INTEREST ON INSTALLMENT LOANS

HEARING

BEFORE A

SPECIAL INVESTIGATING SUBCOMMITTEE

OF THE

COMMITTEE ON THE DISTRICT OF COLUMBIA HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

SECOND SESSION

ON

H.R. 19740

TO AUTHORIZE BANKS, SAVINGS AND LOAN ASSOCIATIONS, AND OTHER REGULATED LENDERS IN THE DISTRICT OF COLUMBIA TO CHARGE OR DEDUCT INTEREST IN ADVANCE ON LOANS TO BE REPAID IN INSTALLMENTS

SEPTEMBER 17, 1968

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Committee on the District of Columbia

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CONTENTS

STATEMENTS

MATERIAL SUBMITTED FOR THE RECORD

APPENDIX

INTEREST ON INSTALLMENT LOANS

TUESDAY, SEPTEMBER 17, 1968

HOUSE OF REPRESENTATIVES,
SPECIAL INVESTIGATING SUBCOMMITTEE OF THE
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The Special Investigating Subcommittee met, pursuant to notice, at 10:30 a.m., in room 1310, Longworth House Office Building, Honorable John Dowdy (Chairman) presiding.

Present: Representatives McMillan (Chairman, Full Committee), Dowdy (presiding), Abernethy, Fuqua, Harsha, Zwach and Steiger.

Also present: James T. Clark, Clerk; Hayden S. Garber, Counsel; Sara Watson, Assistant Counsel; Donald Tubridy, Minority Clerk; and Leanard D. Hilder, Investigator.

Mr. DOWDY (presiding). The Subcommittee will come to order.

We have before us this morning H.R. 19740, to authorize banks, Savings and Loan Associations, and other regulated lenders in the District of Columbia to charge or deduct interest in advance on loans to be repaid in installments.

H.R. 19740 will be made a part of the record.

(H.R. 19740 follows:)

(H.R. 19740, 90th Cong., 2d sess., by Mr. McMillan, on Sept. 12, 1968)

A BILL To authorize banks, savings and loan associations, and other regulated lenders in the District of Columbia to charge or deduct interest in advance on loans to be repaid in installments

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 33 of subtitle II, "Other Commercial Transactions", of title 28, "Commercial Instruments and Transactions", of the District of Columbia Code, is amended by adding the following section:

"§ 28–3307. Charging or deduction of interest in advance

"The charging or deduction of the legal rate of interest in advance, by a bank, savings and loan association, or other regulated lender, on loans (other than loans directly secured on real estate) to be repaid in installments, shall not be deemed to be in contravention of any of the provisions of this chapter. This section shall not affect the provisions of the 'Act to provide for the regulation of finance charges for retail installment sales of motor vehicles in the District of Columbia, approved April 22, 1960' (D.C. code, secs. 40–901 through 40–910), or of the 'Act to regulate the business of loaning money on security of any kind by persons, firms, and corporations other than national banks, licensed bankers, trust companies, savings banks, building and loan associations, and real estate brokers in the District of Columbia, approved February 4, 1913, as amended' (D.C. Code, secs. 26–601 through 26–611)."

(EXCERPTS FROM PERTINENT SECTIONS OF THE DISTRICT OF COLUMBIA CODE)

D.C. CODE—TITLE 28, CHAPTER 33.—INTEREST AND USURY

#28–3301. Rate of interest expressed in contract.

The parties to an instrument in writing for the payment of money at a future time may contract therein for the payment of interest on the principal amount thereof at any rate not exceeding 8 percent per annum. (Aug. 30, 1964, 78 Stat. 675, Pub. L 88–509, # 1, eff. Jan. 1, 1965.)

#28–3302. Rate of interest not expressed and on judgments.

The rate of interest in the District upon the loan or forbearance of money, good, or things in action, and the rate to be allowed in judgments and decrees, in the absence of express contract, is 6 percent per annum. Interest, when authorized by law, on judgments against the District of Columbia, is at the rate of not exceeding 4 percent per annum. (Aug. 30, 1964, 78 Stat. 675, Pub. L. 88–509, #1, eff. Jan. 1, 1965.)

#28–3303. Usury defined.

If a person or corporation contracts in the District.

(1) verbally, to pay a greater rate of interest than 6 percent per annum, or

(2) in writing, to pay a greater rate than 8 percent per annum, the creditor shall forfeit the whole of the interest so contracted to be received.

This section does not effect sections 26–601 to 26–611. (Aug. 30, 1964, 78 Stat. 675, Pub. L. 88–509, #1, eff. Jan. 1, 1965.)

#28–3304. Action to recover usury paid.

If a person or corporation in the District directly or indirectly takes or receives a greater amount of interest than is declared by this chapter to be lawful, whether in advance or not, the person or corporation paying the same may within one year after the date of payment sue for and recover the amount of the unlawful interest so paid. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88–509, #1, eff. Jan. 1, 1965.)

#28–3305. Unlawful interest credited on principal debt.

In an action upon a contract for the payment of money with interest at a rate forbidden by law, any payment of interest that may have been made on account of the contract is deemed to be payment made on account of the principal debt; and judgment shall be rendered for no more than the balance found due after deducting and properly crediting the interest so paid. A bona fide indorsee of negotiable paper purchased before due is not affected by any usury exacted by a former holder of the paper unless he had notice of the usury before his purchase. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88–509, #1, eff. Jan. 1, 1965.)

#28–3306. Parties compelled to testify.

When in an action to recover a debt the defendant claims that payment of unlawful interest on the debt has been made to the plaintiff or those under whom he claims, which the defendant is entitled to have credited on the principal of the debt, the plaintiff or the party who received the unlawful interest may be examined as a witness to prove the payment, and may not be excused from testifying in relation thereto. A creditor who is made defendant in a proceeding for discovery as to payments of unlawful interest made to him may not be excused from answering. (Aug. 30, 1964, 78 Stat. 676, Pub. L. 88–509, #1, eff. Jan. 1, 1965.)

D.C. CODE—TITLE 26, CHAPTER 6—MONEY LENDERS—LICENSES

§ 26–605. Rate of interest—Interest to cover all fees and expenses—Not to be deducted in advance—Statement to be furnished borrower—Amount of loans—Penalties.

No such person, firm, voluntary association, joint-stock company, incorporated society, or corporation shall charge or receive a greater rate of interest upon any loan made by him or it than one per centum per month on the actual amount of the loan, and this charge shall cover all fees, expenses, demands, and services of every character, including notarial and recording fees and charges, except upon the foreclosure of the security. The foregoing interest shall not be

deducted from the principal of loan when same is made. Every such person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall furnish the borrower a written, typewritten, or printed statement at the time the loan is made, showing, in English, in clear and distinct terms, the amount of the loan, the date when loaned and when due, the person to whom the loan is made, the name of the lender, the amount of interest charged, and the lender shall give the borrower a plain and complete receipt for all payments made on account of the loan at the time such payments are made. No such loan greater than two hundred dollars shall be made to any one person: *Provided*, That any person contracting, directly or indirectly, for, or receiving a greater rate of interest than that fixed in this chapter, shall forfeit all interest so contracted for or received; and in addition thereto shall forfeit to the borrower a sum of money, to be deducted from the amount due for principal, equal to one-fourth of the principal sum: *And provided further*, That any person in the employ of the Government who shall loan money in violation of the provisions of this chapter shall forfeit his office or position, and be removed from the same. (Feb. 4, 1913, 37 Stat. 659 ch. 26 § 5.)

Mr. DOWDY. First on our list of witnesses this morning is Mr. Frank A. Gunther, who is the Chairman of the Law and Legislative Committee of the D.C. Bankers Association. Will you come around, please. We will be glad to hear from you now.

STATEMENT OF FRANK A. GUNTHER, PRESIDENT, SECURITY BANK, AND CHAIRMAN, LAW AND LEGISLATIVE COMMITTEE, D.C. BANKERS ASSOCIATION; ACCOMPANIED BY LEWELLYN A. JENNINGS, CHAIRMAN, RIGGS NATIONAL BANK, AND VICE CHAIRMAN, LAW AND LEGISLATIVE COMMITTEE, DISTRICT OF COLUMBIA BANKERS ASSOCIATION

Mr. GUNTHER. Mr. Chairman and Members of the Subcommittee:

I am Frank A. Gunther, President of Security Bank of this city, and Chairman of the Law and Legislative Committee of the D.C. Bankers Association.

And I am accompanied by Mr. Lewellyn A. Jennings, who is Vice Chairman of the Law and Legislative Committee and Chairman of the Riggs National Bank.

I have been authorized to express to you the Association's support of H.R. 19740, and to urge its prompt enactment.

BABKGROUND

Since 1901 the D.C. Code has provided for a maximum legal interest rate of eight per cent per annum by contract on loans made by banks. The Code does not specify whether interest may be taken in advance but this practice has been followed by Washington banks and banks throughout the country as to installment loans over many years. Interest at gross rates up to eight per cent per annum simple interest, simply does not cover the overhead cost of handling smaller loans. On smaller loans made at "discount" or "add-on," the simple interest equivalent would in some instances exceed the stated 8 percent maximum D.C. Code rate. As an example, a 5 percent discounted installment loan yields a simple interest equivalent of 9.25 percent.

The possibility that interest disclosure statements given borrowers after the effective date of the Truth-In-Lending Act might result in nuisance suits against banks, prompted the D.C. Bankers Association

to approach our city government seeking its approval of legislation which would remove the uncertainties which have existed for 67 years. The language of H.R. 19740 was prepared in the office of the Corporation Counsel of the District, and we are informed has received necessary clearance by our city government. It will accomplish the purpose of enabling Washington banks to comply with the disclosure provisions of the Truth-In-Lending Act, without being faced with the distinct possibility of nuisance usury suits; it makes no change in the legal rates of interest; and it gives recognition to bank lending customs which have been in effect for over 60 years, and which have met with full public acceptance, since, to my knowledge, they have never been tested in the courts of the District of Columbia. It will be noted that loans directly secured by real estate are excluded from its provisions. We believe that the enactment of H.R. 19740 would be in the public interest, since it would assure the ability of the banks to continue to serve small users of credit at fair rates as they have always done.

Eminent counsel for the Association has taken the position that Supreme Court decisions allow for the taking of interest in advance. It is possible that this legislation is not necessary. Adoption of H.R. 19740, however, will forever remove the undecided questions which the 1901 District of Columbia Code left unanswered.

The District of Columbia Bankers Association strongly urges enactment of this legislation, and expresses its appreciation for the privilege of presenting its position.

COUNSEL'S OPINION

With the consent of the Chairman, I would like to include in the record a letter addressed to Mr. A. Murray Preston, President of the D.C. Bankers Association on May 3, 1966, by James Rogers of the law firm of Hogan and Hartson, who was then general counsel for the Association which contains the opinion referred to in my testimony.

Mr. DOWDY. It will be made a part of the record at this point.

Mr. GUNTHER. Thank you.

(The letter referred to follows:)

May 3, 1966.

Mr. A. MURRAY PRESTON,
President, D. C. Bankers Association,
Washington, D.C.

DEAR MR. PRESTON: You have requested my opinion as General Counsel of the Association upon the question whether the procedures followed by banking institutions in the District of Columbia in making small loans to individuals evidenced by promissory notes payable in monthly installments over short periods violate the usury law of the District of Columbia. Such loans are known generally as consumer credit loans. The promissory note signed by the borrower usually provides for interest at the rate of 6% per annum on the face amount of the note, for deduction of the interest in advance, and for repayment of the remaining principal in equal monthly installments over a period usually from 12 months to 36 months. In some cases, the interest rate specified in the note is higher than 6% but not exceeding the rate of 8% permitted by the D. C. Code. The procedures in making such loans are not uniform. Therefore, this opinion discusses only general principles.

Usually the full amount of the interest at the rate provided in the note is deducted in advance. The borrower actually receives not the face amount of the note but the face amount less the amount of the interest computed on the principal amount for the full term of the note. In some cases the note is not payable in installments but the borrower is required by written agreement to make deposits

monthly in a savings account with the lender in amounts sufficient to pay the note in full at maturity, which is assigned as security. This is commonly known as "The Morris Plan". In other cases, the lender may require other or additional security such as a chattel mortgage or a conditional sale agreement.

The District of Columbia law provides that the parties to an instrument in writing for the payment of money at a future time may contract therein for the payment of interest on the principal amount thereof at any rate not exceeding 8% per annum, and that if a person or corporation contracts in the District in writing to pay a greater sum than 8% per annum, the creditor shall forfeit the whole of the interest so contracted to be received. (Secs. 28–3301 and 28–3303, D. C. Code, 1961 ed., Sup. V.)

Many States now have statutes providing that, except in cases of loans secured by mortgages or deeds of trust on real property, interest computed on the principal amount of a loan at the maximum legal rate may be charged or deducted in advance where the borrower is required to repay in equal, or in substantially equal, monthly or other periodic installments. Such statutes provide expressly that interest so computed and deducted shall not be deemed usurious. The D. C. Code is silent with respect to the question whether the charging or deducting of interest in advance on installment loans at the maximum legal rate constitutes usury. I have been unable to find any reported case decided by the Courts of the District of Columbia on this question.

The practice of taking interest in advance at the highest legal rate on short-term loans has long been common in banks and with those dealing in commercial paper in the normal course of trade. Although this may appear to be usurious in principle, it has now become a recognized legal right. 55 *Am. Jur.* 353, Usury § 41. The Supreme Court of the United States has held that under the National Banking Act, a national bank in discounting short-term notes in the ordinary course of business may retain an advance charge at the highest rate allowed for interest by the State law, even though such advance taking of interest would be usurious under the State law in the cases to which it applies. *Evans* v. *National Bank of Savannah*, 251 U.S. 108 (1919). While the authorities agree that the taking of the highest rate of interest in advance on negotiable paper having twelve months to run is not usury, where a loan is for more than one year, the decisions are not in accord as to whether taking interest in advance for the full period of time constitutes usury. Where the obligation is for a term longer than a year, the taking of interest in advance in periodic payments of one year or less has been considered by nearly all the cases as free from usury. 55 *Am. Jur.* 354, Usury § 42.

By the general weight of authority, the method referred to above as "The Morris Plan" has been held to be legal and not in violation of usury laws. This was recognized years ago by the Office of the Comptroller of the Currency in a letter dated February 12, 1917, from Deputy Controller W. J. Fowler to Fidelity Savings Company in the District of Columbia. In the absence of statutes authorizing banks to operate loan departments in which small loans are made without following the usual requirements found in the Morris Plan, the question of possible usury may be less clear.

In the absence of a statute in the District of Columbia and of any reported Court decision to the contrary, banking institutions here have engaged in this type of business over the years, apparently without any serious question arising. Accordingly, I conclude that, in my opinion, the loans made upon this basis by banking institutions in the District of Columbia may be regarded as legal and as not in violation of the usury law of the District of Columbia.

Very truly yours,

JIM ROGERS.

Mr. DOWDY. Are there any questions of Mr. Gunther?

Mr. McMillan.

Mr. MCMILLAN. We, certainly, feel highly honored to have two bank presidents with us this morning, Mr. Gunther and Mr. Jennings. We hope that we can be of assistance in clearing up this problem which you think you may be confronted with a later date.

As I understand it, the Comptroller of the Currency favors this proposed legislation, is that right?

Mr. GUNTHER. Mr. McMillan, this proposal was referred to the Comptroller of the Currency, and I have with me copies of this letter

which might as well be made a part of this record, with the permission of the Chairman.

Mr. DOWDY. It will be made a part of the record.

(The letter referred to follows:)

THE ADMINISTRATOR OF NATIONAL BANKS,
Washington, August 8, 1968.

MR. FRANK A. GUNTHER,
Chairman, Law and Legislative Committee for the D.C. Bankers Association, Washington, D.C.

DEAR MR. GUNTHER: Thank you for your letter of August 6, 1968, enclosing a draft amendment of Title 28 of the District of Columbia Code on the subject of maximum interest rates chargeable on loans made in the District of Columbia.

Your letter advises that the draft bill was prepared by Mr. Robert Kneipp, Assistant Corporation Counsel for the District of Columbia, and the purpose of the bill is to clarify the status of loans made on a discount basis, i.e., where interest at the legal rate is deducted in advance from the proceeds of the loan. We understand that the draft bill has been informally approved not only by Mr. Kneipp but also by the Deputy Mayor, Mr. Fletcher, and the Legislative Committee of the City Council.

Please be advised that this Office would have no objection to the passage of the draft bill since it merely clarifies the status of a well-established banking practice in this area.

Sincerely,

WILLIAM B. CAMP,
Comptroller of the Currency.

Mr. GUNTHER. In this letter he states, "Please be advised that this office would have no objection to the passage of the draft bill since it merely clarifies the status of a well-established banking practice in this area."

OTHER JURISDICTIONS

Mr. MCMILLAN. I understand that the States of Virginia and Maryland have higher rates than you are proposing here today, is that not right?

Mr. GUNTHER. The State of Virginia, and the State of Maryland until the last meeting of the Maryland Legislature, opposed taking the interest in advance. Virginia still does up to eight percent. However, at the last session of the Maryland Legislature it fixed the maximum rate at 12 percent per anum which would be equivalent to a little bit more than six percent at discount.

Mr. MCMILLAN. I think that should be in the record, thank you.

Mr. JENNINGS. May I add this? The Virginia change to eight percent would be exactly comparable to what H.R. 19740 would permit the District of Columbia banks to charge on installment consumer loans as a maximum. I think it should be pointed out that if we bankers went through our loans and I will speak for my own bank—we would have very, very few at the eight percent discount rate—very, very few, but competition enters into the picture, and most of them would be for a lesser amount than that, but, nevertheless, I think that we should have the eight percent add-on as is provided in the proposed bill. That is what Virginia has.

Now Maryland, it is true, has moved to a lower level, but I think that in the District of Columbia, based on our experience we feel that we need an add-on at an eight percent maximum, which is, approximately, 15.4 percent per annum for some few loans.

Mr. MCMILLAN. And it is true that it is possible that this may not give any trouble, but you would like to be on the safe side and clear up anything before it happens?

Mr. JENNINGS. That is our opinion. We feel that it should be clarified. We do not want to find ourselves in the position of having to defend aaginst suits. That is, so far as my own bank is concerned. Suits, if they develop, will mean that we will simply not make this type of loan. It would not be worth it. We do not have a large volume in such loans. Some of the banks in town do have, but we simply want to be relieved of even the possibility that someone will say, "We are going to sue you—you are in violation."

Mr. MCMILLAN. Thank you. That is all, Mr. Chairman.

Mr. DOWDY. Mr. Harsha?

Mr. HARSHA. I am not sure that I understand what you are trying to accomplish here. Let me ask you some questions in order to clear up some questions that are in my mind.

SMALL LOANS

You have small loans that would cover such things as household appliances, and the like. Those institutions, what interest rates are they permitted to charge?

Mr. GUNTHER. They are permitted to charge 12 percent per annum. And as a result—I do not know whether there are many companies of that type—there are very few, at any rate, in the District of Columbia doing business here, and that is why you see the small loan companies, such as Household Finance in Silver Spring or in Rosslyn or in Mt. Ranier. You do not see them in the District of Columbia, because out there they can get 42 percent per year, 3½ percent per month on small loans, and they cannot do business at 12 percent per annum.

Mr. DOWDY. Is that simple interest—that 12 percent that you are talking about?

Mr. GUNTHER. The 12 percent is simple interest. We do not have any small loan companies here as a result.

Mr. HARSHA. How about the savings and loan associations; what interest rates are they permitted to charge?

Mr. GUNTHER. They are in the same interest rate structure as are the banks. I asked the President of the D.C. Building & Loan Association if they cared to testify on this bill, but I have not heard any more from them. This is not terribly important to them, because on real estate loans and even on other loans, which are loans directly secured by real estate, they are not covered by this bill.

Mr. HARSHA. Why is that?

Mr. GUNTHER. Well, competitively they carry fully secured loans—they carry a less rate on those—and, in addition, they are all in larger amounts which can be handled with a reasonable profitableness by the banks. When you talk about this eight percent discount it would not apply in our bank to a loan larger, perhaps, than five or six hundred dollars, but if you charged the borrower $40 for $500, for 12 months, you could not. Five years ago we made a cost study and found that it cost $22 to put on an installment loan. That dealt with the cost of light, heat, and so on in our institution. And when you take that off the $40 there was not a great deal left for the use of the money.

We have $300 loans. An there eight percent produces $24 or $2 over our cost of handling the 12-month installment note.

I do not know whether the same cost applies in all banks or not. But as I say, we made a cost study five years ago. It would be somewhat higher now.

Mr. HARSHA. Actually, you are not getting eight percent—you are getting close to 16 percent on those loans, are you not?

Mr. GUNTHER. 15.25 percent.

Mr. HARSHA. Pardon?

Mr. GUNTHER. The simple interest equivalent is 15.4 percent on an eight percent loan.

Your question, sir, as to why we have to have this—why we think we should have this bill is that we do not think that we would be violating the provisions of the District of Columbia Code if we said to the customers, "On your $300 loan you pay 15.25 percent simple interest," but in order to avoid nuisance suits we are asking for this legislation.

Mr. HARSHA. The other gentleman said that eight percent add-on is for some few loans.

Mr. GUNTHER. It is for a few. I have not added up the amount, the total out of 3,300 loans in our bank, but the total amount of installment loans we have, personal loans of this type, is, probably, $300,000 or less, one percent of the total loans of the bank. And of this amount over $50,000 is at eight percent, and they are all small loans, where the eight percent add-on is needed to carry the cost of making the loan.

Mr. HARSHA. What I cannot understand is why you have some at eight percent and some at a lesser percent; what is the purpose of that?

Mr. GUNTHER. The size of the loan competitively determines the rate. If a person wants to borrow $1,200, say, from our bank, he gets the add-on rate of 5 percent, which comes out to about 9.25 percent.

Mr. JENNINGS. But may I add, when you get down to the $200 and $300 item loan, you will not simply make them at 5 percent—you cannot make any money on them—you will lose money. Unfortunately, it is necessary to charge a higher rate on the small loans.

Mr. HARSHA. You say that you have been doing this for a period of approximately sixty years?

Mr. GUNTHER. The D.C. Code provisions were enacted in 1901, which is 67 years ago. And while I cannot say what happened 67 years ago, because I am only 61 years old, I have been in the banking business in Washington since 1924, a matter of 44 years. This practice has been in effect during that time, to my own knowledge.

Mr. HARSHA. And you further say that, apparently, this has met with full public acceptance?

Mr. GUNTHER. If it had not, there, certainly, would have been some instance where in the past the banks would have been sued and the courts would have determined that it was usury.

Mr. HARSHA. Could this be due, possibly, to the fact that the people who borrowed the money did not understand fully that they were paying 9.25 percent or 15.4 percent rather than the eight percent?

Mr. GUNTHER. I cannot say that for certain on that point, but my belief is that the public is pretty knowledgeable of what they are paying for money. And the fact is that if they can get it for 7 percent for the add-on, at another bank, they will not borrow from us. We talk so much about this eight percent, but, as Mr. Jennings says, it applies to an infinitesimal amount of the credit in most of the banks. There are few banks that are heavy in installment loans and do have a larger percentage than we do have, but I would venture to say that ten/100ths or 15/100ths of 1 percent of our bank loans are at eight percent.

Mr. JENNINGS. However, may I interject just to say that I am very sure that there are a few small banks in this District that might have quite a percentage of their total loans in the higher rates, and they need it in order to operate profitably. Of course, I cannot speak for the other banks. I think what I have said comes from my acquaintance with bankers over the years.

Mr. HARSHA. I am a little bit concerned. I know that these small loan companies have a great deal of latitude on this. And while you are of the opinion that people borrowing money know the interest rates they are paying and understand the financial structure of these loans, I sometimes question whether they do or not. I mean that it makes little sense to me for someone to go to an institution to borrow money at thirty or forty percent, when they are advertising 3.25 percent all of the time. And I do believe to a degree they are taken in by those advertisements. I think you are, probably, quite right if you do not say to an individual that he is not paying eight percent but is paying 16 percent.

The question is whether or not under the law you would be legally permitted to do that. I have that question in my mind.

Do we have anyone here who will testify in opposition to this, Mr. Chairman?

Mr. DOWDY. I do not know. We will hear from the Comptroller of the Currency through his Chief Counsel, who is one of the witnesses this morning.

Mr. HARSHA. How about this credit union, does that compete with you in small loans?

Mr. GUNTHER. Yes, it does. I believe that the normal rate of the credit union is one percent per month—12 percent. However, the operation costs of a credit union is not comparable to that of a bank.

Mr. HARSHA. That is all I have at this time.

Mr. DOWDY. Mr. Zwach.

Mr. ZWACH. You are now asking to clarify and to make certain what you have been doing all of the time as being all right. This is, basically, correct?

Mr. GUNTHER. That is correct.

Mr. ZWACH. When you charge this eight percent, and they pay installments, it is less and less each month, is that correct, on your unsecured loan?

Mr. GUNTHER. Yes.

Mr. ZWACH. This is what we are mainly talking about, personal unsecured loans?

Mr. GUNTHER. Yes, sir.

AUTOMOBILE LOANS

Mr. JENNINGS. May I ask at this point, there is a statute on the books of the District pertaining to automobile loans which was enacted in the early sixties and it goes from eight percent to sixteen percent, depending on the age of the car. Of course, the automobile is liened as a collateral against the note, but the legal rate goes from eight percent to sixteen percent for automobile loans, so that we are not talking about those. They are separately handled.

Mr. DOWDY. Will you yield at that point?

Mr. ZWACH. Yes.

Mr. DOWDY. Is that eight percent to sixteen percent an add-on?

Mr. JENNINGS. That is simple interest—it cannot go beyond sixteen percent.

Mr. DOWDY. Thank you.

Mr. ZWACH. As I understood it, you do not have the so-called loan sharks in the District?

Mr. GUNTHER. We have the loan shark law in the District that provides for a maximum of 12 percent. That is the reason that the loan sharks all do business outside.

Mr. ZWACH. In other words, the loan shark rate is twelve percent annual?

Mr. GUNTHER. Twelve percent simple interest rate.

Mr. ZWACH. And so they are operating outside of the District?

Mr. GUNTHER. Yes, sir.

Mr. ZWACH. The District people, therefore, go into the other areas outlying the District to borrow money?

Mr. GUNTHER. They must. I live in Silver Spring, and I pass at least ten of them every morning coming to work. I do not think that they would be in business for their health. I think they are making money.

Mr. ZWACH. So you are not the source of supply in personal loans in the District?

Mr. GUNTHER. Yes, that is correct.

I went to the Office of the Corporation Counsel to discuss this, incidentally. This has all been open and above board discussion with them. They are not unaware of it. The point I made—and I still think it is a good one—is that we are quite happy with the Truth-In-Lending bill, because banks are going to look pretty good, really, when you compare rates that are charged by other lenders on small credit loans and the banks are going to look like the boys with the white hats.

Mr. ZWACH. Do you have a policy of trying to have every loan pay its own way? I mean, when you make these small personal loans, you try to establish a rate on them so that they will pay their own way?

Mr. GUNTHER. You could not say that every loan pays its own way, because we, occasionally, make small loans of $200, and that loan even at eight per cent per year would not carry its cost. By categories you are going to give up the class of business that does not carry its own weight. In other words, as to the class of loans, on loans of $500, personal loans, if we felt that we could not get a rate on them that would make them pay their own way, we would not make them.

Mr. JENNINGS. May I add a point here? I think that you gentlemen would be very much interested if you dropped into our DuPont Circle office. That is where we have much of this business.

Mr. ZWACH. Is that where you are operating your office, at DuPont Circle?

Mr. JENNINGS. We have a branch office there. The head office is downtown. We happen to have personnel—and I am talking about automobile loans, also working on this. There is a great deal of work involved in connection with the small personal loans, whether they are automobile loans or unsecured loans. You have a battery of people on the 'phone all day long. Some come in late. They catch up with some of the borrowers at night. Their techniques in collecting loans of this type is such that you have to keep right after the people. They are honest people, but some of them have to be nudged and nudged hard.

And we work with them and work with them well. But I do not believe that too many people realize the amount of work and the number of personnel involved in conection with running a small loan department from the time the loan is made, put on the books, and then kept current with monthly payments. And when they get in arrears, telephone calls go out. It is just an expensive type of operation.

Mr. ZWACH. Do you have quite a heavy loss experience on these personal type loans? In actual loss?

Mr. JENNINGS. Let me say this, we operate at a profit. We stay pretty much within the national average. Yes, we have a fairly substantial group of loans that we cannot collect for one reason or another. In some we repossess the automobiles. If they do not have the collateral, we send the note down to our attorneys to see whether or not there is anything that may finally be done.

Mr. ZWACH. And you attach anything you can?

Mr. JENNINGS. Well, sometimes, yes; sometimes, no. If the amount is too small, maybe we decide that the best part of wisdom is not to go ahead to try to collect in what appears to be a rather hopeless situation.

Mr. ZWACH. You know, gentlemen, I have paid interest on loans all of my life. And I am one who would like to keep the interest rates as low as possibly can be done. That is, to be in line with a reasonable return.

Mr. GUNTHER. May I have the privilege of also answering a question that Mr. Jennings answered as to the loss ratio? Our experience with this class of people has not been catastrophic, but our loss ratio on these personal loans, these installment loans, is, at least, 20 times what it is on the other type of loans made by the bank.

Mr. ZWACH. I am glad to have that figure, because it will give us some insight into your operation.

Mr. JENNINGS. One other thing that we should make clear, is that during many periods there are other types of investments that we could make that would really give more than the small personal loan business does. We could go into tax-exempt municipals and have yield that would require no supervision, at eight and one half and nine percent, being the effective yield. We would make more money on those, but bankers do have a real desire to serve the public.

Mr. ZWACH. You render a public service.

Mr. JENNINGS. They want to do this.

STUDENT LOANS

Mr. ZWACH. Do you make student loans?

Mr. JENNINGS. Yes, sir; we, certainly, do.

Mr. ZWACH. Both of you?

Mr. GUNTHER. In Washington some of the banks have their own plans, but the Bankers Association here collectively makes them. Each bank that participates takes its proportionate share of the amount loaned.

Mr. ZWACH. Thank you.

Mr. JENNINGS. In that area, before the student loan program was enacted by the Congress, we had our own student loan program. We have had $3 million to $5 million of such loans on our books on which

we had the parents on the loan. In some cases, we carried it with credit life insurance. Our charge on that was 3½ percent discount, or about 6½ percent. Why did we do it at that rate? We did it because we thought that we were performing a real public service in an area that needed looking after.

So in bank loans, many, many stories need to be told. When we come into the small, personal loan field we need a higher rate. There just is not any question about it, because of the work that is involved and the losses that come along.

Mr. HARSHA. Will you yield to me?

Mr. ZWACH. Yes.

OTHER CHARGES

Mr. HARSHA. In addition to this interest rate, what other charges are connected with these unsecured loans?

Mr. GUNTHER. So far as our bank is concerned there are no other charges. We pay $5 for the first report on the borrower's credit, and we absorb that. That goes to the credit agency here.

Mr. HARSHA. Is that the practice among all banks, to absorb that?

Mr. GUNTHER. I cannot answer that question. I do not know. We do not charge the customer.

Mr. JENNINGS. From the standpoint of the rate, we do not pass it on to the customer. We do make it available, that is, we make credit life insurance available, if they wish. We do it on the basis of 49 cents per hundred per annum over the life of the loan. And I assure you that we do not make any profit on that.

Many, many banks around the country charge $1 per hundred for that service. We do not insist on this, unless it is an unusual case. We simply make it available.

I might say that over the course of the years it is surprising how many loans are paid off with that life insurance.

We, also, make the credit life insurance available in connection with student loans. And it is surprising how often that has occurred to pay off the loan, but we do it at a rate that does not yield us a penny of profit.

Mr. HARSHA. You are from a different bank, are you not?

Mr. GUNTHER. I am from the Security Bank, which is a small bank. Riggs is our big bank in Washington, represented here by Mr. Jennings.

Mr. HARSHA. Do you have credit life insurance?

Mr. GUNTHER. We have it available on an absolutely optional basis. If the customer desires to take it he can do so.

Mr. HARSHA. At what rate?

Mr. GUNTHER. We charge $1 per hundred per year.

Mr. HARSHA. Again I assume from Mr. Jennings' testimony that you do make a profit on that, also?

Mr. GUNTHER. Actually, we only have such a small amount I doubt that there is any profit in it. We are not charging—I should correct that statement, that we charge $1 a hundred—we charge 49 cents, the same as Mr. Jennings does. That is the rate in Washington, fixed by the Superintendent of Insurance, but the practice of our banks and other banks here has been to charge the $1 to take care of the cost of writing and keeping the records, et cetera.

Mr. HARSHA. The cost of what?

Mr. GUNTHER. The cost of writing the insurance, the record keeping, and so on.

Mr. HARSHA. Does not the 49 cent premium take care of that?

Mr. GUNTHER. No. That is paid to the insurance company.

Mr. JENNINGS. I would say, if I may jump into this, that banks do have service charges in connection with some of the small loans. I do not know about that too much.

Mr. GUNTHER. We call it a service charge.

Mr. HARSHA. That is what I was trying to get around to, eventually. That is, whether all the charges are added to the loan cost, in addition to the interest cost. And you say now that you have the insurance on an optional basis.

Mr. GUNTHER. Strictly. I would say that, perhaps, one-fourth to one-third of our personal loans have credit life insurance on them. In other words, we simply ask the customer, "Do you wish to take credit life insurance on this loan?" If he says, "No," we do not press it.

Mr. HARSHA. And if he says, "Yes," he pays the premium on the insurance, plus a service charge?

Mr. GUNTHER. Yes.

Mr. HARSHA. What other charges are tacked onto this?

Mr. GUNTHER. There are no other charges, so far as our bank is concerned.

Mr. HARSHA. Do you have any other service charges of any kind, Mr. Gunther?

Mr. GUNTHER. Not on loans. We have a service charge on accounts.

Mr. HARSHA. We are just dealing with loans.

Mr. GUNTHER. We have no other service charges on loans.

Mr. HARSHA. Suppose that I would borrow $1,000 and would deposit it in your bank in a checking account. Is there a service charge on top of that?

Mr. GUNTHER. No, if you have an account with us and you borrowed $1,000, and your financial statement shows that your credit is worthy, why you, probably, today would get the seven percent rate, the simple interest rate on your loan.

Mr. HARSHA. There would not be this add-on?

Mr. GUNTHER. No, because when we get up over the small amounts we, generally, do it at the simple rate.

Mr. HARSHA. I want to deal with this small amount, with a small amount, with this add-on cost provision.

Mr. DOWDY. Not more than $500.

Mr. HARSHA. Say that I borrow $500 and heretofore I have had no account with you, but I have established enough credit with you that you are going to loan me $500. I want to use it over a period of time, so I set up a little checking account with you. I understand that there is a certain charge for each check written. I assume that most banks charge for that. Do you charge for each check issued?

Mr. GUNTHER. If you have a regular checking account—

Mr. HARSHA. I am just starting on it here now. I heretofore have not had any account in your bank.

Mr. GUNTHER. I am assuming that you start a regular checking account, not what we call a special account, where you pay ten cents a check. You have a regular checking account where at the end of each month we average your balance, determine the earnings on it, and if

those earnings were sufficient for the activity in the account you would get no charge.

Mr. HARSHA. All right, but now, in order to get the $500, I would pay the eight percent interest rate, for this example, and if I took credit insurance out, I would pay $1 per hundred or $5 for the insurance?

Mr. GUNTHER. Yes.

Mr. HARSHA. Are there any other service charges that I would pay?

Mr. GUNTHER. None.

You would sign a note for $540, and pay one-twelfth of it each month.

Mr. HARSHA. I would pay one-twelfth of it each month?

Mr. GUNTHER. Yes.

Mr. HARSHA. There are no other costs of any kind involved?

Mr. GUNTHER. No.

Mr. HARSHA. And I would sign a note for $540. How much money would I, actually, receive then?

Mr. GUNTHER. $500.

Mr. HARSHA. $500?

Mr. GUNTHER. Yes, sir.

Mr. DOWDY. Is that with or without interest?

Mr. GUNTHER. Well, the $40 is the add-on interest.

Mr. DOWDY. If he took the insurance, that would be $5 more?

Mr. GUNTHER. If he wanted to put it into the amount of note, it would be $545. He could either pay the $5 out of the $500, or he could add it onto the note—one or the other.

Mr. HARSHA. Are there carrying charges of any kind?

Mr. GUNTHER. No. Those are the only charges that you would have.

Mr. HARSHA. What if I miss a month? Is there any penalty for lapse in payment?

Mr. GUNTHER. No. If you had a good reason for it, we would not charge.

Mr. HARSHA. Assume that in my judgment I had a good reason, but in your judgment it was not so good, would there be a charge then for that?

Mr. GUNTHER. No. Ordinarily I do not know of any case where we have made any charge because of a late payment due on a loan. All we are interested in is, ultimately, getting the loan paid, and if you cannot pay this month, then we would hope that you would pay next month and each month thereafter.

Mr. HARSHA. I will yield to Mr. Steiger.

TRUTH-IN-LENDING LAW

Mr. STEIGER. Thank you. I think that you have established beyond a doubt that it costs you most to serve and handle these consumer loans, these so-called small loans. In your case, Mr. Gunther, you have made the statement that you are concerned about nuisance suits as a result of the Truth-In-Lending bill. As a matter of fact, it occurs to me, and I ask you this question, that what you are asking us to do is to retain eight percent in the light of the Truth-In-Lending bill, and circumvent the Truth-In-Lending bill, because, in effect, the interest on that is 15.4 percent, and you are, by this kind of legislation, stating that we will still call it an eight percent loan, and that you will be permitted to get this other interest rate. This is a practice that has

been engaged in for sixty years. I, of course, see nothing wrong with it. I am disturbed by the fact that we are going to continue to call it an eight percent loan.

Mr. GUNTHER. No, we are not.

Mr. STEIGER. I will yield to you in just a minute. I would quote to you from the so-called loan shark law—D.C. Code, Title 26, subsection 26–605—in the District. This is a law in which one percent per month maximum on the actual amount of the loan is the limit. Under this law—and I quote—"The foregoing interest shall not be deducted from the principal of the loan." In other words, they are not permitted to add on. In my view, they are not permitted to add on, because there is a 12 percent maximum.

Gentlemen, I do not quarrel with the fact that it costs you more to service these loans. I would be remiss if I did, because this is your field.

With the Chairman's permission, I would like this letter to be made a part of the record. This letter is dated January 25, 1966. It is signed by Walter N. Trobriner, the then President of the Board of Commissioners of the District of Columbia and he is commenting on this same proposed legislation, and his final statement is:

"The Commissioners are constrained to object to the bill in its present form as not being in the public interest. If, however, the bill be amended to provide that interest may be charged or deducted in advance on loans repayable in installments so long as the effective rate of interest when so collected does not exceed eight percent per annum, the Commissioners would have no objection to the enactment of the bill. In its present form, however, they recommend against its enactment."

I must find myself in agreement with Mr. Tobriner. If the law in the District is that the maximum rate of interest is eight percent, and we need to raise it to 15.4 percent, then I have no quarrel with that, but then let us raise it to 15.4 percent in the law. You can collect it in any way that is practicable, but I think that we are circumventing the intent of the Truth-In-Lending law, by putting our stamp of approval on this particular legislation. And I submit that the reason that this bill has become essential to your industry is because of the presence of the Truth-In-Lending bill. I congratulate you on your alertness in this matter, but I do not think that you are being fair with us when you ask us to help you in circumventing the Truth-In-Lending bill.

I will now permit you to respond.

Mr. GUNTHER. Sir, I would like to comment, first, on your comment that we would continue to make the 12 percent loan. Under the Truth-In-Lending law we have to show the true effective simple interest rate in our advertisements; in other words, if it is 15.4 percent, we have to advertise 15.4 percent. If we have a law with 15.4 percent as simple interest, we have to give the borrower a statement that he is being charged 15.4 percent.

Mr. STEIGER. May I interrupt at that point? This is, indeed, a question, and not a statement. On an add-on loan you are informing the borrower that he is paying eight percent and an additional eight percent above the principal?

Mr. GUNTHER. 7.4 percent.

Mr. STEIGER. You are telling me that under the Truth-In-Lending bill, and regardless of this legislation, you will have to inform that borrower that he is, indeed, paying 15.4 percent?

Mr. GUNTHER. That is effective July 1 of next year we will be required to do that. That is the reason we are coming to you, to clarify something that was left unanswered in the 1901 Code, whether interest can be taken in advance and still not be guilty of usury.

Mr. HARSHA. Will you yield?

Mr. STEIGER. In a moment, I would like to explore a further question. Then what you are saying is that you want us to legalize the 15.4 percent as not being usury, and we are being placed in this position because of the Truth-In-Lending requirement that the borrower be advised that he is, really, paying 15.4 percent?

Mr. GUNTHER. In effect, that is it, correct.

Mr. STEIGER. It occurs to me that, perhaps, we should re-examine this in fairness to both you and the consumer—that we should re-examine the usury law and say that the honorable thing to do is to make it 15.4 percent in the D.C. Code and not eight percent, because that is, indeed, what you are charging. You, by another process, are saying that while we are staying within the eight percent usury law, yet we are charging you 15.4 percent. You are driven to this because of the limits of the usury law. It would seem to me that it would be the responsible and honorable way to do this by saying, "No, Mr. Consumer, there is no eight percent usury law in the District of Columbia. It is 15.4 percent."

Mr. GUNTHER. If this bill were adopted the interest on the installment loans, other than the real estate loans, may be deducted in advance without violating any of the other provisions of this section—if that were done and that effectively establishes what you are saying.

Mr. STEIGER. I appreciate that, Mr. Gunther. It does put legal sanction on it. What I say to you is that it does it in such a way as to circumvent the usury law. I would like to yield to Mr. Harsha now.

Mr. HARSHA. To carry on this point a step further, you say that you must report to the borrower that he is being charged 15.4 percent interest. Why?

Mr. GUNTHER. Because the Truth-In-Lending law requires that we state in writing to the borrower the simple interest equivalent of the interest that he is paying.

Mr. HARSHA. In other words, you must tell him that he is being charged 15.4 percent interest, because that is what, in effect, you actually are charging him?

Mr. GUNTHER. That is correct.

Mr. HARSHA. And not the eight percent?

Mr. GUNTHER. Yes, sir.

Mr. HARSHA. So that the legislation would provide that as the gentleman is talking about it, of providing or of trying to give the impression to the borrower that he is only being charged eight percent, when you know and I know that he is being charged 15.4 percent?

Mr. GUNTHER. I would like to point out that this would be precisely under the Code of Virginia and the code of a great many other States, which simply provide that interest be taken in advance on installment loans. Competition sets the interest rates. Banks, really, do not set them. In other words, if he can borrow money more reasonably from somebody else, he will not borrow from us.

Mr. HARSHA. Do you know how many States in the country have that kind of law—can you provide that for the record?

Mr. JENNINGS. We could provide it. I would say that at least one-half of them do.

Mr. HARSHA. Will you provide it for the record?

Mr. JENNINGS. So we are not doing anything—we are not asking to do anything that is unusual. You may not like that, but there are many States that do it that way.

Mr. GUNTHER. If I may say this to Mr. Steiger, I provided the Chief Counsel for the Comptroller of the Currency, Mr. Bloom, who is here to testify today, with excerpts from the laws of each State of the Union and their interest rates. And Mr. Bloom might possibly know how many States there are. (See appendix, pp. 27–32.)

Mr. BLOOM. I have the material that you sent over to us yesterday, but I have not had a chance to look at it.

Mr. DOWDY. Before you go further, this letter from Mr. Tobriner that you mentioned will be made a part of the record, Mr. Steiger.

Mr. STEIGER. Thank you.

(The letter referred to follows:)

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
Executive Office,
Washington, D.C., January 25, 1966.

The Honorable JOHN L. MCMILLAN,
Chairman, Committee on the District of Columbia,
United States House of Representatives,
Washington, D.C.

DEAR MR. MCMILLAN: The Commissioners of the District of Columbia have for report H.R. 12180, 89th Congress, a bill "To amend chapter 33, subtitle II, Other Commercial Transactions, of title 28, District of Columbia Code, with respect to charging or deducting in advance interest on loans to be repaid in installments."

Section 28–3301 of the District of Columbia Code presently provides that the parties to an instrument in writing for the payment of money at a future time may contract therein for the payment of interest on the principal amount thereof at any rate not exceeding 8 percent per annum. Section 28–3302 of the Code provides that, in the absence of express contract, the rate of interest upon the loan or forbearance of money, goods, or things in action, shall be 6 percent per annum. Section 28–3303 of the Code provides that if any person or corporation contracts verbally to pay a greater rate of interest than 6 percent per annum or in writing to pay a greater rate than 8 percent per annum the creditor shall forfeit the whole of the interest so contracted to be received, and the excessive interest, under section 28–3304, may be recovered in a civil action brought by the debtor.

The bill amends existing law relating to interest and usury, as set forth in chapter 33 of subtitle II of title 28 of the District of Columbia Code and outlined in part in the preceding paragraph, so as to insert therein a new section, section 3302a (properly section 28–3302a) which would authorize interest computed on the principal amount of a loan at a rate permitted by sections 3301 and 3302 (sic) of this chapter to be charged or deducted in advance where the borrower is required to repay the indebtedness in installments. This means, of course, that on a loan of $1000, with interest at 6 percent, repayable in installments over the period of a year, the creditor would be authorized to charge or deduct the $60 interest in advance, without taking into account the lessening of the principal through the installment payments, so that in effect the interest so charged or deducted is payable on an average unpaid balance of approximately $500. In short, the effective rate of interest is not 6 percent but is closer to 12 percent. Should the contract be in writing and call for interest at the rate of 8 percent, the effective rate which the bill would authorize, assuming interest be charged or deducted in advance on a loan repayable in installments, would be approximately 16 percent.

The Commissioners are constrained to object to the bill in its present form as not being in the public interest. If, however, the bill be amended to provide that interest may be charged or deducted in advance on loans repayable in installments so long as the effective rate of interest when so collected does not exceed 8 percent per annum, the Commissioners would have no objection to the enactment of the bill. In its present form, however, they recommend against its enactment.

Sincerely yours,

WALTER N. TOBRINER,
President, Board of Commissioners, D.C.

Mr. DOWDY. You may proceed.

Mr. STEIGER. I do not mean to belabor this. In my view, the fact that other States have similar legislation does not remove the chicanery aspect. I want to make it very clear that I have nothing but the deepest respect for the banking industry. I recognize the problem. I think that to a greater extent, because I served on a bank board myself. I am not unsympathetic. I think that you find yourself in this position because of the existence of the Truth-In-Lending law, because you would find yourself in a position where you would need some help.

What I am suggesting is—perhaps, the solution to this class of loans is that we should raise the effective rate to 15.4 percent, and let you arrive at that figure in any way that you feel is best. I think it is our role here as a Committee to act, not only in the interests of the District of Columbia, but in the interests of the banks. I think they are synomymous. I think these interests cannot be divorced from each other.

INTEREST AND USURY

I quote from the District of Columbia Code, Title 28, Chapter 33, Subsections 3301, 3302, and 3303, which limits the lending rate to six percent per annum, and eight percent under certain conditions. Actually, what you are doing—and I really do not care if you arrive at it by computation or by definition—you are saying that you have been doing this for 60 years and that there is a greater cost involved, and you simply cannot make these loans unless you arrive at a maximum of 15.4 percent in the District. If we did—would the industry resent this approach? Would there be unhappiness with this approach in which this Committee would frame legislation or you would frame legislation that we would adopt, in which we said that the effective rate was to be 15.4 percent on this type of loan?

Mr. GUNTHER. I can only answer your question according to my own bank. I would resent it, because I think it gives the banking interest an unnecessary black eye in the eyes of the public. In other words, there is such a small percentage of the credit that we extend at this rate, so far as our totals are concerned, like most of the bankers—that if we were to do this, we would have the strong possibility of some nuisance lawsuits coming up, and our counsel feels that we are on safe ground charging the rates we do, on the basis of Supreme Court decisions, but if we were to have nuisance usury suits filed against us, we simply would not make this type of loan any more.

Mr. STEIGER. What you are saying is that if this is changed in some manner you will be subject to usury. I think that your judgment is very sound on that. I think your counsel advises to the effect that if you will do this you will not be subject to suits. You will not be in jeopardy. But it does occur to me that what you are saying is that you do not

want it known that you are charging 15.4 percent on some loans and you would prefer to go this route which will not reveal that. I hope that is not what you are telling me. If you would clarify that I would appreciate it.

Mr. GUNTHER. I am not talking for the District of Columbia Bankers Association. I do not know what the attitude of other bankers would be in answering that question. So far as I am concerned you are quoting me correctly.

Mr. JENNINGS. May I add this? Of course, the State of Arizona has $8 per hundred per year interest and discount to be added. So it is the same thing out there. This is nothing new.

What will we do? What would our reaction be on the 15.4 percent? I do not know. You know very well that under the Truth-In-Lending law we will be required, if we advertise, to point out that the rate ranges from one point to another point. When the customer comes in to borrow, if he is charged eight percent, we would say that it is 15.4 percent. I think that we would continue to make these loans right along. I prefer that it be handled as in so many States, as in the State of Arizona, for example, and I must say that the State of Virginia, a competing State, too. We dislike being the symbol here on this, but, on the other hand, to point out what we are charging for this loan I think, probably, we would resent that. If you insist on it and if it had to be done, we would go ahead and do it. After all, these people must know that when they cross the District Line they pay a lot more than that. Maybe some of the local banks would not. And they would get out of the business. I think that mine would, probably, stay in it, whichever way you handled it.

Mr. STEIGER. I do not want to belabor this. I think that we would like to say from what you have told me it is that you would prefer that it not be generally known that you charge 15.4 percent——

Mr. GUNTHER. I did not say that.

Mr. JENNINGS. I did not say that at all. Not at all. We will advertise that they pay 15.4 percent. It is that.

Mr. STEIGER. As a matter of fact, you will advertise at 15.4 percent. Rather, you will not do that. You will advertise that you have consumer loans. You would be foolish if you did otherwise.

Mr. JENNINGS. When the customer borrows, he will have to know.

Mr. STEIGER. In the light of that, I accept this. And I know that you are going to comply with the law. You are only objecting to having the usury rate raised to 15.4 percent. There must be a public relations objection.

Mr. JENNINGS. I suppose so.

Mr. STEIGER. What you are saying is that——

Mr. JENNINGS. That they will not be doing that, because of the law being written as it is in Arizona where it is $8 per hundred add-on.

Mr. STEIGER. What you are saying is that because the State of Arizona is permitted to deceive and that in the State of Virginia it is all right, on that basis you wish to——

Mr. JENNINGS. We think it is all right on the basis of the add-on discount of six or eight percent. We think it is all right. If you feel that it will be beneficial to the public, I guess our bank will continue to make loans, accordingly.

Mr. STEIGER. Thank you.

Mr. HARSHA. I should like to have comparable information on Ohio which you have presented on Arizona.

Mr. JENNINGS. I think that I can get it for you from some of the references I have. They say maximum loans—wait a minute—the maximum time, no special provisions, interest charges, interest rates allowed by law. And they have a footnote here which I do not have with me, so that I cannot give you that information now.

(The information requested follows:)

REFERENCES ARE TO OHIO REVISED CODE, AS AMENDED

SELECTED LAW PROVISIONS

Sec. 1343.01. Maximum rate. The parties to a bond, bill, promissory note, or other instrument of writing for the forebearance of payment of money at any future time, may stipulate therein for the payment of interest upon the amount thereof at any rate not exceeding eight per cent per annum payable annually.

Sec. 1343.02. Rate upon judgments on instruments containing stipulation. Upon all judgments, decrees, or orders, rendered on any bond, bill, note, or other instrument of writing containing stipulations for the payment of interest in accordance with section 1343.01 of the Revised Code, interest shall be computed until payment is made at the rate specified in such instrument.

Sec. 1343.03. Interest when rate not stipulated. In cases other than those provided for in sections 1343.01 and 1343.02 of the Revised Code, when money becomes due and payable upon any bond, bill, note or other instrument of writing, upon any book account, or settlement between parties, upon all verbal contracts entered into, and upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of a contract, or other transaction, the creditor is entitled to interest at the rate of six per cent per annum, and no more.

Sec. 1343.04. Usurious interest. Payments of money or property made by way of usurious interest, whether made in advance or not, as to the excess of interest above the rate allowed by law at the time of making the contract, shall be taken to be payments made on account of principal; and judgment shall be rendered for no more than the balance found due, after deducting the excess of interest so paid.

Sec. 1701.68. Usury. No domestic or foreign corporation, or anyone on its behalf, shall interpose the defense or make the claim of usury in any proceeding upon or with reference to any obligation of such corporation; nor shall any corporate note, bond, or other evidence of indebtedness, mortgage, pledge, or deed of trust, be set aside, impaired, or adjudged invalid by reason of anything contained in laws prohibiting usury or regulating interest rates.

FOOTNOTES

Any special plan bank which contracts with its depositors for the receipt of deposits which are not payable unconditionally upon demand or at a fixed time may discount interest at the rate allowed by law on loans made in reliance for repayment on the character and earning capacity of the borrower and may require the borrower as security for the loan to make periodic deposits, with or without allowing interest on the deposits and with or without additional security. The transaction is not usurious. (Sec. 1107.26, *as added by Laws 1967, S.B. No. 97, approved September 8, 1967, effective January 1, 1968.*)

DECISIONS—OPINIONS

.361 Discount of paper.—The claim that a secured note was usurious and that at the time of making the agreement the mortgagor was not correctly informed as to the payment terms was rejected by the court since by making a number of payments, the mortgagor ratified the terms of the agreement, and as between the dealer and the finance company, the transaction bore the outward form of a sale or negotiation of the note. As long as this was true there could be no usury, as there had been no loan of money and no charge for the use of money. Bills and notes, like other property, may be bought and sold, and a discount at any rate is not usurious.—*Battle v. Patsy Auto Sales, Inc.* Ohio Ct. App. 1951) 99 N. E. 2d 812.

Mr. HARSHA. Thank you. Could I ask you this question? Somewhere in the testimony it developed that your counsel had some judicial decisions as to this add-on cost, to the effect that it was legal.

Mr. GUNTHER. Yes, sir.

Mr. HARSHA. Do you have that?

Mr. JENNINGS. That has already been turned over.

Mr. HARSHA. Thank you.

Mr. JENNINGS. That letter has been turned over.

Mr. HARSHA. That is all I want, Mr. Chairman. Thank you.

Mr. DOWDY. Thank you, Mr. Gunther and Mr. Jennings.

I believe that the D.C. Building & Loan Association is not represented here. Is Mr. John Raymond here?

Mr. GUNTHER. No, sir; he is not. May we be excused?

Mr. DOWDY. Yes, sir.

The next witness is Mr. Thomas F. Moyer, Assistant Corporation Counsel of the D.C. Government. We will be pleased to hear from you now.

STATEMENT OF THOMAS F. MOYER, ASSISTANT CORPORATION COUNSEL, D.C. GOVERNMENT

Mr. MOYER. Mr Chairman and Members of the Subcommittee, I would just like to say this. The Mayor of the District of Columbia has been on vacation. He returned yesterday. We discussed this bill with him yesterday. Of course, the bill was only introduced last Thursday. As of last night the Mayor had still not reached a conclusion on it. He would like to discuss this further with us and with Members of the City Council. He hopes to be able to submit a report as soon as possible.

Mr. DOWDY. All right, thank you.

Our next witness is Mr. Robert Bloom, Chief Counsel, Comptroller of the Currency. We will be pleased to hear from you now.

Mr. STEIGER. I wonder if I might address a comment to Counsel for the District of Columbia?

Mr. DOWDY. Yes.

Mr. STEIGER. It would be my suggestion that you present Mr. Tobriner's view to Commissioner Washington.

Mr. MOYER. Yes, sir, we will make that known to him.

(Subsequently, the following report was received from the District Government:)

DISTRICT OF COLUMBIA GOVERNMENT,
EXECUTIVE OFFICE,
Washington, October 4, 1968.

The Honorable JOHN L. MCMILLAN,
Chairman, Committee on the District of Columbia, U.S. House of Representatives, Washington, D.C.

DEAR MR. MCMILLAN: The Government of the District of Columbia has for report H.R. 19740, a bill "To authorize banks, savings and loan associations, and other regulated lenders in the District of Columbia to charge or deduct interest in advance on loans to be repaid in installments."

Section 28–3301 of the District of Columbia Code presently provides that the parties to an instrument in writing for the payment of money at a future time may contract therein for the payment of interest on the principal amount thereof at any rate not exceeding 8 percent per annum. Section 28–3302 of the Code provides that, in the absence of express contract, the rate of interest upon the loan or forbearance of money, goods, or things in action, shall be 6 percent per annum.

Section 28–3303 of the Code provides that if any person or corporation contracts verbally to pay a greater rate of interest than 6 percent per annum or in writing to pay a greater rate than 8 percent per annum the creditor shall forfeit the whole of the interest so contracted to be received, and the excessive interest, under section 28–3304, may be recovered in a civil action brought by the debtor.

The bill amends existing law relating to interest and usury, as set forth chapter 33 of subtitle II of title 28 of the District of Columbia Code and outlined in part in the preceding paragraph, so as to insert therein a new section, section 28–3307. This section would provide that:

> "The charging or deduction of the legal rate of interest in advance, by a bank, savings and loan association, or other regulated lender, on loans (other than loans directly secured on real estate) to be repaid in installments, shall not be deemed to be in contravention of any of the provisions of this chapter. . ."

The Government of the District of Columbia notes that the deduction of interest in advance on installment loans has been a common practice by lending institutions in the District of Columbia (as well as throughout the United States) for many years, although it might be argued that such deduction increases the effective rate of interest on an 8% installment loan beyond the limitation set by the District's usury statute. We are informed by representatives of lending institutions that, although they believe that this percentage does not violate the usuary statute, they are seeking legislation to clarify the relationship of deduction of interest in advance to the usury law and to the Consumer Protection Act of 1968.

The pertinent part of the Consumer Credit Protection Act—Section 129, effective July 1, 1969—requires that lenders disclose actual effective interest in advance of making loans. Representatives of lending institutions in the District of Columbia anticipate the possibility that their practice of deducting interest in advance will come into question when, by complying with the Consumer Credit Protection Act, the lending institutions furnish to prospective lenders a statement of an effective interest rate higher than the interest rate authorized by the District of Columbia usury statute.

We are informed that lending institutions in the District of Columbia make loans totaling approximately $1.5 billion per year, and of this amount approximately $61.5 million is in small personal loans where interest is deducted in advance. However, the number of these loans is over 54,000 per year. It can therefore be seen that, although these small loans, where interest is deducted in advance, account for only a small percentage of the total loans made, they provide a service to a substantial number of people in the District.

We note that legislation similar to this bill is in effect in Virginia (Code of Virginia, Title 6, Banking and Finance, section 6.1–320) and in a number of other States. Accordingly, with the understanding that the passage of this legislation will not result in any actual increase in the effective interest charged by lending institutions in the District of Columbia, the Government of the District of Columbia offers no objection to the enactment of H.R. 19740.

Sincerely yours,

THOMAS W. FLETCHER,
Assistant to the Commissioner
(For Walter E. Washington, Commissioner).

Mr. DOWDY. Mr. Bloom.

STATEMENT OF ROBERT BLOOM, CHIEF COUNSEL TO THE COMPTROLLER OF THE CURRENCY

Mr. BLOOM. My name is Robert Bloom, and I am Chief Counsel for the Comptroller of the Currency. I have a brief statement on the bill, and I will be glad to respond to any questions. I would add that because of the fact that I did not know about this hearing before yesterday, I am afraid there may be some questions on technical levels at the various stages and even of the District on which I will not perhaps be able to respond, and maybe I can do as the Corporation Counsel did, because of the comparatively short notice I have received, to furnish further information.

With that preamble, let me say that I have a two-page statement which I will read, with your permission.

Mr. DOWDY. Yes, sir.

Mr. BLOOM. We are pleased to present the views of the Office of the Comptroller of the Currency pursuant to the Committee's request on H.R. 19740, a bill which would expressly permit the deduction of interest in advance from the proceeds of installment loans made by banks and other regulated lending institutions in the District of Columbia.

The Comptroller has previously informally indicated to the Chairman of the Law and Legislative Committee for the D.C. Bankers Association that our Office had no objection to the passage of the subject amendment. The deduction of interest in advance from the proceeds of installment loans is a common and well recognized banking practice. This method of charging interest, known as the discount method, is one of several recognized methods of computing and charging interest on loans which are to be repaid in installment rather than in a lump sum. It is commonly used in the making of automobile and other consumer installment loans. Public Law 90–321, the "Truth-in-Lending Act" which will become effective on July 1, 1969, will require that the effective annual rate of simple interest being paid by the borrower on discount loans as well as other types be disclosed in writing to the borrower prior to the making of the loan. Public Law 90–321 will also require lenders who feature rates of interest in their advertising to use the effective annual rate of simple interest rather than the "discount" rate. The "Truth-in-Lending Act" will therefore insure the disclosure of the full amount of interest being charged to the borrower and would appear to eliminate the possibility of abuse of the proposed amendment to the D.C. Code.

Accordingly, the Comptroller of the Currency has no objection to the passage of H.R. 19740.

That is all I have prepared this morning, Mr. Chairman.

Mr. DOWDY. Do you have any questions?

Mr. MCMILLAN. I have no questions.

Mr. DOWDY. Mr. Harsha?

Mr. HARSHA. Mr. Bloom, the effect of this bill, then, would be to permit the banks to continue to charge the eight percent interest rate on an add-on basis, like they are doing now, yet the Truth-in-Lending bill will require them to advise the borrower at the time he is making the loan that he is being charged the effective simple interest rate of 15.4 percent. Is that correct?

Mr. BLOOM. That is correct.

Mr. HARSHA. And if they advertise in the newspapers or in any other media, I assume that their interest rates will be advertised to the effect that they are charging the 15.4 percent rate?

Mr. BLOOM. Yes, sir.

Mr. HARSHA. So that there will be a disclosure at one time or another to the borrower of what he actually, in the final analysis, is paying?

Mr. BLOOM. Yes, sir. That will apply to all.

Mr. HARSHA. This will preclude him from filing a usury suit?

Mr. BLOOM. I would say that this bill would clarify a question on which there has been some doubt in the minds of lawyers over the years in the District, but, evidently, not enough to generate any litigation or to have a test of the question. I do not regard the bill as

making any material change in the usury bill, actually, because, as I see it, it merely recognizes what has been accepted tacitly and, really, openly over the years as being the effective rate on this type of loan. We have no opposition, because we do not think it is making any material change in the bill, and we do not regard the effective rate of 15.4 percent on this type of loan as being other than competitive and a fair return to this type of loan.

Mr. HARSHA. That is all. Thank you.

Mr. DOWDY. Mr. Steiger.

USURY

Mr. STEIGER. Mr. Bloom, I quote from D.C. Code, Tit. 28–3303, "If a person or corporation contracts in the District (1) verbally, to pay a greater rate of interest than 6 percent per annum, or (2) in writing, to pay a greater rate than 8 percent per annum, the creditor shall forfeit the whole of the interest so contracted to be received."

I am completely sympathetic with the very pragmatic fact that it has been a practice that has been indulged in for some time. I think that the length of time that it has been indulged in does not eliminate the fact that these people did pay 15.4 percent and not eight percent. We are creating a situation in contravention of the existing law, in my view as a layman and not as an attorney. I would like to have you solve that in rather simple semantics, if you would.

Mr. BLOOM. The only answer I can make to that is the example of the type of language which is very common to usury laws throughout the country which permit the charging of interest in advance, the courts have so interpreted it, together with other types of computations, such as add-ons and the like, which have the result of raising the actual amount of interest on the installment loan, figured on a simple interest rate basis. In other words, the question as to these usury laws, really, gets down to the fact that a lot of them, I think, were written at a time when installment loans were not commonly made. They were written in terms of a loan which was to be repaid in a single lump sum at the expiration of the maturity of the loan. The courts in trying to deal with rather old statutes have had to come up with some rather ingenuous interpretations, if you want to call them that, in order to face the reality of the situation.

The fact is that the maximum in the usury ceiling is not actually holding down the cost of the money to the public. The courts have had to interpret it in such a way as to bring it in; otherwise the lenders would withdraw from that market.

Mr. STEIGER. It is very obvious that it is simply to raise the interest. It would seem to me that we are just engendering a whole devious approach. We are putting our sanction on it on the basis that this is what they do in some other parts of the country. What you are saying is that the eight percent figure is not realistic. I agree that it is not. So let us raise it to 15.4 percent. Would that not be a more palatable view in your personal judgment?

Mr. BLOOM. I have no quarrel with that at all, in my personal judgment. I would say that on a technical level, the mechanical drafting level, I would have quite a job to try to tailor the rates to the various types of loans that may be involved. Once you get into the mechanical drafting problem of actually setting the rate, rather than recognizing

the particular method of competition, you may run into some problems.

Mr. HARSHA. If I may interrupt. Let me take the position of the devil's advocate in this although at the same time I have some of the reservations that my colleague from Arizona has. Let us say that we go the route that each suggests. We raise the rate to 15.4 percent. If the practice of the banking institutions is legal, that is, the add-on business, then, in effect, can we not take the 15.4 percent and add it on in the initial stages and deduct it, and then we will wind up with a 33⅓ or 45 percent interest rate in the final analysis.

Mr. BLOOM. It may be a question mark.

Mr. STEIGER. The obvious answer there is that you would not permit the rather extensive computation, because it is unrealistic. All I am saying is that it seems to me that the most honorable course is to set a ceiling. If that is the intent of the usury law, to establish a ceiling. If it is not possible, well then we are being less than realistic by authorizing a computation method which is just temporary. The industry will arrive at whatever method it has to in order to survive. Let us do it in as direct a fashion as possible. That is all I am saying. I say the reason that they do not want to do it is because of the fact that it does cost more money than the public feels it is costing.

Mr. HARSHA. If you will yield?

Mr. STEIGER. Yes.

Mr. HARSHA. After the first of July, 1969, the Truth-In-Lending bill goes into effect. The banks have to make full disclosure to the borrower in no uncertain terms. While on the surface it appears to be eight percent, it is in effect 15.4 percent.

Mr. DOWDY. Will you yield?

Mr. HARSHA. Yes.

Mr. DOWDY. I will preface what I have to say with this, since I have been in Congress I have not been able to keep up with the court decisions of the various States. Some 25 years or more ago, I did engage in trying usury cases in Texas, and I became very familiar with the then law. I do not know what the courts have done since then. They have gone so far away from what they were doing when I was studying and practicing law that I do not now know. But back then I think there had been no conflict between this bill and the eight percent maximum contract interest rate in the District of Columbia, if construed by Texas decisions.

Under the decisions in Texas, the courts have held, when it was discounted, that the true interest would count. If discounted, and the amount discounted effectively gave an interest rate above the usury law rate, then a penalty could be collected, which is two or three times the amount of the interest. I cannot see a conflict between this bill and the usury law of the District of Columbia. I am disregarding any court decisions that might have been handed down in the District of Columbia, but unless the courts have held otherwise, there is no conflict between this bill and the eight precent maximum interest that can be contracted for.

This bill does not say that the lender can discount and get more than eight percent. It just says that he may discount or may add on. It does not say that it may amount to more than eight percent interest. The bill does not so state.

Mr. STEIGER. In fact, it does.

Mr. DOWDY. From the testimony, one would think so, but the bill does not so state. This bill would not increase the eight percent contract rate if you read just the provisions of the bill, and without knowing what the courts may have said. This does not say that. Am I correct about this?

Mr. BLOOM. You are correct. This bill, as I read it, states that it would supply a legislative recognition to the fact that you are deducting the interest in advance. And it goes further to say that in doing that in itself it would not constitute a violation of any other provision on the law.

Mr. DOWDY. All the bill says is that the deduction of the legal rate of interest may be deducted or added on. If the bill were to permit a greater rate of interest, the courts would have to write it in.

Mr. HARSHA. Will you yield there? Does it not all boil down to this: what the bill does is to put a cloak of legality on the fact that you are adding on these charges in the beginning?

Mr. BLOOM. I woud not describe it in those terms. I would say that it clarifies a point which has been of some doubt in the minds of lawyers.

Mr. HARSHA. Thank you, that is all.

Mr. STEIGER. That is all. Thank you.

Mr. DOWDY. Thank you. I believe those are all of the witnesses we have on the list. We will adjourn this meeting. Thank you all for coming. We appreciate your appearance here.

(Whereupon, at 11:45 o'clock a.m., the Subcommittee adjourned.)

APPENDIX

INTEREST AND USURY STATUTES IN THE VARIOUS STATES[1]

INTEREST—USURY

[¶ 31]

Interest—Usury Statutes . . .

Usury statutes prohibit the loan or forbearance of money at more than a specified rate of interest. The prescribed rates apply to legal, contract and judgment charges. Maximum legal rates are generally 6% per annum, but also range from 5% to 7%, and one state, North Dakota, limits its rate to 4%. The variations in the maximum contract rates are more noticeable. The rates range from 6% per annum to an unlimited amount, as agreed to by the parties. The states have provided a deterrent to the charging of excessive interest by prescribing a forfeiture of all, double or even triple the amount of interest taken or received. A few states make the contract void.

Chart Contents . . .

The chart sets out the maximum interest rates and related subjects under the following major headings:

Maximum Rates ∘ Usury Penalty ∘ Usurious Interest Payment ∘ Corporate Rates—Usury Defense

The "Maximum Rates" column is divided into three sub-columns titled: *Legal ∘ Contract ∘ Judgment.* The legal rate of interest is the rate fixed by law in all states. The contract rate is the rate the parties have agreed on, subject to the maximum prescribed by the law. The judgment rate is also fixed by law, as are the usury penalties and the effect of payment of usurious interest. Any statute covering the corporate defense of usury is set out under the "Corporate Rates—Usury Defense" column. Any special rate of interest on corporate borrowing also appears under this column. A reference is made to the absence in a state of a statute on special rates or usury defenses.

Full Text and Statutory References . . .

The chart provides selected law provisions in full text and statutory references for law summaries. The full text provisions cover all statutes referred to in the chart. Statutory references are set out in the chart by use of the state law section and code or statute designation.

Court Decisions—Opinions . . .

Leading court decisions and attorney general opinions appear under the applicable states, beginning at page 1407.

Other Interest Laws . . .

Other types of interest laws appear in their own charts. Instalment loan laws, which generally permit the lender to add the interest to or deduct it in advance from the loan, appear at ¶ 48. Small loan laws are charted at ¶ 41 and the legislation covering check loans at ¶ 73. Finance charges under retail instalment sales laws appear at ¶ 35. Industrial loan laws are charted at ¶ 44.

[1]1968. Commerce Clearing House, Inc.

State	Maximum Rates			Usury Penalty	Usurious Interest Payment	Corporate Rates-Usury Defense
	Legal	Contract	Judgment			
ALABAMA *Code* 1958, *Title* 9	6% (Sec. 60)	8% [1] (Sec. 60)	6% (Sec. 60)	All interest (Sec. 65)	Applied on principal [1] (Sec. 65)	No special rate; no law on defense
ALASKA *Alaska Statutes*	6% (Sec. 45.45.010)	8% (Sec. 45.45.010)	6% * (Sec. 45.45.010)	All interest (Sec. 45.45.040)	Recover double all interest within 2 yrs of payment (Sec. 45.45.030)	No special rate; no law on defense
ARIZONA *Revised Statutes*	6% (Sec. 44-1201	8% [3] (Sec. 44-1201)	As set out in instrument (Sec. 44-1201)	All interest (Sec. 44-1202)	Applied on principal (Sec. 44-1203) May be set-off or recovered (Sec. 44-1204)	1½% mo. if over $5000; no usury defense (Sec. 10-177)[3]
ARKANSAS *Statutes* 1947	6% (Const. Art. 19, Sec. 13)	10% (Sec. 68-602)	6% * (Sec. 29-125)	All interest and principal (Const. Art. 19, Sec. 13)	Cancel contract in equity (Sec. 68-609)	No special rate; no law on defense
CALIFORNIA *Usury Law, Act* 3757	7% (Const. Art. XX, Sec. 22)	10% [5] (Sec. 2; Const. Art. XX, Sec. 22)	7% (Const. Art. XX, Sec. 22)	All interest† [5] (Sec. 3)	Applied on principal. Recover treble amount within 1 yr of payment [5] (Sec. 3; Const. Art. XX, Sec. 22)	No special rate; usury defense allowed (Sec. 3)[5]
COLORADO *Revised Statutes* 1963	6% (Sec. 73-1-1)	As set out in instrument (Sec. 73-1-3)	6% (Sec. 73-1-2)	No statutory provisions.		No special rate; no law on defense
CONNECTICUT *General Statutes* 1958	6% (Sec. 37-1)	12% [7] (Sec. 37-4)	6% [7] (Sec. 37-3)	Principal and interest † [7] (Sec. 37-8)	No recovery after payment by way of interest (Sec. 37-2)	No special rate; no law on defense
DELAWARE *Code* 1953, *Title* 6	6% (Sec. 2301)	8% **, [8] (Sec. 2301)	6% * (Sec. 2301)	Treble excess or $500, whichever is greater (Sec. 2304)[8]	Recover greater of treble interest or $500 within 1 yr after payment (Sec. 2304)[8]	No special rate; no usury defense (Sec. 2306)[8]
DISTRICT OF COLUMBIA *Code* 1961	6% (Sec. 28-3302)	8% (Sec. 28-3301)	6% * (Sec. 28-3302)	All interest (Sec. 28-3303) *	Recover interest within 1 yr of payment (Sec. 28-3301) (Applied on principal (Sec. 28-3305)	Any rate; no usury defense (Sec. 29-904(h))[9]
FLORIDA *Statutes* 1967	6% (Sec. 687.01)	10% [10] (Sec. 687.02)	6% or rate contracted if less (Sec. 55.03)	All interest (Sec. 687.04) All interest and principal when over 25% † (Sec. 687.07)	Recover double interest (Sec. 687.04); or interest and principal when 25% is charged (Sec. 687.07)	15% (Sec. 687.02); usury defense allowed (Sec. 687.11)[10]
GEORGIA *Code* 1933	7% (Sec. 57-101)	8% [11] (Sec. 57-101)	7% (Sec. 57-108)	All interest (Sec. 57-112)	May be recovered or pleaded as set-off (Sec. 57-113)	Any rate if loan over $2500; no usury defense (Sec. 57-118)[11]
HAWAII *Revised Laws* 1955	6% (Sec. 191-1)	12% [12] (Sec. 191-3)	6% (Sec. 191-2)	All interest † (Secs. 191-4, 191-6)	Recover principal in action on usurious contract (Sec. 191-4) Applied on principal (Sec. 191-6)	No special rate; no law on defense

State	Maximum Rates			Usury Penalty	Usurious Interest Payment	Corporate Rates-Usury Defense
	Legal	Contract	Judgment			
IDAHO *Code*	6% (Sec. 28-22-104	8% [12] (Sec. 28-22-105)	6% (Secs. 28-22-104, 28-22-105)	All interest plus twice all interest (Sec. 28-22-107)	Recover interest plus twice the amount thereof (Sec. 28-22-107)	Rate to 12% if over $10,000; no usury defense (Sec. 28-22-105)[13]
ILLINOIS *Revised Statutes* 1967	5% (Ch. 74 Sec. 1)	7% **, [14] (Ch. 74, Sec. 4)	5% (Ch. 74, Sec. 3)	All interest (Ch. 74, Sec. 8) [14]	Recover twice total interest determined by loan contract or payment, whichever is greater, within 2 yrs. from last contract payment[14] (Ch. 74, Sec. 6)	Any rate; no usury defense (Ch. 32, Sec. 157.5, Ch. 74, Sec. 4)[14]
INDIANA *Burns Statutes*	6% (Burns 19-12-101)	8% [15] (Burns 19-12-101)	6% * (Burns 19-12-102)	Excess over 6% (Burns 19-12-104)	Recover amount over 6% (Burns 19-12-104)	Any rate (Burns 19-12-101); no usury defense (Burns 19-12-104)[15]
IOWA *Code* 1962	5% (Sec. 535.2)	7% (Sec. 535.2)	5% * (Sec. 535.3)	All interest and 8% of unpaid principal at time of judgment. Additional 8%-amount to school fund †, [16] (Sec. 535.5)	No statutory provision	Any rate; no usury defense (Sec. 535.2)[16]
KANSAS *Statutes Ann.*	6% (Sec. 16-201)	10% (Sec. 16-202)	6% * (Secs. 16-204, 16-205)	Double excess over 10% (Secs. 16-202, 16-203)	Excess over 10% applied on principal and lawful interest (Sec. 16-203)	No special rate; no usury defense (Sec. 17-4103)
KENTUCKY *Revised Statutes*	6% (Sec. 360.010)	7% [18] (Sec. 360.010)	6% (Sec. 360.040)	Excess of 6% on loans over $300 (Sec. 360.020)	Recover payment in excess of 6% on loans over $300 (Sec. 360.020)	No special rate; no usury defense (Sec. 360.025)[18]
LOUISIANA *Civil Code; Revised Statutes*	5% (CC Sec. 2924)	8% (CC Sec. 2924)	5% (CC Sec. 2924)	All interest (CC Sec. 2924; RS Sec. 9:3501)	Recover within 2 years of payment (CC Sec. 2924)	Any rate; no usury defense (T. 12, Sec. 603)[19]
MAINE *Revised Statutes Ann. Title 9*	6% (Sec. 228)	See footnote 20	6% * (Sec. 228)	No statutory provisions		No special rate; no law on defense
MARYLAND *Code* 1957	6% (Art. 49 Sec. 3)[21]	8% (Art. 49 Sec. 3)[21]	6% (Art. 49 Sec. 3)[21]	Three times excess or $500, whichever is greater (Art. 49, Sec. 8)[21]	No statutory provision	No special rate; no usury defense (Art. 23, Sec. 125)
MASSACHUSETTS *G. L.* 1932, *Ch.* 107	6% (Sec. 3)	No limit (Sec. 3)	No statutory provisions	See footnote 22	No statutory provision	No special rate; no law on defense

State	Maximum Rates			Usury Penalty	Usurious Interest Payment	Corporate Rates-Usury Defense
	Legal	Contract	Judgment			
MICHIGAN *Compiled Laws* 1948; *Acts* 1966, *P. A. 326*	5% (Sec. 438.31)	7% [28] (Sec. 438.31)	5% * (Sec. 600.6013)	All Interest [23] (Sec. 438.32)	No statutory provision	Any rate; no usury defense (Sec. 450.78) [23]
MINNESOTA *Statutes* 1965	6% (Sec. 334.01)	8% (Sec. 334.01)	6% (Sec. 549.09)	Contract void except as to bona fide purchaser (Sec. 334.03) [24]	Recover interest within 2 yrs after payment: ¾ of amount recovered to school fund (Sec. 334.02)	No special rate; no usury defense (Sec. 334.021)
MISSISSIPPI *Code* 1942	6% (Sec. 36)	8% (Sec. 36)	6% * (Sec. 39)	All interest; all interest and principal when over 20% (Sec. 36)	Recover payment in excess of principal. Recover all interest and principal when over 20% (Sec. 36)	Rate to 15%; no usury defense (Secs. 36, 5309-04) [25]
MISSOURI *Revised Statutes* 1959	6% (Sec. 408.020)	8% (Sec. 408.030)	6% * (Sec. 408.040)	Liable for excess and costs of suit (Sec. 408.050) Invalidation of security agreement [26] (Sec. 408.070)	Applied on principal (Sec. 408.060)	Any rate (Sec. 351.385); no usury defense (Sec. 408.060) [26]
MONTANA *Revised Codes* 1947	6% [27] (Sec. 47-124)	10% [27] (Sec. 47-125)	6% (Sec. 47-128)	Forfeit double interest charged (Sec. 47-126)	Recover double within 2 yrs after payment (Sec. 47-126)	Rate as determined for RR (Sec. 72-211) [27]; no law on defense
NEBRASKA *Revised Statutes* 1943	6% (Sec. 45-102)	9% (Sec. 45-101)	6% * (Sec. 45-103)	All interest (Sec. 45-105)	Applied on principal (Sec. 45-105)	Any rate; no usury defense (Sec. 45-101)
NEVADA *Revised Statutes*	7% (Sec. 99.040)	12% [29] (Sec. 99.050)	7% * (Sec. 99.040)	Excess over 12% (Sec. 99.050)	No statutory provisions	No special rate; no law on defense
NEW HAMPSHIRE *Revised Statutes* 1955	6% (Sec. 336:1)	No limit (Sec. 336:1)	6% * (Sec. 336:1)	No statutory provision		No special rate; no law on defense
NEW JERSEY *Revised Statutes* 1937	7½% [31] (Sec. 31:1-1; Dept. of Banks Reg. No. 1)	No statutory provision		All interest [31] (Sec. 31:1-3)	Applied on principal (Sec. 31:1-3 [31])	No special rate; no usury defense (Sec. 31:1-6)
NEW MEXICO *Statutes Annotated* 1953	6% (Sec. 50-6-3)	10%; 12%, if no collateral (Sec. 50-6-16)	6% * (Secs. 50-6-3, 50-6-4)	All interest † (Secs. 50-6-18, 50-6-19)	Recover double within 2 yrs from time of transaction (Sec. 50-6-18)	No special rate; no law on defense
NEW YORK *General Obligations Law, Ch.* 24-a	6% [33] Sec. 5-501	7¼% **, [33] (Secs. 5-501, 5-523; Banking Board Reg; BL Sec. 14-a)	6% (CPLR Sec. 5003)	Contract void and unenforceable [33] (Sec. 5-511)	Recover excess within 1 yr after payment, or it may be recovered by public welfare official within 3 yrs after the 1 yr [33] (Sec. 5-513)	No special rate; no usury defense (Sec. 5-521) [33]

State	Maximum Rates: Legal	Maximum Rates: Contract	Maximum Rates: Judgment	Usury Penalty	Usurious Interest Payment	Corporate Rates-Usury Defense
NORTH CAROLINA *General Statutes*	6% [24] (Sec. 24-1)		6% (Sec. 24-5)	All interest (Sec. 24-2)	Recover double [24]. (Sec. 24-2)	8% if $30,000 or more and 5 yrs.; any rate if secured, no usury defense (Secs. 24-8, 24-9)[24]
NORTH DAKOTA *Century Code*	4% (Sec. 47-14-05)	7% (Sec. 47-14-09)	4% *, [25] (Sec. 28-20-34)	All interest and 25% of principal; or double interest applied on principal † (Secs. 47-14-10, 47-14-11)	Recover double plus 25% of principal within 4 yrs (Sec. 47-14-10)	No special rate; no law on defense
OHIO *Revised Code*	6% (Sec. 1343.03)	8% [24] (Sec. 1343.01)	6% * (Secs. 1343.03, 1343.02)	No statutory provision	Applied on principal (Sec. 1343.04)	No special rate; no usury defense (Sec. 1701.68)
OKLAHOMA *Statutes 1961, Title* 15	6% (Sec. 266)	10% (Sec. 266)	10% * (Sec. 274)	Forfeit double amount charged (Sec. 267)	Recover double within 2 yrs after contract maturity and costs (Secs. 267, 268)	No special rate; no usury defense (T. 18, Sec. 1.26)
OREGON *Revised Statutes*	6% (Sec. 82.010)	10% (Sec. 82.010)	6% * (Sec. 82.010)	Forfeit loan, less interest and payments on principal, to school fund (Sec. 82.120)	Applied on principal (Sec. 82.120)	Rate to 12%, no usury defense (Sec. 82.010)[39]
PENNSYLVANIA *Purdons Statutes*	6% to $50,000 (41 P. S. 3)[26]	6% [24, 39] (41 P. S. 3)	6% (12 P. S. 782)	Excess over 6% (41 P. S. 4)	Recover excess of 6% in action within 6 mos. Excess over 6% applied on principal (41 P. S. 4)	No special rate; no usury defense (41 PS 2; 15 P. S. 2852-313)
PUERTO RICO *Laws Annotated, Title* 31, *Ch.* 313	6% (Sec. 4591)	9% under $3000; 8% each additional $100 (Sec. 4591)	6% (Sec. 4591)	All interest plus 25% of principal to Commonwealth (Sec. 4594)	Excess within 1 yr. after payment (Sec. 4595)	No special rate; no usury defense (T. 14, Sec. 2206)
RHODE ISLAND *General Laws* 1956	6% (Sec. 6-26-1)	21% (Sec. 6-26-2)[41]	6% * (Sec. 6-26-1)	All interest and principal † (Secs. 6-26-3, 6-26-4)	Recover payments (Sec. 6-26-4)	No special rate; no law on defense
SOUTH CAROLINA *Code* 1962	6% (Sec. 8-2)	7% [42] (Sec. 8-3)	6% (Sec. 8-2)	All interest plus costs † (Sec. 8-5)	Recover double (Sec. 8-5)	No special rate; no usury defense (Sec. 8-8)[42]
SOUTH DAKOTA *Code* 1939	6% (Sec. 38.0108)	8% (Sec. 38.0109)	6% * (Sec. 38.0109)	All interest † (Secs. 13.1830, 38.0111)	Recover payment (Sec. 38.0111)	No special rate; no usury defense for RR corp. (Sec. 52.0906)

State	Maximum Rates			Usury Penalty	Usurious Interest Payment	Corporate Rates-Usury Defense
	Legal	Contract	Judgment			
TENNESSEE *Code Annotated* 1955	6% (Secs. 39-4601, 47-14-101)	6% [44] (Sec. 47-14-104)	6% (Sec. 47-14-104)	Excess over 6% † (Secs. 39-4602, 47-14-117)	Recover over 6% within 2 yrs. (Secs. 47-14-117, 47-14-118)	7½% rate for bond over $10,000 (Sec. 47-14-106)[44]; no law on defense
TEXAS *Laws* 1957, *H. B. No.* 452 [45]	6% (Art. 1.03)[45]	10% (Art. 1.02)[45]	6% * (Art. 1.05)[45]	Forfeit double or all interest and principal if rate is double † (Art. 1.06)	Recover amount of penalty in action within 4 yrs. after payment (Art. 1.06)[45]	Rate to 1⅔% per mo. over $5000, no usury defense (MCL Art. 2.09)[45]
UTAH *Code Annotated* 1953	6% (Sec. 15-1-1)	10% [46] (Sec. 15-1-2)	8% * (Sec. 15-1-4)	All interest forfeited † (Sec. 15-1-7)	Recover treble and attorney fees in action within 2 yrs. from time of transaction (Sec. 15-1-7)	Rate to 14% (Sec. 15-1-2); usury defense allowed (Sec. 15-1-7)[46]
VERMONT *Statutes Annotated, Title* 9	6½% (Sec. 41)	6½% (Sec. 41)	No statutory provision	All interest, and 50% of principal † (Sec. 50)	Recover excess paid with interest from payment and costs in action (Sec. 50)	Rate to 12% (Sec. 46); no law on defense
VIRGINIA *Code* 1950	6% (Sec. 6.1-318)	8% [48] (Sec. 6.1-319)	No statutory provision	Double interest paid (Sec. 6.1-326) [49]	Recover double interest paid within 2 yrs. after the transaction occurred [48] (Sec. 6.1-326) [48]	No special rate; no usury defense (Sec. 6.1-327)[48]
WASHINGTON *Revised Code*	6% (Sec. 19.52.010)	12% [49] (Sec. 19.52.020)	6% unless contract provides otherwise, up to 10% (Sec. 4.56.110)	All interest (Sec. 19.52.030)	Double amount of payment applied on principal; recover costs and attorney's fees plus overpayment [49] (Sec. 19.52.030)[49]	No special rate; no usury defense unless natural person liable on obligation (Sec. 19.52.030)[49]
WEST VIRGINIA *Code* 1931; *W. Va. Code*	6% (Sec. 47-6-5)	6% [50] (Sec. 47-6-5)	No statutory provision	Excess over 6% (Sec. 47-6-8)	Recover payment over 6% (Sec. 47-6-9)	No special rate; no usury defense (Sec. 47-6-10)
WISCONSIN *Statutes* 1963	5% (Sec. 138.04)	12% [51] (Sec. 138.05)	5% (Sec. 271.01(4))	All interest plus principal under $2,000 † (Sec. 138.06)	Recover interest, principal and charges paid, not over $2,000 of principal within 2 yrs. of payment (Sec. 138.06)	Any rate; no usury defense (Sec. 138.05)[51]
WYOMING *Statutes* 1957	7% (Sec. 13-477)	10% (Sec. 13-476)	7% or rate contracted if less (Sec. 13-478)	All interest (Sec. 13-482)	Recover payment (Sec. 13-482)	No special rate; no law on defense

INSTALLMENT LOAN LAWS IN THE VARIOUS STATES[2]

INSTALMENT LOAN STATUTES

Instalment loan laws are generally exceptions to the interest-usury laws because they allow a lender making a consumer loan to receive a rate of interest greater than the legal or contract rate. This is done either directly, by prescribing a higher rate of interest, or indirectly, by allowing the lender to add the interest charges to or deduct it in advance from the legal or contract interest rates. Approximately four-fifths of the states have enacted special instalment loan laws. All of the laws have applicability to banks, though many of the states have also extended the laws to corporations and individuals who comply with the statutory provisions. Industrial loans and small loan or consumer finance loan laws are not included in the chart. Summaries of these laws may be found charted, respectively, at ¶ 44 and 41. See ¶ 31 for a detailed "Interest-Usury" chart, which sets out state rules concerning interest rates.

CHART CONTENTS . . .

The statutory enactments in each state range from one or two provisions authorizing the lender to receive a greater rate of interest on loans, to multiple provisions which also regulate the terms, special charges and conditions under which the loan may be made. The "Instalment Loan Laws" chart provides state-by-state information covering instalment loan laws under the following nine major headings:

Lenders

The heading "lenders" tells who is authorized to make an instalment loan. In the great majority of the states, licensing is not required for instalment loan lenders; however, any applicable registration or qualification provisions are set forth under this heading.

Maximum Loan

The limit on the amount which a lender may loan to one borrower appears under "maximum loan." It may be expressed in terms of a dollar amount, either inclusive or exclusive of interest and charges, or it may be expressed in terms of a percentage of the lender's loanable assets. One state, South Carolina, sets forth a minimum limitation rather than a maximum. Other states have no special provision regarding the maximum loan.

Interest Charges

Instalment loan rates of interest vary from state to state. The rates represent the maximum charge that may be made expressed in a percentage per annum or in dollars per $100 dollars per year. The heading "interest charges" also provides information as to whether interest may be taken in advance or added to the principal amount of the loan, computation of the charges, and minimum charges which may be made in lieu of interest.

Maximum Time

The "maximum time" feature of the chart tells whether lender is subject to a time period during which a loan may be outstanding or the time over which instalment payments may extend.

Payments and Refunds

The "payments and refunds" heading is divided into two sub-headings. *Instalment* provides information as to the interval and amount requirements of each instalment or periodic payment. *Prepayment* covers whether a borrower is permitted to repay the amount of the loan before maturity, and, if so, the amount of refund of unearned interest charges he is entitled to receive. Authorized

[2] 1966, Commerce Clearing House, Inc.

methods of computation are explained under this sub-heading. One method of computing the borrower's refund is known as "the rule of 78"; this method is explained at ¶ 38 of the GUIDE.

Special Charges

Any charges permitted to be made in addition to interest are continued in the "special charges" feature of the chart under the following sub-headings: *Delinquency* • *Collection* • *Insurance Premiums* • *Investigation* • *Other* Delinquency charges are permitted when a borrower fails to pay an instalment within the time provided for in the loan agreement. Collection charges encompass the legal costs incurred when the lender is forced to rely on means other than the borrower's promise to repay the loan in order to get his money back. Insurance premium charges occur when the borrower procures credit life, accident or health insurance or property insurance on security from or through the lender in connection with the loan. Investigation charges are the expenses which result from a credit investigation of the borrower or security appraisal. Other charges is a catch-all for miscellaneous authorized charges which usually include fees for filing and recording.

Disclosure

Provisions which require information to be given to the borrower are contained under the heading "disclosure."

Penalty for Excessive Interest

Focus of the feature "penalty for excessive interest" is on the effect of charging beyond the maximum rate of interest permitted by the instalment loan law. Where no special provision exists reference should be made to the "Interest—Usury" chart at ¶ 31.

Miscellaneous Provisions

This portion of the chart contains other provisions not under the above headings. It is sub-divided into four catagories: *Insurance* • *Acceleration* • *Security* • Other. Special provisions which have applicability in only several of the states appear under this heading.

STATUTORY REFERENCE

The chart provides statutory reference to the instalment loan laws adopted in the state. The statutes cited do not appear elsewhere in the GUIDE.

ALABAMA

References are to Code 1958, Recompiled, Title 9, Sec. 61, as amended

Lenders.—Any lender.
Maximum Loan.—No special provisions.
Interest Charges.—6% per annum for the entire loan period; may be aggregated with principal at the date of loan.
Maximum Time.—No special provisions.
Payments and Refunds.—*Instalments:* aggregate sum of principal and interest may be divided into monthly or other periodic payments. *Prepayment:* no special provisions.
Special Charges.—No special provisions.
Disclosure.—No special provisions.
Penalty For Excessive Interest.—No special provisions.
Miscellaneous Provisions.—No special provisions.

ALASKA

References are to Alaska Statutes, Sec. 45.45.080, as amended by Laws 1968, Ch. 74, approved April 6, 1968, effective July 5, 1968

Lenders.—Any money lenders.
Maximum Loan.—$10,000, excluding interest on secured and unsecured loans.
Interest Charges.—$6 per year on each $100 ("add on method"—not over 11.1% per year; "discount method"—not over 11.8% per year) of face amount for the entire loan period; may be collected in advance.
Maximum Time.—7 years.

Payments and Refunds.—*Instalments:* substantially equal. *Prepayment:* allowed; refund credit computed in accordance with "Rule of 78," but lender need not make refund where computed credit is less than $5, or where net charge on loan is less than minimum charge provided for by law.

Special Charges.—*Delinquency:* 5¢ per $1 of each instalment over 15 days in default; only one charge per instalment; maximum loan charge $15. *Collection:* actual charges incurred including attorney's fees and cost of legal process. *Insurance Premiums:* on required security. *Investigation:* no provision. *Other:* filing, recording and releasing fees.

Disclosure.—No special provisions.

Penalty For Excessive Interest.—No special provisions.

Miscellaneous Provisions.—No special provisions.

.01 1968 amendment.—The 1968 amendment made the following changes: Maximum Loan: increased from $3,500. Interest Charges: added parenthetical material. Maximum Time: increased from 3 years.—CCH.

Arizona

References, unless otherwise noted, are to Arizona Revised Statutes, Sec. 6–254, as amended by Laws 1966, Ch. 94, effective July 23, 1966

Lenders.—Any person, partnership, corporation, bank or trust company organized under state law, and any national bank doing business in the state.

Maximum Loan.—$5,000 of total principal.

Interest Charges.—$8 per $100 per year on $1,000 and $6 per year on amount in excess of $1,000, calculated from the date of indebtedness; interest or discount to be added to the principal amount; minimum charge of $10 permitted.

Maximum Time.—No special provisions.

Payments and Refunds.—*Instalments:* no provisions. *Prepayment:* allowed; refund credit computed in accordance with "Rule of 78"; minimum refund is $1; but, the borrower must pay reasonable collection costs in the event of delinquency.

Special Charges.—*Delinquency:* no provision. *Collection:* reasonable costs and fees incurred. *Insurance Premiums:* actual costs incurred; banks and savings and loan associations may charge for disbursements actually and necessarily made to make the loan qualify as a lawful investment, provided the borrower has the privilege of furnishing such services or insurances necessary to satisfy the loan requirement. *Investigation:* no charges can be made for application preparation, credit investigation, security appraisal or examination of public records for liens or encumbrances. *Other:* actual filing, recording, and acknowledging fees and title report costs. (Sec. 6–255, *as amended by Laws 1965, Ch. 86.*)

Disclosure.—No special provisions.

Penalty For Excessive Interest.—Loan is usurious (see "Interest—Usury Chart" at ¶ 31). (Sec. 6–255, *as amended by Laws 1965, Ch. 86.*)

Miscellaneous Provisions.—No special provisions.

Arkansas and California

There are no statutory provisions pertaining to instalment loans.

Colorado

References are to Revised Statutes 1963, as amended

Lenders.—Licensees under this act (Loans over $1500), which includes any person engaged in the business of making loans of money or of personal credit on security. (Sec. 73–2–1) National banks, trust companies, state chartered banks, savings and loan associations and title and guarantee companies are excluded. (Sec. 73–2–10) A $50 per annum license tax on each place of business is required. Licensees must be state residents, or in the case of corporations, joint stock companies or incorporated societies, have a resident agent for service of process. (Sec. 73–2–1) Application must be made to the state banking commissioner not less than 30 days prior to granting of the license. Licenses date from first day of month of issue to following October 31. (Sec. 73–2–2) A $2,000 bond must accompany each application. (Sec. 73–2–3) [The Banking Code of 1957, Sec. 14–6–5, authorizes a state bank to "lend money either upon the security of real property or

personal property, or otherwise; to charge, or to receive in advance, interest therefor; to contract for a charge for a secured or unsecured installment loan."]

Maximum Loan.—Loan must be over $1500. (Sec. 73–3–19)

Interest Charges.—2% per month on the actual amount of the loan may be charged upon any loan or upon any unpaid balance after a partial payment; may not be deducted in advance. (Sec. 73–2–5)

Maximum Time.—No special provisions.

Payments and Refunds.—No special provisions.

Special Charges.—The interest charge must include all charges except upon the foreclosure of security. (Sec. 73–2–5) No other charge provisions.

Disclosure.—The borrower must be furnished with a signed statement showing the amount of the loan, the effective and due dates, the amount and rate of interest, the dates when interest is payable, and a description of the security. When payments are made, the borrower must receive a "receipt for payment stating whether of principal or of interest, made on account of such loan." (Sec. 73–2–5)

Penalty For Excessive Interest.—Violation is a misdemeanor. (Sec. 73–2–9) A person paying a greater rate of interest can recover treble the amount of money so paid within one year after the date of payment. (Sec. 73–2–7)

Miscellaneous Provisions.—No special provisions.

.01 Colorado law.—Art. 2 of Ch. 73, CRS 63, Loans Over Fifteen Hundred Dollars, is based on the 1913 Loan Law, Laws 1913, Ch. 108, limiting the interest on loans to 12%. This Act was not reflected in compilations of the statutes subsequent to 1935 when the legislature passed a small loans act, Laws 1935, Ch. 157. The 1935 Act was replaced by the 1943 Small Loan Law, Laws 1943, Ch. 121. On May 12, 1952 the Colorado Supreme Court ruled in *Sullivan v. Siegal*, 245 P. 2d 860, that the 1913 Loan Law had not been repealed by Sec. 15 of the 1935 Act, which, by title, was held to pertain only to loans under $300, and that omission from the statutes compilations had no effect on repeal. The effect of this ruling was to make the 1913 Act applicable to loans over $300. In 1955 the legislature passed the Colorado Consumer Finance Act, Laws 1955, Ch. 174, (See "Small Loans" Chart at ¶ 41) which pertains only to loans of $1500 or less. This Act replaced the 1943 Small Loans Law and repealed any application of the 1913 Loan Law to loans of $1500 or less.—CCH.

Connecticut

References are to General Statutes, 1958, *Title* 36, *Sec.* 97, *as amended by Laws* 1961, *P.A. No.* 197

Lenders.—Savings banks and savings departments of state banks and trust companies.

Maximum Loan.—$2,000 on unsecured personal loans; aggregate unpaid balances outstanding can not exceed 2% of a bank's assets.

Interest Charges.—1% per month on unpaid principal balance.

Maximum Time.—24 months and 32 days from the date of the note.

Payments and Refunds.—*Instalments:* consecutive and weekly or monthly to begin no later than 2 months from date of note. *Prepayment:* no special provisions.

Special Charges.—No special provisions.

Disclosure.—Prospective borrowers must receive a repayment schedule settling forth the cost of loans.

Penalty For Excessive Interest.—No special provisions.

Miscellaneous Provisions.—No special provisions.

Delaware

Although state banks and trust companies organized under state law and national banks are exempt from the licensing requirements of the Small Loans Act, instalment loans made by these institutions are regulated by the provisions of the Act. (Code Annotated, Tile 5, Secs. 2108, 2114) See "Small Loans Act" Chart at ¶ 41 for the Delaware Small Loan Act provisions.

District of Columbia

There are no statutory provisions pertaining to instalment loans.

Florida

References, unless otherwise indicated, are to Statutes 1965, *Chapter* 659, *Sec.* 18, *as amended*

Lenders.—Any person doing a banking business except industrial banks and savings banks. Privileges hereunder do not extend to lenders who misrepresent rates or conditions of the loan, nor to lenders who do not make a rebate to the borrower upon prepayment of the balance due. (Secs. 258.02, 258.18)

Maximum Loan.—$5,000.

Interest Charges.—6% per annum on total amount from date of loan until maturity of final instalment; may be deducted in advance or added to principal; $5 minimum charge permitted.

Maximum Time.—No special provisions.

Payments and Refunds.—Instalments: substantially equal. *Prepayment:* allowed with a refund of unearned interest upon prepayment of balance due.

Special Charges.—*Delinquency:* 5% of any payment in default. *Collection:* no provision. *Insurance Premiums:* group life, but not exceeding the loan. *Investigation:* actual necessary credit investigation or security appraisal expenses not exceeding 2% of principal. *Other:* no other charges permitted.

Disclosure.—No special provisions.

Penalty For Excessive Interest.—Usury penalties apply to violations. (See "Interest—Usury" Chart at ¶ 31.)

Miscellaneous Provisions.—*Insurance:* no provision. *Acceleration:* no provision. *Security:* may be mortgage pledge, or other collateral, or deposit account. *Other:* no provision.

Georgia

References are to Code 1933, 57–116, *as amended by Laws* 1937, *Act No.* 508

Lenders.—Any lenders who comply with this act.

Maximum Loan.—No special provisions.

Interest Charges.—6% per annum for entire period; principal and interest aggregated and divided into instalments.

Maximum Time.—No special provisions.

Payments and Refunds.—*Instalments:* monthly, quarterly or yearly. *Prepayment:* no special provisions.

Special Charges.—No special provisions.

Disclosure.—No special provisions.

Penalty For Excessive Interest.—No special provisions.

Miscellaneous Provisions.—*Insurance:* no provisions. *Accleration:* no provision. *Security:* mortgage on real and/or personal property. *Other:* no provision.

Hawaii

Any bank may charge, collect in advance or recover interest and other charges at the same rates and in the same amounts permitted by law for loans made by industrial loan companies licensed under Chapter 194 if the bank complies with Sections 194–15 and 194–17 of the Industrial Loan Law. (Revised Laws of Hawaii, Sec. 191–4.) See ¶ 31 (Footnote 12) for full text of Sec. 191–4 and "Hawaii" Division ¶ 1043 and 1043–1 for full text of Secs. 194–15 and 194–17.

Idaho

References are to Idaho Code, as added by Laws 1957, *Ch.* 233, *as amended*

Lenders.—National banks, state banks, savings and loan associations and corporations under supervision of commissioner of finance, except credit unions. (Sec. 28–22–111, *as amended by Laws* 1967, *Ch.* 213, *effective May* 31, 1967.)

Maximum Loan.—$3,500 on monthly instalment loans not secured by real property. (Sec. 28–22–109, *as last amended by Laws* 1967, *Ch.* 60, *effective March* 1, 1967.) No provisions for other loans.

Interest Charges.—6% per annum may be added to or deducted in advance from the entire principal amount on monthly instalment loans not exceeding $3,500. Parties may also agree on an interest rate as provided in Sec. 28–22–105. Charges on monthly instalment loans where the principal amount is in excess of $3,500 and on all loans of $3,500 or less repayable other than in monthly instalments may be discounted at a rate not to exceed the maximum simple interest provided in Sec. 28–22–105. (See "Interest—Usury" Chart at ¶ 31 for Sec. 28–22–105.) (Sec. 28–22–109, *as last amended by Laws* 1967, *Ch.* 60, *effective March* 1, 1967.)

Maximum Time.—No special provisions.

Payments and Refunds.—*Instalments:* monthly instalment loans not exceeding $2,000 must be payable in two or more monthly instalments. *Prepayment:* no special provisions. (Sec. 28–22–109, *as last amended by Laws* 1967, *Ch.* 60.)

Special Charges—*Delinquency:* 4% of monthly instalment 16 days in default; $4 maximum per instalment. (Sec. 28–22–110, *as last amended by Laws* 1967, *Ch.* 60.) No other provisions for special charges.

Disclosure.—No special provisions.

Penalty for Excessive Interest.—No special provisions.

Miscellaneous Provisions.—No special provisions.

Illinois

References are to Act of May 24, 1879, as added by Laws 1959, p. 1973, as last amended by Laws 1967, S. B. No. 30, effective July 26, 1967; and Revised Statutes, 1967, Chapter 74, Sec. 4a as amended

Lenders.—any lender.

Maximum Loan.—$7,500 excluding interest; but, $15,000 if for education or home improvement.

Interest Charges.—7% per year on principal amount for entire period; may be added to principal or received at any other time or times after the making of the loan. $15 minimum charge instead of interest may be collected on loans of $300 or more which are repayable in 6 months or more, but only once from the same person during one year. Interest charges greater than 7% per year on non-business instalment loans over $800 and not exceeding $5,000 may be made by licensees, according to scheduled provisions under the Consumer Instalment Loan Act. (See "Small Loan Acts" Chart at ¶ 41)

Maximum Time.—61 months; if for education or home improvement, 85 months.

Payments and Refunds.—*Instalments:* 2 or more substantially equal periodic payments. *Prepayment*: allowed at any time; refund credit computed in accordance with "rule of 78" based on the scheduled balances; minimum refund is $1.

Special Charges.—*Delinquency:* 5% of each instalment in default 10 or more days, or $5, whichever is lesser; one charge only per instalment. *Collection:* reasonable costs of legal proceedings to collect loan or realize security after default; attorney fees are included. *Insurance Premiums*: credit life, accident and health, on one obligor only, if insurance complies with insurance code; property insurance on security other than household goods or personal effects may be required if reasonable in relation to loan. *Investigation*: no provision. *Other*: $5 service charge in addition to interest on loans of $800 or less, excluding interest, may be collected when loan is made, but only once from the same person during one year; filing and recording fees; attorney fees incurred by lender if loan agreement so provides.

Disclosure.—The borrower must receive a written statement disclosing in conspicuous type: total amount repayable; dollar amount of interest charged; dollar amount, stated separately, of each other charge made to the obligor; rate of interest in dollars per $100 per year computed on the original principal balance, excluding interest; principal amount of loan, excluding interest and other charges; payment schedule; any deductions from the loan; proceeds of loan after all deductions; the right of prepayment and refund credit; the number of months the loan will be outstanding; types of insurance procured if premiums are deducted; terms of future advances if any; and that the lender may not require insurance to be purchased from an agent, broker or insurer specified by the lender. The statement must be delivered within 15 days after the transaction or at the time thereof. If the statement is not delivered at the time of transaction, the borrower may rescind the contract within 10 days after receipt of the statement.

Penalty For Excessive Interest.—No special provisions.

Miscellaneous Provisions.—*Insurance*: purchase from an agent, broker or insurer specified by the lender can not be a condition precedent to granting the loan; all insurance must comply with provisions of insurance code, (see "Credit Insurance" Chart at ¶ 51). *Acceleration*: no provision. *Security*: loans may be secured or unsecured. *Other*: these provisions do not apply to loans made for the purchase of real estate and secured by a lien on or retention of title to such real estate.

INDIANA

References, unless otherwise indicated, are to Acts 1951 Ch. 159; Burns Annotated Statutes, Title 19, Ch. 13, as amended

Lenders.—Banks and trust companies organized under state law, national banking associations and individuals loaning money (Sec. 1; Burns 19-13-101); except individual licensees under state lending laws. (Sec. 5; Burns 19-13-105)

Maximum Loan.—No special provisions.

Interest Charges.—$8 per $100 per year on the total amount computed from date of making to maturity of last instalment; may be charged in advance; total amount may include interest and all expenses permitted by the law. (Sec. 1; Burns 19-13-101) A minimum charge of $3 is permitted for a loan on which the final instalment is due more than 60 days from the date the loan is disbursed. (*Department of Financial Institutions, General Regulation No. 2, Part 1, effective August 30, 1951*)

Maximum Time.—A loan with a duration of more than 60 days from the date of actual disbursement is subject to a provision authorizing a minimum loan charge of $3. (*Department of Financial Institutions, General Regulation No. 2, Part I, effective August* 30, 1951)

Payments and Refunds.—*Instalments:* payments comprising principal, interest and expenses totaled into a single amount may be made in substantially equal monthly, quarterly or other instalments, as the parties may agree. (Sec. 1; Burns 19–13–101) *Prepayment:* allowed at any time before maturity. (Sec. 2; Burns 19–13–102) Refunds must be computed on the basis of the nearest monthly anniversary date of the loan, on the nearest even dollar of the gross discount, interest paid in advance or loan charge by the Rule of 78th. The refund in connection with loans having maturities of over 60 days from the date of disbursement must not exceed the total amount of the original discount, interest paid or loan charge, less $3. (*Department of Financial Institutions, General Regulation No. 2, Part II, effective August* 30, 1951)

Special Charges.—*Delinquency:* If provided for in the loan instrument, a charge of 5¢ per $1 of each installment is permitted for each delinquency over 15 days without giving effect to acceleration of payments otherwise not due, but not over $5 for each delinquent installment. (*Department of Financial Institutions, General Regulation No. 2, Part III, effective August* 30, 1951) *Collection:* reasonable attorney fees and costs expended in enforcement of the contract. *Insurance Premiums:* credit life, accident and health. *Investigation:* no provision. *Other:* filing, recording, releasing and acknowledging fees; charges authorized by department of financial institutions; no other charges may be made. (Sec. 3; Burns 19–13–103)

Disclosure.—Evidence of debt must bear legend: "This loan has been made pursuant to the Instalment Loan Act." (Sec. 6; Burns 19–13–106)

Penalty For Excessive Interest.—Excessive charges, when knowingly made, result in forfeiture of the entire loan charge, and if already paid, the borrower may recover twice the amount of the charges within two years. (Sec. 4; Burns 19–13–104)

Miscellaneous Provisions.—*Insurance:* insurance on security may be required. (Sec. 1; Burns 19–13–101) *Acceleration:* no provision. *Security:* loan may be secured. (Sec. 1; Burns 19–13–101) *Other:* department of financial institutions may order any lender violating this act or the department's regulations to desist. (Sec. 3; Burns 19–13–103) No individual holding a license from the department of financial institutions under state laws relating to lending of money may engage in business as authorized by this act, nor may he do so in the same quarters used or occupied by a holder of such a license, nor in direct or indirect affiliation with the holder of such a license. (Sec. 5; Burns 19–13–105)

IOWA

References are to Code of 1966, as amended

Lenders.—All banks operating under this title and national banks. (Sec. 529.2)

Maximum Loan.—$10,000 exclusive of charges, but no bank can have aggregate outstanding instalment loans in excess of 25% of its total resources. (Sec. 529.3, *as amended by Laws 1967, S. B. No. 184, approved July 3, 1967, effective August 15, 1967*)

Interest Charges.—A maximum charge on any instalment loan, excluding charges, is determined by either of the following options: Option A—$6 per annum upon each $100 actually loaned; may be added to and included in the face amount of the note; total charge shall include and be in lieu of any interest or charge for credit investigation, drawing papers, or any other incidental service charges. Option B—1% per month computed on unpaid principal balances may be the total charge; may be received by crediting each received payment first as to the monthly charge and the remainder to principal until the loan is fully paid; or, the total charge may be precomputed in accordance with this method and included in the face of the note. (Sec. 529.6) $.07 per $100 per year is the maximum interest on first real estate mortgages. (Sec. 529.10)

Maximum Time.—5 years. (Sec. 529.4)

Payments and Refunds.—*Instalments:* regular intervals and may be deferred or omitted on a seasonal basis, (Sec. 529.1); if instalments are monthly, a first interval of not less than 15 days nor more than 45 days may be treated as a monthly interval if the total charge is included in the face of the note pursuant to either Option A or B. (Sec. 529.6) *Prepayment:* allowed at any time; refund credit, in accordance with a schedule prescribed and approved by the superintendent of banking, is to be so calculated that the borrower will not have paid a charge at a greater rate when computed on actual unpaid principal balances than he would have paid had the loan run to maturity, and in no event shall the borrower be required to pay in excess of 1% per month on the actual unpaid principal balances. (Sec. 529.8) The Rule of 78th is used to compute the refund amount. (State of Iowa, Department of Banking)

Special Charges.—*Delinquency:* 1% per month interest on instalments in default from date of delinquency. (Sec. 529.7) *Collection:* no provision. *Insurance Premiums:* reasonable, customarily required insurance. (Sec. 529.6) *Investigation:* no provision. *Other:* lawful fees paid to public officers; adjudged and statutory taxable costs; no other charges permitted. (Sec. 529.6)

Disclosure.—No special provisions.

Penalty For Excessive Interest.—No special provisions.

Miscellaneous Provisions.—*Insurance:* the borrower can provide his own insurance. (Sec. 529.6) *Acceleration:* no provisions. *Security:* no provision. *Other:* "G. I." loans are not prevented or restricted. (Sec. 529.9). This act does not prohibit any person, firm or corporation from making instalment loans. (Sec. 529.11)

KANSAS

Instalment loans in Kansas are regulated by Sec. 16–202(b), reported in full text at ¶ 31 (Footnote 17).

KENTUCKY

References are to Kentucky Revised Statutes, Chapter 287, Sec. 215, as amended by Laws 1962, Ch. 79

Lenders.—Banks and trust companies.

Maximum Loan.—No special provisions.

Interest Charges.—$6 per $100 per annum on first $2,000, and $5 per $100 per annum on excess; computed on principal amount for the entire period; may be collected in advance.

Maximum Time.—5 years and 32 days.

Payments and Refunds.—*Instalments:* substantially equal; no loan can be split or divided to obtain a greater charge. *Prepayment:* allowed with refund credit at a rate not less than 6% per annum of the amount paid in advance of the due date, if the maximum financing charge permitted has been taken; and, if a lesser charge has been taken, the refund must be at least a proportional rate; lender may retain a minimum charge of $10 to cover acquisition costs; minimum refund is $1.

Special Charges.—*Delinquency:* $.05 for each $1 of each instalment over 10 days in default; $5 maximum charge; one charge per instalment. *Collection:* court costs and attorney fees of 15% of the unpaid balance provided that collection is referred to an attorney. *Insurance Premiums:* no provision. *Investigation:* $1 for each $50 upon the first $800 of the principal amount of the loan. *Other:* filing, recording and releasing fees. No other charges may be made.

Disclosure.—Borrower must receive a statement disclosing: original principal amount excluding charges; total charge, amount and date of each instalment; final maturity date; right to prepay and receive a refund.

Penalty For Excessive Interest.—Willful violation results in loss of all interest and charges.

Miscellaneous Provisions.—*Insurance:* no provision. *Acceleration:* no provision. *Security:* loans may be secured or unsecured, but security can not be an assignment of wages or a first real estate mortgage. *Other:* no special provisions.

LOUISIANA

There are no statutory provisions pertaining to instalment loans.

MAINE

References are to Revised Statutes Annotated, Title 9, Ch. 49, Sec. 553, as amended by Laws 1965, Ch. 335

Lenders.—Any savings institution holding a certificate of incorporation from the state bank commissioner.

Maximum Loan.—$3,500 on unsecured loans to individuals, but the aggregate outstanding loans can not exceed 7% of the bank's deposits.

Interest Charges.—No special provisions. (See "Interest—Usury" Chart at ¶ 31).

Maximum Time.—5 years.

Payments and Refunds.—*Instalments:* monthly or quarterly. *Prepayment:* no special provisions.

Special Charges.—No special provisions.

Disclosure.—No special provisions.

Penalty For Excessive Interest.—No special provisions.

Miscellaneous Provisions.—No special provisions.

MARYLAND

References are to Annotated Code, 1957, Article 49, Sec. 5, as added by Laws 1968, Ch. 453, approved May 7, 1968, effective July 1, 1968

Lenders.—Licensed lenders making more than five loans and banking institutions, national banking associations, building and loan associations, credit unions or licensees under any Maryland lending law. Licensed lenders making more than five loans are licensed by the Banking Commissioner to do lending business. The licenses must be applied for and are issued in accordance with provisions of the Industrial Finance Companies law (Article 11), see ¶ 41.

Maximum Loan.—No provision.

Interest Charges.—12% per annum simple interest on the unpaid balance.

Payments and Refunds.—*Instalments:* monthly or other periodic instalment. *Prepayment:* excess over agreed upon precomputed rate must be refunded or credited on any balance owing.

Special Charges.—No provisions.

Disclosure.—If the interest is precomputed, the required written statement between lender and borrower must state the agreed upon and equivalent per cent per annum simple interest rate not over a .2% variance from the actual interest rate which the precomputed charges cannot exceed. For additional disclosure requirements, see Art. 49, Sec. 10, at ¶ 31 (Footnote 31).

Penalty for Excessive Interest.—Failure to comply with the law is a misdemeanor and subject to fine of not over $1,000 or imprisonment, or both.

Miscellaneous Provisions.—The licensing requirement does not apply with respect to loans made between relatives, an employer and his employee, or a landlord and his tenant. Loans are not secured by a mortgage or deed of trust on real property or by negotiable stocks, bonds or bank deposits.

MASSACHUSETTS

References are to General Laws, 1932, *Ch.* 168, *Sec.* 37, *as last amended by Laws* 1965, *Ch.* 810

Lenders.—Savings banks.

Maximum Loan.—$3,500, exclusive of interest, on secured or unsecured personal loans; but the aggregate outstanding balance by one bank can not exceed 10% of its deposits not in excess of $50,000,000 plus 5% of its deposits in excess of $50,000,000.

Interest Charges.—Regulations of board of investment determine interest charges. The provisions of Ch. 140, Sec. 114A relating to small loan interest charges are applicable to savings bank loans (See "Interest—Usury" Chart at ¶ 31 and "Small Loan Acts" Chart at ¶ 41).

Maximum Time.—36 months.

Payments and Refunds.—*Instalments:* can not exceed one month intervals except that one instalment may have a three month interval. *Prepayment:* no special provisions.

Special Charges.—Regulations of board of investment determines charges.

Disclosure.—No special provisions.

Penalty For Excessive Interest.—No special provisions.

Miscellaneous Provisions.—No special provisions.

MICHIGAN

There are no statutory provisions pertaining to instalment loans.

MINNESOTA

References are to Statutes 1965, *Chapter* 48, *as amended*

Lenders.—Any bank organized under state law and national banks. (Sec. 48.153)

Maximum Loan.—$5,000. (Sec. 48.153)

Interest Charges.—6% per annum on total amount from the date of making to date of maturity; may be taken in advance or added to principal; $5 minimum charge permitted. (Sec. 48.153)

Maximum Time.—5 years and 32 days. (Sec. 48.153)

Payments and Refunds.—*Instalments:* payments must be in instalments. *Prepayment:* allowed at any time; refund credit computed at the same rate as the original loan charge, from the date of prepayment to the maturity date; minimum refund is $5. (Sec. 48.154)

Special Charges.—*Delinquency:* 5% of the delinquent instalment with a maximum charge of $.50 on any one instalment, or interest on the delinquent instalment at 6% per annum, whichever is greater. *Collection:* no provision. *Insurance Premiums:* premiums on security insurance may be included as part of the loan as long as the maximum loan limit is not exceeded. *Investigation:* no provision. *Other:* filing, recording, acknowledging and abstract fees. No other charges may be made. (Sec. 48.155)

Disclosure.—The borrower must receive a statement of all loan charges made and a copy of his note. (Sec. 48.157)

Penalty For Excessive Interest.—No special provisions.

Miscellaneous Provisions.—*Insurance:* borrower may procure his own insurance. (Sec. 48.155) *Acceleration:* permitted if the loan agreement so provides. (Sec. 48.156) *Security:* loan may be secured by mortgage, pledge, other collateral or by a deposit account. (Sec. 48.153) *Other:* no special provisions.

MISSISSIPPI

References are to Code of 1942, *Sec.* 5212, *as amended by Laws* 1958, *Ch.* 167

Lenders.—Banks and trust companies organized under state law and national banks.

Maximum Loan.—$1,000.

Interest Charges.—Maximum contract rate per annum; may be added to principal, (see "Interest—Usury" Chart at ¶ 31); $.75 per month, in lieu of interest, may be charged on loans not exceding $100; minimum charge is $5.

Maximum Time.—no speical provisions.

Payments and Refunds.—*Instalmnts:* monthly. *Prepayment:* no special provisions.

Special Charges.—*Delinquency:* no provision. *Collection:* no provision. *Insurance Premiums:* no provision. *Investigation:* $1 per $100 for credit investigation or security appraisal. *Other:* no other charges permitted.

Disclosure.—No special provisions.

Penalty For Excessive Interest.—No special provisions.

Miscellaenous Provisions.—No special provisions.

MISSOURI

There are no statutory provisions pertaining to instalment loans.

MONTANA

There are no statutory provisions pertaining to instalment loans.

NEBRASKA

References are to Revised Statutes of Nebraska, 1943, *and Cumulative Supplement, Secs.* 8–815—8–829, *as added by Laws* 1965, *Chapter* 31 (*L.B. No.* 52), *as amended*

Lenders.—Banks and trust companies organized under state law and national banks doing business in the state (Sec. 8–815), which have registered with the Department of Banking a statement of intention to engage in the business of making personal loans. Registration must be in a prescribed form and contain an agreement to comply with this act. (Sec. 8–816) Lenders must segregate all records pertaining to these loans and file an annual report on or before March 15. (Sec. 8–825)

Maximum Loan.—No special provisions.

Interest Charges.—18% simple interest per year on the first $1,000 and 12% simple interest per year on the balance over $1,000 (Sec. 8–820) ; computed only as a percentage per month of the unpaid principal balances for the number of days actually elapsed; charges can not be paid, deducted or received in advance; precomputation permitted. Additional interest may not be charged on payments made 7 days or less after maturity. (Sec. 8–822)

Maximum Time.—85 months. (Sec. 8–823)

Payments and Refunds.—*Instalments:* two or more approximately equal or declining payments of principal or of principal and charges combined; approximately equal intervals; one or more installments may be accelerated or deferred when borrower's chief source of income makes such arrangement necessary, if the loan agreement so provides and approximately ½ of the entire amount be payable in the first half of the full period of the loan and approximately ½ in the last half of the full period. (Sec. 8–823) *Prepayment:* allowed in full or in part at any time (Sec. 8–823) ; refund credit of unearned charges shall be in such an amount that the amount of charges actually retained by the lender shall not exceed the equivalent of the monthly percentage agreed for due performance computed on the actual unpaid principal balances for the number of days actually elapsed; charges retained by lender may be increased by any delinquency charges on earned charges; payment 7 days or less prior to maturity is not prepayment; refund need not be made until final payment. (Sec. 8–822)

Special Charges.—*Delinquency:* monthly percentage agreed for due performance for the number of days delinquent computed on full amount of delinquency including earned charges. (Sec. 8–822) *Collection:* taxable costs to which the lender is adjudged to be entitled in judicial proceedings. (Sec. 8–821) *Insurance Premiums:* customary and reasonable premiums not exceeding standard rates on policies covering tangible personal property securing the loan. (Sec. 8–821) *Investigation:* No provision. *Other:* filing, recording and releasing fees. No other charges may be made. (Sec. 8–821)

Disclosure.—Borrower must receive a copy of the evidence of the loan stating the principal amount of the loan and the rate of charge plainly expressed as a percentage per month computed on unpaid principal balances. The lender must give the borrower a receipt showing the date and amount of each payment made. (Sec. 8–823)

Penalty For Excessive Interest.—No charges of any kind can be collected. If charges have been collected, the lender forfeits all interest collected and a sum

equal thereto. Violation is a misdemeanor and a fine may be imposed. (Sec. 8–829) Loss of loan registration can result. (Sec. 8–827)

Miscellaneous Provisions.—*Insurance:* if procured through the lender, the borrower must receive an executed copy of the policy or certificate of insurance within fifteen days. (Sec. 8–821) *Acceleration:* no provision. *Security:* lender can not take a real estate lien as security. (Sec. 8–823) *Other:* provisions of this act do not apply to loans on which the interest does not exceed 9% per annum (Sec. 8–815); no bank or trust company is eligible for a license or to make loans under the Instalment Loan Act (see "Small Loan Act" Chart at ¶ 41) (Sec. 8–817); lenders can not take any confession of judgment, power of attorney to confess judgment, power of attorney to appear for a borrower in a judicial proceeding, or agreement to pay the costs of collection or the attorney's fees. (Sec. 8–823)

Nevada

References are to Revised Statutes, Title 55, Sec. 602.045, as added by Laws 1965, Ch. 355, as amended

Lenders.—Banking corporations organized under this Act.

Maximum Loan.—$1,500.

Interest Charges.—8% per annum on loans of $500 or less, and 7% per annum on the excess over $500 to $1,500 may be charged in advance.

Maximum Time.—No special provisions.

Payments and Refunds.—No special provisions.

Special Charges.—No special provisions.

Disclosure.—No special provisions.

Miscellaneous Provisions.—No special provisions.

New Hampshire

References are to Revised Statutes Annotated, Sec. 393:15-a, as last amended by Laws 1967, Ch. 205, approved June 19, 1967, effective August 18, 1967

Lenders.—Loan associations and cooperative banks.

Maximum Loan.—$3,000 (secured or unsecured); $5,000 on mobile home loans; $5,000 on improved realty loans; aggregate loans can not exceed 5% of bank's assets, 10% if improved realty loan.

Interest Charges.—No special provisions.

Maximum Time.—3 years; 7 years on mobile home loans; 7 years on improved realty loans.

Payments and Refunds.—*Instalments:* regular monthly payments. *Prepayment:* no special provisions.

Special Charges.—No special provisions.

Disclosure.—No special provisions.

Miscellaneous Provisions.—*Security:* mobile home financing loans must be secured by the mobile home; bank must hold first mortgage on improved realty loans and loan must be evidenced by negotiable notes.

New Jersey

References are to Revised Statutes, 1937, and Cumulative Supplements, as amended

Note: Separate instalment loan provisions exist for bank instalment loans, bank small business loans, and sales finance company loans on motor vehicles. These provisions are individually charted below.—CCH.

BANK INSTALMENT LOANS, CHAPTER 9A; SECS. 53–55, *as last amended by Laws* 1965, *Ch.* 171, *and* SEC. 56, *as last amended by Laws* 1952, *Ch.* 248

Lenders.—Banks organized under state law and natonal banks. (Sec. 17:9A–53)

Maximum Loan.—$5,500 aggregate to one borrower. (See 17:9A–54)

Interest Charges.—Interest on "Class I" loans, meaning loans which are not property improvement loans, and on "Class II" loans, meaning loans which are property improvement loans, is to be taken in advance for the full amount of the loan based upon the following formulas: (a) where the loan is payable within 3 years and 1 month—formula 1 below; (b) where the loan is payable within 3 years and 1 month and the net proceeds equal a pretedermined sum—formula 2 below; (c) where the loan is over 3 years and 1 month—formula 3

below; (d) where the loan is over 3 years and 1 month and the net proceeds equal a predetermined sum—formula 4 below. The formulas represent: "I" is the maximum initerest taken in advance; "A" is the full amount of the loan or the full amount of the predetermined net proceeds; "P" is the number of payment-periods from the date of the making to the date of the maturity; and "N" is the number of payment-periods in the calendar year (to the nearest whole number). The formulas are:

$$(1)\ I = \frac{.11784A\ (P+1)}{2N + .11784\ (P+1)} \qquad (3)\ I = \frac{.097166A\ (P+1)}{2N + .097166\ (P+1)}$$

$$(2)\ I = \frac{.11784A\ (P+1)}{2N} \qquad (4)\ I = \frac{.097166A\ (P+1)}{2N}$$

Schedules based upon the formulas may be obtained from the Banking Commissioner. (Sec. 17:19A–53)

Maximum Time.—"Class I" loans—3 years and 1 month; "Class II" loans—5 years and 1 month. (Sec. 17:9A–54)

Payments and Refunds.—*Instalments:* equal duration measured in terms of weeks or months with intervals generally not shorter than 1 week or longer than 1 month, except that the initial payment period may be longer but not exceeding 60 days; equal amounts, except that the final instalment may be not more than $1 more or less than the others; one instalment per payment period, except that the last 2 instalments may be payable in the same payment period; omission of instalments may be provided for during any period not exceeding 93 days in any one 12 month period, and if omission occurs during the initial payment period, then that payment period can not exceed 93 days. (Sec. 17:9A–54) *Prepayment:* allowed and a refund credit on the interest taken in advance can not be less than an amount determined by the following formula: $C = AN \div D$ in which "C" is the credit given; "A" is the amount of interest taken in advance; and "D" is the total of all the cardinal numbers ascribed to each remaining payment-period included in the loan (the cardinal number is descriptive of the number of payment-periods scheduled); and "N" is the difference between "D" and the total of all the cardinal numbers ascribed to the payment-periods which have elapsed. Minimum refund is $1. The commissioner may prepare and distribute a schedule based on the formula. (Sec. 17:9A–56)

Special Charges.—*Delinquency:* charge may be made at the legal rate of interest upon each instalment in arrears, for the period from the date of default to date when the instalment is paid, or to the date of acceleration, if such occurs; however, in lieu of interest, the note may provide for payment of a late charge on any instalment in arrears more than 15 days, of 5% of such instalment or $5, whichever is less; but, total late charges can not exceed $15 in any one 12 month period, only one such late charge can be made on any one instalment, and no late charge can be made upon any instalment scheduled to fall due upon a date subsequent to the date upon which the maturity of the unpaid balance of the loan is accelerated, if such occurs. *Collection:* fee in addition to court costs, equal to $7.50 when unpaid balance is $50 or less, $10 when unpaid balance is over $50 and under $100, $12.50 when unpaid balance is over $100 but not over $500, and $25 when unpaid balance is over $500. *Insurance Premiums:* on property insurance covering security. *Investigation:* no provision. *Other:* acceleration fee upon default of any instalment at the legal rate of interest from the date of acceleration upon the difference between the unpaid principal balance and the amount of refund credit pursuant to the prepaymet schedule; filing and recording fees. (Sec. 17:9A–55) No other charges may be made. (Sec. 17:9A–54)

Disclosure.—No special provisions.

Penalty for Excessive Interest.—No special provisions.

Miscellaneous Provisions.—*Insurance:* Either or both credit life insurance and credit accident and health insurance can be provided at the borrower's request pursuant to credit insurance provisions (see "Credit Insurance" Chart at ¶ 51), and, if borrower consents in writing, lender may deduct and retain from the loan proceeds the isurer's premium charge, and such charge is not deemed a further interest or other charge. (Sec. 17:9A–70.2, *as added by Laws* 1963, *Ch.* 103; *amended by Laws* 1968, *Ch.* 204, *approved and effective July* 19, 1968.) *Acceleration:* permitted at lender's option. (Sec. 17:9A–55) *Security:* lender can not, prior to default, take any security for any loan other than an interest in tangible personal property; except that in the case of a "Class II" loan, a mortgage upon the real property improved may be taken. (Sec. 17:9A–54) *Other:* no special provisions.

BANK SMALL BUSINESS LOANS, CHAPTER 9A; SECS. 59.25–59.39, as added by Laws 1964, Ch. 162

Lenders.—Banks, except savings banks, organized under state law and national banks. (Sec. 17:9A–59.25)

Maximum Loans.—$25,000 to small business concerns. (Sec. 17:9A–59.29, *as amended by Laws* 1968, *Ch.* 36, *approved and effective May* 9, 1968.) A small business concern is one whose latest fiscal year gross income is not more than $1,000,000. (Sec. 17:9A–59.25)

Interest Charges.—A finance charge, computed on the sum borrowed for the full term of the loan is to be added to the amount of the sum borrowed according to the following schedule: $6 per $100 per year on loans not over $5,500; $5.50 per $100 per year on the excess over $5,500 to $7,500; and $5.00 per $100 per year on the excess over $7,500 to $25,000. (Sec. 17:9A–59–27, *as amended by Laws* 1968. *Ch.* 36, *approved and effective May* 9, 1968.) Outstanding balances must be added to new loans for the purpose of computing finance charges. (Sec. 17:9A–59.29, *as amended by Law* 1968, *Ch.* 36, *approved and effective May* 9, 1968.)

Maximum Time.—5 years and 1 month. (Sec. 17:9A–59.28)

Payments and Refunds.—*Instalments:* equal duration measured in terms of months with intervals not shorter than 1 month or longer than 3 months; equal amounts, except that the last instalment may not be more than $1 more or less than the others; omissions of instalments, including the first instalment, may be provided for during any period not exceeding 93 days in any one 12 month period. *Prepayment:* allowed on the unpaid balance and a refund credit on the finance charge can not be less than an amount determined by the following formula: $C = AN \div D$ in which "C" represents the amount of the credit given; "A" represents the amount of the finance charge; "D" is determined by ascribing to each month included in the period for which the finance charge was computed, reckoning from the day upon which the loan was made, the cardinal number descriptive of the number of months scheduled, by the terms of the loan, to elapse from the beginning of each such month to the date to which the finance charge was computed, and the total of all the cardinal numbers so ascribed constitutes the quantity "D"; and "N" represents the difference between quantity "D" and the total of all the cardinal numbers ascribed to the months which have elapsed, in whole or in part, from the making of the loan, to the day upon which such repayment is made, or to the day upon which the maturity of the unpaid balance of such loan is accelerated, as the case may be. Minimum credit is $5. (Sec. 17:9A–59.35)

Special Charges.—*Delinquency:* charge may be made of interest at the legal rate upon each instalment in arrears, for the period from the date of default to date when the instalment is paid, or to the date of acceleration, if such occurs; however, in lieu of interest, the note may provide for payment of a late charge on any instalment in arrears more than 10 days of 5% of such instalment or $5, whichever is less; but, total late charges can not exceed $25 in any one 12 month period, only one such late charge can be made on any one instalment, and no late charge can be made upon any instalment scheduled to fall due upon a date subsequent to the date upon which the maturity of the unpaid balance of the loan is accelerated, if such occurs. *Collection:* fee in addition to court costs, as follows: 15% on the first $750, 10% on the excess over $750; maximum fee is $500. (Sec. 17:9A–59.31) *Insurance Premiums:* on credit life and property insurance of security. (Sec. 17:9A–59.33) *Investigation:* no provision. *Other:* acceleration fee upon default of any instalment at the legal rate of interest from the date of acceleration upon the difference between the unpaid principal balance and the amount of refund credit pursuant to the prepayment schedule; (Sec. 17:9A–59.32) filing and recording fees and a fee for security appraisal of the actual cost incurred or 1% of the loan, whichever is less. (Sec. 17:9A–59.30) No other charges may be made. (Sec. 17:9A–59.33)

Disclosure.—Notes evidencing a small business loan must contain a statement that the loan was made pursuant to this act. (Sec. 17:9A–59.36)

Penalty For Excessive Interest.—Forfeiture of entire finance charge; borrower may recover back twice the amount of the finance charge made within 2 years from the date of violation. (Sec. 17:9A–59.37)

Miscellaneous Provisions.—*Insurance:* property insurance can be required on collateral; credit life can be provided at the borrower's request pursuant to credit insurance provisions [see "Credit Insurance Chart" at ¶ 51]. (Sec. 17:9A–59.30)

Acceleration: permitted at lender's option. (Sec. 17:9A–59.32) *Security:* loan may be secured by an interest in real or personal property or both. (Sec. 17:9A–59.32) *Other:* each loan must be evidenced by a note equal to the sum borrowed plus the amount of finance charge; (Sec. 17:9A–59.28) but, the note must not provide power of attorney to confess judgment or for acceleration because the holder deems itself insecure. (Sec. 17:9A–59.37)

SALES FINANCE COMPANY LOANS, CHAPTER 16 C; SEC. 40.1, as added by laws 1961, Ch. 95

Lenders.—Sales finance companies licensed under the Retail Instalment Sales Act (see "New Jersey" Division ¶ 531, Volume 2 of the GUIDE).

Maximum Loan.—$4,000 secured by a purchase money chattel mortgage.

Interest Charges.—5% per annum upon the full amount of the loan for the entire period; may be charged in advance.

Maximum Time.—36 months.

Payments and Refunds.—*Instalments:* substantially equal and monthly. *Prepayment:* no special provisions.

Special Charges.—No special provisions.

Disclosure.—No special provisions.

Penalty For Excessive Interest.—No special provisions.

Miscellaneous Provisions.—The loan must be used by a retail buyer to finance the purchase of a passenger motor vehicle not intended to be used for the transportation of passengers for hire or upon a contract basis.

NEW MEXICO

References are to Statutes Annotated 1953, *Chapter* 48, *Art.* 21, *Secs.* 1–10, *as added by Laws* 1959, *Ch.* 327; *as amended*

Lenders.—State banks and national banks located in and authorized to do business in the state, any licensee as defined in the New Mexico Small Loan Act of 1955 or any sales finance company as defined in the Motor Vehicle Sales Finance Act. (Sec. 48–21–2, *as amended by Laws* 1967, *Ch.* 106, *approved March* 16, 1967, *effective June* 16, 1967.)

Maximum Loan.—No special provisions.

Interest Charges.—$7 per $100 a year upon original amount of loan for entire period of loan; may be added to principal. Minimum charge of $10, or $2 a month for period of loan, whichever is greater. (Sec. 48–21–4, *as amended by Laws* 1967, *Ch.* 41, *approved March* 4, 1967, *effective June* 16, 1967.)

Maximum Time.—No special provisions.

Payments and Refunds.—*Installments:* substantially equal. (Sec. 48–21–3, *as amended by Laws* 1961, *Ch.* 215) *Prepayment:* allowed at any time; refund credit computed in accordance with "rule of 78"; minimum refund is $1. (Sec. 48–21–5)

Special Charges.—*Delinquency:* $.05 for each $1 of each instalment over 15 days in default; may be added to balance due; total such charge is $5; only one charge per instalment. *Collection:* actual costs may be added to balance due, including reasonable attorneys' fees paid to an attorney who is not an employee of the holder of the loan contract. *Insurance Premiums:* actual cost of insurance, provided that the borrower may procure his own insurance. *Investigation:* no provision. *Other:* if collateral on a secured loan subsequently becomes subject to a lien superior to the lender's lien, the lender may pay the levy and add such costs to the balance due; filing, recording and releasing fees. No other charges permitted. (Sec 48–21–6)

Disclosure.—No special provisions.

Penalty For Excessive Interest.—Knowingly charging excessive interest results in a forfeiture of all interest charges, and if the charges have been paid, the borrower can recover twice the amount of the rate of charge within 2 years from the time of the transaction. Willful violation is a misdemeanor punishable by fine and/or imprisonment. (Sec. 48–21–9)

Miscellaneous Provisions.—*Insurance:* can not be required to be procured through a particular broker, agent or insurer as a condition precedent to making the loan; borrower may procure his own insurance. (Sec. 48–21–6) *Acceleration:* no provision. *Security:* no provision. *Other:* lender cannot make a loan under this act to a borrower who is also indebted to him under the small loan law unless the loan made under the small loan law is paid and released at the time the loan is made (Sec. 48–21–8, *as last amended by Laws* 1967, *Ch.* 106, *approved March* 16, 1967, *effective June* 16, 1967.)

NEW YORK

References are to Consolidated Laws, Ch. 2, Banking Laws, Sec. 108, as added by Laws 1957, Ch. 597; amended by Laws 1958, Chs. 263 and 683; Laws 1959, Ch. 583; Laws 1960, Chs. 349 and 784; Laws 1962, Chs. 496 and 642; Laws 1965, Chs. 843 and 849; Laws 1968, Ch. 1072, approved June 22, 1968, effective July 1, 1969

Lenders.—Banks and trust companies holding certificates of authorization to operate personal loan departments from the Superintendent of Banking.

Maximum Loan.—$5,000 of unpaid principal balances, except to extent that loan is made for commercial or business use or for investment in or purchase of an unincorporated business or commercial enterprise.

Interest Charges.—Loans maturing not over 37 months: $6 per annum discount per $100 of face amount computed from date of loan to date of last instalment; may be taken in advance. Loans maturing in excess of 37 months: $5 per annum discount per $100 of face amount computed in the same manner, $10 minimum charge permitted.

Maximum Time.—25 months on loans not over $1,200 face amount; 37 months on loans over $1,200 face amount or on loans in any amount which is loaned to enable payment of imporvements made upon existing structures by the owner or lessee; 61 months on loans over $1,200 face amount which are made for a commercial or business use or for investment in or purchase of an unincorporated business or commerical enterprise or which are made to enable payment of improvements made upon existing structures by the owner or lessee.

Payments and Refunds.—*Instalments:* substantially equal payments at regular periodic intervals of not more than one month; if loan is for a period of one year or more, provisions may be made for omission of instalments during not more than 3 specified months in any 12 month period, but the legal maximum time can not be exceeded. *Prepayment:* allowed in full, or refinance with lender's consent; refund credit computed in accordance with "Rule of 78"; if interest previously deducted was less than $10, no refund required; or if interest previously deducted exceeded $10 and the earned interest is less, the lender may retain such an additional amount as will bring the earned interest to $10 and refund the remainder; unless loan is refinanced, minimum refund is $1; lender must refund any charged excess for credit life and accident and health insurance premiums, minimum refund is $1.

Special Charges.—*Delinquency:* either (a) $.05 per $1 fine on any instalment in default over 10 days; maximum fine is $5; only one fine per instalment; aggregate fines can not exceed 2% of loan or $25, whichever is less, excess of aggrgate fines over $1 must be returned to borrower within 60 days after loan is paid in full; or (b) 1% per month interest on each amount past due during delinquency period. *Collection:* actual expenditures, including reasonable attorney's fees for necessary court process. *Insurance Premiums:* an amount in accordance with premium rate schedules on file with the Superintendent of Insurance on group life, health and accident insurance and on property insurance on security, [see "Creidt Insurance Chart" at ¶ 51]. *Investigation:* any charge must be included in the maximum interest charges permitted. *Other:* fees payable to public officers to perfect any security interest taken to secure the loan, or the premium, not in excess of such filing fees, payable for any insurance in lieu of such filing; no other charges permitted.

Disclosure.—Loan applications and evidences of debt must state the rate of charge as (provided the loan is not subject to the Truth in Lending Act—New York ¶ 1291): a rate in dollars per annum discount per $100 face amount, or at a rate not exceeding $6 per annum discount per $100 face amount; provided that if the loan has a maturity exceeding 37 months, at a rate not exceeding $5 per annum discount per $100 face amount. [Note: The 1968 law, effective July 1, 1969, added the proviso.—CCH.]

Penalty For Excessive Interest.—If done knowingly, forfeiture of entire interest, and if paid, the borrower can recover twice the entire amount of interest. [NOTE: The 1968 law, effective July 1, 1969, deleted the requirement that the usurious interest paid be recovered within 2 years from the time the excess was taken.—CCH.]

Miscellaneous Provisions.—*Insurance:* group life, accident and health and property insurance may be required. *Acceleration:* no provision. *Security:* lender can not require borrower to place any sum on deposit, or to make deposits in lieu of regular periodic instalments as a condition precedent to granting the loan. *Other:* no special provisions.

North Carolina

References are to General Statutes, as amended

Disclosure.—No special provisions.

Bank Instalment Loans, Sec. 53–43(6)

Lenders.—Commercial banks, savings banks, savings and loan associations and trust companies organized under state law and national banks and federal savings and loan associations doing business in the state.

Maximum Loan.—No sepcial provisions.

Interest Charges.—6% per annum on the amount of the loan, from the date of making to maturity of final instalment; may be deducted in advance from proceeds. Savings and loan associations and federal savings and loan associations may deduct interest in advance for one month from each monthly instalment of principal and interest, and may not deduct interest in advance from proceeds where maturity of the loan is three years or more or where the amount of the loan exceeds $1,500.

Maximum Time.—No special provisions.

Payments and Refunds.—No special provisions.

Special Charges.—*Delinquency:* no provision. *Collection:* no provision. *Insurance Premiums:* no provision. *Investigation:* commercial banks may charge $2.50 on loans of $50 or less, $1 for each $50 on loans over $50 and not over $250, and $1 for each $250 on loans over $250. Additional $5 charge allowed on loans secured by real estate mortgage. *Other:* no special provisions.

Disclosure.—No special provisions.

Penalty For Excessive Interest.—No special provisions.

Miscellaneous Provisions.—No special provisions.

Special Crop Loan Provisions, Sec. 44–57

Lenders.—Any person, firm or corporation, including any bank or credit union.

Maximum Loan.—No special provisions.

Interest Charges.—10% commission on amount actually advanced, in lieu of interest; must be added to the amount advanced.

Maximum Time.—No special provisions.

Payments and Refunds.—*Instalments:* must be agreed upon at time of contract.

Prepayment: no special provisions.

Special Charges.—No special provisions.

Disclosure.—No special provisions.

Penalty For Excessive Interest.—No special provisions.

Miscellaneous Provisions.—Loan must be for the purpose of crop cultivation, and sole security must be a lien or mortgage on the crops to be cultivated and the personal property of the borrower.

North Dakota

References are to Century Code, Chapter 13–04, *as amended by Laws* 1963, *Ch.* 125

Lenders.—Banks organized under state law and national banks. (Sec. 13–04–01)

Maximum Loan.—$3,600. (Sec. 13–04–01)

Interest Charges.—$6 per $100 per annum upon total amount of loan from the date thereof to maturity date of final instalment; may be deducted in advance or included in the principal amount. (Sec. 13–04–01)

Maximum Time.—3 years and 32 days. (Sec. 13–04–01)

Payments and Refunds.—*Instalments:* payments may be in instalments. *Prepayment:* allowed in full at any time; refund credit computed in accordance with "rule of 78." (Sec. 13–04–03)

Special Charges.—*Delinquency:* 5% of each instalment in default over 10 days or $5, whichever is less; only one charge per instalment. (Sec. 13–04–02) No other special charge provisions.

Disclosure.—No special provisions.

Penalty For Excessive Interest.—No special provisions.

Miscellaneous Provisions.—*Insurance:* no provision. *Acceleration:* no provision. *Security:* loans can not be secured by realty. *Other:* no special provisions.

OHIO

References are to Laws 1967, *S. B. No.* 97, *approved September* 8, 1967, *effective January* 1, 1968

Lenders.—State banks, including commercial banks, savings banks, trust companies and special plan banks, but not societies for saving, building and loan associations, credit unions, federal savings and loan associations or title guarantee and trust companies. (Sec. 1101.01)

Maximum Loan.—10% of paid-in capital, surplus and capital securities. (Sec. 1107.23)

Interest Charges.—Interest rate allowed by law. (Sec. 1107.26) (See ¶ 31, footnote 36)

Maximum Time.—No special provisions.

Payments and Refunds.—*Instalments:* payments in instalments. *Prepayment:* no special provisions.

Special Charges.—No special provisions.

Disclosure.—No special provisions.

Penalty For Excessive Interest.—No special provisions.

Miscellaneous Provisions.—Loan may be secured or unsecured and the borrower is not required to make periodical deposits in the bank. (Sec. 1107.26)

OKLAHOMA

There are no statutory provisions pertaining to instalment loans.

OREGON

References are to Oregon Revised Statutes, Ch. 708, *Sec.* 480, *as amended by Laws* 1965, *Ch.* 338

Lenders.—State banks and national banks doing business in the state.

Maximum Loan.—10% of lender's aggregate capital and surplus. (Sec. 708.305)

Interest Charges.—10% per annum may be charged; or, in lieu of interest, $8 per annum per $100 on original principal not exceeding $500, and $6 per annum per $100 on the original prinicpal in excess of $500 to $1,000, may be charged. Minimum charge is $7.50.

Maximum Time.—No special provisions.

Payments and Refunds.—*Instalments:* approximately equal. *Prepayment:* allowed and if the loan charges are in excess of 10% per annum, the unearned portion must be refunded; minimum refund is $7.50.

Special Charges.—*Delinquency:* 10% per annum on instalments in default. No other special charge provisions.

Disclosure.—No special provisions.

Penalty For Excessive Interest.—No special provisions.

Miscellaneous Provisions.—No special provisions.

PENNSYLVANIA

References are to Banking Code of 1965, Act of November 30, 1965, P. L. No. 356, Sec. 309, effective January 2, 1966, as amended

Lenders. Banks and bank and trust companies.

Maximum Loan.—$5,000.

Interest Charges.—$6 per $100 per annum; may be collected in advance. If loan is one of a series under a revolving credit plan, the lender may charge not over 1% per month on the actual outstanding balance.

Maximum Time.—59 months calculated from the payment date of the first instalment which must be scheduled no later than 45 days after the time of making the loan; however, revolving credit plan loans must become due within 5 years from the date the last loan was made.

Payments and Refunds.—*Instalments:* substantially equal and at substantially equal intervals of not more than 3 months each; may be omitted because of intermittent income for not more than 3 months in each calendar year; first instalment due no later than 45 days after loan is made. *Prepayment:* allowed and refund credit computed in accordance with "rule of 78," unless it is less than $1 or in any amount until the lender has received a minimum charge of $5.

Special Charges.—*Delinquency:* 5% of each instalment in arrears over 15 days, other than by acceleration or delinquency on a prior instalment, or $2.50, whichever is less; one charge per instalment. *Collection:* reasonable attorneys' fees and collection costs. *Insurance Premiums:* on insurance obtained with the loan. *Investigation:* no provision. *Other:* extension charge not over 1% of unpaid balance for each month of extension up to 6 months; filing fees; check or order charges under a revolving credit plan not over the current check charge for special checking accounts.

Disclosure.—Borrower must be informed of the monthly rate of charge for a loan under a revolving credit plan, and of the dollar amount of the total charge for any other instalment loan.

Penalty For Excessive Interest.—No special provisions.

Misecellaneous Provisions.—*Insurance:* can be required on property which secures the loan. *Acceleration:* no provision. *Security:* no provision. *Other:* these provisions do not apply to loans insured pursuant to national housing legislation.

PUERTO RICO

There are no statutory provisions pertaining to instalment loans.

RHODE ISLAND

References are to General Laws 1956; Sec. 19–9–5(b), as amended by Laws 1962, Ch. 232; Laws 1966, H. B. No. 1606

Lenders.—Savings banks.

Maximum Loan.—$5,000, exclusive of interest or discount on secured or unsecured loans; but, aggregate outstanding loans by any one savings bank must not exceed 5% of its deposits.

Interest Charges.—As established by the department of business regulation.

Maximum Time.—60 months from the date of the note.

Payments and Refunds.—*Instalments:* intervals are as determined by the board of investment subject to the regulations of the department of business regulation. *Prepayment:* allowed in full or in part on any instalment date without cost for interest for the period thus anticipated on the amount paid in advance.

Special Charges.—As established by the department of business regulation.

Disclosure.—No special provisions.

Penalty For Excessive Interest.—No special provisions.

Miscellaneous Provisions.—No special provisions.

SOUTH CAROLINA

References are to Code of 1962, Title 8, as amended

Lenders.—Banks, banking institutions and other lending agencies doing business in the state. (Sec. 8–233, *as last amended by Acts* 1966, *H. B. No. 2272*). A certificate of registration from the State Board of Bank Control, effective for one year, must be obtained by al lenders making more than ten loans per year, except small loan licensees and lenders excepted by Sec. 2(b) of the 1966 small loan law. Sec. 2(b) exceptions include: banks, savings and loan associations, trust companies, insurance companies, credit unions and licensed pawn brokers. (*Acts* 1966, *Act No.* 988, *Sec.* 23, *effective August* 7, *1966*)

Maximum Loan.—Not less than $10. (Sec. 8–233, *as last amended by Acts* 1966, *H. B. No. 2722*)

Interest Charges.—7% per annum interest or add-on charges may be made just as if the entire amount of the debt matured on the last installment date; 1½% per month on the unpaid balance may be charged for loans or advances made under revolving credit plans. (Sec. 8–233, *as last amended by Acts* 1968, *H. B. No. 2722, approved and effective May* 30, 1968.) A fee not exceeding $7.50, or $1.50 per instalment, whichever is greater, may be charged in lieu of interest on loans involving $50 or more and which are payable in not less than three monthly instalments. If such loans are renewed, the renewal fee can not exceed $1.50 per instalment. (*Sec.* 8–4, *as amended by Acts* 1962, *Act No. 762*).

Maximum Time.—Not less than 3 months. (Sec. 8–233, *as last amended by Acts 1968, H. B. No. 2722.*) *State Bank Provision:* Secured or unsecured instalment loans may be made for such length of time and on such other terms and condi-

tions as may be prescribed for similar loans for national Banks. (Sec. 8–223, *as last amended by Acts 1968, S. B. No. 724, approved and effective March 28, 1968*)

Payments and Refunds.—*Instalments:* Payments must be made in instalments. (Sec. 8–233, *as amended by Acts* 1968, *H. B. No. 2722*) *Prepayment:* Lenders making more than ten loans per year, except lenders excepted by Sec. 2(b) of the 1966 small loan law, must disclose title right of the borrower to prepay the loan in full prior to maturity, and the fact that such prepayment in full will reduce the charge for the loan. (*Acts* 1966, *Act No. 988, Secs.* 15(a), 23, *approved May 9,* 1966 *and effective August 7, 1966.*) *State Bank Provisions—Instalments:* Personal instalment loans for automobiles and consumer goods must be payable in equal monthly instalments or as nearly equal as the principal allows; and for instalment loans secured by chattel mortgages on farm implements or equipment, such payments may be monthly, quarterly, semiannually or annually. (Sec. 8–223, *as last amended by Acts* 1968, *S. B. No. 724, approved and effective March 28, 1968*)

Special Charges.—No special provisions.

Disclosure.—All lenders making more than ten loans per year, except those excepted under Sec. 2(b) of the 1966 small loan law, must give the borrower a written statement disclosing: the amount of the loan; date and maturity; the principal amount excluding charges; the original dollar charge; a description of the payment schedule; the right of prepayment and refund; the nature of security, if any; and every deduction from the loan or payment for insurance. *Acts* 1966, *Act No.* 988, *Secs.* 15, 23, *effective August* 7, 1966)

Penalty For Excessive Interest.—No special provisions.

Miscellaneous Provisions.—*Insurance:* no accident, health or property insurance may be required on loans of $100 or less. (Sec. 8–4, *as amended by Acts* 1962. *Act No. 762*) No other special provisions. *State Bank Provisions:* Limitations imposed by Sec. 8–223, as amended, do not apply to loans made in participation with agencies of the United States authorized to make direct loans or with Federal reserve banks; and, they do not apply to loans made to persons for the purpose of obtaining higher education, however, the first payment on any such loan must be made not later than four years from the date of completion of the course of higher education for which the loan was made. (Sec. 8–224).

South Dakota

References are to South Dakota Code 1939, 1960 Supplement, as amended

Lenders.—State banks and national banks, and any association, corporation, partnership or individual licensed under the Instalment Repayment Small Loan and Consumer Finance Law. (Sec. 6.04A02, *as last amended by Laws* 1967, *S. B. No. 82.*)

Maximum Time.—7 years and 30 days from the date of the loan. (Sec. *by Laws* 1967, *S. B. No.* 82, *effective July* 1, 1967)

Interest Charges.—8% per annum upon the total amount of the loan up to $1,000 and 6% upon the excess, computed from the date of the loan until the stated maturity date of the final instalment. A minimum fee of $2 may be charged. Renewal loans or new loans made to the same borrower within 14 days after repayment of a previous loan are exempt from the minimum fee. (Sec. 6.04A02, *as last amended by Laws* 1967, *S. B. No.* 82.)

Maximum Time.—7 years and 30 days from the date of the loan. (Sec. 6.04A02, *as last amended by Laws* 1967, *S. B. No.* 82, *approved February* 20, 1967, *effective July* 1, 1967.)

Payments and Refunds.—*Instalments:* substantially equal and at equal periodic intervals; payments schedule may reduce or omit payments to facilitate payment in accordance with the debtor's principal source of income, if requested in writing by the borrower at the inception of the loan. (Sec. 6.04A08) *Prepayment:* allowed in full at any time; the refund of charges shall be at least as great a proportion of the total charges, as the sum of the remaining monthly balances of the principal and interest combined schedule to follow the date of prepayment bears to the sum of all the monthly balances of principal and interest combined originally scheduled by the loan agreement; provided, that in any event the lender may retain at least two dollars of the original charge. (Sec. 6.04A03, *as amended by Laws* 1964, *Ch.* 13.)

Special Charges.—*Delinquency:* 5% of amount due on any delinquent instalment or interest on the instalment at 6% per annum, whichever is greater. *Collection:* no provision. *Insurance Premiums:* may be charged unless borrower procures his own insurance. *Investigation:* credit abstract report costs. *Other:* filing, recording and acknowledging fees. (Sec. 6.04A04)

Disclosure.—Borrower must receive a copy of all instruments evidencing the loan and a statement of all charges made by the lender on the loan. Upon payment in full, the lender must return every obligation and security signed by any obligator with the word "Paid" or "Cancelled" plainly marked thereon, and restore all security to the lender. (Sec. 6.04A06)

Penalty For Excessive Interest.—If any amount in excess of the permitted charges is charged, contracted for or received, except as the result of an accidental and bona fide error of computation, the contract of loan is void and the owner of the note has no right to collect or receive any principal, interest or charges whatsoever; however, this does not apply to any retail instalment transaction under SDC 1960 Supp. 6.04C. (Sec. 6.04A07, *as amended by Laws* 1964, *Ch.* 14.)

Miscellaneous Provisions.—*Insurance:* borrower may procure his own insurance. (Sec. 6.04A04) *Acceleration:* permitted immediately upon default if loan agreement so provides. (Sec. 6.04A05) *Security:* no provision. *Other:* The Instalment Loan Law does not apply to any loan of money, bearing not over 8% simple interest, repayable in instalments as which any charge for such loans or interest thereon is not included in the principal amount of the note or in instruments evidencing such loans. (Sec. 6.04A11)

TENNESSEE

NOTE: Separate instalment loan provisions exist for bank and trust company instalment loans and federal savings and loan association home improvement instalment loans.

BANK AND TRUST COMPANY INSTALMENT LOANS, CHAPTER 411, *enacted by Laws* 1968, *approved and effective March* 6, 1968 [*adding a new section to Ch.* 4 *of Title* 45, *Tennessee Code Annotated*]

Lenders.—Banks and trust companies. (Sec. 1(a))

Maximum Loan.—No special provisions.

Interest Charges.—6% per annum on principal amount for entire term; may be deducted in advance or added to principal. (Sec. 1(b))

Maximum Time.—No special provisions.

Payments and Refunds.—*Instalments:* equal or substantially equal. (Sec. 1(a)) *Prepayment:* allowed with refund of unearned interest in an amount representing at least as great a proportion of the original charge as the sum of the periodical time balances after the date of prepayment bears to the sum of all the periodical time balances under the schedule of payments in the original instalment loan; no required refund resulting in less than the minimum charge of $10 per loan or $1 per monthly instalment, whichever is greater; no refund of less than $1 required. (Sec. 1(b), (c)(5))

Special Charges.—*Delinquency:* 5% of any one instalment more than 15 days in arrears. (Sec. 1(c)(1)) *Collection:* expenses incurred in closing, securing and collecting loan, including legal costs and reasonable attorney's fees; lender may make a minimum charge of $10 per loan or $1 per monthly instalment, whichever is greater. (Sec. 1(c)(5)) *Insurance Premiums:* on insurance required or obtained as security for loan (Sec. 1(c)(2)); lender may deduct and remit premium to insurer on loan over $300, and any gain therefrom may not be considered additional charge or interest; borrower may procure own insurance. (Sec. 2(a)–(c)) *Investigation:* expenses of investigating title to real property securing loan, including cost of title insurance. (Sec. 1(c)(4)) *Other:* fees and taxes paid to public officials for filing, recording or releasing any instrument or lien. (Sec. 1(c)(3))

Disclosure.—Within 30 days of loan, lender must furnish borrower with a written statement of the transaction or a copy of the note containing the following information: (a) original principal amount; (b) insurance premium for each type of coverage provided; (c) amount of fees and taxes to public officials; (d)

total amount of interest and charges and the approximate rate expressed in dollars per one hundred dollars per year; (e) other charges; (f) unpaid balance; (g) number, amount and due dates of instalment payments schedules. (Sec. 3) Evidence of insurance must be delivered to the borrower within 30 days of the loan and must show coverages and costs (Sec. 2(d))

Penalty for Excessive Interest.—No special provisions.

Miscellaneous Provisions.—*Insurance:* On loans over $300 property insurance on collateral can be required up to the value of the property or the approximate amount of the loan, whichever is lesser. (Sec. 2(a)) On such loans, lender may request credit life insurance on the life of the borrower, or one of them; the initial amount of such insurance may not exceed the total amount repayable under the total amount of the indebtedness; not more than one policy per loan may be written unless requested by the borrower, co-maker or endorser. (Sec. 2(b)) *Acceleration:* no provision. *Security:* loan may be secured. (Sec. 1(a)) *Other:* none.

FEDERAL SAVINGS AND LOAN ASSOCIATION HOME IMPROVEMENT INSTALMENT LOANS, CHAPTER 590, *enacted by Laws* 1968, *approved and effective April* 4, 1968.

Lenders.—Federal Savings and Loan Associations. (Sec. 1)

Maximum Loan.—No special provisions.

Interest Charges.—6% per annum on principal amount for entire term; may be deducted in advance or added to principal. (Sec. 1(a))

Maximum Time.—No special provisions.

Payments and Refunds.—*Instalments:* equal or substantially equal. (Sec. 1) *Prepayment:* allowed with refund of unearned interest in an amount representing at least as great a proportion of the original charge as the sum of the periodical time balances after the date of prepayment bears to the sum of all the periodical time balances under the schedule of payments in the original instalment loan; no required refund resulting in less than the minimum charge of $10 per loan or $1 per monthly instalment, whichever is greater; no refund of less than $1 required. (Sec. 1(a), (c)[b](5))

Special Charges.—*Delinquency:* 5% of any one instalment more than 15 days in arrears. (Sec. 1(b)(1)) *Collection:* up to 4% of gross amount of loan plus legal costs and reasonable attorneys' fees; lender may make a minimum charge of $10 per loan or $1 per monthly instalment, whichever is greater. (Sec. 1(b)(5)) *Insurance Premiums:* on insurance required or obtained as security for loan (Sec. 1(b)(2)); lender may deduct and remit premium to insurer on loan over $300, and any gain therefrom may not be considered additional charge or interest; borrower may procure own insurance. (Sec. 2(a)–(c)) *Investigation:* expenses of investigating title to real property securing loan, including cost of title insurance and costs of closing loan. (Sec. 1(b)(4)) *Other:* fees and taxes paid to public officials for filing, recording or releasing any instrument or lien (Sec. 1(b)(3))

Disclosure.—At time of closing loan, lender must furnish borrower with a written statement of the transaction or a copy of the note containing the following information: (a) original principal amount; (b) insurance premium for each type of coverage provided; (c) amount of fees and taxes to public officials; (d) total amount of interest and charges and the approximate rate expressed in dollars per one hundred dollars per year; (e) other charges; (f) unpaid balance; (g) number, amount and due dates of instalment payments scheduled. (Sec. 3) Evidence of insurance must be delivered to the borrower within 30 days of the loan and must show coverages and costs. (Sec. 2(d))

Penalty for Excessive Interest.—No special provisions.

Miscellaneous Provisions.—*Insurance:* On loans over $300 property insurance on collateral can be required up to the value of the property or the approximate amount of the loan, whichever is lesser. (Sec. 2(a)) On such loans, lender may request credit insurance on the life of the borrower, or one of them; the initial amount of such insurance may not exceed the total amount repayable under the total amount of the indebtedness; not more than one policy per loan may be written unless requested by the borrower, comaker or endorser. (Sec. 2(b)) *Acceleration:* no provisions. *Security:* loan may be secured. (Sec. 1(b)(2), 1(b)(4), 2(a)–(c)) *Other:* none.

TEXAS

References are to Revised Civil Statutes of 1925; *Vernon's Annotated Revised Civil Statutes, as amended*

INSTALMENT LOANS, ART. 4.01–4.03, *as added by Laws* 1967, *H. B. No.* 452, *approved May* 23, 1967, *effective "at midnight on September* 30, 1967"

Lenders.—Any bank, savings and loan association or credit union doing business under the laws of Texas or of the United States and any person licensed under the Regulated Loans (small loans) chapter. (Art. 4.01(1),)

Maximum Loan.—No special provision.

Interest Charges.—Add-on interest of $8 per $100 per annum for the full term of the loan contract. (Art. 4.01(1))

Maximum Time.—No special provisions.

Payments and Refunds.—*Instalments:* May be substantially equal regular instalments of month to month or irregular or unequal instalments. (Art. 4.01 (1)(3)) *Prepayment:* allowed in full at any time, but if before the first instalment due date, the lender may retain for each elapsed day from making of loan, 1/13 of portion of interest which could be retained if first instalment due date was one month and prepayment in full had occurred thereon; refund credit amount must equal as great a proportion of the total interest as the sum of the periodic balances scheduled to follow the instalment date after prepayment in full bears to the sum of all periodic time balances; no refund for partial prepayments and no refund of less than $1. (Art. 4.01(6)) If prepayment is less than in full, must be in an amount equal to one or more full instalments. (Art. 4.03(3))

Special Charges.—*Delinquency:* if contracted for, not over 5¢ for each $1 unpaid for 10 days or more following date payment is due, including Sundays and holidays, only one charge per instalment. (Art. 4.01(5)) *Collection:* collection charges are considered to be included in the authorized charges. (Art. 4.01(7)) *Insurance Premiums:* credit life, and health and accident may be required on any loan, and on loans of $300 or more additional property insurance may be required on property offered as security for the loan. (Art. 4.02(1)(2) *Investigation:* investigating fees considered part of authorized charges. (Art. 4.01(7)) *Other:* the prohibition against any fees other than authorized interest does not apply to amounts paid as court costs, attorney fees assessed by a court, filing fees and costs for repossessing, storing, preparing for sale or selling any security, and fees for noting a lien on a certificate of title, or insurance premiums. (Art. 4.01(7))

Disclosure.—Loan made under the law requires that the lender deliver to the borrower a copy of the note and all other documents signed by the borrower and a statement in writing in English showing: names and addresses of parties; date and amount of advance, maturity date and schedule of payments; nature of security, if any; filing fees; charges for default and deferment; types of insurance, if any; premiums; amount in dollars and cents of interest charges or the percentage the interest charges bears to the total amount of the loan expressed as the nominal rate on the average outstanding unpaid balance of the principal amount of the loan; total of all charges included in the loan, in dollars and cents. (Art. 4.03(1)) When insurance is required with the loan, the lender must furnish a statement which clearly and conspicuously states that insurance is required and that the borrower has the option of furnishing it. (Art. 4.02(3)) Special provisions govern disclosure in a check loan type of transaction, see summaries at ¶ 73.

Penalty for Excessive Interest.—Forfeit to obligor twice the amount of interest and default and deferment charges contracted for and reasonable attorneys' fees fixed by the court. (Art. 8.01). Charge of double the authorized interest rate is subject to forfeiture of all principal as well as all interest and is also a misdemeanor. (Art. 8.02)

Miscellaneous Provisions.—*Insurance:* purchase from an agent or broker designated by the lender is prohibited and a lender must not at any time decline existing coverages providing substantially equal benefits that comply with the law. (Art. 4.02(8)) If insurance is procured by the lender, he must within 30 days after execution of the loan contract deliver or mail the insurance policy or con-

tract to the borrower. (Art. 4.02(5)) Premiums must be refunded upon cancellation or termination of insurance unless used for similar insurance. (Art. 4.02(6)) *Acceleration:* No provision. *Security:* loans may be secured. (Art. 4.02(2)) *Other:* lenders are prohibited from taking a wage assignment as security for any loan; a lien upon real estate as security for any loan, except such lien created by law upon the recording of an abstract of judgment; confession of judgment; a promise to pay that does not disclose the amount of the cash advance, time it is made, payment schedule, maturity date, authorized charges, types of insurance, and premiums; an instrument with blanks; or a waiver. (Art. 4.04)

BANKING CODE OF 1943

Lenders.—State banks. (Art. 342–506)

Maximum Loan.—Aggregate liability of any borrower cannot exceed 25% of bank's capital and surplus; limitation does not apply to specified classes of liability. (Sec. 342–507, *as amended by Laws* 1959, *Ch.* 412)

Interest Charges.—A rate not exceeding that perfited by law; may be collected in advance, (see "Interest—Usury" Chart at ¶ 31). (Art. 342–506)

Maximum Time.—Loans shall mature when the withdrawal value of the investment certificates securing the same equals the face amounts of the notes evidencing the loans. (Art. 342–506)

Payments and Refunds.—*Instalments:* weekly, semimonthly, monthly or other regular periodic payments to be paid upon the investment certificates. (Art. 342–506) *Prepayment:* no special provisions.

Special Charges.—*Delinquency:* no provision. *Collection:* no provision. *Insurance Premiums:* if necessary for protection of borrower. *Investigation:* appraisal fees; loan granting fees are prohibited. *Other:* fee for service actually incurred in making the loan, not to exceed $1 for each $50 loaned; filing and recording fees; expenses necessary for protection of the borrower. (Art. 342–508)

Disclosure.—No special provisions.

Penalty For Excessive Interest.—No special provisions.

UTAH

Miscellaneous Provisions.—*Insurance:* no provision. *Acceleration:* permitted for specified causes. (Art. 342–506) *Security:* lender must take as collateral its investment certificates, issued simultaneously with the granting of the loan. (Art. 342–506) *Other:* no special provisions.

Instalment loans in Utah are regulated by Sec. 15–1–2(g), reported in full text at ¶ 31 (Footnote 46).

VERMONT

Instalment loans in Vermont are regulated by Title 9, Sec. 41(c) reported in full text at ¶ 31 (Footnote 47). Disclosure is required by Title 9, Sec. 31(f), also reported in full text at ¶ 31 (Footnote 47).

VIRGINIA

References are to Code 1950, *Title* 6.1, *Secs.* 320, 321, *as added by Laws* 1966, *Ch.* 584, *approved April* 5, 1966, *effective July* 1, 1966

Lenders.—Banks.

Maximum Loan.—No special provisions.

Interest Charges.—Legal rate of interest on entire amount; may be charged in advance (see "Interest—Usury" Chart at ¶ 31).

Maximum Time.—No special provisions.

Payments and Refunds.—*Instalments:* weekly, monthly or other periodic intervals. *Prepayment:* no special provisions

Special Charges.—*Delinquency:* no provision. *Collection:* no provision. *Insurance Premiums:* no provision. *Investigation:* 2% on loans not exceeding $1,000; $1 minimum charge permitted. *Other:* no special provisions.

Disclosure.—No special provisions.

Penalty For Excessive Interest.—No special provisions.
Miscellaneous Provisions.—*Insurance:* no provisions. *Acceleration:* permitted upon default of any instalment, *Security:* no provision. *Other:* no special provision.

WASHINGTON

There are no statutory provisions pertaining to instalment loans.

WEST VIRGINIA

References are to Code of West Virginia 1931, *Sec.* 31–4–20, *as amended; West Virginia Code*

Lenders.—Banking institutions.
Maximum Loan.—No special provisions for secured or unsecured loans.
Interest Charges.—6% per annum on the face amount for the entire period of the loan; may be deducted in advance; $1 minimum charge allowed.
Maximum Time.—No special provisions.
Payments and Refunds.—*Instalments:* payments must be in instalments. *Prepayment:* allowed in full on the unpaid balance outstanding on any instalment date prior to maturity; refund credit computed on the aggregate instalments not due, at the original contract rate of charge, prorated to the period of the loan covered by such unmatured instalments.
Special Charges.—*Delinquency:* no provision. *Collection:* no provision. *Insurance Premiums:* no provision. *Investigation:* reasonable expenses incurred in procuring reports and information regarding the loan and related security. *Other:* no special provisions.
Disclosure.—No special provisions.
Penalty For Excessive Interest.—No special provisions.
Miscellaneous Provisions.—*Insurance:* no provision. *Acceleration:* permitted at lender's option upon default of any instalment if loan agreement so provides. *Security:* loans may be secured or unsecured. *Other:* no special provisions.

WISCONSIN

Instalment loans in Wisconsin are regulated by Sec. 138.05, reported in full text at ¶ 31 (Footnote 51).

WYOMING

References are to Statutes 1957, *Secs.* 13–486—13–488, *as amended.*

Lenders.—Banks, trust companies, finance companies, national banks and individuals.
Maximum Loan.—$1,000.
Interest Charges.—8% per annum on total amount, from date of making to maturity of final instalment; may be added to principal or taken in advance. A service charge of $.50 per instalment may be charged by a bank or trust company in lieu of interest where the interest charge is under $3.
Maximum Time.—No special provisions.
Payments and Refunds.—No special provisions.
Special Charges.—No special provisions.
Disclosure.—No special provisions.
Penalty For Excessive Interest.—Misdemeanor.
Miscellaneous Provisions.—No special provisions.

Public Law 90-321
90th Congress, S. 5
May 29, 1968

An Act

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Consumer Credit Protection Act.

§ 1. Short title of entire Act

This Act may be cited as the Consumer Credit Protection Act.

TITLE I—CONSUMER CREDIT COST DISCLOSURE

CHAPTER 1—GENERAL PROVISIONS

§ 101. Short title

This title may be cited as the Truth in Lending Act.

Citation of title.

§ 102. Findings and declaration of purpose

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 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.

82 STAT. 146

82 STAT. 147

§ 103. Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) The term "Board" refers to the Board of Governors of the Federal Reserve System.

(c) The term "organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(d) The term "person" means a natural person or an organization.

(e) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(f) The term "creditor" refers only to creditors who regularly extend, or arrange for the extension of, credit for which the payment of

a finance charge is required, whether in connection with loans, sales of property or services, or otherwise. The provisions of this title apply to any such creditor, irrespective of his or its status as a natural person or any type of organization.

(g) The term "credit sale" refers to any sale with respect to which credit is extended or arranged by the seller. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(h) The adjective "consumer", used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, household, or agricultural purposes.

(i) The term "open end credit plan" refers to 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.

(j) The term "State" refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(k) Any reference to any requirement imposed under this title or any provision thereof includes reference to the regulations of the Board under this title or the provision thereof in question.

(l) The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this title does not in itself constitute a violation of this title.

§ 104. Exempted transactions

This title does not apply to the following:

(1) Credit transactions involving extensions of credit for business or commercial purposes, or to government or governmental agencies or instrumentalities, or to organizations.

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

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

(4) Transactions under public utility tariffs, if the Board determines that a State regulatory body regulates the charges for the public utility services involved, the charges for delayed payment, and any discount allowed for early payment.

82 STAT. 147

82 STAT. 148

§ 105. Regulations

The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain such classifications, differentiations, or other provisions, 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 this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

§ 106. Determination of finance charge

(a) Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly

by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit, including any of the following types of charges which are applicable:

(1) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges.

(2) Service or carrying charge.

(3) Loan fee, finder's fee, or similar charge.

(4) Fee for an investigation or credit report.

(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

(b) Charges or premiums for credit life, accident, or health insurance written in connection with any consumer credit transaction shall be included in the finance charge unless

(1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and

(2) in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(c) Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained.

(d) If any of the following items is itemized and disclosed in accordance with the regulations of the Board in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction:

(1) 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 the credit transaction.

(2) The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph (1) which would otherwise be payable.

(3) Taxes.

(4) Any other type of charge which is not for credit and the exclusion of which from the finance charge is approved by the Board by regulation. 82 STAT. 148

(e) The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction: 82 STAT. 149

(1) Fees or premiums for title examination, title insurance, or similar purposes.

(2) Fees for preparation of a deed, settlement statement, or other documents.

(3) Escrows for future payments of taxes and insurance.

(4) Fees for notarizing deeds and other documents.

(5) Appraisal fees.

(6) Credit reports.

§ 107. Determination of annual percentage rate

(a) The annual percentage rate applicable to any extension of consumer credit shall be determined, in accordance with the regulations of the Board,

(1) in the case of any extension of credit other than under an open end credit plan, as

(A) that nominal annual percentage rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed, calculated according to the actuarial method of allocating payments made on a debt between the amount financed and the amount of the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed; or

(B) the rate determined by any method prescribed by the Board as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined under subparagraph (A).

(2) in the case of any extension of credit under an open end credit plan, as the quotient (expressed as a percentage) of the total finance charge for the period to which it relates divided by the amount upon which the finance charge for that period is based, multiplied by the number of such periods in a year.

(b) Where a creditor imposes the same finance charge for balances within a specified range, the annual percentage rate shall be computed on the median balance within the range, except that if the Board determines that a rate so computed would not be meaningful, or would be materially misleading, the annual percentage rate shall be computed on such other basis as the Board may by regulation require.

(c) 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 the rate is converted into an annual percentage rate under procedures prescribed by the Board.

(d) The Board may authorize the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with subsection (a)(1)(A) by not more than such tolerances as the Board may allow. The Board may not allow a tolerance greater than 8 per centum of that rate except to simplify compliance where irregular payments are involved.

(e) In the case of creditors determining the annual percentage rate in a manner other than as described in subsection (c) or (d), the Board may authorize other reasonable tolerances.

(f) Prior to January 1, 1971, any rate required under this title to be disclosed as a percentage rate may, at the option of the creditor, be expressed in the form of the corresponding ratio of dollars per hundred dollars.

82 STAT. 149

82 STAT. 150

§ 108. Administrative enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under

80 Stat. 1046.
12 USC 1818.

(1) section 8 of the Federal Deposit Insurance Act, in the case of

(A) national banks, by the Comptroller of the Currency.

(B) member banks of the Federal Reserve System (other than national banks), by the Board.

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions. 80 Stat. 1028. 12 USC 1464. 80 Stat. 1036. 12 USC 1730. 47 Stat. 727; 69 Stat. 640. 12 USC 1426, 1437.

(3) the Federal Credit Union Act, by the Director of the Bureau of Federal Credit Unions with respect to any Federal credit union. 12 USC 1751.

(4) the Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts.

(5) the Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act. 72 Stat. 731. 49 USC 1301 note.

(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act. 42 Stat. 159. 7 USC 181.

(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. 38 Stat. 717. 15 USC 58.

(d) The authority of the Board to issue regulations under this title does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this title.

§ 109. Views of other agencies

In the exercise of its functions under this title, the Board may obtain upon request the views of any other Federal agency which, in the judgment of the Board, exercises regulatory or supervisory functions with respect to any class of creditors subject to this title. 82 STAT. 150

82 STAT. 151

§ 110. Advisory committee

The Board shall establish an advisory committee to advise and consult with it in the exercise of its functions under this title. In

Compensation.

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.

§ 111. Effect on other laws

(a) This title does not annul, alter, or affect, or 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 those laws are inconsistent with the provisions of this title or regulations thereunder, and then only to the extent of the inconsistency.

(b) This title does not otherwise 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 does this title extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply.

(c) In any action or proceeding in any court involving a consumer credit sale, the disclosure of the annual percentage rate as required under this title in connection with that sale may not be received as evidence that the sale was a loan or any type of transaction other than a credit sale.

(d) Except as specified in sections 125 and 130, this title and the regulations issued thereunder do not affect the validity or enforceability of any contract or obligation under State or Federal law.

§ 112. Criminal liability for willful and knowing violation

Whoever willfully and knowingly

(1) gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this title or any regulation issued thereunder,

(2) uses any chart or table authorized by the Board under section 107 in such a manner as to consistently understate the annual percentage rate determined under section 107(a)(1)(A), or

(3) otherwise fails to comply with any requirement imposed under this title,

shall be fined not more than $5,000 or imprisoned not more than one year, or both.

§ 113. Penalties inapplicable to governmental agencies

No civil or criminal penalty provided under this title for any violation thereof may be imposed upon the United States or any agency thereof, or upon any State or political subdivision thereof, or any agency of any State or political subdivision.

§ 114. Reports by Board and Attorney General

Not later than January 3 of each year after 1969, the Board 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, each report of the Board shall include its assessment of the extent to which compliance with the requirements imposed under this title is being achieved.

CHAPTER 2—CREDIT TRANSACTIONS

§ 121. General requirement of disclosure

(a) Each creditor shall disclose clearly and conspicuously, in accordance with the regulations of the Board, to each person to whom consumer credit is extended and upon whom a finance charge is or may be imposed, the information required under this chapter.

(b) If there is more than one obligor, a creditor need not furnish a statement of information required under this chapter to more than one of them.

§ 122. Form of disclosure; additional information

(a) Regulations of the Board need not require that disclosures pursuant to this chapter be made in the order set forth in this chapter, and may permit the use of terminology different from that employed in this chapter if it conveys substantially the same meaning.

(b) Any creditor may supply additional information or explanations with any disclosures required under this chapter.

§ 123. Exemption for State-regulated transactions

The Board shall by regulation exempt from the requirements of this chapter any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter, and that there is adequate provision for enforcement.

§ 124. Effect of subsequent occurrence

If information disclosed in accordance with this chapter is subsequently rendered inaccurate as the result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this chapter.

§ 125. Right of rescission as to certain transactions

(a) Except as otherwise provided in this section, in the case of any consumer credit transaction in which a security interest is retained or acquired in any real property which is used or is expected to be used as the residence of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required under this section and all other material disclosures required under this chapter, whichever is later, by notifying the creditor, in accordance with regulations of the Board, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, an adequate opportunity to the obligor to exercise his right to rescind any transaction subject to this section.

(b) When an obligor exercises his right to rescind under subsection (a), he is not liable for any finance or other charge, and any security interest given by the obligor becomes void upon such a rescission. Within ten days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within ten days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it.

(c) Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this title by a person to whom a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

(d) The Board may, if it finds that such action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those regulations.

(e) This section does not apply to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling.

§ 126. Content of periodic statements

If a creditor transmits periodic statements in connection with any extension of consumer credit other than under an open end consumer credit plan, then each of those statements shall set forth each of the following items:

(1) The annual percentage rate of the total finance charge.

(2) The date by which, or the period (if any) within which, payment must be made in order to avoid additional finance charges or other charges.

(3) Such of the items set forth in section 127(b) as the Board may by regulation require as appropriate to the terms and conditions under which the extension of credit in question is made.

§ 127. Open end consumer credit plans

(a) Before opening any account under an open end consumer credit plan, the creditor shall disclose to the person to whom credit is to be extended each of the following items, to the extent applicable:

(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.

(4) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding nominal annual percentage

rate determined by multiplying the periodic rate by the number of periods in a year.

(5) If the creditor so elects,

(A) the average effective annual percentage rate of return received from accounts under the plan for a representative period of time; or

(B) whenever circumstances are such that the computation of a rate under subparagraph (A) would not be feasible or practical, or would be misleading or meaningless, a projected rate of return to be received from accounts under the plan.

The Board shall prescribe regulations, consistent with commonly accepted standards for accounting or statistical procedures, to carry out the purposes of this paragraph.

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

(7) The conditions under which the creditor may retain or acquire any security interest in any property to secure the payment of any credit extended under the plan, and a description of the interest or interests which may be so retained or acquired.

(b) The creditor of any account under an open end consumer credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items to the extent applicable:

(1) The outstanding balance in the account at the beginning of the statement period.

(2) 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.

(3) The total amount credited to the account during the period.

(4) The amount of any finance charge added to the account during the period, itemized to show the amounts, if any, due to the application of percentage rates and the amount, if any, imposed as a minimum or fixed charge.

(5) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and, unless the annual percentage rate (determined under section 107(a)(2)) is required to be disclosed pursuant to paragraph (6), the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(6) Where the total finance charge exceeds 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, the total finance charge expressed as an annual percentage rate (determined under section 107(a)(2)), except that if the finance charge is the sum of two or more products of a rate times a portion of the balance, the creditor may, in lieu of disclosing a single rate for the total charge, disclose each such rate expressed as an annual percentage rate, and the part of the balance to which it is applicable.

(7) At the election of the creditor, the average effective annual percentage rate of return (or the projected rate) under the plan as prescribed in subsection (a)(5).

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

94-642 O - 68 - 2

(9) The outstanding balance in the account at the end of the period.

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

(c) In the case of any open end consumer credit plan in existence on the effective date of this subsection, the items described in subsection (a), to the extent applicable, shall be disclosed in a notice mailed or delivered to the obligor not later than thirty days after that date.

§ 128. Sales not under open end credit plans

(a) In connection with each consumer credit sale not under an open end credit plan, the creditor shall disclose each of the following items which is 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 amount referred to in paragraph (1) and the amount referred to in paragraph (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 amount described in paragraph (3) plus the amount described in paragraph (4)).

(6) Except in the case of a sale of a dwelling, the amount of the finance charge, which may in whole or in part be designated as a time-price differential or any similar term to the extent applicable.

(7) The finance charge expressed as an annual percentage rate except in the case of a finance charge

(A) which does not exceed $5 and is applicable to an amount financed not exceeding $75, or

(B) which does not exceed $7.50 and is applicable to an amount financed exceeding $75.

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.

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

(10) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

(b) Except as otherwise provided in this chapter, the disclosures required under subsection (a) shall be made before the credit is extended, and may be made by disclosing the information in the contract or other evidence of indebtedness to be signed by the purchaser.

(c) If a creditor receives a purchase order by mail or telephone without personal solicitation, and the cash price and the deferred payment price and the terms of financing, including the annual percentage rate, are set forth in the creditor's catalog or other printed material distributed to the public, then the disclosures required under subsection (a) may be made at any time not later than the date the first payment is due.

(d) If a consumer credit sale is one of a series of consumer credit sales transactions made pursuant to an agreement providing for the addition of the deferred payment price of that sale to an existing out-

standing balance, and the person to whom the credit is extended has approved in writing both the annual percentage rate or rates and the method of computing the finance charge or charges, and the creditor retains no security interest in any property as to which he has received payments aggregating the amount of the sales price including any finance charges attributable thereto, then the disclosure required under subsection (a) for the particular sale may be made at any time not later than the date the first payment for that sale is due. For the purposes of this subsection, in the case of items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest priced shall be deemed first paid for.

§ 129. Consumer loans not under open end credit plans

(a) Any creditor making a consumer loan or otherwise extending consumer credit in a transaction which is neither a consumer credit sale nor under an open end consumer credit plan shall disclose each of the following items, 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 credit extended but which are not part of the finance charge.

(3) The total amount to be financed (the sum of the amounts referred to in paragraph (1) plus the amounts referred to in paragraph (2)).

(4) Except in the case of a loan secured by a first lien on a dwelling and made to finance the purchase of that dwelling, the amount of the finance charge.

(5) The finance charge expressed as an annual percentage rate except in the case of a finance charge

(A) which does not exceed $5 and is applicable to an extension of consumer credit not exceeding $75, or

(B) which does not exceed $7.50 and is applicable to an extension of consumer credit exceeding $75.

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.

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

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

(8) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

(b) Except as otherwise provided in this chapter, the disclosures required by subsection (a) shall be made before the credit is extended, and may be made by disclosing the information in the note or other evidence of indebtedness to be signed by the obligor.

(c) If a creditor receives a request for an extension of credit by mail or telephone without personal solicitation 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, then the disclosures required under subsection (a) may be made at any time not later than the date the first payment is due.

§ 130. Civil liability

(a) Except as otherwise provided in this section, any creditor who fails in connection with any consumer credit transaction to disclose to any person any information required under this chapter to be disclosed to that person is liable to that person in an amount equal to the sum of

(1) twice the amount of the finance charge in connection with the transaction, except that the liability under this paragraph shall not be less than $100 nor greater than $1,000; and

(2) in the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court.

(b) A creditor has no liability under this section if within fifteen days after discovering an error, and prior to the institution of an action under this section 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 are necessary to insure that the person will not be required to pay a finance charge in excess of the amount or percentage rate actually disclosed.

(c) A creditor may not be held liable in any action brought under this section for a violation of this chapter 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.

(d) Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in real property may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this chapter, and that it maintained procedures reasonably adapted to apprise it of the existence of any such violations.

(e) Any action under this section 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.

§ 131. Written acknowledgment as proof of receipt

Except as provided in section 125(c) and except in the case of actions brought under section 130(d), in any action or proceeding by or against any subsequent assignee of the original creditor without knowledge to the contrary by the assignee when he acquires the obligation, written acknowledgment of receipt by a person to whom a statement is required to be given pursuant to this title shall be conclusive proof of the delivery thereof and, unless the violation is apparent on the face of the statement, of compliance with this chapter. This section does not affect the rights of the obligor in any action against the original creditor.

CHAPTER 3—CREDIT ADVERTISING

Sec.

§ 141. Catalogs and multiple-page advertisements

For the purposes of this chapter, a catalog or other multiple-page advertisement shall be considered a single advertisement if it clearly and conspicuously displays a credit terms table on which the information required to be stated under this chapter is clearly set forth.

§ 142. Advertising of downpayments and installments

No advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit may state

(1) that a specific periodic consumer 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.

(2) that a specified downpayment is required in connection with any extension of consumer credit, unless the creditor usually and customarily arranges downpayments in that amount.

§ 143. Advertising of open end credit plans

No advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit under an open end credit plan may set forth any of the specific terms of that plan or the appropriate rate determined under section 127(a)(5) unless it also clearly and conspicuously sets forth all of the following items:

(1) 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.

(4) Where periodic rates may be used to compute the finance charge, the periodic rates expressed as annual percentage rates.

(5) Such other or additional information for the advertising of open end credit plans as the Board may by regulation require to provide for adequate comparison of credit costs as between different types of open end credit plans.

§ 144. Advertising of credit other than open end plans

(a) Except as provided in subsection (b), this section applies to any advertisement to aid, promote, or assist directly or indirectly any consumer credit sale, loan, or other extension of credit subject to the provisions of this title, other than an open end credit plan.

(b) The provisions of this section do not apply to advertisements of residential real estate except to the extent that the Board may by regulation require.

(c) If any advertisement to which this section applies states the rate of a finance charge, the advertisement shall state the rate of that charge expressed as an annual percentage rate.

(d) If any advertisement to which this section applies states the amount of the downpayment, if any, the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment, then the advertisement shall state all of the following items:

(1) The cash price or the amount of the loan as applicable.

(2) The downpayment, if any.

(3) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended.

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

§ 145. Nonliability of media

There is no liability under this chapter on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

TITLE II—EXTORTIONATE CREDIT TRANSACTIONS

Sec.
201. Findings and purpose.
202. Amendments to title 18, United States Code.
203. Reports by Attorney General.

§ 201. Findings and purpose

(a) The Congress makes the following findings:

(1) Organized crime is interstate and international in character. Its activities involve many billions of dollars each year. It is directly responsible for murders, willful injuries to person and property, corruption of officials, and terrorization of countless citizens. A substantial part of the income of organized crime is generated by extortionate credit transactions.

(2) Extortionate credit transactions are characterized by the use, or the express or implicit threat of the use, of violence or other criminal means to cause harm to person, reputation, or property as a means of enforcing repayment. Among the factors which have rendered past efforts at prosecution almost wholly ineffective has been the existence of exclusionary rules of evidence stricter than necessary for the protection of constitutional rights.

(3) Extortionate credit transactions are carried on to a substantial extent in interstate and foreign commerce and through the means and instrumentalities of such commerce. Even where extortionate credit transactions are purely intrastate in character, they nevertheless directly affect interstate and foreign commerce.

(4) Extortionate credit transactions directly impair the effectiveness and frustrate the purposes of the laws enacted by the Congress on the subject of bankruptcies.

(b) On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of chapter 42 of title 18 of the United States Code are necessary and proper for the purpose of carrying into execution the powers of Congress to regulate commerce and to establish uniform and effective laws on the subject of bankruptcy.

§ 202. Amendments to title 18, United States Code.

62 Stat. 683.

(a) Title 18 of the United States Code is amended by inserting the following new chapter immediately after chapter 41 thereof:

"CHAPTER 42—EXTORTIONATE CREDIT TRANSACTIONS

"Sec.
"891. Definitions and rules of construction.
"892. Making extortionate extensions of credit.
"893. Financing extortionate extensions of credit.
"894. Collection of extensions of credit by extortionate means.
"895. Immunity of witnesses.
"896. Effect on State laws.

"§ 891. Definitions and rules of construction

"For the purposes of this chapter:

"(1) To extend credit means to make or renew any loan, or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.

"(2) The term 'creditor', with reference to any given extension of credit, refers to any person making that extension of credit, or to any person claiming by, under, or through any person making that extension of credit.

"(3) The term 'debtor', with reference to any given extension of credit, refers to any person to whom that extension of credit is made, or to any person who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same.

"(4) The repayment of any extension of credit includes the repayment, satisfaction, or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

"(5) To collect an extension of credit means to induce in any way any person to make repayment thereof.

"(6) An extortionate extension of credit is any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

"(7) An extortionate means is any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

"(8) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and territories and possessions of the United States.

"(9) State law, including conflict of laws rules, governing the enforceability through civil judicial processes of repayment of any extension of credit or the performance of any promise given in consideration thereof shall be judicially noticed. This paragraph does not impair any authority which any court would otherwise have to take judicial notice of any matter of State law.

"§ 892. Making extortionate extensions of credit

"(a) Whoever makes any extortionate extension of credit, or conspires to do so, shall be fined not more than $10,000 or imprisoned not more than 20 years, or both. Penalties.

"(b) In any prosecution under this section, if it is shown that all of the following factors were present in connection with the extension of credit in question, there is prima facie evidence that the extension of credit was extortionate, but this subsection is nonexclusive and in no way limits the effect or applicability of subsection (a):

"(1) The repayment of the extension of credit, or the performance of any promise given in consideration thereof, would be unenforceable, through civil judicial processes against the debtor

"(A) in the jurisdiction within which the debtor, if a natural person, resided or

"(B) in every jurisdiction within which the debtor, if other than a natural person, was incorporated or qualified to do business

at the time the extension of credit was made.

"(2) The extension of credit was made at a rate of interest in excess of an annual rate of 45 per centum calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which a payment is applied first to the accumulated interest and the balance is applied to the unpaid principal.

"(3) At the time the extension of credit was made, the debtor reasonably believed that either

"(A) one or more extensions of credit by the creditor had been collected or attempted to be collected by extortionate means, or the nonrepayment thereof had been punished by extortionate means; or

"(B) the creditor had a reputation for the use of extortionate means to collect extensions of credit or to punish the nonrepayment thereof.

"(4) Upon the making of the extension of credit, the total of the extensions of credit by the creditor to the debtor then outstanding, including any unpaid interest or similar charges, exceeded $100.

"(c) In any prosecution under this section, if evidence has been introduced tending to show the existence of any of the circumstances described in subsection (b)(1) or (b)(2), and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing the understanding of the debtor and the creditor at the time the extension of credit was made, the court may in its discretion allow evidence to be introduced tending to show the reputation as to collection practices of the creditor in any community of which the debtor was a member at the time of the extension.

"§ 893. Financing extortionate extensions of credit

Penalties.

"Whoever willfully advances money or property, whether as a gift, as a loan, as an investment, pursuant to a partnership or profit-sharing agreement, or otherwise, to any person, with reasonable grounds to believe that it is the intention of that person to use the money or property so advanced directly or indirectly for the purpose of making extortionate extensions of credit, shall be fined not more than $10,000 or an amount not exceeding twice the value of the money or property so advanced, whichever is greater, or shall be imprisoned not more than 20 years, or both.

"§ 894. Collection of extensions of credit by extortionate means

Penalties.

"(a) Whoever knowingly participates in any way, or conspires to do so, in the use of any extortionate means

"(1) to collect or attempt to collect any extension of credit, or

"(2) to punish any person for the nonrepayment thereof,

shall be fined not more than $10,000 or imprisoned not more than 20 years, or both.

"(b) In any prosecution under this section, for the purpose of showing an implicit threat as a means of collection, evidence may be introduced tending to show that one or more extensions of credit by the creditor were, to the knowledge of the person against whom the implicit threat was alleged to have been made, collected or attempted to be collected by extortionate means or that the nonrepayment thereof was punished by extortionate means.

"(c) In any prosecution under this section, if evidence has been introduced tending to show the existence, at the time the extension of credit in question was made, of the circumstances described in section 892(b)(1) or the circumstances described in section 892(b)(2), and direct evidence of the actual belief of the debtor as to the creditor's

collection practices is not available, then for the purpose of showing that words or other means of communication, shown to have been employed as a means of collection, in fact carried an express or implicit threat, the court may in its discretion allow evidence to be introduced tending to show the reputation of the defendant in any community of which the person against whom the alleged threat was made was a member at the time of the collection or attempt at collection.

"§ 895. Immunity of witnesses

"Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness in any case or proceeding before any grand jury or court of the United States involving any violation of this chapter is necessary to the public interest, he, upon the approval of the Attorney General or his designated representative, may make application to the court that the witness be instructed to testify or produce evidence subject to the provisions of this section. Upon order of the court the witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor may testimony so compelled be used as evidence in any criminal proceeding against him in any court, except a prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.

"§ 896. Effect on State laws

"This chapter does not preempt any field of law with respect to which State legislation would be permissible in the absence of this chapter. No law of any State which would be valid in the absence of this chapter may be held invalid or inapplicable by virtue of the existence of this chapter, and no officer, agency, or instrumentality of any State may be deprived by virtue of this chapter of any jurisdiction over any offense over which it would have jurisdiction in the absence of this chapter."

(b) The table of chapters captioned "Part I—Crimes" at the beginning of part I of title 18 of the United States Code is amended by inserting

"42. Extortionate credit transactions ..... 891"

immediately above

"43. False personation ..... 911".

§ 203. Reports by Attorney General

The Attorney General shall make an annual report to Congress of the activities of the Department of Justice in the enforcement of chapter 42 of title 18 of the United States Code. Report to Congress.

TITLE III—RESTRICTION ON GARNISHMENT

Sec.
301. Findings and purpose.
302. Definitions.
303. Restriction on garnishment.
304. Restriction on discharge from employment by reason of garnishment.
305. Exemption for State-regulated garnishments.
306. Enforcement by Secretary of Labor.
307. Effect on State laws.

§ 301. Findings and purpose

(a) The Congress finds:

(1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.

(2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce.

(3) The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country.

(b) On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of this title are necessary and proper for the purpose of carrying into execution the powers of the Congress to regulate commerce and to establish uniform bankruptcy laws.

§ 302. Definitions

For the purposes of this title:

(a) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(c) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

§ 303. Restriction on garnishment

(a) Except as provided in subsection (b) and in section 305, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 in effect at the time the earnings are payable,

80 Stat. 838.
29 USC 206.

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) The restrictions of subsection (a) do not apply in the case of

(1) any order of any court for the support of any person.

(2) any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act.

52 Stat. 930.
11 USC 1001-1086.

(3) any debt due for any State or Federal tax.

(c) No court of the United States or any State may make, execute, or enforce any order or process in violation of this section.

§ 304. Restriction on discharge from employment by reason of garnishment

(a) No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

(b) 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. Penalties.

§ 305. Exemption for State-regulated garnishments

The Secretary of Labor may by regulation exempt from the provisions of section 303(a) garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in section 303(a).

§ 306. Enforcement by Secretary of Labor

The Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor, shall enforce the provisions of this title.

§ 307. Effect on State laws

This title does not annul, alter, or affect, or exempt any person from complying with, the laws of any State

(1) prohibiting garnishments or providing for more limited garnishments than are allowed under this title, or

(2) prohibiting the discharge of any employee by reason of the fact that his earnings have been subjected to garnishment for more than one indebtedness.

TITLE IV—NATIONAL COMMISSION ON CONSUMER FINANCE

Sec.
401. Establishment.
402. Membership of the Commission.
403. Compensation of members.
404. Duties of the Commission.
405. Powers of the Commission.
406. Administrative arrangements.
407. Authorization of appropriations.

§ 401. Establishment

There is established a bipartisan National Commission on Consumer Finance, referred to in this title as the "Commission".

§ 402. Membership of the Commission

(a) The Commission shall be composed of nine members, of whom

(1) three are Members of the Senate appointed by the President of the Senate;

(2) three are Members of the House of Representatives appointed by the Speaker of the House of Representatives; and

(3) three are persons not employed in a full-time capacity by the United States appointed by the President, one of whom he shall designate as Chairman.

(b) A vacancy in the Commission does not affect its powers and may be filled in the same manner as the original appointment.

(c) Five members of the Commission constitute a quorum.

§ 403. Compensation of members

(a) Members of Congress who are members of the Commission shall serve without compensation in addition to that received for their services as Members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(b) Each member of the Commission who is appointed by the President may receive compensation at a rate of $100 for each day he is engaged upon work of the Commission, and shall be reimbursed for travel expenses, including per diem in lieu of subsistence as authorized

80 Stat. 499.

by law (5 U.S.C. 5703) for persons in the Government service employed intermittently.

§ 404. Duties of the Commission

(a) The Commission shall study and appraise the functioning and structure of the consumer finance industry, as well as consumer credit transactions generally. The Commission, in its report and recommendations to the Congress, shall include treatment of the following topics:

(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.

Reports to President and Congress.

(b) The Commission may make interim reports and shall make a final report of its findings, recommendations, and conclusions to the President and to the Congress by January 1, 1971.

§ 405. Powers of the Commission

(a) The Commission, or any three members thereof as authorized by the Commission, may conduct hearings anywhere in the United States or otherwise secure data and expressions of opinion pertinent to the study. In connection therewith the Commission is authorized by majority vote

(1) to require, by special or general orders, corporations, business firms, and individuals to submit in writing such reports and answers to questions as the Commission may prescribe; such submission shall be made within such reasonable period and under oath or otherwise as the Commission may determine.

(2) to administer oaths.

(3) to require by subpena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties.

(4) in the case of disobedience to a subpena or order issued under paragraph (a) of this section to invoke the aid of any district court of the United States in requiring compliance with such subpena or order.

(5) in any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths, and in such instances to compel testimony and the production of evidence in the same manner as authorized under subparagraphs (3) and (4) above.

(6) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States.

Compliance order by court.

(b) Any district court of the United States within the jurisdiction of which an inquiry is carried on may, in case of refusal to obey a subpena or order of the Commission issued under paragraph (a) of this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) The Commission may require directly from the head of any Federal executive department or independent agency available information which the Commission deems useful in the discharge of its duties. All departments and independent agencies of the Government shall cooperate with the Commission and furnish all information requested by the Commission to the extent permitted by law.

Research contract authority.

(d) The Commission may enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of

research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

(e) When the Commission finds that publication of any information obtained by it is in the public interest and would not give an unfair competitive advantage to any person, it may publish the information in the form and manner deemed best adapted for public use, except that data and information which would separately disclose the business transactions of any person, trade secrets, or names of customers shall be held confidential and shall not be disclosed by the Commission or its staff. The Commission shall permit business firms or individuals reasonable access to documents furnished by them for the purpose of obtaining or copying those documents as need may arise.

(f) The Commission may delegate any of its functions to individual members of the Commission or to designated individuals on its staff and to make such rules and regulations as are necessary for the conduct of its business, except as otherwise provided in this title.

§ 406. Administrative arrangements

(a) The Commission may, without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service or to classification and General Schedule pay rates, appoint and fix the compensation of an executive director. The executive director, with the approval of the Commission, shall employ and fix the compensation of such additional personnel as may be necessary to carry out the functions of the Commission, but no individual so appointed may receive compensation in excess of the rate authorized for GS-18 under the General Schedule. 81 Stat. 625. 5 USC 5332.

(b) The executive director, with the approval of the Commission, may obtain services in accordance with section 3109 of title 5 of the United States Code, but at rates for individuals not to exceed $100 per diem. 80 Stat. 416.

(c) The head of any executive department or independent agency of the Federal Government may detail, on a reimbursable basis, any of its personnel to assist the Commission in carrying out its work. Personnel detail.

(d) Financial and administrative services (including those related to budgeting and accounting, financial reporting, personnel, and procurement) shall be provided the Commission by the General Services Administration, for which payment shall be made in advance, or by reimbursement, from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator of General Services. The regulations of the General Services Administration for the collection of indebtedness of personnel resulting from erroneous payments apply to the collection of erroneous payments made to or on behalf of a Commission employee, and regulations of that Administration for the administrative control of funds apply to appropriations of the Commission.

(e) Ninety days after submission of its final report, as provided in section 404(b), the Commission shall cease to exist. Termination of Commission.

§ 407. Authorization of appropriations

There are authorized to be appropriated such sums not in excess of $1,500,000 as may be necessary to carry out the provisions of this title. Any money so appropriated shall remain available to the Commission until the date of its expiration, as fixed by section 406(e).

TITLE V—GENERAL PROVISIONS

Sec.
501. Severability.
502. Captions and catchlines for reference only.
503. Grammatical usages.
504. Effective dates.

§ 501. Severability

If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this Act is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications.

§ 502. Captions and catchlines for reference only

Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the legislative intent with respect to any provision enacted by this Act may be drawn from them.

§ 503. Grammatical usages

In this Act:

(1) The word "may" is used to indicate that an action either is authorized or is permitted.

(2) The word "shall" is used to indicate that an action is both authorized and required.

(3) The phrase "may not" is used to indicate that an action is both unauthorized and forbidden.

(4) Rules of law are stated in the indicative mood.

§ 504. Effective dates

(a) Except as otherwise specified, the provisions of this Act take effect upon enactment.

Ante, pp. 152, 157.

(b) Chapters 2 and 3 of title I take effect on July 1, 1969.

(c) Title III takes effect on July 1, 1970.

Ante, p. 162.

Approved May 29, 1968.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 1040 (Comm. on Banking & Currency) and
No. 1397 (Comm. of Conference).
SENATE REPORT No. 392 (Comm. on Banking & Currency).
CONGRESSIONAL RECORD:
Vol. 113 (1967): July 11, considered and passed Senate.
Vol. 114 (1968): Jan. 30, 31, Feb. 1, considered and passed House, amended, in lieu of H. R. 11601.
May 22, House and Senate agreed to conference report.

(Excerpts from Conference Report on the Consumer Credit Protection Act, S.5; H. Rept. 1397, 90th Cong., 2d sess., May 20, 1968)

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 5) to assist in the promotion of economic stabilization by requiring the disclosure of finance charges in connection with extension of credit, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

General Statement

This conference report represents the culmination of a long and arduous struggle. The House Committee on Banking and Currency, on December 13, 1967, reported favorably on the Sullivan bill, H.R. 11601, which passed the House overwhelmingly on February 1, 1968. The House then took up S. 5, struck all after the enacting clause, inserted the text of the House bill, and returned it to the Senate, which asked for a conference.

All of the major provisions of the House bill are retained in the accompanying conference report. In addition to the requirement of disclosure of credit costs in individual transactions, which was all the Senate bill dealt with, the House bill contained provisions relating to credit advertising, loan sharking, and garnishment. The House bill also provided for administrative enforcement by the Federal Trade Commission as to businesses generally, and by the specialized regulatory agencies with respect to those under their respective jurisdictions. The House bill created a study commission on consumer credit generally with full investigative powers, and directed it to report its recommendations for further legislation in this area. Not only does the conference substi tute rettain all these major affirmative provisions; it also omits or substantially modifies the Senate exemption for first mortgages and the Senate exemptions from annual rate disclosure. In sum, your conferees were able substantially to sustain the position of the House.

Short Titles

Section 1 of the conference substitute retains the "Consumer Credit Protection Act" as the short title for the entire act, as contained in the House bill. Title I of the conference substitute, dealing entirely with the subject matter of S. 5 as it passed the Senate, with the additional disclosure requirements recommended by the House, is designated as the "Truth in Lending Act" under section 101 of the conference substitute.

Title I—Consumer Credit Cost Disclosure

First Mortgages

Section 8(4) of the Senate bill exempted first mortgages on real estate from all of the provisions of the act. There was no corresponding provision in the House bill. In the conference substitute, the total finance charge over the life of the mortgage is not required to be

disclosed in connection with a purchase money first mortgage. Such mortgages are also exempted from the requirement that the creditor afford a 3-day right of rescission where a lien is placed on the obligor's dwelling. First mortgages are subject to all other requirements imposed under this title, and there are no exemptions for other types of mortgages.

Property and Liability Insurance

Under section 202(d) of the House-passed bill, all mandatory charges imposed by a creditor in connection with an extension of credit were required to be included in the finance charge. The language left in some doubt the treatment to be accorded charges such as those for various types of insurance as well as other items which, although not charges for credit, were included in a financing package and were not specifically excluded from the finance charge by other provisions of that section. Under section 3(d)(2)(C) of the Senate bill, premiums for property and liability insurance would be excluded from the finance charge if itemized and disclosed by the creditor. Under section 106(c) of the conference substitute, such an exclusion is permitted, but only if the debtor is clearly informed of his right to choose where to buy such insurance.

Credit Life and Accident and Health Insurance

Section 3(d)(2)(D) of the Senate bill also provided an exclusion for credit life, accident, and health insurance premiums if itemized and disclosed. Under the conference substitute, such charges may not be excluded unless the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this is clearly disclosed to the debtor. The creditor must also disclose to the prospective debtor the cost of such insurance, and may not include it in the financing package unless the debtor gives specific affirmative written indication of his desire to have it. If credit life, accident, or health insurance is written in connection with any consumer credit transaction without complying with all of the foregoing requirements, then its cost must be included in the finance charge under section 106(b) of the conference substitute.

Other Charges

Section 106(d)(4) of the conference substitute permits the Board to approve by regulation the exclusion of any other type of charge which is not essentially for credit. It is not intended that the Board should exercise this authority except in the case of charges which are reasonable in relation to the benefits conferred on the obligor, and where their inclusion in the package makes economic sense from the standpoint of the obligor, apart from the creditor's merchandising convenience.

Prepayments

The conferees were agreed that the Federal Reserve Board and other regulatory agencies should provide for the disclosure to the obligor at the time of the completion of a consumer credit transaction of any prepayment penalties in connection with real estate mortgages

or the policy to be followed by the creditor in granting partial refund, if any, of the finance charges in case of substantial prepayment of an installment contract in terms of amount and time.

Administrative Enforcement

Section 108 of the conference substitute clarifies the legislative intention that the vesting of sole rulemaking power under title I in the Board of Governors of the Federal Reserve System does not impair the authority of the other agencies having administrative enforcement responsibilities to make rules respecting their own procedures in enforcing compliance. It also makes clear that, except for the exclusions specifically stated in the section, the jurisdiction of the Federal Trade Commission is plenary and attaches to any creditor subject to the title, irrespective of whether the creditor meets any jurisdictional test in the Federal Trade Commission Act.

Right of Rescission

Section 203(e) of the House-passed bill required that the disclosures required under the bill would have to be made at least 3 days before the consummation of any transaction in connection with which a security interest was to be retained or acquired in the obligor's residence. The corresponding provisions in the conference substitute are found in section 125, with substantial modifications. Purchase money first mortgages are exempted altogether from the provisions of section 125. As to other transactions, the obligor is given a right of rescission which runs until midnight of the third business day following consummation of the transaction, or delivery of all material disclosures (including disclosure of the right to rescind without liability), whichever is later. Upon exercise of this right, any security interests created under the transaction are voided, the creditor must refund any advances, and the obligor must tender back any property, or its reasonable value, which he has received from the creditor.

Content of Periodic Statements

Section 126 of the conference substitute sets forth the requirements with respect to the content of periodic statements in connection with extensions of credit other than those under open end credit plans. The simplest type of statement would be a reminder of payment due on a straight installment contract; that is, a contract which did not provide for any additional purchases to be made under it and where the amounts and the dates of the obligor's obligations were entirely fixed at the time the contract was entered into. In that situation, it is not expected that the Board would require the statement to contain any information other than that provided for in paragraphs (1) and (2); that is, the annual rate and the late payment penalties, if any. If, however, the installment contract were more complex, perhaps providing for the purchase of additional items without entering into a new contract, or containing other terms and conditions which might tend to make it more like revolving credit, then it is expected that under paragraph (3), the Board would require appropriate additional disclosures to obligors.

Disclosure of Creditor's Rate of Return

The House bill did not mention disclosure of the creditor's rate of return. Section 127(a)(5) specifically authorizes any creditor under an open end consumer credit plan to disclose his average effective annual percentage rate of return or, where that would not be feasible or practical or would be misleading or meaningless, to disclose a projected rate of return. Calculation of both actual and projected rates would be subject to regulations of the Board consistent with commonly accepted standards for accounting or statistical procedures.

Minimum Charge Exemptions

The House bill contained no exemptions from the annual rate disclosure requirement, either as to open end accounts or other transactions. The Senate bill did not require rate disclosure with respect to monthly minimum or fixed charges in connection with open end plans, and also provided an absolute exemption from rate disclosure for finance charges less than $10 in connection with transactions not under open end plans.

Under section 127(b)(6) of the conference substitute, the actual rate need not be disclosed in the periodic statement with respect to an account under an open end plan if the total finance charge does not exceed 50 cents for a billing period of a month or more. In any statement of an account under an open end plan under which a rate may be used to compute the finance charge (even though, for the particular month, the rate may yield a charge below the minimum and thus be inapplicable) the creditor must state the periodic rate and the "nominal" annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

Under sections 128(a)(7) and 129(a)(5), where the amount financed does not exceed $75, the percentage rate applicable to a finance charge not exceeding $5 need not be disclosed, and where the amount financed exceeds $75, the rate applicable to a finance charge not exceeding $7.50 need not be disclosed. Section 128(a)(7) applies to sales, and section 129(a)(5) to loans, and both prohibit creditors from artificially dividing transactions to avoid the rate disclosure requirement. It is expected that the Board will by regulation deal with the loan renewal problem, as section 129(a)(5) is not intended as a loophole through which creditors may escape rate disclosure by making short-term loans with multiple renewals.

Credit Advertising

In general, the substance of the provisions of the House passed bill with respect to advertising were retained, the only changes in conference being to make entirely clear that where any specific credit terms on any type of credit are advertised, all of the material terms must be set forth. The House had provided authority to the Federal Reserve Board to exempt residential real estate advertisements from the advertising requirements of title I. This authority is retained in the conference substitute.

Title II—Extortionate Credit Transactions

Title II of the conference substitute is aimed directly at the activities of organized crime. This title, which passed the House as section 102 of the House's amendment to S. 5, makes it a Federal offense to make extortionate extensions of credit, to finance the making of extortionate extensions of credit, or to collect any extensions of credit by extortionate means.

An extortionate extension of credit is defined as any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

Similarly, an extortionate means is defined as any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

Constitutional Basis

Article I, section 8, of the Constitution expressly empowers Congress to make "uniform laws on the subject of bankruptcies." In the exercise of this power, Congress has enacted the Bankruptcy Act, which confers on any debtor the statutory right, with certain qualifications, to be discharged of his debts by applying substantially all of his property toward their repayment. It is obvious, however, that obligations as to which there is an understanding that they may be collected by extortionate means, or which are actually so collected, are not susceptible of being "discharged" in bankruptcy in any meaningful sense. Such transactions thus deprive the debtor of a Federal statutory right, and at the same time defeat one of the principal purposes of the Bankruptcy Act, which is to afford insolvent persons the opportunity to make a fresh start. Thus, it seems clearly within the power of the Congress to protect the Federal statutory right, and to assure that the bankruptcy laws will be carried into execution, by enacting legislation to prohibit extortionate credit transactions. In addition, there is ample evidence that such transactions are being carried on on a large scale and that they have a substantial impact on interstate commerce. Section 201 of the conference substitute is an explicit statement of the foregoing rationale.

Technical Structure

Section 202 adds to title 18 of the United States Code a new chapter 42 consisting of sections numbered 891 through 896. Section 891 sets forth definitions and rules of construction, the most important of which are the definitions of extortionate extensions of credit and extortionate means, which are quoted above.

Extortionate Extension of Credit

Section 892(a) provides—

> Whoever makes any extortionate extension of credit, or conspires to do so, shall be fined not more than $10,000 or imprisoned not more than 20 years, or both.

The major difficulty which confronts the prosecution of offenses of this type is the reluctance of the victims to testify. That is, if they are in genuine fear of the consequences of nonpayment, they are apt to be equally or even more in fear of the consequences of testifying as a complaining witness.

Prima Facie Case

Section 892(b) provides that if certain factors are present in connection with an extension of credit, there is prima facie evidence that the extension of credit is extortionate. These factors are (1) the inability of the creditor to obtain a personal judgment against the debtor for the full obligation; (2) a rate of interest in excess of 45 percent per annum; (3) a reasonable belief on the part of the debtor that the creditor either had used extortionate means in the collection of one or more other extensions of credit, or that he had a reputation for the use of such means; and (4) that the total amount involved between the debtor and the creditor was more than $100.

In the light of common experience, the inference of the use of extortionate means from the foregoing factors seems strong enough to make it constitutionally permissible to put the burden on the defendant to come forward with evidence to show the innocent nature of the transaction, if such was the case. In arms length transactions, people simply do not lend sums of money at exorbitant rates of interest under circumstances where they cannot enforce the obligation to repay. Where the prosecution has shown the absence of legal means to enforce the obligation, it is a reasonable inference, in the absence of evidence to the contrary, that illegal means were contemplated. Any debtor who deals with a creditor under these circumstances, knowing or reasonably believing that the creditor has used extortionate means in the past, may be fairly surmised to know what he is getting into.

The debtor, of course, may be unavailable or, for reasons already discussed, unwilling to testify. Section 892(c) permits the court, in its discretion, where evidence has already been introduced tending to show either uncollectability or a rate of interest in excess of 45 percent, to allow evidence to be introduced tending to show the reputation as to collection practices of the creditor in any community of which the debtor was a member at the time of the extension of credit. The trial court is in the best possible position to appraise the probative value of such evidence and to weigh that against its possible prejudicial effects. The ban on reputation evidence as part of the prosecution's case in chief has never been absolute, and where, as here, it is directly relevant to the state of mind of the parties in entering into the transaction, there will undoubtedly arise cases where it should very properly be before the trier of facts.

Finally, it is intended that the inference created by the presence of the factors set forth in section 892(b) may be weighed by the jury as evidence. It is not a mere rebuttable presumption, and is not to be treated under the rule adopted in some jurisdictions with respect to such presumptions, which are said to be wholly dispelled by the introduction of any direct evidence.

Nonexclusiveness of Section 892(b)

It should be emphasized, however, that the offense under section 892, and the only offense, is the making of an extension of credit with the understanding that criminal means may be used to enforce repayment, or conspiracy to make such an extension. Where this offense can be proved by direct evidence, it may be unnecessary for the prosecution to make use of sections 892(b) and 892(c).

Section 892 is in no sense a Federal usury law. The charging of a rate in excess of 45 percent per annum is merely one of a set of factors which, where there is inadequate evidence to explain them, are deemed sufficiently indicative of the existence of criminal means of collection to justify a statutory inference that such means were, in fact, contemplated by the parties.

Financing Extortionate Extensions of Credit

In organized crime, loan sharking is normally carried out as a multilevel operation. It is the purpose of section 893 to make possible the prosecution of the upper levels of the criminal hierarchy. It should not be supposed that the enactment of this legislation will suddenly do away with the immense practical difficulties which attend any effort to prosecute the top levels of organized crime. Nevertheless, in those instances where legally admissible evidence can be gathered to trace the flow of funds from the upper levels, the legal capability to prosecute the organizers and financiers of the underworld, as well as loan sharks at the operating level, would appear to be a worthwhile weapon to add to the Government's arsenal.

Section 893 has been carefully drawn to preclude the possibility of creating difficulties for legitimate lenders or those who furnish financing to them. It should be noted that no case is made out where it is shown that funds were advanced to a lender who subsequently collected an indebtedness by criminal means. To come within the prohibition of section 893, the financier must have had reasonable grounds to believe that it was the *intention* of the lender to use the funds for extortionate extensions of credit; that is, extensions of credit whose extortionate character is known to both the borrower and the lender at their inception.

Extortionate Collection

Not everyone who falls into the clutches of a loan shark is necessarily aware at the outset of the nature of the transaction into which he has entered. Moreover, cases will arise where the use of extortionate means of collection can be demonstrated even though it cannot be shown that a bilateral understanding that such would be the case existed at the outset. Section 894(a) covers these situations by making it a criminal offense to collect an indebtedness by extortionate means, regardless of how the indebtedness arose. Section 894(b) merely codifies a principle of evidence which already appears to be recognized in the case law, but whose importance in this area is sufficiently great to make it desirable to leave no doubt whatever as to its applicability. It allows evidence as to other criminal acts by the defendant to be introduced for the purpose of showing the victim's state of mind. Section 894(c) is similar to section 892(c), discussed above, and was included on the basis of the same considerations.

Compulsory Testimony

Section 895 authorizes the Government, in any case or proceeding before any grand jury or court involving a violation of this chapter, to compel the testimony of witnesses claiming the fifth amendment privilege against self-incrimination. This may be done, however, only when, in the judgment of the U.S. attorney, the testimony or evidence involved is necessary to the public interest, and then only by order of the court on the application of the U.S. attorney with the approval of the Attorney General or his designated representative. Any witness so compelled to testify or produce evidence is, of course, granted immunity from prosecution on account of the matters as to which he has been compelled to give evidence.

No Preemption of State Laws

Section 896 makes clear the congressional intention not to preempt any field in which State law would be valid in the absence of this chapter.

General Applicability

The full utility of chapter 42 as a weapon in the war on organized crime obviously cannot be assessed until it has been tested in battle. Some general observations, however, appear to be in order at this point. As noted above, it is not, and is not intended to be, a Federal usury law, nor does it have anything to do with interest rates as such. It is, rather, a deliberate legislative attack on the economic foundations of organized crime. Most of the business of the underworld, whether in loan sharking, gambling, drugs, "protection," or other activities, involves extensions of credit as defined in section 891 at one or more stages. The methods used in the enforcement of such obligations are notorious. Thus, a very large proportion of underworld financial transactions fall within the ban of one or more of the provisions of chapter 42. It may very well develop that this chapter will find as much usefulness in the investigation and prosecution of transactions entirely within the world of organized crime as it does in connection with transactions between those within that world and those who are otherwise outside it. Be that as it may, the conferees wish to leave no doubt of the congressional intention that chapter 42 is a weapon to be used with vigor and imagination against every activity of organized crime that falls within its terms.

Reports by Attorney General

Because of the far-reaching potentials of chapter 42, the conferees have added a final section to title II requiring the Attorney General to make an annual report to Congress on the activities of the Justice Department in the enforcement of its provisions.

Title III—Restriction on Garnishment

Section 202(a) of the House-passed bill restricted garnishment to an amount not exceeding 10 percent of gross earnings in excess of $30 per week, and contained no provision for the exemption of any State from the applicability of this rule. The restrictions in section 303(a) of the conference substitute are related to "disposable earnings," defined

as earnings remaining after the deduction of any amounts required by law to be withheld. No garnishment is allowed which would exceed either 25 percent of disposable earnings, or the amount by which the weekly disposable earnings exceed 30 times the Federal minimum hourly wage, whichever is less.

Section 305 authorizes the Secretary of Labor to exempt from the limitation just described any State whose laws provide substantially similar restrictions on garnishment. The remaining provisions of title III of the conference substitute are unchanged, in terms of intended substantive effect, from the provisions of title II of the House bill.

Title IV—National Commission on Consumer Finance

There were no changes of substance in this title, except that the date for the final report of the Commission was changed from December 31, 1969, to January 1, 1971. In the process of evolving the provisions of the conference substitute relating to the exemptions from annual rate disclosure for certain minimum charges (secs. 127(b)(6), 128(a)(7), and 129(a)(5)), the conferees agreed that the Commission should consider whether these exemptions are desirable in the public interest, taking into consideration their impact, if any, on the availability of credit and their relationship to the objectives of the act.

Title V—General Provisions

Effective Dates

Under the bill as passed by the House, the disclosure provisions were to take effect on the first day of the ninth calendar month beginning after enactment, and all other provisions were to take effect on enactment. The Senate bill's effective date was July 1, 1969.

The conference substitute provides that the disclosure provisions become effective July 1, 1969, the garnishment provisions become effective July 1, 1970, and all other provisions become effective on enactment.

Wright Patman,
William A. Barrett,
Leonor K. Sullivan,
Henry S. Reuss,
Thomas L. Ashley,
William S. Moorhead,
William B. Widnall,
Paul A. Fino,
Florence P. Dwyer,
Managers on the Part of the House.

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