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A LOOK AT TRUTH IN LENDING —FIVE YEARS AFTER

Griffith L. Garwood*

INTRODUCTION

Rapid growth of the consumer credit industry,[1] combined with widespread public ignorance about credit practices and costs, set the stage for historic legislative action regulating consumer credit. In 1968, after several years of congressional study, the Truth in Lending Act was adopted.[2]

In hearings conducted by both houses of Congress it was clearly demonstrated that because information either was not available to consumers or was deceptively or technically phrased, the consumer was unable to shop for the best credit terms in the same way he could shop for best buys when making cash purchases.[3] Because creditors used different systems of credit computation and billing, the consumer often found he was unable to make an intelligent choice and instead relied on such slogans as "easy payment," "low monthly charge" or "take thirty-six months to pay" when choosing credit. These "easy payments" often translated into annual percentage rates roughly twice the "add-on" or "discount" rate shown on the customer's contract, sometimes leaving the customer with a liability he could not meet.[4]

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1. *See, e.g.*, H.R. REP. No. 1040, 90th Cong., 1st Sess. 10-11 (1967) which shows that from the end of World War II through 1967 the amount of credit had increased from $5.6 billion to almost $96 billion.

2. The Truth in Lending Act is Title I of the Consumer Credit Protection Act, 15 U.S.C. §§ 1601-65 (1970). The Act became effective on July 1, 1969.

3. *See Hearings on S. 5 Before the Subcomm. on Financial Institutions of the Senate Comm. on Banking and Currency*, 90th Cong., 1st Sess. (1967); *Hearings on H.R. 11601 Before the Subcomm. on Consumer Affairs of the House Comm. on Banking and Currency*, 90th Cong., 1st Sess. (1967).

4. See notes 77 and 78 and accompanying text *infra*.

Correction of this national problem of uninformed use of credit was the purpose of the Truth in Lending Act.[5]

The scope of the Act may accurately be described as immense. Outstanding consumer credit now exceeds 160 billion dollars, and more than sixteen per cent of the American consumer's disposable income goes to the payment of installment credit.[6] Although certain transactions are exempted from the provisions of the Act, it applies to virtually all extensions of credit for personal, family, household or agricultural purposes.[7] Thus, every home mortgage, credit card transaction, retail installment contract and personal loan is subject to the protections of the Truth in Lending Act and Regulation Z which implements and interprets it.[8] The extent of the Act is reflected in its enforcement apparatus. Nine different federal agencies join together in enforcing the requirements of Truth in Lending.[9]

Though neither the Act nor Regulation Z is designed to tell creditors the terms under which they may extend credit, Truth in Lending does demand that consumers be informed about the terms of their credit transactions. This is accomplished by requiring the use of standard terminology, uniform methods of calculating the cost of the credit and making this information

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5. *See* 15 U.S.C. § 1601 (1970) which provides:

> The Congress finds that economic stabilization would be enhanced and the 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 subchapter 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.

6. 59 FED. RESERVE BULL. A 54 (Dec. 1973).

7. Truth in Lending exempts from coverage the extension of credit for business or commercial purposes. 15 U.S.C. § 1603(1) (1970). In determining whether a transaction is exempt, the purpose of the transaction, not the property on which the security interest is retained, controls. *See* Sapenter v. Dreyco, Inc., 326 F. Supp. 871 (E.D. La.), *aff'd*, 450 F.2d 941 (5th Cir. 1971), *cert. denied*, 406 U.S. 920 (1972). Also exempt under the above section are transactions in securities with a registered broker-dealer and transactions other than real property in which the amount financed exceeds $25,000.

8. Congress has stipulated that the Board of Governors of the Federal Reserve System is given authority to promulgate regulations. 15 U.S.C. § 1604 (1970). These regulations are codified in 12 C.F.R. §§ 226.1-13 (1973). The regulations are known collectively as Regulation Z.

9. The federal agencies include the Civil Aeronautics Board, Comptroller of the Currency, Federal Credit Union Administration, Federal Deposit Insurance Corporation, National Home Loan Bank Board, Federal Reserve Board, Federal Trade Commission, Interstate Commerce Commission, and Packers and Stockyards Administration. *See* 15 U.S.C. § 1607 (1970). Five states (Connecticut, Maine, Massachusetts, Oklahoma and Wyoming) have received exemptions from the Act because of enactment of similar state laws. For the procedures to be followed in obtaining a state exemption see 12 C.F.R. § 226.12 (1973) and the Supplements to Regulation Z referred to therein.

available to the consumer.[10] The goal expressed by Congress is a public sufficiently informed to make intelligent choices when financing purchases or obtaining loans.[11]

Courts have consistently interpreted the Truth in Lending Act and regulations issued pursuant to it broadly in order to best effectuate the remedial intent of Congress.[12] In addition to an examination of judicial approval of Truth in Lending, this article will discuss the implementation of the Act and will focus on significant developments of the past five years. Finally, the effectiveness of Truth in Lending will be analyzed and major problems will be discussed.

IMPLEMENTING THE ACT

The Federal Reserve Board is charged with implementing the provisions of Truth in Lending. The Board has two distinct duties: *regulatory* responsibility for all creditors and *enforcement* responsibility for state-chartered banks that are members of the Federal Reserve System.[13] The Board is also charged with 1) granting exemptions from the federal law to states with substantially similar qualifying laws,[14] and 2) submitting an annual report to Congress concerning its administrative functions under the Act.[15]

The Federal Reserve Board's regulatory responsibility in-

10. Extensions of credit are broken into two categories with different disclosure schemes: open end credit and other than open end credit. Open end credit typically includes bank credit cards and revolving accounts. The Act regulates these transactions by requiring the creditor to make certain general disclosures when the account is opened (12 C.F.R. § 226.7(a) (1973)), and to provide additional information with each monthly statement (12 C.F.R. § 226.7(b) (1973)). Open end credit is defined at 12 C.F.R. § 226.2(r) (1973). That section states:

> 'Open end credit' means consumer credit extended on an account pursuant to a plan under which (1) the creditor may permit the customer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check, or other device, as the plan may provide; (2) the customer has the privilege of paying the balance in full or in installments; and (3) a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

Credit other than open end credit requires disclosure by the creditor before the transaction is consummated. 12 C.F.R. § 226.8(a) (1973).

11. *See* 15 U.S.C. § 1601 (1970) the text of which is quoted at note 5 *supra*.

12. *See, e.g.*, Mourning v. Family Publications Serv., Inc., 411 U.S. 356 (1973); Gardner & North Roofing & Siding Corp. v. Board of Governors, 464 F.2d 838 (D.C. Cir. 1972); Garza v. Chicago Health Clubs, Inc., 347 F. Supp. 955 (N.D. Ill. 1972); Douglas v. Beneficial Fin. Co., 334 F. Supp. 1116 (D. Alas. 1971).

13. 15 U.S.C. §§ 1604, 1607 (1970).

14. *Id.* § 1633.

15. *Id.* § 1613.

cludes the issuance of implementing regulations which are enforced by all agencies. Collectively, these regulations are known as Regulation Z.[16] The Board amends and interprets Regulation Z as necessary.[17] The Board's staff also informally interprets Regulation Z by answering in letter form the vast number of inquiries from consumers, business men and attorneys concerning the effect of Regulation Z on particular transactions. These letters have been both relied upon and ignored by the courts.[18] They have been made available to the public and have been published commercially.[19]

The year spent drafting Regulation Z and the almost five years spent administering it have involved constant decisionmaking by the Board in an effort to make the requirements of Truth in Lending as workable and effective as possible. The exceedingly complex nature of credit extension has made the task a difficult one. Regulation Z has been adjusted continually in an attempt to minimize the burdens on creditors while providing the consumer with the optimum amount of understandable credit information.[20] All of these decisions have been made in the shadow of the conflict between the need to keep disclosures simple while at the same time providing as much information as

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16. 12 C.F.R. §§ 226.1-13 (1973).

17. Amendments and interpretations in the form of a pamphlet and supplement may be obtained from the Board in Washington, D.C., 20551, or from any Federal Reserve Bank. The status of a formal Board interpretation has recently been reviewed in *Bone v. Hibernia Bank*, 4 CCH CONSUMER CREDIT GUIDE ¶ 99,025 in which the Ninth Circuit Court of Appeals stated:

> When interpreting an administrative regulation whose meaning is in doubt, we must necessarily look to the construction given the regulation by the agency responsible for its promulgation. . . . Great deference is especially due the Federal Reserve Board's construction of its own Regulation Z because of the important interpretive and enforcement powers granted this agency by Congress under the Truth in Lending Act. . . . (footnotes omitted).

18. The court in Ratner v. Chemical Bank N.Y. Trust Co., 329 F. Supp. 270, 278-79 (S.D.N.Y. 1971) declined to accept an interpretation contained in a staff letter. The court emphasized that the opinion in the letter was that of the attorney who wrote it and not of the Board itself. *But see* the Board's own view of the weight of a letter from its staff, 4 CCH CONS. CRED. GUIDE ¶ 30,640. It should be noted that in *Ratner* the letter was sent *after* litigation had begun. Buford v. American Fin. Co., 333 F. Supp. 1243 (N.D. Ga. 1971) suggests that the court might view a staff letter more favorably if it is received prior to initiation of the suit.

19. *See* CCH CONS. CRED. GUIDE (1971); CLONTZ, TRUTH IN LENDING MANUAL (1973).

20. The Board has issued more than fifty formal interpretations of its provisions and has amended Regulation Z numerous times. The 1973 amendments include provisions which simplify and clarify the advertising restrictions of the Regulation. For example, the amount of information which must be included in an open end credit advertisement once a specific "triggering" term is used has been reduced. *See* 38 Fed. Reg. 18457 (1973). *See also* Garwood, *A New Look at Credit Advertising Under Regulation Z*, 91 BANKING L.J. 48 (1974).

possible to the consumer. An attempt has been made to determine and avoid the point at which disclosures become so complicated that they fail in their objective of informing the public, at a glance, what the cost of the offered credit will be.[21] Unfortunately, given the complexity inherent in many transactions, the disclosures are often necessarily complicated.

While the Federal Reserve Board has, of course, made hundreds of decisions with regard to the implementation of Truth in Lending, three are particularly significant. These three are the more-than-four installment rule,[22] the application of the right of rescission to mechanics' and materialmen's liens[23] and the decision relating to confession of judgments.[24] Although there have been many other difficult interpretations, these three are good illustrations of the type of problem with which the regulatory agency has grappled in its effort to implement the Act.

MAJOR FEDERAL RESERVE BOARD DECISIONS

The More-Than-Four Installment Rule

The Act requires disclosure "to each person to whom consumer credit is extended and upon whom a finance charge is or may be imposed."[25] Because of the widespread practice of concealing the credit charges within the purchase price of goods, the Board provided in Regulation Z, that Truth in Lending applies to transactions payable in more than four installments even when no separately identifiable finance charge is designated.[26] By this rule the Board gave notice to vendors that they could not evade the Act's requirements by concealing finance charges. This was done to ensure that the "no charge for credit" sellers would make important disclosures such as the total purchase price even when no finance charge or annual percentage rate was apparent on the face of the transaction.[27] The Board's more-than-four installment rule was based on the economic fact that such installment contracts typically include some compensation to the creditor for the cost involved in allowing deferred payment, even though that cost may not be separately identified as a finance charge.

The Board's rule was challenged in *Mourning v. Family Pub-*

21. For a discussion of this process see Garwood, *Truth in Lending—A Regulator's View*, 29 BUS. LAW. 193 (1973).
22. 12 C.F.R. § 226.2(k) (1973).
23. *Id.* §§ 226.2(a), 226.2(z).
24. *Id.* § 226.202.
25. 15 U.S.C. § 1631(a) (1970).
26. 12 C.F.R. § 226.2(k) (1973).
27. *See id.* § 226.8(b)(3).

lications Service, Inc.[28] Mrs. Mourning, a seventy-three year old widow, had been approached by a representative of Family Publications Service, a corporation engaged in soliciting magazine subscriptions door-to-door. Mrs. Mourning purchased a five year subscription to four magazines, and agreed to make thirty-one monthly payments of $3.95 each. She signed a contract which included an acceleration clause providing that any default on the monthly payment made the entire balance due and a clause stating that the subscription could not be cancelled. The contract did not make any mention of the total price of $122.45 and, more significantly, made no mention of any finance charges. The district court held that the transaction was an extention of credit subject to the disclosure requirements of Regulation Z since payments were to be in more than four installments.[29] The court of appeals, however, reversed the decision holding that the Board had exceeded its statutory authority in issuing a regulation making Truth in Lending disclosure requirements applicable to such transactions.[30]

The Supreme Court, in reversing the court of appeals, rejected the defendant's contention that the "Four Installment Rule" exceeded the scope of the Board's powers. The defendant urged that the Act was to be interpreted narrowly and its application limited to transactions in which a finance charge is *actually* imposed. The Court, however, reiterated that Congress had intended that the Board be given broad rulemaking powers to insure that all those extending consumer credit would be included within the Act, even if the *form* of the credit extension were unusual.[31] Therefore, the Court found the "Four Installment Rule" to be a valid exercise of the Board's powers.[32]

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28. 411 U.S. 356 (1973).

29. *See* 449 F.2d 235, 237-38 (5th Cir. 1971).

30. 449 F.2d 235 (5th Cir. 1971).

31. The Truth in Lending Act gives the Board power to prescribe regulations to carry out the purposes of the Act. 15 U.S.C. § 1604 (1970). In deciding whether a Board regulation is reasonably related to the purposes of the Act a court will apparently defer to the Board finding. *See, e.g.*, Charnita, Inc. v. FTC, 479 F.2d 684 (3d Cir. 1973) (the court upheld the validity of the Board's regulation concerning a "security interest" in the consumer's residence); N.C. Freed Co. v. Board of Governors, 473 F.2d 1210 (2d Cir. 1973) (the court upheld the Board's regulation which defined "security interest" to include non-consensual liens).

32. Although agreeing with the majority that Regulation Z was valid, Justices Douglas, Stewart and Rehnquist, in partial dissent, would have remanded the case to the district court. They raised the possibility that the transaction involved in *Mourning* was not a true credit transaction because the publishing service may have made no advances for Mrs. Mourning for which she had not already paid. Justice Powell, in a separate dissent, noted that there may have been an extension of credit but it was by *Mrs. Mourning* and not by the defendant. Justice Powell arrived at this conclusion because the facts showed that Mrs. Mourning

The Right of Recission

A second major decision of the Federal Reserve Board required that a consumer's three-day right to rescind a contract, when a security interest is taken in his home,[33] should apply when non-consensual liens are acquired in any real property which is the consumer's principal residence.[34] The right to rescind the transaction continues for three days. This period begins to run from the later of two dates: 1) from the date the contract is consummated, or 2) from the date the disclosure of the rescission right and other disclosures required by Truth in Lending are made.[35] The rationale for allowing a right to rescind in the case of simple lien rights as well as when a security interest such as a mortgage arises, is that in either case the consumer could lose his home thrugh foreclosure proceedings. The Board, therefore, provided in Regulation Z that the right of rescission be extended to *credit* transactions which involve mechanic's or materialmen's liens on the consumer's home.

Like the more-than-four installment rule, this Board decision

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paid every month for two months worth of magazines. Thus, until she had received the last magazine she would have paid for more than she received. Nevertheless, the majority of the Court was clear in its support of congressional intent to protect consumers by the mechanism of disclosure. Apparently, the Court felt that to have disallowed the more-than-four installment rule would have made it too easy for creditors to circumvent Truth in Lending.

33. 15 U.S.C. § 1635(a) (1970).

34. Under 12 C.F.R. § 226.9(a) (1973), a three-day rescission right is applicable when a security interest is taken in the consumer's principal residence (other than in the case of a first purchase money mortgage). Subsection (2) of 12 C.F.R. § 226.2(z) (1973) defines "security interest" and "security" as:

> [A]ny interest in property which secures payment or performance of an obligation. The terms include, but are not limited to, security interests under the Uniform Commercial Code, real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded, mechanic's, materialmen's, artisan's, and other similar liens, vendor's liens in both real and personal property, the interest of a seller in a contract for the sale of real property arising by operation of law, and any interest in a lease when used to secure payment or performance of an obligation.

35. 12 C.F.R. § 226.9(a) (1973) provides in pertinent part:

> Except as otherwise provided in this section, in the case of any credit transaction in which a security interest is or will be retained or acquired in any real property which is used or is expected to be used as the principal residence of the customer, the customer shall have the right to rescind that transaction until midnight of the third business day following the date of consummation of that transaction or the date of delivery of the disclosures required under this section and all other material disclosures required under this Part, whichever is later, by notifying the creditor by mail, telegram, or other writing of his intention to do so.

Conceivably, if no disclosure is made by the creditor, the consumer's right to rescind the contract could continue indefinitely. The Board has suggested that Congress amend the Act to provide a limitation on the time the right of rescission may run. FED. RESERVE BOARD, TRUTH-IN-LENDING ANNUAL REP. TO CONGRESS 16 (1973).

was challenged in the courts. After conflicting holdings by federal district courts, two United States courts of appeals upheld the validity of the Board's decision.[36]

The first of these cases—*Gardner & North Roofing & Siding Corp. v. Board of Governors*[37] —was an action for a declaratory judgment challenging the Board's decision in extending the consumer's right of rescission. The argument that Congress did not intend the term "security interest" to include liens created by law was rejected by the District of Columbia Court of Appeals.[38] Instead the court insisted that the Act must be given a broad interpretation in order to carry out its purpose of protecting the consumer. The court noted that without disclosure of all consequences of a home improvement contract, the home-owner would be exposed to "hidden and perhaps fatal traps."[39]

In a case almost identical to *Gardner & North,* the Court of Appeals for the Second Circuit upheld the validity of a recission regulation in *N. C. Freed Co. v. Board of Governors.*[40] In language similar to that found in *Gardner & North* the court ruled that as a remedial act, the Truth in Lending provisions and the rules issued pursuant to the Act must be given broad interpretation in order to carry out the intent of Congress. Seeing the regulation as a clarification of the Act, rather than as an administrative extension, the court rejected the Freed Company's challenge.

Confession of Judgments

Another significant Federal Reserve Board decision defined a "security interest" which will give rise to the consumer's right of rescission to include a confession of judgment clause.[41] In sev-

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36. N.C. Freed Co. v. Board of Governors, 473 F.2d 1210 (2d Cir. 1973); Gardner & North Roofing & Siding Corp. v. Board of Governors, 464 F.2d 838 (D.C. Cir. 1972).

37. 464 F.2d 838 (D.C. Cir. 1972). Gardner and North, a New York construction company specializing in remodeling and repairing homes, allowed customers to use a deferred payment plan in which case the customer signed a promissory note. Under the laws of New York, home improvement contractors are given a lien on the customer's home when work is performed. Once the lien exists, Truth in Lending comes into play. The effect of the challenged Board regulation was to require that the customer be notified of his rescission rights whenever a lien will arise against his home.

38. The term "security interest" is not defined in section 1635(a) of the Act. Because the section speaks only of a security interest which is "retained or acquired," the appellants asserted this language does not include a lien that may arise in favor of a third party not privy to the original contract. 464 F.2d at 841.

39. *Id.* at 842.

40. 473 F.2d 1210 (2d Cir.), *cert. denied,* 414 U.S. 827 (1973).

41. 12 C.F.R. § 226.202 (1973).

eral states it had been common for a creditor to cause the consumer to execute a "confession of judgment clause" permitting the creditor to obtain a lien on the consumer's property simply by recordation entry of the confessed judgment.[42] Under this procedure, the consumer was given no opportunity to enter a defense against such action prior to entry of the judgment. The Board reasoned that since confession of judgment clauses have the effect of depriving the consumer of the right to be notified of a pending action and to enter a defense before judgment is entered or recorded against him, such clauses are security interests for the purposes of Truth in Lending.[43] In effect, when the consumer signs a confession of judgment instrument, it is just as if he had signed a second mortgage. This Board decision was challenged and upheld in *Douglas v. Beneficial Finance Co.*[44] The district court ruled that not only did a confession of judgment provision constitute a security interest under Regulation Z, but the explicit regulation that requires disclosure of the finance charge and annual percentage rate on the face of the document[45] must be followed.[46] The *Douglas* decision is in accord with the basic philosophy of Truth in Lending—consumer protection through disclosure and notice.

EFFECTIVENESS OF TRUTH IN LENDING LEGISLATION

Consumer Awareness

At the outset, it must be acknowledged that it is extremely difficult to truly measure the effectiveness of Truth in Lending legislation. However, there are some concrete indications of how it is working. The National Commission on Consumer Finance[47] authorized two studies to determine consumer awareness of annual percentage rates.[48] One study was an analysis of two

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42. *See, e.g.*, OHIO REV. CODE ANN. § 2323.13 (1965); PA. RULES CIV. PRO. §§ 2950-76 (1967).

43. 12 C.F.R. § 226.202 (1973).

44. 334 F. Supp. 1166 (D. Alas. 1971), *rev'd on other grounds*, 469 F.2d 453 (9th Cir. 1972).

45. 12 C.F.R. § 226.801 (1973).

46. 334 F. Supp. at 1174-75.

47. This Commission was established by Title IV of the Consumer Credit Protection Act, 15 U.S.C.A. § 1601 (Supp. 1973) (enacted on May 29, 1968, Pub. L. No. 90-321, §§ 401-07, 82 Stat. 164, *as amended*, June 30, 1972, Pub. L. No. 92-321, §§ 401-07, 86 Stat. 382). A discussion of the Commission's specific recommendations for amendments to the Truth in Lending Act appears in the Truth in Lending Annual Report to Congress for the Year 1973 by the Board of Governors of the Federal Reserve System, CCH CONS. CRED. GUIDE 21 (Jan. 16, 1974).

48. *See* NAT'L COMM'N ON CONS. FINANCE REP., CONS. CRED. IN THE U.S. (1972).

surveys conducted for the Federal Reserve Board in 1969 and 1970;[49] the other study involved 641 personal interviews in California.[50]

Both studies indicate that there are two distinct markets for credit—the "general market" and the "high risk market."[51] The general market includes consumers with higher educational levels and family incomes above $8,000. General market consumers are likely to be white, own homes in non-poverty areas, and rely relatively more on cash loans than do consumers in the high risk market who depend on vendor credit. The high risk market[52] is generally characterized by consumers with a high school education or less and with a family income below $8,000. Such consumers more typically rent residences in poverty areas, are more likely to be black than white, and rely heavily on vendor credit.

The studies concluded that approximately forty to fifty per cent of the consumers within the general market were aware of the annual percentage rate (APR) in credit transactions. They could recall and quote an APR on loans and credit purchases in the range of rates commonly charged. In terms of fostering rival rate competition among creditors, the surveys concluded that this level of awareness was probably adequate to stimulate competition. All consumers need not be aware of the APR to bring about effective price competition since a significant marginal group of consumers who are aware and do shop for credit terms is sufficient to "police" the market.[53]

The National Commission on Consumer Finance concluded that fifteen months after the effective date of Truth in Lending, APR awareness had not reached many consumers in the high risk market and price competition was less effective in that market.[54] However, the Commission points out that there are natural limitations to the effectiveness of Truth in Lending in the high risk market. Credit in that market is "rationed" in the sense that the consumers cannot obtain as much credit as they might wish. Also, such consumers are more likely to care about the required down-payment and the size of monthly payments than about the actual cost of credit. According to the Commission:

> TIL improves the market by requiring disclosure of all pertin-

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49. This analysis, the Shay-Schober Study, is based on two large nationwide telephone and personal interview surveys conducted for the Board. The first survey was made in 1969 immediately before the effective date of Truth in Lending, and the second occurred fifteen months later. *Id.* at 175-76.

50. The Brandt-Day study was conducted in October, 1970. *Id.*

51. *Id.* at 176.

52. *Id.*

53. *Id.*

54. *Id.* at 177.

> ent credit terms, but it cannot be expected that quotation of the APR will cause rationed consumers to shift from shopping for low downpayments and low monthly payments to comparative shopping for price. Until these consumers become more affluent, rate disclosure will not add significantly to their economic well-being.[55]

One interesting conclusion drawn by the Commission was that there is a plateau of awareness of annual percentage rates and Truth in Lending legislation which is significantly below one hundred per cent. The awareness level is not likely to go higher because along with the group of consumers who are "learners" there are "forgetters."[56] Unless there are changes in whatever variables affect the rate of forgetting,[57] awareness will peak at about sixty-seven percent, an acceptable level.[58] Compared to this realistic percent of expected awareness, the fifty percent APR awareness already shown to exist in the general market is heartening.[59]

Furthermore, compared to a goal of sixty-seven percent, the Federal Reserve Board's two surveys are encouraging even though the absolute figures were rather low. For example, one survey indicated that, although only twelve percent of consumers with personal loans in 1969 reported that their annual percentage rate was as high as ten percent, more than twenty-five percent of the borrowers reported such rates in the 1970 survey.[60] An annual percentage rate of ten percent or more was reported in 1969 by approximately seventeen percent of the consumers who had bought appliances or furniture on credit, as compared with approximately forty percent of the consumers in 1970.[61] The rise in the number of knowledgeable consumers is similar for annual percentage rate awareness on other types of credit transactions as well. For all credit transactions, unrealistically low rates were reported less frequently in the 1970 survey.[62]

Beyond this data there are other indicia of the effectiveness of Truth in Lending. There has been an increase in competitive

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55. *Id.* at 179.
56. *Id.* at 180.
57. Variables might be experiences with credit or concern over the cost of credit. *Id.* at 180.
58. *Id.*
59. *Id.*
60. FED. RESERVE BOARD, TRUTH-IN-LENDING ANNUAL REP. TO CONGRESS 9 (1970).
61. *Id.* at 9-10.
62. *Id.* at 10. It should be noted, however, that the upward trend in rates reported on first mortgage financing appeared to be primarily a reflection of the general upward trend in mortgage interest rates rather than any increase in consumer knowledge. *Id.*

"annual percentage rate" advertising among banks in some markets, and "bait" credit advertising appears to be on the wane.[63] Finally, the fact that the typical charge on revolving credit accounts is eighteen percent now seems to be a well known middle-class household fact.

Truth in Lending and the Low Income Consumer

There is some question about the effectiveness of the Act for the low income consumer, but unfortunately it may not be realistic to expect Truth in Lending alone to provide a solution to the credit problems of the poor. The poor are under other disabilities which profoundly affect the way in which family assets are distributed.[64] Low income consumers often do not have the means to conduct comparative shopping either because the information is unavailable or because credit is available only through certain outlets. The low income consumer who is also non-English speaking is even more limited in finding sources of credit. Naturally, he will tend to deal with merchants with whom he can communicate. As yet, Truth in Lending has no requirement that disclosures be made in any language but English.[65] The effectiveness of Truth in Lending presupposes a consumer who is able to shop around for the best buys in goods and services. Low income consumers may be forced by necessity to consider only monthly payments in making purchases and therefore may be unable to seek the best credit terms available.[66]

Problems such as these have deep roots and their correction was neither contemplated nor predicted by the proponents of

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63. The term "bait" credit advertising refers to the situation in which the consumer is lured into credit transactions by advertised terms or products which are not actually offered by the vendor. For example, although a low downpayment or monthly payment is advertised the consumer is told that these terms are available only on the more expensive item. *See* 15 U.S.C. § 1663 (1970); 12 C.F.R. § 226.10(a) (1973).

64. *See* Comment, *Consumer Legislation and the Poor*, 76 YALE L.J. 745 (1967) [hereinafter *Consumer Comment*]. *See generally* D. CAPLOVITZ, THE POOR PAY MORE (1967); Note, *Instalment Sales: Plight of the Low Income Buyer*, 2 COLUM. J.L. & SOC. PROB. 1 (1966).

65. A cogent argument can be made that for disclosure to be meaningful, as required by section 1601 of the Act, the language of disclosure must be understood by the consumer. However, the need to bring meaningful disclosure to the non-English speaking people in the nation must be weighed against the problems that requiring foreign language disclosure would entail. No Board recommendation has been made in this regard. *But see* Statement by J.L. Robertson, Vice Chairman, Board of Governors, before the Subcommittee on Consumer Affairs, House Banking and Currency Committee, March 22, 1972.

66. *Consumer Comment, supra* note 64, at 750, *citing Hearings on H.R. 7179 Before a Subcomm. of the House Comm. on Government Operations*, 89th Cong., 2d Sess. 191 (1966); *Hearings on S. 2755 Before a Subcomm. of the Senate Comm. on Banking and Currency*, 86th Cong., 2d Sess. 116 (1960).

Truth in Lending. For the low income consumer Truth in Lending is but a small step toward more intelligent spending but, nevertheless, many of the benefits resulting from the Act serve to give a basis for protection of the poor just as they do other strata of society.

Additional Positive Aspects of Truth in Lending

There are several side effects related to consumer credit which probably have their origin in Truth in Lending disclosure requirements. The present concern over the use of the "previous balance method" in computing finance charges on open end credit accounts may have been stimulated in part by the fact that Truth in Lending requires a creditor to disclose specifically if he utilizes this method.[67] The previous balance method of computation gives no credit for partial payments made during the billing cycle.[68] Of even greater significance as a side effect is the recent challenge to the validity of confession of judgment clauses.[69] It was probably Truth in Lending that highlighted these clauses through disclosure and rescission provisions.

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67. 15 U.S.C. § 1637(a)(2) (1970); 12 C.F.R. § 226.7(a)(2) (1969). An attempt to amend Title I of the Fair Credit Billing Act (S. 2101) to prohibit the previous balance method was defeated fifty-six to thirty-three when the Senate passed the bill, but the issue will probably be considered by the House of Representatives when it considers the legislation. 119 CONG. REC. 14411 (daily ed. July 23, 1973). The issue has not yet been considered by the House of Representatives.

The latest version of the Uniform Consumer Credit Code permits use of the previous balance method. *See* UNIFORM CONSUMER CREDIT CODE § 2.202(2)(b) (Working Redraft No. 5, 1973). This method is apparently also allowed under the Unruh Act. *See* CAL. CIV. CODE § 1810.2(d) (West 1973); Siebert v. Sears, Roebuck & Co., [1969-73 Transfer Binder] CCH CONS. CRED. GUIDE ¶ 99,164, at 89,057 (Cal. Super. Ct. May 1, 1972), which holds that the "previous balance" method of computing finance charges is permissible under Civil Code section 1810.2.

68. For example, given an APR of eighteen percent (one and one-half percent per month), if at the end of the first monthly billing cycle the consumer owes $100 and promptly pays $75, the amount of interest for which the consumer is billed is calculated on the basis of the $100 balance rather than on the $25 which actually remains unpaid. In the next billing cycle the previous balance will be $26.50 ($25 + $1.50) and interest will usually be computed on that amount as well as on any other amount charged during the first billing cycle.

69. *See, e.g.*, Swarb v. Lennox, 405 U.S. 191 (1972) in which the plaintiffs challenged Pennsylvania statutes permitting confession of judgment on due process grounds. The court rejected plaintiffs' challenge to the statutes on their face, but emphasized that this in no way constituted approval of the statutes as applied. Other cases evidencing the hostility of courts to statutes allowing collection before litigation include Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969); Blair v. Pitchess, 5 Cal. 3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971); Randone v. Appellate Dep't of Super. Ct., 5 Cal. 3d 536, 488 P.2d 13, 96 Cal. Rptr. 709 (1971), *cert. denied*, 407 U.S. 924 (1972).

The results, then, on the whole are encouraging. Although confusion has not been completely eradicated, progress has been made in improving the public's understanding of the cost of credit.

PERSISTENT PROBLEMS

Many problems have arisen in implementing Truth in Lending legislation. Most Federal Reserve Board amendments of Regulation Z and most interpretations have grown out of some difficulty in administering the Act. Problems have stemmed from two principal sources. The first is the incredible complexity and variety of methods used in extending credit. To a large extent, this is a result of the patchwork quilt of state laws which have determined the course of the consumer credit industry for so many years. The problem may diminish as more states adopt the Uniform Consumer Credit Code which limits the forms in which credit may be extended.[70] But until now credit has been extended in as many different ways as creative and ingenious minds can devise. Credit is an extremely complicated area of human endeavor, and, as with all complicated things, it breeds problems.

The second source of problems is the fact that the credit granting process has not remained static. Credit is being granted today in ways that are vastly different than in 1968 when the Truth in Lending Act was enacted.[71] As the methods of granting credit change, so Regulation Z must change. Although the fluidity of the problems renders definitions and solutions difficult, five major areas of concern, some still unresolved, are examined below.

Advertising

One requirement of the Act is that whenever a creditor advertises a single credit term, he must give additional, applicable

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70. *See* UNIFORM CONSUMER CREDIT CODE §§ 2.201-10, 2.301-13 (dealing with maximum charges, disclosure and advertising in credit sales) and §§ 3.201-10, 3.301-12 (dealing with maximum charges, disclosure and advertising for loans). At present the Code has been adopted in Colorado, Idaho, Indiana, Kansas, Oklahoma, Utah and Wyoming.

71. For an illustration of problems arising in one method of credit extension see FRB letter No. 673, 4 CCH CONS. CRED. GUIDE ¶ 30,949 (1973) which discusses matching the open end credit disclosure pattern to the purchase of items such as automobiles, boats or property improvements. When a consumer finances a car, for example, he may receive credit from a bank with the express understanding that he may obtain further credit advances, subject to bank approval, for future purchases. Thus the consumer may continue to borrow on his line of credit for tires, repairs, etc. In this way, a line of credit may be developed which is similar to an open end credit account which allows the consumer to make continuous purchases, resulting in a running outstanding balance.

credit terms.[72] In other words, advertising of a specific credit term triggers a requirement of further disclosure. While this provision has worked well in the area of closed end credit (mortgages, notes, installment contracts), difficulties have arisen with similar disclosure requirements for open end credit (bank credit card plans, charge accounts and the like). Simply stated, so much information was required once a term triggering compliance with Regulation Z was used, that open end creditors, for the most part, were discouraged from attempting to advertise other than in very general terms which would not mandate additional disclosures.[73] Thus, the very purpose of Truth in Lending, meaningful disclosure to the public, was discouraged by a regulation meant to further that purpose. In recognition of this situation, on July 11, 1973, some disclosure requirements were amended to trim back the information that must be given when a specific credit term is used in advertising open end credit.[74] For example, a statement which triggers the requirement for additional disclosures no longer requires the minimum periodic payment to be shown. Technical changes in the advertising provisions were given effect. These changes were promulgated in an effort to make the provisions more workable and to encourage specific advertising of credit terms.[75] It is through advertising that consumers can most easily shop for the most advantageous credit arrangement. Hopefully, these changes will stimulate more advertising of specific terms.[76]

Disclosure of the Annual Percentage Rate

Another problem has been creditor resistance to the disclosure of annual percentage rates. Notwithstanding the enactment of Truth in Lending, some extenders of credit continued quoting

72. 15 U.S.C. §§ 1663, 1664(d) (1970).

73. 12 C.F.R. § 226.10(c) (1973).

74. 38 Fed. Reg. 18457-58 (1973), *amending* 12 C.F.R. §§ 226.2, 226.10 (1973). In section 226.2(u), the words "under an open end credit plan" have been deleted. Subsections (5) and (6) of section 226.10(c) have been deleted and section 226.10(d) has been substantially reworded. *Id.*

75. See a description of the changes accompanying the regulations in 38 Fed. Reg. 18457 (1973). Generally the changes simplify and clarify the advertising restrictions of the regulation by limiting the amount of information required to be disclosed in an advertisement.

76. With regard to private rights of action for advertising violations, district courts have disagreed. *Compare* Jordan v. Montgomery Ward & Co., 442 F.2d 78 (8th Cir.), *cert. denied*, 404 U.S. 870 (1971) *with* Garza v. Chicago Health Clubs, Inc., 329 F. Supp. 936 (N.D. Ill. 1971). In *Jordan* it was held that section 130 of the Act did not create a private right of action for violations of the advertising provisions. The *Garza* court assumed, without deciding, that it had jurisdiction to enjoin fraudulent credit advertising, including violations of the Truth in Lending Act and Regulation Z.

the add-on[77] or discount rate,[78] rather than the annual percentage rate, in response to oral inquiries from consumers about the cost of credit.[79] Such quotations may have given the consumer the impression that the cost of credit was substantially under the true cost. By an interpretation of Regulation Z, also issued on July 11, 1973, the Board specified that the annual percentage rate, and not the add-on or discount rate, is to be used in response to such inquiries.[80] This interpretation should remedy the problem.

Timing of Disclosures

While the advertising of credit represents a problem which hopefully has been solved, the timing of real estate disclosures presents a problem not yet satisfactorily answered. The Act requires disclosures to be made "before the credit is extended."[81] In order to give some precision to this requirement, Regulation Z requires disclosure before the credit transaction is "consummated."[82] Consummation is defined as the point when a contractual relationship has arisen between the parties under state law.[83] While this may often occur before actual closing of a real estate loan, at times consummation does not occur until settlement of the loan. If disclosures are not delivered until closing it is highly questionable whether they can properly serve the "credit shopping" function anticipated by Congress.[84]

In an attempt to solve this problem, the Federal Reserve

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77. NAT'L COMM'N ON CONS. FINANCE REP., CONS. CRED. IN THE U.S. 169 (1972). The report notes that prior to Truth in Lending:

> Retailers, finance companies and some banks often quoted the rate as a dollar add-on—an expression of the dollar amount of the finance charge per annum in relation to the *initial* unpaid balance. For instance, the finance charge on a new car loan might have been stated as $7 per $100 per year, indicating that on a 3-year loan of $2,000 the dollar amount of the finance charge was $420 ($140 x 3 years). The APR on such a contract is 12.83 percent.

Id. (emphasis in original).

78. Prior to Truth in Lending,

> [c]ommercial and industrial banks often quoted rates on a discount basis—a statement of dollars per $100 of initial unpaid balance on the assumption that the finance charge was deducted from the face amount of the note at the time credit was extended. A charge of $7 per $100 of initial unpaid balance *discounted* for 3 years is equivalent to an APR of 16.01 percent.

Id. (emphasis in original).

79. A series of surveys by the Ralph Nader associated "Public Interest Research Groups" highlighted the problem. *See* FED. RESERVE BOARD, TRUTH-IN-LENDING ANNUAL REP. TO CONGRESS 11 (1973).

80. 38 Fed. Reg. 18458 (1973).

81. 15 U.S.C. §§ 1638(b), 1639(b) (1970).

82. 12 C.F.R. § 226.8(a) (1973).

83. *Id.* § 226.2(cc).

84. *See* 15 U.S.C. § 1601 (1970) the text of which is quoted at note 5 *supra*.

Board published a proposed rule requiring disclosures at least ten days prior to closing.[85] In response, the Board received an avalanche of adverse comment, almost exclusively from mortgage lenders in small communities. The thrust of these comments was that such loans are routinely processed in less than ten days in small communities, and a fixed ten day rule would be a severe burden on both sellers and buyers of homes.

At approximately the same time as publication of the proposed rule, the District of Columbia Court of Appeals reversed a lower court decision in *Bissette v. Colonial Mortgage Corp.*,[86] which had held that the Act required disclosure prior to closing. The appellate court in *Bissette* determined that at the time the Bissettes entered into a credit relationship with Colonial Mortgage Corporation, the law required disclosure at any time prior to the existence of a *contractual* relationship between borrower and lender.[87] Because the district court made no finding as to *when* the contract arose, the case was remanded.[88] The effect of the decision was to recognize that the time when the agreement becomes a contract is the key time irrespective of when closing might occur. The appellate court rejected the lower court's reasoning that the Truth in Lending Act disclosure prior to closing in a home purchase and mortgage transaction was necessary for credit shoppers. Borrowers, it commented, could demand a prior commitment of financing terms.[89] Nevertheless, the court agreed that disclosure well before final formalities would be preferable for the consumer and made it clear that the *Bissette* holding would in no way invalidate the proposed Federal Reserve Board amendment requiring disclosure not less than ten business days before the customer executes evidence of debt.[90]

Congress also has expressed interest in the problem of time of disclosure. Recently a bill requiring pre-settlement disclosure passed the Senate.[91] The bill as passed requires delivery of a full statement of closing costs to be incurred by the borrower prior to the time any down payment is made or, if the transaction concerns real property, at the time the creditor makes a commitment with respect to the transaction. In light of these developments, the Board has deferred further action on the problem until

85. 37 Fed. Reg. 15522 (1972).
86. 477 F.2d 1245 (D.C. Cir. 1973).
87. *Id.* at 1246.
88. *Id.* at 1248.
89. *Id.* at 1247.
90. *Id.*
91. S. Res. 2101, 93d Cong., 1st Sess. (1973), *reported in* 119 CONG. REC. 14428 (daily ed. July 23, 1973), *amending* 15 U.S.C. 1631 (1970) with the addition of section 209.

the Congress acts.[92]

Consumer Leasing

While the Act and Regulation Z have a provision which defines those instances in which a lease should be deemed a credit sale so as to require Truth in Lending disclosures,[93] the area of consumer leasing is rapidly expanding in a fashion which may make this provision inadequate. Over two million automobiles were leased in 1971, and all indications are that the percentage of leased consumer goods will accelerate rapidly during the 1970's.[94] Although the problems of leasing are in their infancy, it can be anticipated that they will become more acute as leases become a common substitute for the traditional installment sales contract. The Federal Reserve Board has recommended to Congress that it review the area of consumer leases and has suggested as a starting point that it examine the provisions of the Uniform Consumer Credit Code.[95]

Recognizing the increasing popularity of the lease as an alternative to sale, the drafters of the Uniform Consumer Credit Code included several sections which are applicable to leases. The Code defines a "consumer lease" as one in which a lessor, regularly engaged in the business of leasing, makes a lease of goods to a person other than for business use for a term exceeding four months and for an amount not exceeding $25,000.[96] Other applicable code sections provide: 1) if the transaction is a lease there must be full disclosure of all charges imposed as well as information concerning the amounts, number and schedule of periodic payments;[97] 2) lessors must also set forth the method

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92. FED. RESERVE BOARD, TRUTH-IN-LENDING ANNUAL REP. TO CONGRESS 8 (1973).

93. 15 U.S.C. § 1602(g) (1970); 12 C.F.R. § 226.2(n) (1973).

94. American Banker, Sept. 19, 1973, at 14. *See* Comment, *Automobile Leasing: Is the Moscone Act Really Protecting the Consumer?*, 14 SANTA CLARA LAW. — (1974).

95. FED. RESERVE BOARD, TRUTH-IN-LENDING ANNUAL REP. TO CONGRESS 14 (1973); *see* UNIFORM CONSUMER CREDIT CODE §§ 2.105(4), 2.106, 2.311, 2.313, 2.406, 2.407, 5.101 *et seq.*, 6.101 *et seq.*

In connection with leasing by bank holding companies of personal property, the Board has recommended legislation to require "suitable disclosures" in connection with consumer leases. These disclosures would be similar to those required under the Act for credit costs and would provide adequate leasing cost disclosures. FRB Press Release 3 (March 20, 1974).

96. UNIFORM CONSUMER CREDIT CODE § 2.106. The four month requirement serves to exempt the short term rental or hire agreement often used for automobiles, sick room equipment, etc. *See also id.* § 1.301(14) (Working Redraft No. 5, 1973).

97. UNIFORM CONSUMER CREDIT CODE § 2.311. *See also id.* § 3.202 (Working Redraft No. 5, 1973).

by which a lessee can terminate the lease and any liabilities which might be incurred by the lessee at the end of the term;[98] 3) lessors are prohibited from engaging in false or misleading advertising concerning the terms of the lease;[99] 4) the remedies and penalties applicable to enforce rights arising from consumer credit sales apply equally to consumer leases.[100]

Agricultural Credit

The inclusion of agricultural credit under the coverage of Truth in Lending has stirred a great deal of controversy, and has caused numerous problems.[101] The very nature of many agricultural transactions, involving advances and payments for which both time and amount are unknown when the transaction is consummated, makes meaningful disclosure difficult. Furthermore, it has often been argued that since agriculture is a business, it should be exempt from the Act's coverage, just as other business credit is exempt.[102] In spite of several amendments to Regulation Z designed to make disclosure easier for agricultural creditors and more meaningful to farmers,[103] these problems may not have been completely solved.

The Federal Reserve Board has stated that a strong case can be made for neither complete coverage nor complete exemption of agricultural credit under Truth in Lending. It has recommended that credit primarily for agricultural purposes in excess of $25,000 be exempted from the Act, whether or not secured by real property,[104] and this exemption has won Senate approval.[105] It is reasonable to remove large extensions of credit from coverage since they are generally extended to sophisticated borrowers who are less in need of disclosures than smaller borrowers who would still be covered. Such an amendment would benefit credi-

98. *Id.*

99. UNIFORM CONSUMER CREDIT CODE § 2.313. The prohibitions under this section apply to advertising by the lessor in any state in which the Uniform Consumer Credit Code has been enacted even though the lease was not made in that state. *See also id.* § 3.209 (Working Redraft No. 5, 1973).

100. UNIFORM CONSUMER CREDIT CODE § 5.102 *et seq.* These sections restrict deficiency judgments and garnishment, extend rescission rights, provide remedies for unconscionability and enumerate civil and criminal penalties for violations. *But see id.* § 5.103 (Working Redraft No. 5, 1973) (restrictions on deficiency judgments do not appear to apply to leases); § 5.203 (Working Redraft No. 5, 1973) (civil liability for violation of advertising disclosure provisions may not apply to leases).

101. FED. RESERVE BOARD, TRUTH-IN-LENDING ANNUAL REP. TO CONGRESS 21 (1973).

102. *See* 15 U.S.C. § 1602(h) (1970).

103. *See* C.F.R. § 226.8(p) (1973).

104. *Id.* Appendix D at 4.

105. S. Res. 2101, 93rd Cong., 1st Sess. (1973) (*reported in* 119 CONG. REC. 14428 (daily ed. July 23, 1973)), *amending* 15 U.S.C. 1603 (1970).

tors by eliminating the need for disclosures in some large and complex credit situations.

CONCLUSION

The five years that have passed since the enactment of the Truth in Lending Act have witnessed a tremendous growth in the importance of consumer credit in the American economy. With this growth have come problems and for many of these problems, Truth in Lending has provided a solution through action by the Federal Reserve Board which has implemented and interpreted the Act in the broad manner intended by Congress.

The Act and Regulation Z have been judicially tested and usually upheld by the courts which have repeatedly emphasized the remedial nature of the legislation and the necessity for liberal interpretation. The cases involving the more-than-four installment rule, the right of rescission, and the confession of judgment clauses illustrate the deference of the judiciary to legislative intent in this area.

With respect to creditor compliance with the Truth in Lending Act, the federal agencies with general supervisory authority over their creditor groups, such as the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board and the National Credit Union Administration, have reported that the level of compliance is high.[106] For the most part, compliance is determined by these agencies during the regular periodic examinations which occur at least once each year. This is an on-going effort by a staff of examiners who have complete access to credit institutions' records.[107]

Based upon the reports of all enforcement agencies, including state agencies,[108] the Federal Reserve Board has concluded that substantial compliance with Truth in Lending is being achieved.[109] One stimulus to this compliance has been the efforts of trade associations throughout the years to educate their

106. FED. RESERVE BOARD, TRUTH-IN-LENDING ANNUAL REP. TO CONGRESS 11 (1973).

107. This type of enforcement procedure differs, of course, from the enforcement activity of the Federal Trade Commission which, to an important degree, is activated by individual complaints.

108. States reporting statistical evidence of the degree of compliance were as follows: Connecticut—81 percent of the creditors examined were in compliance; Maine—62 percent of creditors under its jurisdiction examined in 1971 were in complete compliance, 14 percent were in substantial compliance, 19 percent were in partial compliance and 5 percent were not in compliance. FED. RESERVE BOARD, TRUTH-IN-LENDING ANNUAL REP. TO CONGRESS 15 (1971).

109. FED. RESERVE BOARD, TRUTH-IN-LENDING ANNUAL REP. TO CONGRESS 11 (1973).

members and keep them informed. Probably of equal importance is the spectre of a class action suit which haunts major creditors as they decide how much attention they will give to compliance with Truth in Lending.[110] Finally, the Act provides for civil penalties with minimum individual damages, in addition to attorneys' fees and costs for noncompliance with the disclosure requirements.[111]

It is widely accepted that Truth in Lending has worked far better than its most vocal proponents predicted, and that it has brought benefits to the American public as a whole. It may not have helped low income consumers as much as some had hoped, but those who held such expectations probably failed to consider and weigh the impact of more fundamental problems than mere disclosure of credit terms. There have been difficulties in implementing credit disclosure requirements, but the problems are not insoluble. Compliance has been high, and the public is better informed and more knowledgeable about credit today than at any previous time. Improved consumer awareness of credit costs is the product of Truth in Lending and to that extent it has fulfilled its function.

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110. *See id.* at 13 for a discussion of class actions. The trend of the cases is away from allowing class actions for the enforcement of Truth in Lending. *E.g.*, Mourning v. Family Publications Serv., Inc., 411 U.S. 356 (1973); Buford v. American Fin. Co., 333 F. Supp. 1243 (N.D. Ga. 1971); Garza v. Chicago Health Clubs, 347 F. Supp. 955 (1972); Ratner v. Chemical Bank N.Y. Trust Co., 54 F.R.D. 412 (S.D.N.Y. 1972). In *Ratner*, Judge Frankel found "cogent and persuasive" defendant's argument that the "proposed recovery of $100 each for some 130,000 class members would be a horrendous, possibly annihilating punishment, unrelated to any damage to the purported class or to any benefit to defendant . . ." 54 F.R.D. at 416.

The Federal Reserve Board recognizes that in some cases liability may be disproportionate to any injury sustained by the consumer but it also believes that potential class liability is an important encouragement to voluntary compliance with Truth in Lending. In the Board's view, the best way to meet this problem is to set an upper limit on the aggregate amount of possible class action recovery (the greater of $50,000 or one percent of net worth is suggested by the Board). FED. RESERVE BOARD, TRUTH-IN-LENDING ANNUAL REP. TO CONGRESS 14 (1973).

Another problem which may seriously curtail class action suits is expansion of notice requirements. *See* Eisen v. Carlisle & Jacquelin, 479 F.2d 1005 (2d Cir.), *cert. granted*, 414 U.S. 908 (1973), *argued*, 42 U.S.L.W. 3493 (U.S. Mar. 5, 1974).

111. 15 U.S.C. § 1640(a)(1) (1970) provides in part that any creditor who fails to make the required disclosures in a consumer credit transaction is liable to the consumer in an amount equal to the sum of twice the finance charge in the transaction except that the liability shall not be less than $100. It should be noted that since a creditor is broadly defined in section 1602(f) as one who regularly extends or arranges for the extension of credit, the civil liabilities of section 1640(a)(1) may be found against an assignee. *See* Philbeck v. Timmers Chevrolet, Inc., 42 U.S.L.W. 2061 (U.S.D.C. N. Ga. June 28, 1973) (assignee General Motors Acceptance Corp. held liable as a creditor); Garza v. Chicago Health Clubs, Inc., 347 F. Supp. 955 (N.D. Ill. 1972) (assignee finance company held liable as a creditor).