It is also important to note that many consumers who are in marginal economic circumstances or who have records of prior credit delinquency or bankruptcy may not be able to obtain credit because they lack the ability to produce assurances against nonpayment. In these cases, the only assurance against nonpayment may be the consumer's earning capacity, i.e., the ability of a creditor to look to a portion of the debtor's earnings for satisfaction. If confessions of judgment and garnishments are prohibited by Federal statute there is a distinct probability that many consumers who are essentially judgment-proof may be denied credit by legitimate lenders and may be forced to resort to the loan shark who lends at exorbitant and illegal rates.

FIRST MORTGAGE REAL ESTATE LOANS

S. 5 and H.R. 11602 expressly exclude "transactions involving extensions of credit secured by first mortgages on real estate" from the operation of these proposed Acts. Conversely, the exclusions provision in Section 203(n) of H.R. 11601 does *not* exempt first mortgage real estate transactions from coverage.

It is the considered judgment of The American Bankers Association that these transactions should be expressly excluded from any Federal finance charge disclosure law. The Senate Committee's decision to exclude first mortgage real estate loans was made in cognizance of the fact that there are very few known abuses in loans of this type and finance charge disclosure in this field is fully adequate. The Uniform Law Commissioners have excluded first mortgages or first deeds of trust from the disclosure requirements of the proposed Uniform Consumer Credit Code for these reasons. Moreover, disclosure requirements for relatively short-term consumer credit are not appropriate for real estate loans which have maturities of 20 or 30 years.

The A.B.A. fully endorses the need for requiring disclosure in all second mortgage and second deed of trust transactions which relate to residential real estate. It is acknowledged that there have been flagrant abuses in the form of inordinately high rates charged by some unscrupulous lenders in transactions of this type. This problem would be rectified by a full and complete disclosure of finance charges in these transactions as is required under S. 5 and the two House bills.

THE REGULATION OF TRADING IN COMMODITY FUTURES AND STANDBY CREDIT CONTROLS

In 1950, the Administration, as a part of its stabilization program under the Defense Production Act, proposed that all commodity exchange credit transactions be subject to Government regulation. This proposal was not adopted by the Congress.

Standby consumer credit controls have been employed during emergency periods such as World War II and Korean conflict. In both cases, this program of credit regulation was an integral part of a broad-based wage and price stabilization program. An attempt was made in 1966 to reinstate consumer credit controls on a standby basis under the Defense Production Act, but this proposal was defeated in the House by a substantial margin.

In connection with the proposed regulation of trading in commodity futures under Section 207 and the proposed standby credit controls under Section 208, the A.B.A. urges that neither of these proposals is relevant to the basic objectives of this legislation, i.e., the disclosure of finance charges in consumer credit transactions. Moreover, no evidence has been suggested or produced which would indicate that there is a need for these controls. It is our considered judgment that current inflationary pressures can best be handled through fiscal and monetary actions.

ADMINISTRATIVE ENFORCEMENT

The A.B.A. is critical of the extremely broad and relatively complex enforcement provisions contained in Section 209. We believe that the scheme of "self-enforcement" contained in S. 5 is basically a more practical and economical approach to this problem.

The enforcement provisions would impose an onerous and complex burden upon the Board of Governors of the Federal Reserve System which will be heavily burdened by the rule making and regulatory responsibility imposed by Section 204. From the point of view of the banking industry, the enforcement burden conceivably could interfere with and impede the primary functions of the Federal Reserve Board, i.e., the making of monetary policy and the supervision of the member banks of the Federal Reserve System.