Truth in Lending - A Time for Reform

William P. Barry
NOTES

TRUTH IN LENDING — A TIME FOR REFORM

The Truth In Lending Act was enacted in 1968 to benefit consumers by compelling lending institutions to disclose the true cost of credit before a consumer enters into a transaction. It was assumed that the information thus disclosed would enable a consumer to make an informed decision whether to accept a creditor's terms, pay cash, or shop for better rates. Eight years in the making, the Act stemmed from a bill introduced by the late Senator Paul Douglas in 1960. Realizing that the statute could not adequately provide for all present and future aspects of credit transactions, Congress gave broad authority to the Federal Reserve Board (FRB) to implement the Act with appropriate regulations. Enforcement of the Act was to be achieved largely through civil suits brought by individuals and by sanctions imposed by designated government agencies. Creditors could also be subjected to criminal sanctions.

Eight years later, there is a rising note of concern even among the Act's sponsors that the Act is not accomplishing its goals. Senator William Proxmire, who sponsored the Act after Senator Douglas left the Senate, has recognized that “its beneficial purposes are being frustrated by unnecessarily com-


plex disclosure requirements which consumers may ignore or fail to understand. 8

In part, this complexity is the result of Regulation Z, which expanded the quantity and the detail of the disclosure requirements. The regulation, promulgated by the FRB pursuant to its statutory authority, was an attempt to confine a complex market commodity within a static regulatory scheme. 9 Numerous private suits have also added to the complexity of the Act and its regulations. Creditors protest that they are harassed by increasingly technical suits often based on minor and harmless violations of the Act. 10 As creditors seek to insulate themselves from such suits with lengthy disclosure statements packed with every bit of information that the creditor thinks a court might require, the consumer is left with the complicated disclosure statement of which Senator Proxmire was complaining. As a result, there is a feeling that the Truth in Lending Act has had little, if any, appreciable effect on the conduct of consumers in the credit marketplace. 11

Two bills were introduced in the Senate during the 94th Congress to reform the Act, 12 and the embattled FRB has proposed sweeping changes to simplify it. 13 This note will consider the causes of the Act's current complexity, discuss the most significant proposals for reform, 14 and make recommendations based on these first, albeit tentative, proposals.

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14. Other proposals, such as limitations on the award of attorney's fees to consumers (S. 3302, 94th Cong., 2d Sess. (1976)), limitation on the number of times a creditor must change his forms in a year (S. 3875, 94th Cong., 2d Sess. § 6 (1976)) and elimination of the "vacant lot" right of recission (Id. § 7 and S. 3699, 94th Cong., 2d Sess. § 4 (1976)) are beyond the scope of this note.
I. EXPERIENCE WITH THE ACT TO DATE

Disclosure of credit cost terms was the essence of the Act as originally conceived.\textsuperscript{15} The underlying assumption was that credit cost disclosure would result in more informed decisions by the consumer regarding the use of credit. Disclosure of the annual percentage rate was seen as an important term facilitating comparison shopping. Much like unit pricing in a supermarket, the availability of the annual percentage rate computed in a uniform manner was thought to promote a more intelligent consumer choice. The Act's supporters reasoned that a consumer armed with this information would help stabilize the economy by avoiding high interest rates during a "boom" and by increasing credit purchases during a recession. Furthermore, the consumer's ability to comparison shop, defer purchase, or pay cash was expected to lead to more competition among creditors and lower rates for all consumers.\textsuperscript{16}

The disclosure concept was originally aimed at the revelation of the true cost of credit,\textsuperscript{17} a numerical disclosure. In the interval between 1960 and 1968, this relatively simple concept expanded to include the selective disclosure of information of theoretical interest to the "ideal" consumer. Originally intended to provide the consumer with what he needed to know to make an informed decision about the relative cost of credit, the Act as passed mandated that the consumer be apprised of items with which Congress thought he ought to be concerned, such as default, delinquency, or late payment charges, the extent of any security interest taken in the consumer's goods, and the actual components of the total finance charge.\textsuperscript{18} The shift from this previous theory, a functional approach, to what has been called the "all relevant factors" approach lies behind many of the problems with the Act today.\textsuperscript{19}

The Federal Reserve Board carried the shift even further in the regulations promulgated under its statutory mandate. Regulation Z attempts to tailor the broad sweep of the Act to the specificity desired by creditors and apparently needed to regulate such a complex market.\textsuperscript{20} For example, these regu-

\textsuperscript{15} See Oversight Hearings, supra note 9, at 128. Statement of Jonathan M. Landers Professor of Law, University of Illinois College of Law and Visiting Scholar, American Bar Foundation [hereinafter cited as Statement of Jonathan M. Landers].
\textsuperscript{16} See REPORT, supra note 11, at 174.
\textsuperscript{17} See note 15 supra.
\textsuperscript{18} These requirements are contained in 15 U.S.C. §§ 1638(a)(1)-(5),(9),(10); 1639 (a)(1)-(3), (7),(8) (Supp. V 1975).
\textsuperscript{20} Id. at 203.
lations add the following requirements that are not mandated by the Act itself: disclosure must be in a meaningful sequence as well as clear and conspicuous,\textsuperscript{21} components of the finance charge must be separately itemized,\textsuperscript{22} downpayments must be broken down into cash or trade-in downpayments,\textsuperscript{23} and prepaid finance charges must be disclosed.\textsuperscript{24} To the extent that these additional terms are not directly related to the credit shopping rationale, the Act has transcended not only the functional purpose conceived by Senator Douglas, but has also left creditors accountable to a far more elusive standard.\textsuperscript{25} From the very beginning, therefore, the Act and its regulatory scheme were prone to problems because a complex and variable market was to be regulated under a vague standard of accountability.

Consumer advocates were quick to recognize the litigation possibilities in this Pandora's Box,\textsuperscript{26} and they encountered a substantial number of recalcitrant creditors.\textsuperscript{27} Congress had sought to encourage private enforcement of the Act by granting consumers certain procedural and substantive advantages, not the least of which was a federal forum.\textsuperscript{28} Truth in Lending claims

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\item 21. 12 C.F.R. § 226.6(a) (1977).
\item 23. 12 C.F.R. § 226.8(c)(2) (1977).
\item 24. 12 C.F.R. §§ 226.8(c)(6), 226.8(d)(2) (1977).
\item 25. A numerical disclosure requirement as originally conceived would have enabled creditors to measure relatively easily their compliance with the standards. Either the figure is correctly computed or it is not. The “all relevant factors” standard which the Act ultimately embraced is imprecise, since there is no absolute upper limit to the number of terms that a creditor could be required to disclose. This means that a creditor can never be absolutely sure that his form will be upheld in a court challenge no matter how diligently he prepared it. See Statement of Jonathan M. Landers, Oversight Hearings, supra note 9, at 129-30; Meyers v. Clearview Dodge Sales, Inc., 384 F. Supp. 722, 726-27 (E.D. La. 1974) (an example of the length some courts are willing to go in deciding what terms a creditor should have included in his disclosure statement).
\item 26. 15 U.S.C. § 1640 (Supp. V 1975) provides for private individual civil suits for actual damages sustained and recovery of twice the amount of the finance charge subject to a minimum recovery of $100 and a maximum of $1000. In the case of class actions, actual damages can be recovered, but there is a ceiling on the penalty section of the lesser of $500,000 or one percent of a creditor's net worth. A successful consumer can also recover attorney's fees. To date, very few criminal suits have been prosecuted. See S. Rep. No. 94-1388, 94th Cong., 2d Sess. 8 (1976).
\item 27. Even though the FTC REPORT ON SURVEYS OF CREDITOR COMPLIANCE WITH TRUTH IN LENDING (April 1971) seemed content with results which showed that 69% of the retailers surveyed were in total compliance and 86% in substantial compliance with the Act, there is a substantial lack of compliance disclosed by these figures. A retailer was classified as substantially complying if he disclosed at least the annual percentage rate and the finance charge correctly. Id. at 3. Therefore, by April 1971, (approximately 18 months after the Act's enactment), 14% of those surveyed still did not even disclose these fundamental terms properly and 31% had at least some violations in their disclosure statements.
\item 28. Some federal courts have refused to exercise their pendent jurisdiction and allow
tended to revolve around questions of law, not fact, and thus lent themselves to relatively simple preparation and frequent summary judgments. Consumers were encouraged to sue by the promise of a guaranteed $100 recovery plus attorney's fees even in the absence of actual damages.\textsuperscript{29} The "all relevant factors" standard, the expense of litigation, and the threat of more suits if a creditor's form were found to be deficient were powerful stimuli for a creditor to settle out of court.\textsuperscript{30} Truth In Lending actions were attractive litigation vehicles for consumer suits against retailers and often gave both the consumer and his attorney a handsome return for a minimum of effort.\textsuperscript{31} The huge number of private civil suits has contributed greatly to the complexity of the Act's interpretation and has forced creditors to put more and more information in their already lengthy disclosure statements.

The probability of a plaintiff's success was greatly enhanced by the creditor's inability to claim a good faith misinterpretation of what disclosures were required. A "bona fide" error provision in the Act\textsuperscript{32} was early held to excuse only clerical errors.\textsuperscript{33} The dilemma in which creditors found themselves was compounded by their inability to rely on unofficial interpretations of the Act issued by the FRB staff.\textsuperscript{34} Creditors complained that they were being held responsible for harmless and technical violations,\textsuperscript{35} and there appeared to be no limit to the requirements imposed by the courts.\textsuperscript{36}

\textsuperscript{30} See Statement of Jonathan M. Landers, Oversight Hearings, supra note 9, at 131-32.
\textsuperscript{31} See Statement of David L. Campbell of Lemle, Kelleher, Kohlemeyer & Matthews, Qui Tam Hearings, supra note 10, at 517-538.
\textsuperscript{32} 15 U.S.C. § 1640(c) (1970): "A creditor may not be held liable . . . if the creditor shows . . . that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures . . . to avoid any such error."
\textsuperscript{33} See, e.g., Ratner v. Chemical Bank New York Trust Co., 329 F. Supp. 270, 281 (S.D.N.Y. 1971). Congress sought to restore some measure of protection for the creditor who relies on an interpretation by the FRB that turns out to be erroneous by enacting a provision in 1976 that excused such good faith errors. 15 U.S.C.A. § 1640(f) (West Supp. 1977). This amendment may go far to reduce the liability that creditors now face with the vague accountability standard.
\textsuperscript{34} This problem, although now remedied by § 1640(f), initially stimulated the use of such suits because creditors' forms, even if in compliance with FRB directives, could be successfully challenged by consumers.
\textsuperscript{35} See, e.g., Carlin v. Homemakers Fin. Serv., Inc., C.A. 75-1045 (E.D. La. 1975) (defendant liable even though none of the figures on the disclosure statement were accurate and the plaintiff was correctly informed of how much he was borrowing).
\textsuperscript{36} See Statement of Jonathan M. Landers, Oversight Hearings, supra note 9, at 129-30.
Not surprisingly, creditors began to draft their disclosure statements with particular care to cover the remotest possibility of being found deficient. This tactic, along with continuing litigation, caused creditors to ask for numerous FRB interpretations of the Act and regulations, which in turn led to more technical requirements and new possibilities for violations. Finally, by 1976, members of Congress and others had begun to realize that this vicious cycle was not going to be broken by piecemeal attempts to remedy the Act. The disclosure requirements were so complicated that it did not seem reasonable to expect consumers to read or understand them. Such a vast body of case law and interpretations had developed over eight years that many small creditors could not afford the legal assistance necessary to prepare an acceptable disclosure statement which would inevitably be doomed to instant obsolescence with each new judicial or administrative pronouncement.

Congress had originally provided for procedures to grant exemption from the requirements of the Act to states whose statutes were substantially similar to the Truth In Lending Act. This gave the exempted state sole enforcement responsibility over all nonfederally chartered financial institutions within the state. Inconsistent state requirements were preempted in those states not granted exemption. Because of the restrictions against state inspection of federally chartered institutions, frictions in the federal-state relationship have developed. Active state consumer protection agencies have accused federal agencies responsible for enforcement in these federally chartered institutions of a serious lack of diligence in enforcing consumer protection legislation.

Since the Act preempts only inconsistent state requirements, overlapping state legislation has added another layer of complexity to the disclosure statement. Multistate creditors face varying requirements from state to state.

37. The staff opinions are gathered together and printed in 5 CONS. CRED. GUIDE (CCH) ¶ 31,088 et seq.
39. It has been speculated that, in contrast to its stated purpose, the Act has led to a reduction of market competition by driving small creditors out of the market. Oversight Hearings, supra note 9, at 162.
43. See generally Oversight Hearings, supra note 9, at 9-72.
44. Regulation Z actually allows a creditor to put inconsistent disclosures in his dis-
If they leave out a disclosure required by the state, they risk a subsequent finding that the state requirement is not in fact preempted. Not surprisingly, creditors tend to include any information which might possibly be required, thus further complicating the disclosure statements.

II. Proposals to Simplify the Act

In the 94th Congress, there were three major proposals to remedy the problems. They were: total preemption of state truth in lending statutes, reduction or modification of the disclosure requirements, and modification of the civil enforcement remedy to grant damage awards only when the violation actually interferes with a consumer’s ability to shop for credit. Preemption of all state laws promises to present difficulties not only because it may result in curtailed consumer protection activity in states which have vigorously enforced their disclosure statutes, but also because of the potential enforcement problems if federal agencies become solely responsible for oversight. The National Commission on Consumer Finance concluded in 1971 that federal enforcement of the Truth in Lending Act was a “mixed bag.” Recent congressional hearings went even further and stated that federal enforcement of consumer protection legislation was unsatisfactory. Although the Commision found that state enforcement was no better, testimony of state officials at congressional hearings in 1976 gave a quite different picture. It is at least arguable that preemption will stifle state efforts

closure statement if there is proper separation and identification of the federal requirements. 12 C.F.R. § 226.6(c) (1977).


46. The bills introduced in the 95th Congress by Senators Garn and Proxmire generally cover these same areas. S. 1846 is particularly interesting because it calls for a major rewrite of the Act. See S. 1846, 95th Cong., 1st Sess. (1977). Hearings were held on July 12-13, 1977.

47. See generally Statement of Lawrence Connell, Jr., Bank Commissioner, State of Connecticut, Oversight Hearings, supra note 9, at 29-35.

48. REPORT, supra note 11, at 56-57.

49. See S. REP. No. 94-930, 94th Cong., 2d Sess. 2-3 (1976); S. REP. No. 94-1388, 94th Cong., 2d Sess. 3-4 (1976).

50. REPORT, supra note 11, at 57.

51. See generally Oversight Hearings, supra note 9, at 3-97.
to enforce such legislation. Only the FRB has proposed total preemption, but it apparently feels that the gains to be made by imposing uniform disclosure requirements and having a clear-cut delineation of enforcement responsibility outweigh the potential loss of another layer of enforcement.52

There is general agreement that disclosure requirements must be reduced and simplified. Two bills introduced in the 94th Congress proposed to do that: S. 3699, introduced by Senator Proxmire, and S. 3875, introduced by Senator Garn.53 While both bills would have eliminated certain terms which have caused problems of interpretation or compliance in the past,54 the Garn bill went further than the Proxmire bill in the reductions it would have made. It proposed to delete all disclosure requirements for both closed-end sales and loans except the following: the total amount financed (without an itemized listing of the total sum as is now required), the amount of the finance charge, the annual percentage rate, the repayment schedule, and a modified security interest disclosure.55

Another significant proposal contained in the Garn bill, but not in the Proxmire bill, picks up the FRB’s proposal56 to limit the civil penalty section of the Act to those violations that actually interfere with a consumer’s ability to shop for credit. By no mere coincidence, most of the terms which must be disclosed under the Garn bill are the ones to which civil penalties would attach.57

52. Senator Garn believed that the proposal was highly controversial and would require more study. He also stated that preemption is not directly related to simplification of the Act. 122 CONG. REC. S17,825 (daily ed. Oct. 1, 1976). In fact, preemption would eliminate additional state requirements from the disclosure statements. If the disclosure requirements in the Act are to be reduced as the Senator proposes in his bill, it would seem logical to preempt state requirements also; otherwise, there would be a question of whether states could nullify the reduction of disclosure requirements by adding new ones under state law.

53. S. 3699, 94th Cong., 2d Sess. and S. 3875, 94th Cong., 2d Sess. (1976) will be referred to as the Proxmire and Garn bills respectively.

54. The requirement that such charges as taxes and other fees prescribed by law be itemized or included in the finance charge would be dropped. S. 3699, 94th Cong., 2d Sess. § 2(c) (1976); S. 3875, 94th Cong., 2d Sess. § 4 (1976). Both bills reduce the description requirements for security interests taken as a result of the transaction, although S. 3875 went further than S. 3699 in relaxing this requirement. Compare S. 3699, 94th Cong., 2d Sess. §§ 7(b), 8(b) (1976) with S. 3875, 94th Cong., 2d Sess. §§ 11(a), (b) (1976). Because some courts have been willing to call acceleration clauses default payments, both bills proposed to delete that word from the disclosure requirements. S. 3699, 94th Cong., 2d Sess. §§ 7(a), 8(a) (1976).

55. S. 3875, 94th Cong., 2d Sess. §§ 10(a),(b) (1976). The bill also deleted some of the disclosure requirements for open-end credit in conjunction with the deletions for closed-end credit, S. 3875, 94th Cong., 2d Sess. § 9(a) (1976).


57. No liability would attach to the security interest and late payment disclosures.
III. ANALYSIS OF PROPOSED CHANGES

Any one of the proposals to remedy the Act, be it preemption, reduction of disclosure requirements, or modification of the penalty section, will have a significant impact on the consumer's benefits under the Act. The severity of the impact of each change will depend in part on whether the companion proposals are adopted. For this reason, they are presented in the order in which they ought to be considered so that the Act can be reformed with a minimum reduction in proper benefits to consumers. It is imperative that these proposals be considered as a package because the value of the Act for consumer purposes will be in the sum of its interrelated parts.\(^6^8\)

The proposal to preempt state laws completely has the dual advantage of achieving uniformity while reducing the compliance burden now borne by creditors who must tailor their disclosure statements for each jurisdiction with a disclosure statute. One significant drawback to this proposal merits careful study: the potential loss of state enforcement efforts. Loss of state involvement would have serious ramifications for two reasons. First, the state agencies are probably more familiar with local conditions and are relatively more accessible to aggrieved consumers.\(^5^9\) Second, and perhaps most important, the relative enforcement track records of the state and federal agencies show serious and deep-seated deficiencies in the federal agencies in contrast to the vigorous programs of some states.\(^6^0\)

Although uniformity and the corresponding simplification of the disclosure statement would make compliance easier for creditors, the strongest reason for preemption is that it will result in a clear-cut delineation of enforcement authority and if properly molded, get states more actively involved in this area of consumer protection. Rather than discourage state enforcement when preemption occurs, the FRB has suggested that states be allowed to incorporate the federal legislation into their own statutory scheme by reference.\(^6^1\)

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\(^5^8\) S. 3875, 94th Cong., 2d Sess. §12 (1976). The civil penalties for violations would remain the same.

\(^5^9\) It is hoped that interests opposed to such legislation will not use the momentum for reform to "gut" the Act. The Garn bill, by calling for a reduction in the disclosure requirements as well as a weakening of the private enforcement provisions of the Act, might have done just that.

\(^6^0\) See REPORT, supra note 11, at 61; Statement of Lawrence Connell, Jr., Bank Commissioner, State of Connecticut, Oversight Hearings, supra note 9, at 24. In at least one state, none of the federal agencies charged with banking oversight has an office in that state. \(id\). at 40. Not only does a consumer encounter difficulties with distance; he also faces the obstacle of locating the proper agency.

\(^6^1\) See generally Oversight Hearings, supra note 9, at 3-84.
Standing alone, this proposal may seem unduly optimistic because it assumes that state legislatures will be willing to rubber-stamp federal legislation and its administrative package. It also assumes that those states which currently have no truth in lending statute, or are not exempted, will voluntarily assume the financial burden of enforcing federally-drafted legislation. This budgetary burden partially accounts for the small number of states which have sought exemption. The proposal becomes much more viable when linked with suggestions to reimburse states for the expenses incurred in such efforts and to give state consumer agencies authority over all financial institutions within their borders for purposes of monitoring Truth in Lending compliance. Under these proposals, the FRB could utilize the standards currently employed for exemption purposes to designate those states which have suitably organized agencies and the experience to be solely responsible for Truth in Lending enforcement within their jurisdictions. The FRB could retain oversight authority, as it does now for states that are exempt. This proposal would encourage states to assume responsibility for the protection of their citizens, would reduce federal-state tensions by clearly allocating enforcement responsibility, and might result in savings by reducing the need for federal involvement. That the result is more expensive might be attributable to lackadaisical federal enforcement in the past.

The proposal for reduction or modification of disclosure requirements contained in both the Proxmire and Garn bills is, at least conceptually, the least controversial and most needed of all the proposed reforms. Reduction of disclosure terms would not necessarily make the average consumer less aware of the consequences of his credit transaction since there is only a tenuous con-

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Code based on their conclusion that the Truth In Lending Act effectively preempted the field of disclosure and that attempts by states to regulate disclosure would do more harm than good. Letter from Stephen S. Gardner, member of the FRB, to Senator Proxmire (July 16, 1976), 122 CONG. REC. S12,296 (daily ed. July 23, 1976).

62. REPORT, supra note 11, at 58. Only five states are exempt: Massachusetts, Maine, Connecticut, Oklahoma, and Wyoming. Twenty-three states have no state disclosure statute. 1 CONS. CRED. GUIDE (CCH) ¶ 2256.

63. Statement of Lawrence Connell, Jr., Bank Commissioner, State of Connecticut, Oversight Hearings, supra note 9, at 34.

64. REPORT, supra note 11, at 60. Congress will have to study the ramifications such jurisdictional rights would have for enforcement of other consumer legislation such as the Equal Credit Opportunity Act. 15 U.S.C. § 1691 (Supp. V 1975).

65. See 15 U.S.C. § 1633 (1970): Letter from Lawrence Connell, Jr., Bank Commissioner, State of Connecticut to Senator Proxmire (Aug. 12, 1976), Oversight Hearings, supra note 9, at 84. For states that did not seek such responsibilities, the federal agencies would exercise enforcement responsibilities as they do now.

66. See notes 54 & 55 supra. The general support these proposals have received is another reason for preemption of state laws. Why allow states to require something which Congress has determined needlessly complicates the disclosure statements?
nection between credit awareness and much of the information now required to be disclosed.\textsuperscript{67} Some of the information now required in the disclosure statement, such as default and security interest terms, merely duplicates what must appear in the basic contract between the parties and deletion of such information from the disclosure statement should not unduly prejudice the consumer.\textsuperscript{68} Other terms hypothetically of interest to the ideal consumer, but not directly related to the credit shopping rationale of the Act, also serve to lengthen and complicate the statement.\textsuperscript{69} Reduction of disclosure terms would thus promote the original salutary purpose of the Act—to help consumers make informed credit decisions—and would ease the creditor's burden of compliance. It could also reduce the number of suits clogging some federal district courts.\textsuperscript{70}

The primary area of dispute with the proposal to reduce disclosure requirements is over which terms are essential. Congressional hearings brought out quite clearly that the following terms are considered fundamental: the annual percentage rate, the amount financed, the finance charge, the total payment, and the repayment schedule.\textsuperscript{71} Reduction of the disclosure require-

\textsuperscript{67. See note 11 supra. The report demonstrated that it is at least arguable that disclosure of the annual percentage rate and finance charge affects some groups. This finding may become questionable as the disclosure statement becomes longer and more complicated. See Statement of Jonathan M. Landers, Oversight Hearings, supra note 9, at 123-24.}

\textsuperscript{68. Senator Proxmire's bill did little to reduce this duplication since it only eliminated the need to disclose default charges. S. 3699, 94th Cong., 2d Sess. §§ 7(a), 8(a) (1976). The Garn bill was apparently intended to eliminate the requirement to disclose default, late payment and delinquency charges, but it did not do so. Compare 122 Cong. Rep. S17,827 (daily ed. Oct. 1, 1976) (remarks of Sen. Garn) with S. 3875, 94th Cong., 2d Sess. § 10(a) (1976). Neither bill eliminates entirely the security interest disclosure. S. 3699, 94th Cong., 2d Sess. §§ 7(b), 8(b) (1976); S. 3875, 94th Cong., 2d Sess. § 11 (1976).}

\textsuperscript{69. Since studies cited at note 11 supra show that consumers are often not affected by the disclosure of the comparative cost of credit, one doubts that the credit decision would be much affected by such terms as default charges and rebate procedures. What is more significant about these studies is their conclusion that low income groups are the ones least likely to use disclosure information even though they probably need it most. See REPORT, supra note 11, at 175-77; Whitford, The Function of Disclosure Regulation In Consumer Transactions, 1973 Wis. L. Rev. 400, 418 n.75, 421 n.81. If there is to be any hope that such groups will use the information, it will depend upon its presentation in an understandable format.}

\textsuperscript{70. See Statement of W. Rhett Tanner of Hansell, Post, Brandon & Dorsey, Qui Tam Hearings, supra note 10, at 413.}

\textsuperscript{71. See Statement of Jonathan M. Landers, Oversight Hearings, supra note 9, at 123, 133; Statement of Leonard O'Connor, Vice President, First National Bank of Boston, id. at 139. See also S. 3857 94th Cong., 2d Sess. § 10 (1976). There may be a continuing temptation to add just “one more essential term.” This temptation should be resisted lest the Act end up as complicated as it is now.}
ments to these five basics is in line with the Act's original purposes; however, Congress should consider giving the consumer some means with which to check those figures. Theoretically, the annual percentage rate and the finance charge could stand alone without any means provided to check their accuracy, because the consumer should be able to go elsewhere for cheaper credit. In reality, studies have shown that poorer consumers are not always mobile or educated enough to shop for credit. In addition, a number of creditors still err in their disclosure of these basic figures.

A second disclosure sheet that does not duplicate either the contract or the primary statement, and is available only on request, might serve to protect lower income consumers who are not able to shop effectively for credit. It would act as a deterrent to creditors who might otherwise tack on exorbitant charges to the cost of the credit as well as serve as a check to ensure that the sums in the primary disclosure statement are being computed properly. Congress should weigh these merits against the fact that a second statement would keep the Act and Regulation Z relatively complicated. Simplification of the Act has two meanings. To the consumer, it means simplification of the disclosure statement. It means the same to the creditor, but he is more interested in reforms that result in easier compliance and less threat of litigation. Dual level disclosure will be controversial because it will satisfy consumers without fulfilling the desires of creditors.

The proposal to modify the civil enforcement section of the Act by elimi-

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72. See authorities cited note 11 supra. Such consumers are vulnerable to unscrupulous creditors who might inflate credit cost with superfluous charges. The Act has been in effect long enough for consumers to expect that when a figure is quoted, there is no hidden charge that he would be likely to object to. One can also argue that most consumers expect their government to protect them from harsh practices and that the government should meet those expectations.

73. See S. Rep. No. 94-1388, supra note 49, at 6. The FDIC cited 507 banks between Jan. 1 and June 30, 1976, for violations involving the annual percentage rate and the finance charge. Of all the violations, the failure to disclose or incorrect disclosure of these terms were most common. Id. If this is the compliance rate for bankers, one can only wonder what it must be for less scrupulous merchants.

74. This idea was suggested during the congressional hearings. Statement of Leonard O'Connor, Vice President, First National Bank of Boston, Oversight Hearings, supra note 9, at 140. It is true that few, if any, consumers would ask for such secondary sheets, but consumer protection groups and governmental inspectors could use them.

75. Now that a creditor can rely on the interpretations of the FRB staff, the threat of litigation is already reduced. This threat will be reduced even further if the substantial compliance rule of the Garn bill becomes law (S. 3875 § 12). Perhaps a compromise is possible which will give consumers the second disclosure statement and creditors the protection from suits by limiting liability to only a few key terms. Creditors would still be subject to sanctions imposed by government agencies although they would not be subject to a civil suit. 15 U.S.C. § 1607(c) (1970).
nating creditor liability when there has been substantial compliance with disclosure requirements\textsuperscript{76} has far-reaching consequences that call for careful consideration lest the Act become a “paper tiger.” Although private civil actions have contributed significantly to the complexity of the Act and Regulation Z, they have also been a significant force in achieving creditor compliance. The importance of their role would increase if the proposal to preempt all state disclosure statutes were to be enacted without some provision to encourage state enforcement. Even if the federal agencies can drastically change their past dilatory habits, the federal bureaucracy may never be an adequate substitute for an active local agency. Moreover, if the number of disclosures were decreased, there would be little reason for reducing the encouragement the Act gives consumers to sue. With fewer terms to disclose, the creditor who failed to disclose them properly ought to be held more strictly accountable, not less. On the other hand, should Congress determine that disclosure requirements could not be reduced without significant harm to consumers, then the current civil liability ought to be correspondingly weakened. To leave the Act with the same complicated disclosure requirements while limiting liability to a few terms would only be placing enforcement responsibility on agencies already accused of being deficient in enforcing the Act\textsuperscript{77} without achieving the goal of simplification. The wiser route would seem to be to eliminate the superfluous disclosures without also enacting an essentially redundant provision that would limit liability to those few remaining terms.\textsuperscript{78}

IV. CONCLUSION

The Truth In Lending Act and Regulation Z have become so complex that the disclosure statements drafted in compliance with them are virtually useless to all except a student of semantics. What is needed is a movement back to the original concept of what truth in lending was supposed to offer—the disclosure of information that would allow the consumer to make a ration-

\textsuperscript{76} S. 3875, 94th Cong., 2d Sess. § 12 (1976). The liability would attach only if the creditor failed to disclose one of the designated terms properly: the annual percentage rate, the amount financed, the finance charge, the due dates, and the repayment schedule. 

\textsuperscript{77} See notes 42, 43 and 49 supra & accompanying text.

\textsuperscript{78} It is conceivable that Congress will want certain additional terms disclosed without creditor liability for failure to do so correctly. The Garn bill did this by requiring disclosure of security interests and late payment charges without liability attaching. See note 57 supra. In view of the number of frivolous suits in the past, it seems wise to couple this substantial compliance rule with proposals which require disclosure beyond essential terms. See note 76 supra. This limitation of a creditor's liability also makes the second disclosure statement proposal more desirable. See note 75 supra.
al decision about the use of credit. Preemption of state laws should be ef-
ected, but with some provision to encourage states to enforce the Act them-
selves. Reduction of disclosure requirements seems to be the surest solution
to further the credit shopping goal of the Act. The proposal to limit civil
liability should be approached with caution and set aside if the simplification
of disclosure requirements is extensive enough to limit creditor liability ade-
quately.

As the vanguard of consumer protection laws, the Act must not be allowed
to remain as a monument to bureaucratic inflexibility and a hollow reminder
of what might have been.

William P. Barry