic statements.—This paragraph outlines the disclosure which must be made on the periodic statement, for each billing period, if at the end of which there is an outstanding balance.

Section 203(d)(3)(A)—Opening balance.—Requires disclosure of "the outstanding balance in the account at the beginning of the billing period."

Section 203(d)(3)(B)—Additional extensions of credit.—Requires disclosure of "the amount and date of each extension of credit during the period and, if a purchase was involved, a brief identification (unless previous furnished) of the goods or services purchased."

Section 203(d)(3)(C)—Credits to the account.—Requires disclosure of "the total amount credited to the account during the period."

Section 203(d)(3)(D)—Amount of finance charge.—Requires disclosure of "the amount of any finance charge added to the account during the period," and a breakdown showing how much of such finance charge is due to percentage rate and how much is due to a fixed or minimum fee.

Section 203(d)(3)(E)—Rate of finance charge.—All open-end credit plans would disclose a periodic (usually monthly) rate on the periodic statements. In addition, installment open-end credit plans would disclose the equivalent annual percentage rate for the reasons outlined under section 203(d)(2)(C).

Section 203(d)(3)(F)—Balance on which finance charge is computed.—The method of determining the balance on which the finance charge is computed must be disclosed, and plans using the opening-balance method must disclose that fact as well as the amount of payments during the period.

Section 203(d)(3)(G)—Closing balance.—Requires disclosure of "the outstanding balance in the account at the end of the period."

Section 203(d)(3)(H)—Time for avoiding finance charge.—Requires disclosure of "the date by which, or the period (if any) within which payment must be made to avoid additional finance charges."

Section 203(d)(4)—Information previously disclosed.—This paragraph makes it clear that information previously disclosed would not have to be disclosed again where unpaid amounts are added to a bill.

Section 203(d)(5)—Approximate annual percentage rates to be supplied on request.—This paragraph requires a creditor to furnish an estimate of the approximate annual percentage rate of the finance charge for a transaction (including a specific unpaid balance), where the customer requests it and supplies the information needed to make the estimate.

Section 203(e)—Acknowledgment of disclosure.—This is a provision designed to facilitate the free flow of credit paper. It provides a bank or finance company with assurance that the original dealer has made the required disclosure and that the bank or finance company will not be liable for any failure, on the dealer's part, to make disclosure.

Section 203(f)—Method of disclosure.—This subsection contains four provisions designed to facilitate compliance.

In order to reduce needless paperwork, disclosure need only be made to one obligor. For example, if two people (e.g. a husband and wife) are the obligors, only one copy of the contract with the required disclosure information would need to be furnished.

In order to afford greater flexibility, the required information need not be furnished in the order outlined in the act.

In order to facilitate compliance, language different from that contained in the act can be used if it conveys substantially the same meaning. This provision will ease the compliance with both State and Federal law in a single disclosure statement.

In order to provide greater clarity, additional explanation of disclosed information is expressly permitted.

Section 203(g)—Compliance with comparable State laws is compliance with Federal law.—This provision is intended to avoid duplication of Federal and State requirements, to leave State requirements untouched as much as possible, and to permit a creditor to avoid double paperwork. If he complies with the applicable State disclosure law, he need supply only the additional information required by the Federal act to comply with such Federal act. It also makes it clear the Congress does not intend to preempt consistent State laws but merely to build upon them.

Section 203(h)—Adjustments after the contract do not violate the disclosure made.—This subsection makes it clear that where information disclosed in compliance with the act is made inaccurate as a result of subsequent events, the inaccuracy would not be a violation.

Section 203(i)—Advertising installment credit terms.—This subsection applies to advertising of credit transactions, other than open end credit plans, which are covered by section 203(j); advertisements of residential real estate are exempt except to the extent the Federal Reserve Board may by regulation require compliance. The subsection requires that an advertisement that states a rate of finance charge must also express the rate as an annual percentage rate. If the amount of an installment payment or the amount of finance charge is stated, the advertisement shall also state the cash price or loan amount; downpayment (if any); the number, amount, and due dates or period of payments scheduled; and the annual percentage rate of the finance charge.

Section 203(j)—Advertising of open end credit.—This subsection requires that if any of the specific terms of an open-end credit plan are advertised, the advertisement must also set forth the same information that section 203(d)(2) requires to be disclosed when the account is opened, with one difference. That is, section 203(j) requires that the advertisement state the annual percentage rate of the finance charge, whereas section 203(d)(2) requires disclosure of an annual rate only for installment open end credit plans.

Section 203(k)—Prohibition against advertising credit terms not customarily available.—This subsection prohibits a creditor from advertising "that a specified periodic credit amount or installment amount can be arranged" or "that a specified downpayment is required" unless he "usually and customarily" makes such arrangements.

Section 203(l)—Catalogs and other multiple-page advertisements.—A multiple-page advertisement will be treated as a single advertisement for purposes of determining compliance with the advertising requirements, if it contains a credit terms table clearly and conspicuously furnishing the required information.

Section 203(m)—Creditor, not advertising media, responsible for compliance.—This subsection makes it clear that the advertising requirements apply to the creditor or his agent who causes the advertisement to be published, and not to those who own or distribute the medium in which it appears.

Section 203(n)—Exemptions.—This subsection exempts three kinds of credit. First, credit extended for business or commercial purposes, or to governments or organizations, is exempted. Second, certain transactions by broker-dealers registered with SEC are exempted (SEC is authorized to require disclosure as to such transactions under the Securities Act of 1933). Finally, transactions where the total amount to be financed exceeds $25,000 are exempt, except for real property transactions. This exemption will facilitate determinations of whether a transaction is exempt as being made for a business or commercial purpose. It provides an objective test so as not to require the creditor to inquire continuously as to the purpose of the credit.

Section 204. Regulations

Section 204(a)—Federal Reserve Board to prescribe regulations to implement section 203.—This subsection directs the Board of Governors of the Federal Reserve System to prescribe regulations to carry out section 203, including provisions governing the method of determining annual percentage rates, prescribing procedures for clear and conspicuous disclosure of the required information, and prescribing reasonable tolerances of accuracy.

Section 204(b)—Limitations on tolerances.—This subsection sets forth standards for the Board to follow in prescribing regulations on tolerances.

Section 204(b)(1)—Tolerance on single rate situations.—This paragraph covers simple situations where a creditor uses a single add-on, discount, or periodic rate to determine the finance charge. For example, a bank which uses a 6-percent, add-on rate would know immediately that the acturial equivalent was 10.90 percent on a 12-month contract. A credit union would instantly know that 1 percent per month was 12 percent a year. In such cases a tolerance to the nearest quarter of 1 percent is prescribed.

Section 204(b)(2)—Tolerance for tables.—This paragraph covers more complex situations where the creditor determines the finance charge in a more complicated manner such as a combination of monthly rates (e.g. 3 percent on the first $300; 2 percent on the next $200; and 1½ percent on the excess); or perhaps he determines the charge by an add-on rate of 10 percent plus a fixed charge of $10. In such cases the answer would be provided by a rate table. The bill authorizes a tolerance of 8 percent to be built into the table. This does not refer to 8 percentage points, but to 8 percent of the rate. For example, if the actual rate were 12 percent, the tolerance would be 96 percent (8 percent times 12 percent) or almost 1 percentage point. Thus, the tolerance would vary depending upon the size of the rate. For credit at 6 percent, the tolerance would be roughly one-half of a percentage point. At 12 percent it would be 1 percentage point. At 24 percent it would be 2 percentage points and so on. A provision is added to penalize any creditor who willfully uses these tolerances so as to always understate the rate. The purpose of the tolerance is to simplify the construction of tables so that they do not have to be overly detailed. With such tolerances, the disclosed rate should, ln the average, be slightly over the actual rate half the time and slightly under the actual rate half the time.

Section 204(b)(3)—Tolerance for other situations.—This paragraph authorizes the Board to prescribe other reasonable tolerances for creditors who do not wish to use tables in computing the rate.

Section 204(b)(4)—Tolerance for irregular payment situations.—This paragraph would permit the Board to prescribe even greater tolerances for irregular payment situations. It is expected, for example, that the Board will permit creditors to disregard a certain number of skip payments in computing the rate. In such a case, the rate computed as though the contract were a level payment contract might vary 2 or 3 percentage points from the actual rate.

Section 204(c)—Authority to prescribe adjustments and exceptions.—This section gives the Board authority to prescribe adjustments and exceptions for any classes of transactions in order to prevent circumvention and facilitate compliance.

Section 204(d)—Consultation with other agencies.—This subsection provides that the Board may consult with any agency which in the Board's judgment exercises regulatory functions with respect to any class of creditors.

Section 204(e)—Advisory committee.—This section requires the Board to establish an advisory committee.

Section 205. Effect on State laws

Section 205(a)—Relationship of Federal law to State law.—This subsection sets forth the basic policy that the Federal statute does not preempt State legislation, and adds the further stipulation that inconsistent State laws are annulled "only to the extent of the inconsistency."

It also makes clear that Congress does not regard the annual percentage rate as an interest rate within the meaning of the usury statutes or the judicial interpretations of the time price doctrine.

Section 205(b)—Exemption when State laws are similar.—This subsection permits the Board to exempt creditors from the Federal law if State law requires similar disclosures, with adequate provisions for enforcement.

Section 206. Civil and criminal penalties

Section 206(a)—Civil penalties.—This subsection sets forth civil penalties of double the finance charge with a minimum of $100 and a maximum of $1,000, for failure to comply with section 203 (other than the advertising requirements). It permits a creditor to defend against a civil action by proving the failure to disclose was an unintentional error. However, the burden of proof would be on the creditor, and he would have to establish, by a preponderance of evidence, that such error was unintentional. It also permits a creditor to escape liability for an error if the creditor discovers it first and makes whatever adjustments are necessary to insure that the consumer will not pay a finance charge in excess of the amount or precentage rate actually disclosed.

Section 206(b)—Criminal penalties.—Criminal penalties of $5,000 or 1 year imprisonment or both are specified.

Section 206(c)—Exemption for governments.—This subsection exempts the Federal Government and State and local governments from civil and criminal liabilities.

Section 206(d)—Exemption for overstatement.—Creditors would be relieved of any civil or criminal penalty for overstating the annual percentage rate.

Section 207. Administrative enforcement

Section 207—Administrative enforcement.—This section vests in various Federal agencies the responsibility for enforcing title I of the bill.

In the case of financial institutions subject to the Financial Institutions Supervisory Act of 1966, enforcement will be by the Federal Home Loan Bank Board with respect to savings and loan associations and other institutions subject to that Board's jurisdiction, by the Comptroller of the Currency with respect to national banks, by the Board of Governors of the Federal Reserve System with respect to State member banks, and by the Federal Deposit Insurance Corporation with respect to insured nonmember banks. Since any violation of title II would constitute a "violation of law" under the Financial

Institutions Supervisory Act, the procedures set forth in that act to prevent such violations will be available for enforcement of this title.

Similarly, the Interstate Commerce Commission will be responsible for enforcing compliance with the title on the part of common carriers under its jurisdiction. In the case of carriers subject to the Federal Aviation Act of 1958, enforcement will be by the Civil Aeronautics Board or the Federal Aviation Agency, as may be appropriate. And for creditors subject to the Packers and Stockyards Act, 1921, the Secretary of Agriculture will have enforcement responsibility. The Federal Trade Commission will have the responsibility of administrative enforcement of title I with regard to those industries not otherwise subject to such enforcement by the aforementioned agencies.

Section 208. Reports

Section 208—Reports.—This section requires annual reports from the Federal Reserve Board and the Attorney General on the administration of their functions under title II. The Board's report is to include its assessment of the extent to which compliance is being achieved.

Section 209. Effective date

Section 209—Effective date.—Title II will take effect 9 months after enactment, except for section 204, which will take effect immediately so that the Federal Reserve Board may begin preparation of regulations.

TITLE II OF THE BILL

As reported, this title restricts the availability of garnishment as a creditors' remedy.

Section 201 states that—

> Congress finds that garnishment of wages is frequently an essential element in predatory extensions of credit and that the resulting disruption of employment, production, and consumption constitutes a substantial burden upon interstate commerce.

Section 202(a) prohibits the garnishment of wages to the extent of more than 10 percent of excess of over $30 per week.

Section 202(b) excepts from this prohibition debts due for the support of any person or for any State or Federal tax.

Section 202(c) authorizes the Secretary of Labor to issue regulations in implementation of this section, and provides a criminal penalty of $1,000 or 1 year, or both, for violation thereof.

Section 202(d) directs the Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor, to enforce the provisions of this section.

Section 203 prohibits the discharge of any employee by reason of the fact that, on one occasion, his compensation has been subjected to garnishment. Violation of this prohibition is made subject to criminal penalty of $1,000, 1 year, or both, and the Secretary of Labor is directed to enforce this section.

Section 204 provides that where State and Federal law are inconsistent, the governing law will be that which provides for the least garnishment or which further restricts the employer's right to discharge an employee on the ground that his compensation has been subjected to garnishment.

TITLE III OF THE BILL

Section 301 establishes a bipartisan National Commission on Consumer Finance.

Section 302 provides for the establishment of a nine-member Commission—three members of the Senate, three members of the House, and three public members.

Section 303 provides for the compensation of members of the Commission.

Section 304 provides that the "Commission shall study and appraise the functioning and structure of the consumer finance industry, as well as consumer credit transactions generally", reporting its findings and recommendations to the President and to the Congress by December 31, 1969.

Section 305 describes the powers of the Commission.

Section 306 describes the administrative arrangements under which the Commission may operate.

Section 307 authorizes the appropriation of $1.5 million for the Commission.

TITLE IV OF THE BILL

Section 401. This section provides that the judicial finding that any provision of the act is invalid shall not affect the validity of any other provision of the act.

CHANGES IN EXISTING LAW

Federal Reserve Act

To provide for the establishment of Federal reserve banks, to furnish an elastic currency, to afford means of rediscounting commercial paper, to establish a more effective supervision of banking in the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That the short title of this Act shall be the "Federal Reserve Act."]

TITLE I.—THE FEDERAL RESERVE SYSTEM

SECTION 1. SHORT TITLE AND DEFINITIONS

This title may be cited as the Federal Reserve Act.

Wherever the word "bank" is used in this [Act] *title*, the word shall be held to include State bank, banking association, and trust company, except where national banks or Federal reserve banks are specifically referred to.

The terms "national bank" and "national banking association" used in this [Act] *title* shall be held to be synonymous and interchangeable. The term "member bank" shall be held to mean any national bank, State bank, or bank or trust company which has become a member of one of the reserve banks created by this [Act] *title*. The term "board" shall be held to mean Board of Governors of the Federal Reserve System; the term "district" shall be held to mean Federal reserve district; the term "reserve bank" shall be held to mean Federal reserve bank; the term "the continental United States" means the States of the United States and the District of Columbia.

SECTION 2. FEDERAL RESERVE DISTRICTS

As soon as practicable, the Secretary of the Treasury, the Secretary of Agriculture and the Comptroller of the Currency, acting as "The Reserve Bank Organization Committee," shall designate not less than eight nor more than twelve cities to be known as Federal reserve cities, and shall divide the continental United States, excluding Alaska, into districts, each district to contain only one of such Federal reserve cities. The determination of said organization committee shall not be subject to review except by the Board of Governors of the Federal Reserve System when organized: *Provided*, That the districts shall be apportioned with due regard to the convenience and customary course of business and shall not necessarily be coterminous with any State or States. The districts thus created may be readjusted and new districts may from time to time be created by the Board of Governors of the Federal Reserve System, not to exceed twelve in all. Such districts shall be known as Federal reserve districts and may be designated by

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SECTION 29. SAVING CLAUSE

If any clause, sentence, paragraph, or part of this [Act] *title* shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this [Act] *title*, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION 30. RESERVATION OF RIGHT TO AMEND

The right to amend, alter, or repeal this [Act] *title* is hereby expressly reserved.

TITLE II—CREDIT TRANSACTIONS

DECLARATION OF PURPOSE

SEC. 201. The Congress finds that economic stabilization would be enhanced and that competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this title 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 avoid the uninformed use of credit.

DEFINITIONS

SEC. 202. For the purposes of this title

(a) "Board" means the Board of Governors of the Federal Reserve System.

(b) "credit" means the right granted by a creditor to a person other than an organization to defer payment of debt or to incur debt and defer its payment, where the debt is contracted by the obligor primarily for personal, family, household, or agricultural purposes. The term does not include any contract in the form of a bailment or lease except to the extent specifically included within the term "consumer credit sale".

(c) "consumer credit sale" means a transaction in which credit is granted by a seller in connection with the sale of goods or services, if such seller regularly engages in credit transactions as a seller, and such goods or services are purchased primarily for a personal, family, household, or agricultural purpose. The term does not include any contract in the form of a bailment or lease unless the obligor contracts to pay as compensation for use a sum substantially equivalent to or in excess of the value of the goods or services involved, and unless it is agreed that the obligor is bound to become, or for no other or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(d) "finance charge" means the sum of all the mandatory charges imposed directly or indirectly by a creditor, and payable directly or indirectly by an obligor, as an incident to the extension of credit, including loan fees, service and carrying charges, discounts, interest, time price differentials, investigators' fees, costs of any guarantee or insurance protecting the creditor against the obligor's default or other credit loss,

and any amount payable under a point, discount, or other system of additional charges, except that

(1) if itemized and disclosed under section 203, the term "finance charge" does not include amounts collected by a creditor, or included in the credit, for

(A) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to a credit transaction, or the premium, not in excess of those fees and charges, payable for any insurance in lieu of perfecting the security; or

(B) taxes; and

(2) where credit is secured in whole or in part by an interest in real property, the term does not include, in addition to the duly itemized and disclosed costs referred to in clauses (A) and (B) of paragraph (1), the costs of

(A) title examination, title insurance, or corresponding procedures;

(B) preparation of the deed, settlement statement, or other documents;

(C) escrows for future payments of taxes and insurance;

(D) notarizing the deed and other documents;

(E) appraisal fees; or

(F) credit reports.

(e) "creditor" means any individual, or any partnership, corporation, association, cooperative, or other entity, including the United States or any agency or instrumentality thereof, or any other government or political subdivision or agency or instrumentality thereof, if such individual or entity regularly engages in credit transactions, whether in connection with the sale of goods and services or otherwise, and extends credit for which the payment of a finance charge is required.

(f)(1) "annual percentage rate" means, for the purposes of sections 203(b), 203(c), and 203(d), the nominal annual rate determined by the actuarial method (United States rule).

(2) The Board may prescribe methods other than the actuarial method, if the Board determines that the use of such other methods will materially simplify computation while retaining reasonable accuracy as compared with the rate determined under the actuarial method.

(3) For the purposes of section 203(d), the term "equivalent annual percentage rate" means the rate or rates computed by multiplying the rate or rates used to compute the finance charge for any period by the number of periods in a year.

(4) Where a creditor imposes the same finance charge for all balances within a specified range, the annual percentage rate or equivalent annual percentage rate shall be computed on the median balance within the range for the purposes of sections 203(b), 203(c), 203(d).

(g) "open end credit plan" means a plan prescribing the terms of credit transactions which may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder.

(h) "installment open end credit plan" means an open end credit plan which has one or more of the following characteristics: (1) creates a security interest in, or provides for a lien on, or retention of title to, any property (whether real or personal, tangible or intangible), (2) provides for a repayment schedule pursuant to which less than 60 per centum of

the unpaid balance at any time outstanding under the plan is required to be paid within twelve months, or (3) provides that amounts in excess of required payments under the repayment schedule are applied to future payments in the order of their respective due dates.

(i) "organization" means a corporation, government or governmental subdivision or agency, business or other trust, estate, partnership, or association.

(j) "State" means any State, the Commonwealth of Puerto Rico, or the District of Columbia.

DISCLOSURE OF FINANCE CHARGES; ADVERTISING

SEC. 203. (a) Each creditor shall furnish to each person to whom credit is extended and upon whom a finance charge is or may be imposed the information required by this section, in accordance with regulations prescribed by the Board.

(b) This subsection applies to consumer credit sales other than sales under an open end credit plan. For each such sale the creditor shall disclose, to the extent applicable,

(1) the cash price of the property or service purchased;

(2) the sum of any amounts credited as downpayment (including any trade-in);

(3) the difference between the amounts set forth in paragraphs (1) and (2);

(4) all other charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge;

(5) the total amount to be financed (the sum of the amounts disclosed under (3) and (4) above);

(6) the amount of the finance charge (such charge, or a portion of such charge, may be designated as a time-price differential or as a similar term to the extent applicable);

(7) the finance charge expressed as an annual percentage rate, unless the finance charge does not exceed $10, and in ascertaining the applicability of this paragraph, a creditor may not divide a consumer credit sale into two or more sales to avoid the disclosure of an annual percentage rate pursuant to this paragraph;

(8) the number, amount, and due dates or periods of payments scheduled to repay the indebtedness; and

(9) the default, delinquency, or similar charges payable in the event of late payments.

Except as otherwise hereinafter provided, the disclosure required by this subsection shall be made before the credit is extended. Compliance may be attained by disclosing such information in the contract or other evidence of indebtedness to be signed by the obligor. Where a seller receives a purchase order by mail or telephone without personal solicitation by a representative of the seller and the cash price and deferred payment price and the terms of financing, including the annual percentage rate, are set forth in the seller's catalog or other printed material distributed to the public, the disclosure shall be made on or before the date the first payment is due.

(c) This subsection applies to extensions of credit other than consumer credit sales or transactions under an open end credit plan. Any creditor

making a loan or otherwise extending credit under this subsection shall disclose, to the extent applicable,

(1) the amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf;

(2) all charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge;

(3) the total amount to be financed (the sum of items (1) and (2) above);

(4) the amount of the finance charge;

(5) the finance charge expressed as an annual percentage rate, unless the finance charge does not exceed $10, and in ascertaining the applicability of this paragraph, a creditor may not divide an extension of credit into two or more transactions to avoid the disclosure if an annual percentage rate pursuant to this paragraph;

(6) the number, amount, and due dates or periods of payments scheduled to repay the indebtedness; and

(7) the default, delinquency, or similar charges payable in the event of late payments.

Except as otherwise hereinafter provided, the disclosure required by this subsection shall be made before the credit is extended. Compliance may be attained by disclosing such information in the note or other evidence of indebtedness to be signed by the obligor. Where a creditor receives a request for an extension of credit by mail or telephone without personal solicitation by a representative of the creditor and the terms of financing, including the annual percentage rate for representative amounts of credit, are set forth in the creditor's printed material distributed to the public, or in the contract of loan or other printed material delivered to the obligor, the disclosure shall be made on or before the date the first payment is due.

(d)(1) This subsection applies to open end credit plans.

(2) Before opening any account under an open end credit plan, the creditor shall, to the extent applicable, disclose to the person to whom credit is to be extended—

(A) the conditions under which a finance charge may be imposed, including the time period, if any, within which any credit extended may be repaid without incurring a finance charge;

(B) the method of determining the balance upon which a finance charge will be imposed;

(C) the method of determining the amount of the finance charge (including any minimum or fixed amount imposed as a finance charge), the percentage rate per period of the finance charge to be imposed, if any, and, in the case of an installment open end credit plan, the equivalent annual percentage rate; and

(D) the conditions under which any other charges may be imposed, and the method by which they will be determined.

(3) For each billing cycle at the end of which there is an outstanding balance under any such account, the creditor shall dislcose, to the extent applicable,

(A) the outstanding balance in the account at the beginning of the billing period;

(B) the amount and date of each extension of credit during the period and, if a purchase was involved a brief identification (unless previously furnished) of the goods or services purchased;

(C) the total amount credited to the account during the period;

(D) the amount of any finance charge added to the account during the period, itemized to show the amount, if any, due to the application of a percentage rate and the amount, if any, imposed as a minimum or fixed charge;

(E) the rate, if any, used in computing the finance charge and, in the case of an installment open end credit plan, the equivalent annual percentage rate;

(F) the balance on which the finance charge was computed and a statement of how the balance was determined. If such a balance is determined without first deducting all payments during the period, that fact and the amount of such payments shall also be disclosed;

(G) the outstanding balance in the account at the end of the period; and

(H) the date by which, or the period (if any) within which, payment must be made to avoid additional finance charges.

(4) If a creditor adds to this billing under an open end credit plan one or more installments of other indebtedness from the same obligor, the creditor is not required to disclose under this subsection any information which has been disclosed previously in compliance with subsection (b) or (c).

(5) Any creditor under an open end credit transaction shall furnish any party to the transaction with a written estimate of the approximate annual percentage rate of the finance charge on the transaction determined in accordance with regulations issued by the Board, if the party making the request specifies or identifies the repayments schedule involved and such other essential credit terms as may be prescribed in the regulations issued by the Board.

(e) Written acknowledgment of receipt by a person to whom a statement is required to be given pursuant to this section shall be conclusive proof of the delivery thereof and, unless the violation is apparent on the face of the statement, of compliance with this section in any action or proceeding by or against an assignee of the original creditor without knowledge to the contrary by such assignee when he acquires the obligation. Such acknowledgment shall not affect the rights of the obligor in any action against the original creditor.

(f) If there is more than one obligor, a creditor may furnish a statement of required information to only one of them. Required information need not be given in the sequence or order set forth in this section. Additional information or explanations may be included. So long as it conveys substantially the same meaning, a creditor may use language or terminology in any required statement different from that prescribed by this title.

(g) If applicable State law requires disclosure of items of information substantially similar to those required by this title, then a creditor who complies with such State law may comply with this title by disclosing only the additional items of information required by this title.

(h) If information disclosed in accordance with this section and any regulations prescribed by the Board is subsequently rendered inaccurate as the result of a prepayment, late payment, adjustment, or amendment of the credit agreement through mutual consent of the parties or as permitted by law, or as the result of any act or occurrence subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom shall not constitute a violation of this section.

(i) If a creditor, in order to aid, promote, or assist directly or indirectly, any consumer credit sale, loan, or other extension of credit subject to the

provisions of this section, other than an open end credit plan, states or otherwise represents in any advertisement.

(1) the rate of the finance charge, the advertisement shall state the rate of the finance charge expressed as an annual percentage rate; or

(2) the amount of an installment payment or the dollar amount of finance charge, the advertisement shall state:

(A) the cash price or the amount of the loan, as applicable;

(B) the downpayment, if any;

(C) the number, amount, and due dates or period of payments scheduled to repay the indebtedness if such credit were extended; and

(D) the rate of the finance charge expressed as an annual percentage rate.

The provisions of this subsection shall not apply to advertisements of residential real estate except to the extent that the Board may by regulation require.

(j) No creditor, in order to aid, promote, or assist directly or indirectly, the extension of credit under an open end credit plan may state or otherwise represent in any advertisement any of the specific terms of that plan unless the advertisement clearly and conspicuously sets forth

(1) the conditions under which a finance charge may be imposed, including the time period, if any, within which any credit extended may be repaid without incurring a finnace charge;

(2) the method of determining the balance upon which a finance charge will be imposed;

(3) the method of determining the amount of the finance charge (including any minimum or fixed amount imposed as a finance charge), and the annual percentage rate; and

(4) the conditions under which any other charges may be imposed, and the method by which they will be determined.

(k) No creditor may state or otherwise represent in any advertisement

(1) that a specified periodic credit amount or installment amount can be arranged, unless the creditor usually and customarily arranges credit payments or installments for that period and in that amount; or

(2) that a specified downpayment is required, unless the creditor usually and customarily arranges downpayments in that amount.

(l) For the purposes of subsections (i), (j), and (k), a catalog or other multiple-page advertisement shall be considered a single advertisement if the catalog or other multiple-page advertisement clearly and conspicuously displays a credit terms table on which the information required to be stated by subsections (i), (j), and (k) is clearly set forth.

(m) The prohibitions and requirements of subsections (i), (j), (k), and (l) of this section shall apply only to a creditor or his agent directly or indirectly causing the publication or dissemination of an advertisement and not to the owner, employees, or distributors of the medium in which the advertisement appears or through which it is disseminated.

(n) The provisions of this section shall not apply to

(1) credit transactions involving extensions of credit for business or commercial purposes, or to governments or governmental agencies or instrumentalities, or to organizations;

(2) transactions in securities or commodities in accounts by a broker-dealer registered with the Securities and Exchange Commission; or

(3) credit transactions, other than real property transactions, in which the total amount to be financed exceeds $25,000.

REGULATIONS

SEC. 204. (a) The Board shall prescribe regulations to carry out section 203, including provisions

(1) describing the methods which may be used in determining annual percentage rates under section 203, including, but not limited to, the use of any rules, charts, tables, or devices by creditors to convert to an annual percentage rate any add-on, discount, or other method of computing a finance charge;

(2) prescribing procedures to insure that the information required to be disclosed under section 203 is set forth clearly and conspicuously; and

(3) prescribing reasonable tolerances of accuracy with respect to disclosing information under section 203.

(b) In prescribing regulations with respect to reasonable tolerances of accuracy as required by subsection (a) (3), the Board shall observe the following limitations:

(1) The annual percentage rate may be rounded to the nearest quarter of 1 per centum for credit transactions payable in substantially equal installments when a creditor determines the total finance charge on the basis of a single add-on, discount, periodic, or other rate, and such rates are converted into an annual percentage rate under procedures prescribed by the Board.

(2) The use of rate tables or charts may be authorized in cases where the total finance charge is determined in a manner other than that specified in paragraph (1). Such tables or charts may provide for the disclosure of annual percentage rates which vary up to 8 per centum of the rate as defined by section 202(f). However, any creditor who willfully and knowingly uses such tables or charts in such a manner so as to consistently understate the annual percentage rate, as defined by section 202(f), shall be liable for criminal penalties under section 206(b) of this title.

(3) In the case of creditors determining the annual percentage rate in a manner other than as described in paragraph (1) or (2), the Board may authorize other reasonable tolerances.

(4) In order to simplify compliance where irregular payments are involved, the Board may authorize tolerances greater than those specified in paragraph (2).

(c) Any regulation prescribed under this section may contain such classifications and differentiations and may provide for such adjustments and exceptions for any class of transactions as in the judgment of the Board are necessary or proper to effectuate the purposes of section 203 or to prevent circumvention or evasion of, or to facilitate compliance by creditors with, section 203 or any regulation issued under this section. In prescribing exceptions, the Board may consider, among other things, whether any class of transactions is subject to any State law or regulation which requires disclosures substantially similar to those required by section 203.

(d) In the exercise of its powers under this title, the Board may request the views of other Federal agencies which in its judgment exercise regulatory functions with respect to any class of creditors, and such agencies shall furnish such views upon request of the Board.

(e) The Board shall establish an advisory committee, to advise and consult with it in the exercise of its functions with respect to section 203 and this section. In appointing the members of the committee, the Board shall

seek to achieve a fair representation of the interests of sellers of merchandise on credit, lenders, and the public. The committee shall meet from time to time at the call of the Board, and members thereof shall be paid transportation expenses and not to exceed $100 per diem.

EFFECT ON STATE LAWS

SEC. 205. (a) This title shall not be construed to annul, alter or affect, or to exempt any creditor from complying with, the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that such laws are inconsistent with the provisions of this title, or regulations issued thereunder, and then only to the extent of the inconsistency. This title shall not otherwise be construed to annul, alter or affect in any manner the meaning, scope or applicability of the laws of any State, including, but not limited to, laws relating to the types, amounts or rates of charges, or any element or elements of charges, permissible under such laws in connection with the extension or use of credit, nor to extend the applicability of such laws to any class of persons or transactions to which such laws would not otherwise apply, nor shall the disclosure of the annual percentage rate in connection with any consumer credit sale as required by this title be evidence in any action or proceeding that such sale was a loan or any transaction other than a credit sale.

(b) The Board shall by regulation exempt from the requiremenis of section 203 any class of credit transactions which it determines are subject to State law or regulation substantially similar to the requirements under that section, with adequate provision for enforcement.

(c) Except as specified in section 206, section 203 and the regulations issued thereunder do not affect the validity or enforcibility of any contract or obligation under State or Federal law.

CIVIL AND CRIMINAL PENALTIES

SEC. 206. (a)(1) Any creditor who, in connection with any credit transaction, knowingly fails in violation of section 203 (except sections 203(i), 203(j), and 203(k)), or any regulation issued thereunder, to disclose any information to any person to whom such information is required to be given shall be liable to such person in the amount of $100, or in any amount equal to twice the finance charge required by such creditor in connection with such transaction, whichever is the greater, except that such liability shall not exceed $1,000 on any credit transaction.

(2) In any action brought under this subsection in which it is shown that the creditor disclosed a percentage rate or amount less than that required to be disclosed by section 203 or regulations prescribed by the Board (after taking into account permissible tolerances), or failed to disclose information so required, there shall be a rebuttable presumption that such violation was made knowingly. The presumption is rebutted if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. A creditor has no liability under this subsection if within fifteen days after discovering the error, and prior to the institution of an action hereunder or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account as are

necessary to insure that the person will not be required to pay a finance charge in excess of the amount or percentage rate so disclosed.

(3) *Any action under this subsection may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation. In any such action in which a person is entitled to recover a penalty as prescribed in paragraph (1), the defendant is also liable for reasonable attorneys' fees and court costs as determined by the court.*

(b) *Any person who knowingly and willfully gives false or inaccurate information or fails to provide information required to be disclosed under the provisions of this title or any regulation issued thereunder, or who otherwise knowingly and willfully violates any provision of this title or any regulation issued thereunder, shall be fined not more than $5,000 or imprisoned not more than one year, or both. The Attorney General shall enforce this subsection.*

(c) *No punishment or penalty provided for a violation of section 203 or any regulation issued under section 204 applies to the United States, or any agency thereof, or to any State, any political subdivision thereof, or any agency of any State or political subdivision.*

(d) *No person is subject to punishment or penalty under this section solely as the result of the disclosure of a finance charge or percentage which is greater than the amount of such charge or percentage required to be disclosed by such person under section 203, or regulations prescribed by the Board.*

ADMINISTRATIVE ENFORCEMENT

SEC. 207. All of the functions and powers of the Federal Trade Commission are applicable to the administration and enforcement of this title to the same extent as if this title were a part of the Federal Trade Commission Act, and any person violating or threatening to violate any provision of this title or any regulation in implementation of this title is subject to the penalties and entitled to the provisions and immunities provided in the Federal Trade Commission Act, except as follows:

(1) *The exceptions stated in section 5(a)(6) of the Federal Trade Commission Act (15 U.S.C. 45(a)(6)) are not, as such, applicable to this title.*

(2) *No bank or thrift institution is subject to the jurisdiction of the Federal Trade Commission or to the provisions of the Federal Trade Commission Act with respect to this title if the bank or institution is subject to section 5(d) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)), section 407 of the National Housing Act (12 U.S.C. 1730), or section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818). The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation) shall enforce this title and regulations in implementation thereof with respect to banks and other institutions under their respective jurisdictions.*

(3) *No common carrier subject to the acts to regulate commerce is subject to the jurisdiction of the Federal Trade Commission or to the provisions of the Federal Trade Commission Act with respect to this title. The Interstate Commerce Commission shall enforce this title and regulations in implementation thereof with respect to such carriers.*

(4) No air carrier or foreign air carrier subject to the Federal Aviation Act of 1958 is subject to the Federal Trade Commission or to the provisions of the Federal Trade Commission Act with respect to this title. The Civil Aeronautics Board or the Federal Aviation Administration, as may be appropriate, shall enforce this title and regulations in implementation thereof with respect to any such carrier.

(5) Except as provided in section 406 of the Act of August 15, 1921 (7 U.S.C. 227)—

(A) no person, partnership, or corporation subject to the Packers and Stockyards Act, 1921, is subject to the jurisdiction of the Federal Trade Commission or to the provisions of that Act with respect to this title, and

(B) the Secretary of Agriculture shall enforce this title and regulations in implementation thereof with respect to persons, partnerships, and corporations subject to the Packers and Stockyards Act, 1921

REPORTS

SEC. 208. Not later than January 3 of each year commencing after the effective date of this title, the Board of Governors of the Federal Reserve System and the Attorney General shall, respectively, make reports to the Congress concerning the administration of their functions under this title, including such recommendations as the Board and the Attorney General, respectively, deem necessary or appropriate. In addition, reports of the Board of Governors of the Federal Reserve System shall include the Board's assessment of the extent to which compliance with the provisions of this title, and regulations prescribed thereunder, is being achieved.

EFFECTIVE DATE

SEC. 209, The provisions of this title shall take effect on the first day of the ninth calendar month which begins after the date of enactment of this title, except that section 204 shall take effect immediately.

SUPPLEMENTAL VIEWS OF REPRESENTATIVES WRIGHT PATMAN, ABRAHAM J. MULTER, WILLIAM A. BARRETT, LEONOR K. SULLIVAN, HENRY S. REUSS, WILLIAM S. MOORHEAD, FERNAND J. ST GERMAIN, HENRY B. GONZALEZ, JOSEPH G. MINISH, JONATHAN B. BINGHAM, AND SEYMOUR HALPERN

H.R. 11601, as approved by near-unanimous vote of the Committee on Banking and Currency, is, in most respects, a strong bill to provide many important protections for the consumer in his use of credit. We are proud to have been original sponsors, or, in key votes in the committee, supporters of these far-reaching reforms in consumer credit practices.

Nevertheless, and because we believe strongly in the purposes of the legislation, we must call to the attention of the House the fact that the bill now contains two loophole committee amendments of such serious magnitude that, despite all of the many good things the bill does, it could not, in its present form, accomplish the main purpose for which it is intended. That purpose is to assure to the consumer sufficient, clearly understandable and readily comparable information to enable him to measure various types of consumer credit proposals with one another and then decide, with reasonable accuracy, which offer is more suitable to his economic situation, or a better buy, or whether he should dip into his savings or make other arrangements to avoid using credit in a particular situation.

SHOPPING FOR CREDIT

This objective was the heart of truth-in-lending legislation as first proposed 7 years ago by former Senator Paul H. Douglas of Illinois, and vigorously endorsed by Presidents John F. Kennedy and Lyndon B. Johnson in their consumer messages to Congress. It was the objective behind S. 5 as introduced in the Senate earlier this year by Senator William Proxmire of Wisconsin, and was the prime objective of those of us who originally introduced H.R. 11601 or its identical companion measure, H.R. 11806.

If consumers were already thoroughly knowledgeable about credit terminology and interest rate percentages, truth-in-lending legislation would not be needed. It is because this field has become, over a period of many years, such an impenetrable jungle of confusing ter ns and incomprehensible concepts for the average consumer that legislation must now be enacted. But it will not solve the problem to enact a bill which freezes into law the very differences in the expression of credit costs that have caused so much of the confusion to begin with.

To compare a department store or mail-order house's credit charges on a purchase with the credit charges made by a furniture store or appliance dealer, and to compare both with the cost of a loan from a bank or other institution, the consumer must have a uniform standard of measure. This standard, to be effective, should be based on a percentage rate. The only kind of percentage rate which would be meaningful, and readily understandable, to all consumers—as it is now to all professionals in the field of money and credit—is an annual percentage rate.

THE TWO BIG HOLES IN TITLE I, THE TRUTH-IN-LENDING TITLE OF H.R. 11601

The two exemptions, or loopholes, written into H.R. 11601 by a majority of the members of the Committee on Banking and Currency, which would defeat the basic thrust of title I, the truth-in-lending title of the bill, are:—

1. The "open end" exemption which permits the very large department stores and chains, mail order houses, and other sellers using computerized "revolving credit," and some credit card systems, to express their credit charges to the customer on a periodic percentage rate basis (customarily a monthly rate), rather than the annual rate method prescribed in the bill for all other forms of consumer credit; and

2. The $10, or "loan shark" loophole, which lays a blanket of concealment over the costs, on a percentage basis, of a vast number of additional consumer credit transactions in which the credit charge does not exceed $10, meaning deferred payment sales or loans up to about $110.

If these two exemptions, which were included in the Senate-passed truth-in-lending bill, are agreed to by the House on H.R. 11601, they would permit the suppression, rather than force the disclosure, of the most important information a consumer requires in order to be able to use credit intelligently and discriminatingly in most of his day-to-day credit transaction.

"A statement of part of the facts"

Annual rate disclosure would still be required for the largest and most important individual credit transactions the average family may make—such as the purchase of a home, or automobile, or furniture, or a "large ticket" appliance on which the payoff period runs beyond 19 months, or substantial loans, et cetera. But while these may represent the bulk of consumer credit outstanding in dollar volume, they represent only a small portion of consumer credit transactions, leaving out the majority of instances in which most families use credit.

Lower income families would still spend most of their credit dollars without having an opportunity to learn how to use those dollars wisely. Without knowing it, they would be paying at rates of 18 or 24 percent, or more, for what they are told are "easy terms" of 1½ or 2 percent a month on revolving credit. And they would be paying rates of 120 or 240 percent or even more, on other transactions on which the credit charges are given as "only $10."

How can anyone justify, in a truth-in-lending bill, two provisions which so conceal the truth from those who need it most?

Unless these two amendments are defeated in the House, the consumer will be offered—in most of his credit dealings—not the whole truth, not the full information which he needs for comparison shopping for credit, but "a statement of part of the facts, the remaining facts being purposely suppressed; an incomplete recital—usually intended to evade blame or to deceive"—in other words, the dictionary definition of a half-truth. In the case of "revolving credit," this information might properly be described not as half-truth but as one-twelfth of the truth. And in the case of other purchases or loans up to $100 or $110, it would be no truth at all, on a percentage rate basis, for none would be required.

THE ONE-TWELFTH-OF-THE-TRUTH SHELTER FOR OPEN-END CREDIT

The amendment on "revolving credit," or "flexible charge," or similar computerized open end credit plans used by big retailers, or in some bank credit card systems, was adopted in committee by a vote of 17 to 14. It apparently was based on the self-serving claim of the American Retail Federation that a "true" or "simple" annual percentage rate cannot be determined in advance for charge accounts on which there is a variable free credit, or grace period (the so-called free ride), followed by a period for which a credit charge is assessed.

Under this reasoning, vigorously pressed by spokesmen for the largest retailers in the Nation, a typical charge of 1½ percent per month assessed on a customer's unpaid balance, as of the same date each month, is not at a rate of 18 percent a year because the customer usually pays it off long before a year elapses, and makes payments on his account, and other purchases, at his own option, often being liable for no service charge whatsoever.

If an annual rate were to be required for this form of credit, they say, it would have to be determined retroactively at the end of a year in order to be accurate, based on the number of days the customer enjoyed free credit as well as the total credit charges he paid during that year.

This reasoning, apparently persuasive to a majority of the committee, neglects the fact that under a revolving credit account, a transaction is, in effect, a cash deal with no service charge for a specified "free ride" period, and then, and only then, becomes a credit transaction on which a fee is charged.

Many stores, in fact, offer "cash" terms up to 3 months on which no credit charge is assessed. Others offer varying periods of free credit, from 30 to 59 days after the date of the first billing. There is nothing in this legislation to prohibit the store from emphasizing the period of free credit on which no service charge is assessed. Under H.R. 11601 as introduced, it would not have to make any statement to the customer implying that it was charging 18 percent, or any percent, service charge for that period.

The Competitive Advantage of the Monthly Rate

However, for the period for which service charges are to be made, the bill, as amended, permits such stores to state the charge on a monthly percentage rate only, rather than on an annual rate. The testimony before our committee is overwhelming, from consumer groups and also from businesses and banks which would not enjoy the "revolving credit" loophole of this amendment, that most consumers are not sophisticated enough about interest rates to be able to translate a monthly percentage rate into an annual rate. This amendment, therefore, provides the largest retailers with a tremendous competitive advantage in stating their charges on a small-sounding monthly rate basis while their independent competitors would have to reveal the annual rate of their credit charges.

This problem was probably best documented in the testimony of Mr. Charles D. Stapp, president of Koos Bros., Rahway, N.J., president of the National Retail Furniture Association, when he stated—in calling for a uniform percentage rate disclosure method for all vendors of credit: [1]

> When competition between credit grantors is considered, the major consideration is that each competitor (retailer or financial institution) be required to quote the consumer identically for the same credit offer. In dealing with people, in addition, identical offers have both factual and psychological sameness and differences. Rates of 1½ percent a month and 18 percent a year are not psychologically identical to consumers * * *.
>
> Mr. A. G. Bassham in testimony on S. 5 in behalf of the National Retail Furniture Association related his firm's experience in explaining credit rates to about 200 new customers. He told the committee that some of his store's more experienced credit counselors were asked to alternate their method of disclosing the cost of their credit plan to customers. Some customers were told the credit service charge on the new account they were about to open would be 1½ percent a month, while other customers opening new accounts under the same terms were told the credit service charge would be 18 percent a year. Each time the credit counselor quoted the 18-percent rate he was involved in a 30- to 45-minute discussion of what it was going to cost the customer, but when the credit counselor quoted the 1½-percent rate it was quite readily understood and accepted by the customer.

The furniture dealers, auto dealers, appliance, hardward, sporting goods and music stores, banks, loan firms, and other sellers and lenders which would have to state their credit charges on an annual percentage rate basis while the big department stores and catalog houses could invoke the monthly rate loophole of this committee amendment feel, with good reason, that this disparity of treatment places them at a serious competitive disadvantage. They would prefer, of course, having similar treatment for themselves—that is, being permitted to state their credit costs also on a monthly rate basis, and not be required to state annual rates.

However, while this might seem to solve the problem of competition among sellers and lenders, it would certainly solve nothing for the consumer, unless we were at the same time to revolutionize the entire system of finance in the United States to require also that bank deposit interest be stated as one-third of 1 percent a month rather than 4 percent a year, and mortgages, stock dividends, savings and loan shares, Treasury and private bonds, and all other money rates customarily stated on an annual rate basis be required to be stated on a monthly basis.

[1] Hearings, p. 709.

Recognizing this problem, the banks and businesses which would be so greatly disadvantaged by the committee amendment favoring revolving credit have, therefore, urged the committee and the Congress to require that all credit terms be annualized under this legislation. In opposing this committee amendment, we seek to achieve the uniformity in measurement of rates which most of the credit industry itslef demands, and which the consumer sorely needs.

What is the rate on revolving credits?

The argument made by the major retailers that the 1½ percent a month which most of them charge on unpaid balances is not at an annual rate of 18 percent, because of the "free ride" period for which no service charge is made, deliberately confuses the store's yield on its accounts receivable with the rate at which the charge is assessed.

This argument would be similar to that of a motorist traveling at a rate of 44 feet per second but insisting that he was not going at the rate of 30 miles per hour because he had not driven at that speed for an entire hour. Regardless of how short or long a distance he travels at the rate of 44 feet per second, his rate—during that period—is still 30 miles per hour.

However, if he clocks his traveltime in relation to the number of miles he has actually covered, he may come up with an average speed far different from 30 miles per hour, just as the store may average less than 18 percent a year on a particular credit account. But just as the motorist's speedometer is accurate whenever it translates a rate of 44 feet per second into 30 miles per hour, "truth-in-lending" computations likewise would be accurate when they translated a montly rate of 1½ percent on revolving credit to a rate of 18 percent a year.

To use the speedometer analogy in another way, the period of "free ride" would no more enter into the computation of the annual percentage rate on a revolving credit charge than would a motorist's speedometer reading evidence a violation of the speed laws if the car were standing still with the back wheels spinning on ice.

It is only when the car is moving forward at the speed actually shown on the speedometer that the miles-per-hour reading on the device has any meaning, and it is only when a credit assessment actually begins to run, at 1½ percent a month or any other periodic rate, that an accurate annual rate can be determined from it.

Thus, when the retailer's revolving credit charge begins to run at 1½ percent a month, the annual rate cannnot be other than 18 percent a year, even though the store's yield on that account over a year's time may be far less than 18 percent, depending upon how often during the year the account is paid up within the specified grace period with no service charge whatsoever.

These are the mathematical facts of this controversy.

We are all aware that on our passbook savings accounts the bank pays us at an annual rate of 4 percent. However, we are equally aware that whether we receive this full 4 percent or not will depend upon when we make deposits or withdraw money. The amount we actually receive is our yield, but the fact that our yield on a savings account may vary cannot change the fact that the bank pays us at an annual rate of 4 percent.

Without the committee amendment on revolving credit, a store would still be free to use a monthly rate in its statement of credit charges, if it wished to do so for any reason, just so long as it also stated the annual rate. There was nothing in the bill prior to adoption of the committee amendment to prohibit the use of a monthly rate or similar information clarifying or explaining the method of determining the annual rate.

Position of the Federal Reserve Board

Since the Board of Governors of the Federal Reserve System would issue all regulations dealing with the disclosure of finance charges, rates, etc., under H.R. 11601, the position of the Board on the mechanics of an annual rate disclosure requirement for revolving credit, and on the importance of such a requirement, should certainly be noted here.

In testifying on H.R. 11601 before the Subcommittee on Consumer Affairs, prior to the amendment of the House bill in the full committee to contain the exemption for revolving credit previously adopted by the Senate on S. 5, Federal Reserve Board Vice Chairman James L. Robertson gave the position of the Board in this matter as follows: [2]

> The provisions of H.R. 11601 relating to open-end credit plans—revolving credit—offer important advantages, we believe, over the comparable provisions of S. 5. Under the Senate bill, an annual percentage rate need not be disclosed for most revolving credit plans; although the percentage rate per period must be disclosed. To guard against the possibility that existing forms of ordinary installment credit might be converted to revolving credit in order to escape disclosure of an annual percentage rate, the Senate bill's exemption for revolving credit is limited to plans that meet three tests. To qualify for exemption a plan must require payment of at least 60 percent of the amount of the credit within 1 year, must not involve retention by the creditor of a security interest in property, and must provide for crediting prepayments immediately to reduce the balance due.
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> These compromise provisions were adopted in response to criticism by representatives of a segment of the retail industry, who argued that it would be unfair to require disclosure of an 18-percent annual percentage rate for revolving credit plans under which a monthly charge of 1½ percent was imposed, because that would ignore the "free ride" period between the date the sale was made and the last date on which the bill could be paid without imposition of any finance charge. Inclusion of the "free ride" period—that is, calculation of the annual percentage rate from the date of purchase rather than the date on which payment must be made to avoid a finance charge—would, it is true, produce annual rates below 18 percent where a monthly charge of 1½ percent is imposed. But an 18-percent annual rate is the exact equivalent of a 1½-percent monthly rate and is a fair and meaningful figure if one assumes that the credit begins at the end of the "free ride" period. We believe that this is the significant date from the point of view of a customer who is considering whether to pay the entire balance and avoid any finance charge.

[2] Hearings, pp. 125–126.

In eliminating the revolving credit exemption, the sponsors of H.R. 11601 have recognized the importance of providing consumers with a standardized method of comparing credit costs, and have avoided giving one type of creditor an unfair competitive advantage over another.

In addition to rate information, knowledge of the specific accounting practices employed by the store is necessary for accurate comparison of credit costs in the case of open-end credits. Though it is impossible to calculate in advance the influence of such differing practices on effective finance charges, the consumer should at least be alerted in clear and unambiguous language to the differences that may exist. Thus, the Board has recommended, and both the Senate bill and H.R. 11601 require, that information disclosed on all open-end credit plans must include the duration of any free period allowed, the method of computing the balance against which the finance charge is imposed, and minimum or special charges—if any.

Such information would be disclosed in some detail when the account is opened, and, in addition, a brief disclosure of the essentials would be required in the monthly bill.

We believe that this information would give the credit user a picture that is fair to the store, informative to the customer, useful in comparing charges from store to store, and broadly comparable to other rates charged for credit or paid on savings.

Charging the groceries

Revolving credit now represents only about 5 percent of consumer credit outstanding other than real estate credit, but it has been growing at a tremendous rate and, according to some experts, in the next 5 years will have captured about 50 percent of the consumer credit market. If this form of credit is favored by a special exemption in truth-in-lending legislation, the already strong trend toward open-end credit plans will be greatly accelerated.

In the meantime, we now have the word of Business Week magazine that credit card systems are even following the housewife into the food supermarkets, where, after carefully shopping the specials and making sure she has received all of the trading stamps to which she is entitled, she can blithely charge her groceries at the checkout counter for "only" 3 percent a month.

Shouldn't an effective truth-in-lending law require that she be told she is paying the equivalent of 36 percent annual interest on her grocery store charge account? The bill, as amended by the committee, would not require that the consumer would have to be so informed.

Two corollary amendments on revolving credit

In addition to the main amendment adopted by the committee on revolving credit, two corollary amendments also bear on this subject. Both should be removed from the bill along with the major amendment they modify.

One of them establishes a category of credit known as installment open-end credit in an attempt to set up a barricade against the indiscriminate admission of installment sales or loan transactions into the monthly rate shelter set up by the committee for revolving credit.

This supplementary amendment, in and of itself, constitutes a tacit admission that the revolving credit exemption undermines the whole concept of "truth in lending"; thus, it sets arbitrary characteristics for eligibility for this privilege in order to keep as many independent businesses as possible from qualifying for the special exemption intended only for the big stores using computerized systems.

The other supplementary amendment professes to enable the customer to obtain from the retailer on request a written statement of the annual percentage rate on that particular customer's revolving credit account. However, as adopted by the committee, the amendment extends to the customer only the right to ask the store what the store's yield will be on his account. This amendment would establish in the law the concept that the free period, or grace period, on a revolving credit account, should be counted into the interest rate computation, even though no service charge is made and none is paid for that period.

The consumer would be far better served, of course, by being told the rate at which the charge is assessed, not the yield to the store from that particular account based on estimates in advance of how the account might be paid off. This amendment appears to provide a means for the customer to obtain information which could be compared with other forms of credit, but it would not be the right information the customer needs for that purpose.

THE $10 "LOAN SHARK" LOOPHOLE

The second major defect in title I of H.R. 11601, as amended by the committee, is the amendment to exempt from percentage rate disclosure requirements—monthly or annual—any transaction, other than an open-end credit transaction, in which the credit charge does not exceed $10. As stated previously, this would throw a blanket of concealment, from a comparison shopping standpoint, over countless transactions of the average family amounting to as much as $100 or $110.

The original intent of this amendment, as first proposed, was to relieve very small firms from the necessity of figuring out the percentage rate on occasional credit sales, on the theory that in one-man establishments, or "pop and mom" stores, the proprietors have little time to devote to such bookkeeping chores.

The irony of this amendment is that its greatest and most enthusiastic support has come from the American Bankers Association, the Independent Bankers Association, the big retailer associations, the loan companies, and other interests which are not only quite competent to determine the annual percentage rate on any transaction without difficulty or hardship but are also very much aware of the implications to their businesses of this vast loophole.

Because of the tremendous potential of this amendment for the most flagrant abuse of the consumer's right to fair treatment, the committee modified it to state that a single sale could not be divided into several separate transactions merely for the purposes of evading annual rate disclosures. Policing this provision will be difficult, if not impossible. And the opportunities for abuse are fantastic, and freightening.

86-910—67——8

The American Bankers Association strongly approves of this "small business" amendment because, under its terms, its member banks would not have to admit to borrowers that the minimum charge of $10 on a 1-month "accommodation" loan of $100 actually comes to an annual finance charge of 120 percent. The Independent Bankers Association added that many of its banks have smaller minimums (as low as $1) but that at $5 for a $100 loan for 1 week the annual rate would be 260 percent.

No one disputes the fact that small loans of this nature are costly to a bank, and that the minimum charge often does not cover accounting expenses. But does the borrower realize that his loan requires a 120- or 260-percent finance charge? If he knew, would he perhaps shop around for a better deal on a loan of that nature—say at his credit union, where the rate would be, not 120 or 260 percent, but 12-percent true annual interest?

Far more serious than the suppression of the true cost of borrowing from legitimate lenders is the invitation this amendment extends to predatory loan sharks and credit gyps to continue to charge $5 or $10 on a loan week after week, constantly refinancing the obligation, without having to tell the borrower anything more than the dollar cost of $10 or less per transaction.

People who are desperately in need of loans will pay whatever rate they are asked to pay. But there is no reason to throw a protective arm of this law around those who prosper handsomely from cruelly exploiting and gouging the ignorant and very poor in the use of credit.

Without this amendment, very small businesses engaging in infrequent credit transactions where truth-in-lending requirements might be burdensome can be exempted by the regulations of the Federal Reserve Board from any of the provisions of title I. Furthermore, neither the Small Business Administration nor the Department of Commerce felt that compliance with the full disclosure requirements of H.R. 11601 as introduced, would create any unusual problems for small concerns which normally engage in credit transactions for they would already be familiar with the kind of rate tables which would be issued as guides for compliance with the truth-in-lending regulations.

Hence, it would not be small business, but very large businesses—and the ubiquitous neighborhood loan sharks—which would reap the real benefits of this loophole amendment.

Speaking of this proposal to exempt from percentage rate disclosure requirements those transactions in which the credit charge is $10 or less, the Honorable Betty Furness, Special Assistant to the President for Consumer Affairs, testified: [3]

> This is the area where the poor are subject to most abuse. We shouldn't discriminate against the man who purchases a small powersaw, and who pays only $8 interest, in favor of the family that buys a $700 set of furniture and pays $100 interest.

"TRUTH IN LENDING" SHOULD BE THE WHOLE TRUTH

To achieve the purposes of title I of H.R. 11601, "informed use of credit" based on "full disclosure" of the costs of credit in a manner

[3] Hearings, p. 87.

which would enable the consumer to compare competing offers of credit, the committee amendments exempting revolving credit from annual rate disclosure and the $10 exemption should be defeated.

WRIGHT PATMAN.
FERNAND J. ST GERMAIN.
ABRAHAM J. MULTER.
HENRY B. GONZALEZ.
WILLIAM A. BARRETT.
JOSEPH G. MINISH.
LENOR K. SULLIVAN.
JONATHAN B. BINGHAM.
HENRY S. REUSS.
WILLIAM S. MOORHEAD.
SEYMOUR HALPERN.

SUPPLEMENTAL VIEWS OF HON. LEONOR K. SULLIVAN

As the principal sponsor of H.R. 11601 and chairman of the Subcommittee on Consumer Affairs which conducted extensive hearings on the legislation, I am proud to have my name associated with the many features of a bill which should give to consumers greater confidence in the honesty and competiveness of the credit industry, and greater self-assurance in their use of credit. The two big loopholes placed in the bill by the committee amendments on revolving credit and the $10 exemption are fully discussed in the supplemental views signed by 11 members of the committee and need no further discussion here. But as the House prepares to take up H.R. 11601, it is important to a full understanding of the measure to place the background of the bill in proper perspective.

Title I, the truth-in-lending title, grew, of course, out of the original legislation on this subject introduced 7 years ago by the then senior U.S. Senator from Illinois, the Honorable Paul Douglas. His imaginative development of this concept, and the indefatigable and patient and effective effort he devoted to its promotion, entitle him to the deep gratitude of every American. Every consumer and every businessman who believes in the integrity and surging vitality of an economic system in which competition can be based on honest quality, price, and service, rather than on customer uncertainty, confusion, and deception, are in Paul Douglas' debt.

The credit industry should be particularly grateful. Out of the operations of this legislation should come needed help to the decent elements in this vital industry in overcoming unfair and dishonest competition from an unscrupulous minority engaging in practices which too often discredit credit and dishonor its ethics.

RESPONSIBLE MAJORITY OF CREDIT INDUSTRY RECOGNIZES NEED FOR LEGISLATION

Despite past misgivings of some leaders of the credit industry over the possible "interference" of truth-in-lending legislation with cusmary methods of doing business, that industry, on the whole, has been helpful to my subcommittee and to the full committee in the development of technical aspects of this legislation. No industry wants regulation for the sake of regulation; but this industry, like all responsible industries beset by fringe operators who give a bad name to an essential service, has demonstrated a willingness to accept a significant number of long overdue reforms which can be accomplished only through legislation.

This bill would strengthen the overwhelming majority of those in the credit industry seeking to improve services to the public, not mulct the consumer.

The legislation should also encourage more consumers to use credit with care and responsibility, as it becomes more generally recognized that the "renting" of money, to use Calvin Coolidge's homespun description, or the deferred payment of purchases, cannot be cheap at a time when interest rates are the highest in generations.

Without the vast resources of the credit industry and the many new techniques it has developed for financing the purchase of goods and services, our recordbreaking gross national product would quickly evaporate into a fraction of its present size. Homebuilding would stagnate, automobile sales plummet, the vast array of appliances and devices for improved living and recreation now within the reach of the average family, would be reserved to the very wealthy.

But too many Americans have found "easy credit" far easier in terms of availability than in their ability to repay. The personal and family tragedies caused by overextension of credit are reflected in the alarming rising flood of personal bankruptcies.

This bill, by itself, will not curb the excessive appetite of "credit addicts" for luxuries they cannot afford. But, by spotlighting the true costs of various forms of credit, and limiting the ability of predatory credit outfits to use the process of garnishment as a bargain-priced substitute for reasonable investigation of the financial responsibility of potential customers, irresponsible practices in the use of credit can be sharply reduced. Of course, this assumes that the legislation as finally enacted will require full disclosure of consumer credit costs under uniform standards, and will retain restrictions on garnishment.

BACKGROUND OF H.R. 11601

While the basic provisions of the truth-in-lending sections of the bill grew out of the Douglas bill (except for the committee exemptions neither former Senator Douglas nor I condone), H.R. 11601 goes well beyond mere disclosure of finance rates at the point of completion of a credit transaction. The advertising section was first proposed in this bill as introduced; so was the section on administrative enforcement. Both have been improved in committee, under amendments which I sponsored and which the committee approved almost unanimously. The Bingham amendment on clarification of the confusing practices in differing revolving credit plans is a significant improvement. The garnishment title is new, and the Halpern amendment strengthens not only the acceptability of this title, but its practical effectiveness as well. The proposal in title III for a National Commission on Consumer Finance may, in retrospect, turn out to be one of the most useful features of the bill from a long-range standpoint, if it brings us, as intended, a long overdue, comprehensive review of the entire consumer credit field, with recommendations to Congress for further improvements in one of our most important industries.

DELETIONS FROM H.R. 11601

Four controversial provisions of the bill as originally introduced were deleted from the measure in subcommittee, on my motion, after hearings demonstrated a lack of adequate support for them from both administration and consumer witnesses, and reflected uniform opposition from business.

These provisions were inserted in the bill originally for the very purposes they did serve; that is, for an airing of issues in the field of credit utilization which have been neglected, but which nevertheless deserve public attention. I am convinced that these proposals, as included originally in the bill or in some other form, will eventually become law. Our hearings succeeded in stimulating some significant interest in them, even if not enough to achieve passage. But these hearings should speed the day when they will receive greater legislative attention. However, the proposals referred to were not regarded by me, or by any of the cosponsors of H.R. 11601, as attainable in this legislation at this time.

A Federal Usury Ceiling

One was the proposal for a Federal ceiling on the percentage rate of credit charges. This idea was suggested by Chairman Wright Patman, foe of unconscionable interest rates. The arbitrary figure used in H.R. 11601 for discussion purposes was 18 percent. Such a limit would probably close down most of the small loan firms in the country, which charge fees ranging far higher than 18 percent, up to legal ceilings in some States of 42 percent, and even higher rates in States which do not regulate such charges. The purpose of the 18-percent figure was not to close down legitimate businesses, but to educate us all to the realities of credit's high costs, with the hope that a viable and fair ceiling might be devised and eventually enacted. Let us hope that the States can take care of this problem by proceeding to revise and reform their generally outmoded or ineffectual laws on maximum rates.

Standby Credit Controls for National Emergencies

The second proposal deleted in subcommittee called for the creation of machinery for standby controls over consumer credit, to be used only in periods of grave national emergency. When such a law was recommended to the House last year by our committee, as an amendment to the Defense Production Act (where it belongs), it was defeated on two grounds: first, that we were not in a national emergency; and second, that no hearings had been conducted on the proposal. It is my view that the authority for standby credit controls, which would be needed instantly in a war situation, should be enacted not when we are engaged in a battle for our national survival—when calm appraisal by the Congress of the details of such legislation would be impossible to achieve—but now, before an emergency requiring them even begins to appear over the distant horizon. Like some of our other defense weapons we hope we never have to use, economic defenses for emergency situations should be enacted and placed on the shelf—ready to use instantly if disaster should strike.

Our hearings developed no great clamor for these standby economic defense powers—quite the contrary. But they also brought out clearly the lack of effective machinery in our existing laws for confronting a possible extreme danger to our economic survival from the sudden inflationary impact of a great national emergency. I felt that the immediate objectives of placing this provision in H.R. 11601 were served in the hearings, and therefore moved to delete this section from the bill.

Margins on Commodity Futures

The third controversial proposal dropped in subcommittee from H.R. 11601 dealt with the regulation of margins on commodity futures trading. This is a vastly neglected issue involving the use of small downpayments, or "earnest money" on futures contracts worth many thousands of dollars, traded in by professionals and numerous amateurs betting on a rise or fall in the prices of dozens of different basic commodities—not just agricultural commodities, but also many essential defense materials. Excessive speculation at very low margins can and does influence the prices of such commodities, causing wide and unstabilizing swings in these prices during any periods of market dislocation, yet no Federal agency has a word to say about the margins which are set by the various privately run exchanges.

The stock market was—disastrously—free of margin regulation prior to the enactment of the Securities and Exchanges Act of 1934, giving margin control powers to the Federal Reserve Board; all of the futures markets, however, are still exempt from any Federal margin regulation. This issue remains to be solved. The hearings on H.R. 11601 contributed to public awareness of the problem, but not enough so to bring about legislation at this time. Thus, I moved to remove this provision also from the bill.

"Confession of Judgment" Notes

The fourth deletion from H.R. 11601 dealt with a proposed ban on "confession of judgment" notes. These are instruments of financial self-incrimination which are imposed by some segments of the credit industry, usually on trusting but naive consumers who innocently sign away their legal rights as a required, but not understood "formality," of a credit transaction. Despite later utter lack of good faith by the seller or lender, or even outright cheating on the quality of the goods purchased on credit, the customer is left with no legal right of self-defense against the alleged debt, and is often gouged to the last penny of the obligation, plus, in many instances, a multitude of added-on charges, fees, and penalties representing outright financial cruelty.

Essentially, this a problem for State laws to solve. But, like many of the other problems in the consumer credit field, action at the State level has been excruciatingly slow. I sincerely hope the information brought out in our hearings on the legal trappings of credit entrapment, so widespread in consumer credit transactions involving the poor and uneducated, will now encourage prompt State action to end such practices as the use of confession of judgment notes.

THE CONSUMER MUST FIGHT FOR HIS RIGHTS

In connection with this legislation, I strongly urge the leaders of our many voluntary nonprofit organizations, public agencies, newspapers and other mass media, and all whose interest in political issues is primarily from the standpoint of the public interest rather than special economic interest, to alert the consumers of this country to the many protections they already enjoy by law, to encourage them to seek and obtain the help which is available to them and educate them on how to fight for their rights in the credit marketplace. Agencies engaged in aspects of the war on poverty must become particularly alert to their opportunities to help individual families protect themselves from the predatory racketeers which infest the fringe of the credit industry and which zero-in on those least able to defend themselves.

H.R. 11601—if enacted by Congress without destructive amendments such as the resolving credit and $10 exemptions recommended as committee additions to this bill—can provide substantial additional help to all consumers, from highest to lowest economic levels, in utilizing credit with greater selectivity and effectiveness. The greatest need for this help, of course, is at the lowest income levels, where the words "credit" and "gouge" are often synonomous to the user-victim. If H.R. 11601 can succeed in this objective, all who participate in its enactment can be proud of having had an opportunity to serve in the cause of economic decency.

LEONOR K. SULLIVAN.

SUPPLEMENTAL VIEWS OF CONGRESSMAN RICHARD T. HANNA

The sobriquet "truth-in-lending" has been less than descriptive of the legislation unanimously adopted by the Senate, and now reported from the House Banking Committee. Unfortunately, this popular title has done little in the way of accurately reporting the real nature of the issues to which this legislation addresses itself. Even more unfortunate the title "truth-in-lending" has falsely led many to blanket the credit industry with the misleading conclusion that the industry is "less than truthful."

While there are, as the testimony in hearings point out, unscrupulous creditors who prey upon those least able to defend their own interests, still the overwhelming majority of establishments offering credit reflect reputable and honest business practices. The reported legislation should in no way be considered an indictment against our Nation's credit industry, for on the whole it provides a most valuable and needed service to our economy. Rather this measure should serve as a notice that Congress, in the absence of State regulations, recognizes it must be responsible for maintaining a balance between the interests of the consumers of credit and those who offer it.

The real consideration before our committee, and the one which the Senate struggled for 7 years with, was one of balancing the needs and interests of the consumer with the reputable credit practices of business. Specifically, we were confronted with the relative proposition of how much and what type of information the consumer needed the creditor to report before he could make an intelligent determination in contracting for any particular program of credit. In order to answer this question it was necessary to analyze what types of credit programs were available, and how best to report their specific features so that the consumer would be provided with some meaningful reference when he found himself in the market for credit.

In examining the credit programs available to the consumer it became obvious that the various forms of credit devices were established to meet widely differing needs which had develcped in the marketplace. One form of credit was needed to satisfy a demand for specific terms over a specific period of time for specific purchases or loans. Thus installment credit, by far the largest and most popular form of credit, was devised. More recently another type of credit program, answering to a set of different demands, has become popular. Revolving, or openend credit, has been developed and is used to meet circumstances that installment credit could not easily or efficiently handle.

Revolving credit has been designed to meet a more flexible type of transaction; one which permits the consumer the widest choice of options in the use of his credit. It is a system that works to the maximum mutual advantage of both the customer and the merchant. For the merchant a market is provided which, if either cash, or a long-term credit contract were demanded, might otherwise not be available. For the consumer, merchandise, primarily small ticket soft goods, and now through bank credit cards even small loans can be arranged for, with the balance carried by the creditor for a short period of time with no penalty to the customer. In addition the consumer in handling his account has a wide range of flexibility including: (1) Whether he will pay the balance on the paper before the expiration of the "free ride" period, (2) and if he is willing to have an interest charge assessed, the period of time over which he will pay off the balance, (3) with certain minimum limitations the amount paid each period, and (4) the option of adding at any time and paying out or immediately amortizing new purchases.

The fact that revolving credit offers such a wide variety of options to the user abundantly pointed out that disclosure of its terms would have to be considered and treated in the light of its particular features.

To the merit of the committee, cognizance was taken of the very real fact that the marketplace had demanded and molded these various and differing devices for credit transactions. The committee discarded the notion which would have taken these widely differing credit programs and reconstructed their features in order to conform them to some arbitrary uniform standard bearing no relation to the realities of the marketplace. The theory of complete uniform disclosure for all credit transactions while hypothetically appealing does not stand up under the cold light of either experience or real circumstance. It assumes that while the realities of the market demand and produce diversity, the consumer is unable to distinguish amongst and between these real differences. It suggests the consumer must be coddled to the point of providing an artificially contrived womb in which diversity is reduced to the simplest common denominator, even to the point of sacrificing accuracy. For accurate information is sacrificed when you demand an arbitrary common denominator for all credit disclosure.

The bill reported by the committee takes into account the realities of the marketplace. It brings to the marketplace appropriate guidelines for reporting the features of credit transactions. It is accompanied by guidelines for advertising credit as an inducement to buy or borrow. And it encompasses a workable enforcement section. It also suggests a well placed faith in the ability of the American public to distinguish between different types of credit devices by requiring, to the fullest extent possible, disclosure of the specific features of these various programs.

While certainly not a cure-all for the great multitude of problems arising from $95 billion in outstanding consumer credit the bill reported from the committee will substantially assist in facilitating the intelligent use of credit. However, in the last analysis the best safeguard for the consumer must be his own informed and judicious judgment. No amount of legislation of this type will help those who are incapable or uninterested in responsibly understanding and handling their own financial affairs.

RICHARD T. HANNA.

SUPPLEMENTAL VIEWS OF: REPRESENTATIVES WILLIAM B. WIDNALL, PAUL B. FINO, FLORENCE P. DWYER, ALBERT W. JOHNSON, J. WILLIAM STANTON, AND LAWRENCE G. WILLIAMS ON H.R. 11601

SUMMARY

From the beginning, the minority vigorously has supported consumer credit protection legislation. After the Senate on July 11, 1967 passed its truth in lending bill by a 92 to 0 vote, we indicated our support for early House action when eight minority members of this committee cosponsored H.R. 11602, a bill identical to that which passed the Senate. In spite of the fact that we applauded the action taken by the Senate, at the opening day of the subcommittee on Consumer Affairs hearings on H.R. 11601 we joined with the ranking minority member in her statement that we didn't have closed minds on the issue; that "our final product may represent a compromise between the two bills before us."

While we will endeavor further to improve the bill when it reaches the House for final consideration, on balance we are very pleased with the final committee product.

Indeed, with respect to the most controversial and comprehensive provisions of the bill (treatment of revolving or "open end" credit plans, advertising and enforcement) H.R. 11601 as reported is strikingly similar to a draft bill circulated to members of the full committee and revealed to high officials of the Johnson administration on November 13 by the ranking minority member of the Consumer Affairs Subcommittee, when it became apparent a new approach was needed to avoid a paralyzing deadlock similar to that which was encountered in subcommittee.

Any major legislation is the product of deliberation and compromise of differing viewpoints. Although we will set forth below some provisions with which we take issue, we voted to report the bill to the floor so that they could be resolved by the House and the bill signed into law at the earliest possible date. On the other hand, there are those who will seek needlessly to delay floor consideration because the committee did not respond in every instance to their individual wishes. It will be recalled that truth in lending bills have languished in congressional committees for 7 years while similar attitudes prevailed.

With this in mind, we think the President has a right to express his impatience over Congress' failure to enact this legislation. Bookshelves and entire storerooms in the Capitol groan under the burden of printed hearings and data relating to this issue. The public is growing impatient over promises for future congressional action. Controversy over conflicting facts relating to certain key provisions of this bill has delayed final enactment too long. In this regard, we are reminded of the thoughts expressed by a famous essayist around the turn of the century:

> I often wish that I could rid the world of the tyranny of facts. What are facts but compromises? A fact merely marks the point where we have agreed to let investigation cease.

There are major differences between H.R. 11601 and S. 5, as passed unanimously by the Senate. The committee also made several changes and deletions in the reported version of H.R. 11601, as compared to the bill of the same number introduced on July 20, 1967, by the chairman of the Consumer Affairs Subcommittee. Without going into technical detail and for the purpose of informing the House of the product of our deliberations, we think it would be appropriate to summarize the action taken by your committee.

1. Disclosure of open end credit generally is patterned after the provisions in the Senate-passed bill. H.R. 11601 contains a provision (sec. 203(d)(5)) not included in the Senate-passed bill that requires creditors to furnish to borrowers an estimate of the approximate annual percentage rate of the finance charge on open end credit transactions when the party making the request submits the information essential to such computations. This added protection for consumers was offered by the minority.
2. An exemption for annual rate disclosure of finance charges of $10 or less is similar to the Senate-passed bill, with an additional safeguard provided in the bill reported by your committee to guard against so-called split ticket sales aimed at avoiding interest disclosure on credit extended for more expensive purchase.
3. A comprehensive administrative enforcement section practically identical to that proposed in the November 13 draft bill of the minority is included in the reported bill. The Senate-passed truth in lending bill contained no administrative enforcement provisions.
4. Comprehensive provisions governing credit advertising along the lines of those proposed by H.R. 11601 as originally introduced were included in the bill as reported.
5. The exemption provided by the Senate bill for transactions involving extensions of credit secured by first mortgages on real estate is not included in H.R. 11601.
6. The 18-percent national usury limit originally included in H.R. 11601 was removed. Testimony was received pointing to the danger that a ceiling of 18 percent would soon become a floor if Congress legalized such a maximum rate so far in excess of the great majority of rates currently being charged for the nearly $100 billion in consumer credit outstanding.
7. Prohibition of garnishment of wages originally proposed by H.R. 11601 has been reduced in title II to a restriction of garnishment not to exceed 10 percent of the excess over $30 per week except with regard to debts due under a court order for the support of any person or for debts due for State and Federal taxes. This was offered and generally supported by the minority as being a reasonable compromise of a very complex and controversial subject currently under extensive study by the executive branch. That which was approved by the committee is patterned after the New York State law.
8. Proposed standby consumer credit controls were removed from the bill in their entirety.

9. A Commission on Consumer Finance, not included in the Senate bill, is contained in H.R. 11601 as reported.

10. A rather comprehensive section proposing Federal regulation of credit for commodity futures trading included in H.R. 11601 as originally introduced was deleted in its entirety in the bill as reported.

11. A compromise was achieved on the effective date, from July 1, 1968, as originally proposed to the first day of the ninth calendar month which begins after the date of enactment, except with regard to the authorization to promulgate regulations which would become effective on the date of enactment. This period of gestation for promulgation and distribution, of regulations would match closely with the July 1, 1969, effective date provided in the Senate bill if the views of those who wish to delay final House consideration to the second session of the 90th Congress prevail.

12. Removal of the dollars-per-hundred option as contained in the Senate-passed bill, H.R. 11602 and H.R. 11601 as originally introduced.

One readily can see the extent to which the Committee on Banking and Currency reshaped H.R. 11601 as originally introduced. It should be further evident that the bill as reported is far stronger and more comprehensive than that which passed the Senate.

OPEN-END CREDIT

At the heart of the basic rationale for "truth in lending" is the concept of comparability—all credit charges should be stated in common terms. The bills in both the House and Senate have endorsed as the most meaningful common yardstick a statement of credit charges in terms of an effective annual rate, figured on the actuarial method.

Such a method produces reasonably accurate advance rates in almost all types of transactions and is thus ideally suited to the purpose. In the case of revolving or open-end credit plans, however, the creditor seldom possesses enough advance information to make the calculation of an effective rate. For that reason, revolving credit plans must be treated differently. The question of how to treat them has been the most controversial single issue throughout the entire history of the legislation.

Perhaps the best description of the difficulties associated with advance disclosure of the simple annual interest rate on open-end credit is provided for us by a staff analysis on page 236 of the printed hearings, submitted by Congresswoman Sullivan.

> The service charge *yield* from the account is different from the service charge *rate* applied to the account because the rate is applied to the selected balances in accordance with certain stated contractual rules. The yield on the other hand will vary from account to account depending upon the billing policies of the retailers and decisions entirely within the powers of their customers.

Obviously, of far more meaning to the consumer is the dollars and cents charge or *yield* for credit, rather than some abstract rate of marginal relationship to credit costs.

Two proposed solutions to the problem have been presented. The first is the use of the "applied" rate, proposed by the original drafters of H.R. 11601. It is unfortunate and misleading that many supporters of this approach have taken as their slogan, "Everyone should be treated alike." Disclosing an applied rate on revolving plans and an effective rate on installment plans hardly can be construed as "treating everyone alike."

The second solution to the revolving credit controversy is a straightforward acceptance of the fact that revolving credit charges do not lend themselves to any meaningful annual figure. (In the Senate testimony, evidence was shown where one account produced an effective rate of 15 percent one month and 2 percent the next, even though the terms of the account stayed the same.) Under this approach, the consumer is given a statement of all the terms of the account and all factors bearing on it, so that she can know as much in advance of the transaction as the seller or lender knows. But, she is not given any speculative annual figure.

Technical consideration aside, there are flows in both approaches from the consumers standpoint. The first approach, while appearing to be quite simple, actually sets up an "umbrella" for the high-cost operator. By emphasizing the applied rate over all other considerations, it permits him to set the terms of the account in such a way as to make sure that the rate is applied in the most expensive manner possible—for the consumer. The creditor who applies his rate in a way which *yields* more reasonable charges is forced to make expensive and cumbersome explanations. The temptation to forego these in favor of simply raising his own rates would be strong indeed. Thus, adoption of the first solution to the revolving credit problem obviously would not be in the best interests of the consumer. Because it would penalize those who charge far less than 18 percent interest by forcing them to emphasize a false and misleading 18 percent applied rate in their contracts and monthly statements, a "floor" or nationwide pattern of 18-percent charge on all retail credit transactions of this type would be encouraged. The additional cost of credit to the American consumer in an environment such as this would soon reach staggering proportions.

The second approach avoids these difficulties, but could create another. If *all* revolving credit plans were exempt from the requirement of stating any annual rate, either applied or effective, a sharp operator easily could turn an installment account into a revolving account. That way he could avoid telling the customers his effective rate, truly the only rate which is meaningful.

In dealing with this problem we attempted to determine under what circumstances the applied rate reasonably could be expected to approximate the resulting effective rate. It was quickly determined that the applied rate of, say 18 percent yearly (1½ percent per month), would not produce an effective rate of anything approaching 18 percent if the transaction was paid off completely in 1 or 2 months. The elusive "free time," of which much has been said, but for which no firm definition has ever been forthcoming, made it virtually certain that the effective rate on such a transaction would vary anywhere from 2 to 17 percent, with no assurance of predictability. On the other hand, a purchase or loan paid off over an extended period of time, say 3 years, would produce a fairly predictable rate, particularly if the payments were all equal.

From these two extremes, we sought to determine where the effective rate and the applied rate came into some predictable relationship. Following the compromise achieved by the Senate after several years deliberation, we finally accepted the formula of the Connecticut State statute, which states that if at least 60 percent of a debt under a revolving credit agreement is not required to be paid within 12 months, the account can be considered to be stable enough to warrant the disclosure of the applied rate. The Connecticut law further recognizes that if the seller or lender takes a security interest from the borrower, the transaction is most likely to be an installment-type agreement rather than a casual add-on purchase of a small item.

These two conditions, along with another primarily technical requirement, are identical to the definition of "open end" credit contained in the Senate bill. The House committee has come to the conclusion that they are wise and necessary if the consumer is to be given the most useful possible information. Their adoption by the Congress will insure that the consumer will be given an annual rate in every case where such a rate reasonably can be expected to be meaningful. Rejection of the seemingly simple "treat us all alike" panacea also will insure that the consumer will be spared the misleading use of annual rates in situations where such use could well be used to her detriment. Thus, the resultant "package" adopted by both the Senate and the House committee will produce the fairest possible type of disclosure from the consumer's standpoint.

Indeed, the disclosure requirements for open-end creditors are far more comprehensive than those applying to all other retail lenders, particularly those who extend credit on a straight installment basis. The approximately 95 percent of consumer credit not falling under the definition of open-end credit would not have to comply with the disclosure requirements under section 203(d)(3), wherein open-end credit plans must disclose eight separate items for each billing cycle (i.e., on each monthly bill) at the end of which there is an outstanding balance under such account.

In effect, open-end creditors, besides making extensive disclosure to the customer in contracts and agreements prior to purchase, must repeat the process in each and every monthly bill or statement of account. The typical installment lender, on the other hand, once having disclosed interest and other charges in the repayment contract or other evidence of indebtedness and having secured the customer's signature, need never concern himself again with regard to interest rate or any other form of credit disclosure on monthly statements. As a matter of fact, there are those who feel disclosure is of equal importance on monthly statements as it is on the prior-to-purchase contract insofar as educating the consumer on the cost of credit. Furthermore, there is evidence that suggests that some of the highest cost credit is that which will be excluded from disclosure requirements on monthly statements.

Nevertheless, this is not to say that the point at which the consumer should be informed of the cost of credit is not prior to consummating a retail transaction, while he or she still can refuse to buy or further shop around. We point this out, however, to emphasize the faulty reasoning of those who say the bill as reported exempts open-end credit from adequate disclosure as compared to the bulk of consumer credit currently outstanding in the United States. If any form of credit is being treated with special care, it is open-end credit.

We should also keep in proper perspective the amount of consumer debt that will fall within the statutory definition of open-end credit. According to the Federal Reserve Board, at the end of October there was $96.1 billion total consumer credit outstanding in the United States. Of this amount, approximately $5.3 billion represented revolving credit. More significantly, for the purposes of the present discussion, the Federal Reserve estimates that "much less than half," or somewhere between $2 and $3 billion would be the type of revolving credit within the statutory definition of H.R. 11601 permitting monthly rather than annual interest rate disclosure. In short, only 2 to 3 percent of total consumer credit outstanding in the United States has caused nearly all the controversy surrounding this legislation.

Nevertheless, there will be those who will claim that providing an exception to annual interest rate disclosure for even this small fraction of total consumer debt would encourage other type of installment or revolving credit to come within the definition permitting periodic interest rate disclosure. While we doubt that this will occur to any significant degree, if it does it will force creditors to decrease the period of repayment currently being enjoyed by borrowers, and to that extent decrease the total interest charges incurred. To the extent that the exclusion from annual interest rate disclosure encourages the users of revolving charge accounts to pay off their retail debts in less than 19 months (at least 60 percent paid off within 1 year) a tendency toward ever lengthening periods of repayment on consumer debt will be reversed. There are many economists, not to mention home economists, who would welcome such a trend. We whould not lose sight of the fact that, for the most part, the highest cost retail credit is that which carries the "easiest" and longest periods of repayment.

Finally, the committee adopted an amendment offered by the ranking minority member of the Consumer Affairs Subcommittee aimed at providing the consumer with a written estimate of the approximate annual percentage rate on open-end credit transactions, when the party making the request specifies or identifies the repayment schedule involved and such other essential credit terms as may be prescribed by the Federal Reserve Board. We like to think of this amendment as representing good faith on the part of those offering open-end credit plans, in that throughout the hearings retail witnesses indicated that an annual rate disclosure could be made if the creditor had the necessary information upon which to base his calculations. We see no reason why the Federal Reserve Board regulations could not require that monthly billings include a statement, "Estimated annual percentage rate will be supplied upon request."

TEN-DOLLAR EXEMPTION

After devoting a great deal of time and attention to the problem of annual rate disclosure on credit extended resulting in finance charges of $10 or less on installment or closed-end accounts and cash loans, we agreed with the approach unanimously approved by the Senate. We think the testimony of the witness for the Federal Reserve Board, the Honorable James L. Robertson, best sums up the reasons for having taken this action:

Presumably no one wants to press disclosure of credit costs to the point where borrowers are denied access to credit at any price. But to require disclosure of an annual percentage rate in small closed-end credit transactions might have just that result. For credit of this kind, a high effective rate may be justified to compensate the creditor for the relatively high out-of-pocket costs of handling the transaction. However, he may be understandably reluctant to disclose a high annual percentage rate, and might decide instead simply to discontinue this type of credit. S. 5 would exempt transactions involving a finance charge of less than $10 from the requirement of disclosure of an annual percentage rate, although other disclosure requirements would still apply. We believe that some such exemption is needed.

Your committee guarded against abuse of this exemption by prohibiting creditors from dividing consumer credit sales into two or more sales to avoid the disclosure of an annual percentage rate. With the adoption of this added safeguard not included in the Senate bill, the exemption from annual rate disclosure will be restricted to relatively low cost purchases and small loans.

CREDIT ADVERTISING

We were glad to see provisions covering credit advertising included in the bill, and are pleased to report that the committee adopted these requirements unanimously. No credit advertising provisions were contained in the Senate-passed measure.

It is our considered judgment that establishment of criteria covering credit advertising may prove to be the most important aspect of the proposed legislation. The advertising sections of H.R. 11601 are aimed at providing full disclosure of credit terms if specific credit terms are included in the advertisement. We refer the reader of these views to earlier pages in this report for a detailed description of the advertising provisions.

In our opinion, the practical effect will be further to emphasize product, price, and service in retail advertising, while discouraging those advertisements which contain little more than attractive and often misleading credit terms. Some of the highest cost retail credit, more often than not directed to low-income persons, goes hand in hand with retail sales made artificially attractive by such advertising. In many instances, this form of advertising completely ignores either the total price of the product or its manufacturer. Often the retailer offering by far the lowest price, the best product and the most reasonable credit terms is placed at a distinct competitive disadvantage to those who advertise misleading, if not fraudulent credit terms.

For the most part, reputable retailers will not be greatly affected by the credit advertising sections of this bill because currently it is their practice to devote little if any attention to advertising specific credit terms available.

We are not troubled by across-the-board annual rate disclosure with regard to retail credit advertising being inconsistent with a periodic rate disclosure for open end credit on contracts and monthly billings. By its very nature, an advertisement addresses itself to a broad segment of a marketing area, while a contract or a monthly bill represents a legal or accounting relationship between a creditor and an obligor. The uncertainties of repayment patterns by individuals and families which argue so forcefully for periodic rate disclosure on open end accounts lose at least some validity in advertisements aimed at a broad segment of population. Furthermore, for the most part, those who offer open end charge accounts seldom stress or even mention specific credit terms in their advertisments because their competitive advantage is in product, price, and service.

With regard to personal loans and other extensions of credit where advertising of specific credit terms may be essential disclosure requirements such as the number, amount, and due dates or period of payments scheduled to repay the indebtedness as well as the finance charge expressed as an annual rate will insure a competitive advantage to those who advertise the lowest rates.

ADMINISTRATIVE ENFORCEMENT

We are in complete accord with section 207 dealing with administrative enforcement. The provisions of this section afford the kind of protection essential to any consumer protection legislation. At the same time, strict enforcement will protect the honest creditors from those who may choose to violate the proposed law. Of equal importance is the fact that care has been taken to maintain existing Federal areas of responsibility in that the bank regulatory agencies will enforce the provisions of this bill with regard to institutions presently under their supervision, while the Federal Trade Commission will be the agent of enforcement with regard to retail credit as well as other Federal agencies in accordance with their traditional administrative responsibilities.

THE DOLLARS-PER-HUNDRED OPTION

The Senate-passed truth in lending bill contains a provision in section 4(i) which gives creditors the option of disclosing finance charges in terms of a dollars-per-hundred per year rate on average unpaid balances in installment credit transactions and as a dollars-per-hundred per period rate in revolving credit transactions until January 1, 1972. After that date, all rates required to be disclosed under S. 5 shall be expressed as percentage rates. H.R. 11601, as reported by your committee, does not contain this optional disclosure provision.

The purpose of the dollars-per-hundred option in the Senate bill is to afford a temporary partial solution to a problem which conceivably could give rise to considerable litigation in a number of States after the Federal disclosure law is enacted and takes effect. For reasons that will be explained in greater detail, the failure to include this option in the Federal law may force creditors to disclose finance or interest charges which exceed the maximum interest ceilings permitted under State usury laws.

A dollars-per-hundred option would allow State legislatures adequate leadtime in which to amend State disclosure laws which conflict with the method of disclosure prescribed by the proposed Federal act. It must be remembered that the Federal act would affect credit transactions which are now governed by an estimated 450 statutes in 51 jurisdictions. Importantly, this option would also provide a reasonable time for constitutional amendments in several States where this would be necessary in order to avoid conflict between the method of disclosure prescribed by the Federal act and the interest rate ceiling prescribed by the State constitution.

Usury statutes in 51 jurisdictions establish maximum contract interest rates ranging from 6 to 21 percent annual interest. Twenty-nine States have maximum annual interest ceilings ranging from 6 to 8 percent. Five States have no contract usury ceiling whatsoever.

Over the years, legislatures in the majority of States have enacted statutes affecting various types of credit transactions which constitute special exceptions to the usury ceilings in such States. These statutes permit creditors to compute or disclose interest or finance charges in a variety of forms which avoid direct conflict with maximum annual percentage ceilings in the State usury statutes. Finance charges or interest under these special statutes may be computed according to a variety of methods, for example, dollars-per-hundred per annum add-on or discount, dollars-per-hundred per period add-on or discount, percent per annum add-on or discount, or percent per month add-on or discount. Some statutes prescribe methods of finance charge computation without a disclosure requirement per se, whereas others prescribe both the method of computation and the method of disclosure.

In several jurisdictions, State constitutions establish specific maximum interest rate ceilings and provide that State legislatures may not enact special legislation on this subject. Interest ceilings in these States can be legally changed only by amending the State constitution, which is a difficult and time-consuming process involving political uncertainties.

The proposed Federal law requires that finance charges be expressed as annual percentage rates under the actuarial method (U.S rule). This method involves a formula for computing interest or finance charges which does not permit such charges to be calculated on the basis of add-on or discount or dollars-per-hundred methods currently prescribed by many State laws as methods of permitting finance charges in excess of the annual percentage rate ceiling prescribed by the State usury statutes.

Thus, the annual or monthly percentage rate disclosure prescribed by the Federal act would preempt or supersede the currently permissible methods of interest or finance charge computation and disclosure under State laws which differ considerably from the proposed Federal method. Significantly, most contract forms in credit transactions governed by the Federal act would have to be amended in order to comply with the required percentage rate disclosure. Because the method of disclosure prescribed by the special State statutes will no longer be effective, creditors in a number of States will be required to express finance charges as annual percentage rates which exceed the annual percentage rate ceilings permitted under State usury statutes. Legitimate creditors may stop extending credit in transactions in which, as a result of the Federal law, the interest charges appear to violate the usury statutes.

It is readily apparent that this situation could well give rise to litigation for violation of State usury statutes. This could cause serious dislocations in the credit industry for the reason that the penalty for usury or excessive interest charges under the laws of many States is the voidance of contracts requiring creditors to forfeit both principal and interest.

H.R. 11601 and S. 5 both contain language which endeavors to establish the fact that these bills are not "interest statutes." The committee reports also state that the annual percentage rate required to be disclosed under these bills does not constitute an interest rate within the meaning of the State usury statutes. On the other hand, this language in the bills and these statements in the committee reports are admittedly not binding on the State courts. The question of usury or the charging of excessive interest clearly is within the exclusive determination of the courts in the States in which such actions may be brought.

The potential legal problems that may well be created by the Federal act, and the resulting dislocations in the credit industry, have caused grave concern among lawyers who have considered this question. A dollars-per-hundred option would permit creditors in many cases to compute and disclose finance charges for a reasonable period of time according to methods prescribed by existing State laws. This is essential in order to permit adequate opportunity for State legislatures to amend affected State laws and for several States to amend their constitutional provisions where this is necessary. The absence of the dollars-per-hundred option would make an otherwise complex legal problem exceedingly more difficult and would raise the specter of increased litigation.

Of more importance, while the legal problem was being solved, consumers very well might be denied credit on terms generally recognized as being reasonable for consumer financing.

The dollars-per-hundred option was contained in the bill originally introduced by the chairman of the Subcommittee on Consumer Affairs as well as in the bill cosponsored by members of the minority. Because it is a reasonable solution to a temporary problem, we will endeavor to have this language restored during floor consideration.

COMMISSION ON CONSUMER FINANCE

We see no justification for creation of a Commission on Consumer Finance as proposed in the bill as reported. In recent years we have witnessed a very rapid growth in these types of ad hoc bodies in connection with various issues requiring continuing study. Undoubtedly there will be a need for such continued study of consumer credit protection. We would like to see as much as possible of this occur in the Congress.

While six of the nine members of the proposed Commission would be Members of Congress (three Senators and three Representatives), commissions drawn along these lines more often than not merely represent the views of executive department staff in whatever administration happens to be in power. We happen to think that consumer credit protection should be a continuing interest on the part of the committees of Congress with proper jurisdiction. We further believe that the oversight and investigative functions of Congress have been greatly eroded by the ever-increasing, though sometimes subtly disguised delegation of these functions to the executive branch.

With regard to both the promulgation of regulations as well as the administrative enforcement of H.R. 11601, the executive branch properly will play the dominant role. Moreover, section 204(e) establishes an advisory committee to advise and consult with the Federal Reserve Board in the exercise of its functions with respect to this proposed legislation. In appointing the members of this committee, the Federal Reserve Board shall "seek to achieve a fair representation of the interests of sellers of merchandise on credit, lenders, and the public." It seems to us that the proposed Commission on Consumer Finance duplicates needlessly the functions of the advisory committee proposed by section 204(e).

Even with the passage of the proposed legislation, there will remain many unanswered questions relating to consumer credit protection. We think Congress should reassert its proper role in further investigating whatever might require legislative revision or solution. Unlike practically every other major legislative proposal of the past decade, truth-in-lending *was* and *is* the product of congressional and not executive initiative. By not relying on reports and recommendations sent to it by a commission oriented to the executive branch, Congress can maintain its initiative in at least this area.

William B. Widnall.
Paul A. Fino.
Florence P. Dwyer.
Albert W. Johnson.
J. William Stanton.
Lawrence G. Williams.

SUPPLEMENTAL VIEWS OF CONGRESSMAN SEYMOUR HALPERN ON H.R. 11601

While my views on this legislation are reflected in the committee report and in the supplemental views with which I have concurred, I would nonetheless like to point to one aspect of the bill which I feel resolves a major issue.

The final committee version of H.R. 11601 provides for restrictions on the use of garnishment. The Senate truth-in-lending bill has no provisions dealing with garnishment; the original House bill called for outright prohibition of the practice.

Our committee's hearings clearly brought out the need for some basic regulation of this collection instrument, which often causes great economic hardship on countless households in our Nation. This hardship is largely due to ignorance of credit charges, which will greatly be alleviated by our overall legislation.

The problem is sufficiently severe, however, that something more had to be done to protect the consumer who faced potential economic disaster because of excessive garnishment of his wages, or loss of his job resulting from objections by his employer to the assumption of the administrative difficulties attendant to the handling of garnishment procedures.

At the same time, it was clear that the creditor must have some instrument of last resort for collecting legitimate debts, when the debtor is gainfully employed.

A review of New York State's garnishment law bears out the finding that it has had excellent results, and has been strongly backed by representatives of both consumer groups and credit institutions. Using this law as the basis, I offered an amendment which, I am pleased to say, was unanimously adopted by the committee.

The amendment provides for a complete exemption from garnishment of the first $30 of weekly income; of the remainder of the income, not more than 10 percent can be garnisheed. The only debts to which the above prohibitions do not pertain are those due for family support or for State or Federal taxes. The amendment further prohibits an employer from firing an employee on the occasion of a single garnishment on the latter's wages. Enforcement of this section of the bill will be the responsibility of the Labor Department.

It is my hope and expectation that, by means of these provisions, consumers will be protected from the pyramiding of economic disasters that can result from the use of garnishment, while creditors will justly be able to collect legitimate debts.

SEYMOUR HALPERN.

SUPPLEMENTAL VIEWS OF CONGRESSMAN SHERMAN P. LLOYD

I support the committee approved version of H.R. 11601. Two facts stand out: (1) the growth of consumer credit since 1945 has been at a rate 4½ times greater than the growth rate of our economy as a whole and now totals nearly $96 billion, (2) the interest charged on this consumer credit is approximately $13 billion annually, nearly as large as the interest on the national debt.

Consequently, the clear disclosure of finance charges becomes appropriate. Yet I retain a vestigial resentment toward much of the basic thrust supporting the legislation because of the constant insinuation that the American businessman is somehow not to be trusted. For example, the legislation was originally supported, and is still referred to, as a "truth-in-lending" bill, indicating it is aimed at liars. As it emerges from committee, its preamble asserts its purpose is to "safeguard the consumer," indicating a legislative safeguard is necessary to prevent willful cheating. This represents a blanket indictment of the good faith of American businessmen. Title II relating to prohibition against garnishment of wages refers to "the predatory extensions of credit." In actual practice this title may materially protect the professional deadbeat and increase the cost of credit for the legitimate creditor and honest debtor.

I feel that disclosure on a monthly basis rather than on an annual basis of finance charges on revolving credit sales is completely justified as confirmed by a unanimous vote in the other body and by a majority vote of our committee. These additional views are based on my belief there is also much to commend the judgment expressed by Mr. Wylie that disclosure of finance charges on monthly installment sales and certain other lenders and sellers should also be based on a monthly rather than annual basis as required by the committee bill on grounds both that (1) the consumer is still thereby accurately informed, and (2) the requirement of finance charge disclosure on an annual basis upon one merchant offering open-end installment credit might put him at an unjustified competitive disadvantage with a competitor making disclosure on a monthly basis.

As legislation designed to bring about understandable disclosure of finance charges, the bill has merit. Certainly the merchant who extends credit either as a convenience to his customer, or as a money lender, cannot object to proper disclosure of finance charges. If, however, as a committee member suggested during a hearing, the bill is designed to protect "the uneducated buyer," it would be unwise to go too far and require a statement of annual interest when the account is cleared up in less than a year and only monthly interest is charged. The revolving credit disclosure on a monthly rather than annual basis, therefore, seems not unreasonable, but clearly within the spirit of a public policy requiring accurate disclosure of finance charges.

In order to prevent competitive disadvantage to follow adoption of this legislation, I believe it would be reasonable, as Mr. Wylie recommends, to add to the exemptions to include other open-end credit transactions as defined, from the annual finance charge disclosure requirement and require instead the disclosure of the finance charge on a monthly basis.

If further education is needed for "the uneducated consumer" I should not consider it to be the merchant's responsibility to perform the educational function. To honestly and properly disclose is sufficient in my view. The job of "educating" can be done in the schools, in consumer organizations, labor organizations, and at other points where consumer education is available. Community action centers would be particularly convenient educational facilities for many, and while it may appear old fashioned, respect for and knowledge in the handling of money and extension of credit may even be learned in the home. There are few, if any, sane human beings who cannot be responsible parents, unless the opportunity is forfeited because of an overpaternalistic government which assumes a mother-child posture toward its citizens.

SHERMAN P. LLOYD.

MINORITY VIEWS OF CONGRESSMEN WILLIAM E. BROCK, DEL CLAWSON, CHESTER L. MIZE, BENJAMIN B. BLACKBURN, GARRY E. BROWN, AND CHALMERS P. WYLIE

H.R. 11601 as reported by the House Banking and Currency Committee falls far short of achieving its declared legislative objectives; i.e., (1) to strengthen competition among creditors and (2) to assure a meaningful disclosure of credit terms so as to promote the informed use of credit.

On the other hand, H.R. 11601 as originally introduced requiring disclosure of all credit costs on an annual rate basis when applied to revolving credit would result in an inaccurate disclosure of credit costs. Revolving credit is offered by many of the larger department stores, usually at a service charge of 1½ percent per month on the unpaid balance. On most such accounts, if a customer pays his bill within 30 days no credit cost is assessed. In some cases, the days of free credit are extended depending on the billing date. In other instances, credit charges are applied to an unpaid balance which may be reduced by applying payments made during the month to first purchases. The true annual rate, then, will depend upon the timing of purchases and payments. The only true and meaningful method of disclosing the rate on revolving credit accounts in advance is in terms of a percentage per month. Recognizing this difference in types of credit, the bill reported by the committee adopts a dual form of disclosure which would require the majority of lenders and retail sellers to disclose credit costs in terms of annual percentage rates, whereas other creditors would be permitted to disclose finance charges in terms of what might otherwise appear to be a lower monthly percentage rate.

A law which would require annual rate disclosure in some transactions and monthly rate disclosure in others clearly would not provide a meaningful disclosure of credit terms and would not promote the informed use of credit.

The bill would require lenders, retail sellers, and small businessmen who extend equal monthly payment installment credit to disclose their finance charges on the basis of annual percentage rates. It would also require the majority of lenders and sellers who at present extend installment open end revolving credit to the public to disclose their finance charges in terms of annual percentage rates. On the other hand, it would exempt from the annual rate requirement certain revolving credit extenders.

Section 202(h) contains a provision relating to "installment open end credit plans" which apparently represents a compromise between the annual percentage rate advocates and the monthly percentage rate advocates. It is this provision that creates a double standard of rate disclosure. This provision establishes two important standards for exempting creditors from the annual percentage rate requirement in revolving credit transactions. In effect, the bill says that creditors who offer revolving credit plans which (1) do not provide for the creation of a security interest in property or (2) provide for customer repayment schedules in which at least 60 percent of the unpaid balance in the account is required to be paid out within 12 months are exempted from the annual percentage rate requirement and may instead make disclosure on the basis of monthly percentage rates. All extenders of revolving credit who do not meet these tests are required to annualize their credit costs at the relatively higher annual percentage rate figure.

The provision in section 202(h) is clearly arbitrary and at odds with the weight of industry practice in the area of revolving credit. Virtually all revolving credit plans offered by banks, and many offered by retailers, provide for payment terms which are more liberal than the 60-percent, 12-month payout provision, and in many cases these plans allow for the retention of a security interest. The result is that the great majority of existing revolving credit plans would not qualify for the exemption from the annual rate-requirement while a few such plans would qualify. The requirement that these "non-qualifying" plans would be subject to the annual rate requirement is completely contrary to historic credit industry practice whereby practically all revolving credit charges have traditionally been calculated and disclosed in terms of monthly percentage rates. The bill reported by the committee and S. 5 would in large part overturn established accounting and billing procedures with dubious justification.

We are deeply concerned about the plight of the merchant or small businessman who does not offer revolving credit to his customers but who instead does business on the basis of traditional equal monthly payment *installment* credit. Under these bills, the creditor who extends installment credit is required to make disclosure on an annual percentage rate basis. It is clear to us that he is therefore discriminated against and is at a serious competitive disadvantage with the creditor who, because he has a higher volume of business and more sophisticated accounting practices, may offer revolving credit at what appears to be lower *monthly* percentage rates. There is little doubt that the average consumer will construe a monthly percentage rate of finance charge as being lower and more attractive than an annual percentage rate of finance charge.

Many businesses, including banks, furniture dealers, and other small retailers who are not able to offer revolving credit terms on such items as home repairs, furniture, television sets, home appliances, and smaller items, but who typically make loans or sales under traditional installment credit arrangements, would be subject to discrimination in that they would be required to make annual rate disclosure while some of their larger competitors who extend revolving credit would be able to quote monthly rates.

It is abundantly clear to us that the primary thrust of a Federal credit disclosure law should be to establish a *uniform standard of credit disclosure which will provide consumers with a single, unvarying test for comparing credit costs which will be uniformly and equitably applied to all creditors and all types of consumer credit.* The purpose of this measure is to promote the informed use of consumer credit. How can this be achieved by the enactment of a Federal law which establishes a double standard of disclosure? Clearly, consumers are going to be confused by monthly percentage rate quotations in some cases and annual percentage rate quotations in other cases. The historic thrust of this legislation has been to avoid just exactly this result.

There are very persuasive reasons for recommending the calculation and disclosure of credit charges on a monthly basis. Banks and retail sellers historically have calculated and disclosed revolving credit finance charges on a monthly basis. Credit unions historically have employed the monthly charge for rate calculation and disclosure. The consumer is billed for and makes payments for purchases and services on a monthly basis. The average American budgets his personal economy on a monthly basis. What is more logical than to require the disclosure of all consumer credit charges in a Federal statute to be on a uniform monthly basis?

Banks which make installment loans and retail sellers who make installment credit sales can easily calculate and disclose credit charges on a monthly rate basis without distortions or inaccuracies. It has been argued that annual rate disclosure in revolving credit creates distortions and inaccuracies because of interest-free grace periods ranging from 30 to 60 days and because consumers frequently pay off revolving charge obligations in 1, 2, or 3 months. These problems would be largely resolved by our recommendation for uniform monthly disclosure.

It is for these reasons that an amendment to H.R. 11601 should be adopted to delete the double disclosure standard and to substitute in lieu thereof a uniform *monthly* disclosure requirement which will apply equitably and fairly to all creditors and would provide consumers with a single unvarying test for measuring and comparing such costs.

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BILL BROCK.
DEL CLAWSON.
CHESTER L. MIZE.
BEN B. BLACKBURN.
GARRY BROWN.

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