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# A Survey of Experience Under the Massachusetts Retail Installment Sales Act

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# A SURVEY OF EXPERIENCE UNDER THE MASSACHUSETTS RETAIL INSTALLMENT SALES ACT

## I. Introduction—Federal Legislation

On May 29, 1968, the federal Consumer Credit Protection Act was signed into law.[1] Title I of that Act is termed the Truth in Lending Act[2] and its passage culminates eight years of congressional debate on the alleged abuses which result from an inadequate disclosure of consumer-credit interest rates and finance charges.[3] Briefly, title I requires creditors to disclose to consumers the conditions and methods by which they compute their credit-finance charge, including an expression of the annual percentage rate which is the basis for the finance charge.[4] Compliance with Federal Reserve Board regulations will guarantee uniformity in the calculation of this rate.[5]

A major reason for the delay in the enactment of such a statute was the debate over the application of a uniform annual percentage rate to open-end credit plans, in particular retail revolving-credit accounts.[6] An open-end credit plan, as defined in title I, "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."[7] A practical example of such an account is helpful in illustrating what is herein involved. Suppose a buyer buys a $100 item under a revolving-charge plan in which the monthly rate is one and one-half percent. Under most plans a specified minimum of the balance, usually 10 percent, must be repaid each month with the credit charge computed against the remaining balance. Thus, as long as the buyer repays 10 percent of the balance, he may pay back each month as much or as little as he desires. In addition, he can make other credit purchases which will raise his balance and hence raise his monthly credit charge.

If a retailer is required to state an annual rate in lieu of, or in addition to, a monthly rate, a monthly rate of one and one-half percent would simply be translated to an annual rate of 18 percent. The retail industry and others have asserted vigorously that an annual rate should properly not be applied to measure the cost of open-end credit transactions.[8] They argue that the

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[1] Pub. L. No. 321, 90th Cong., 2d Sess. (May 29, 1968) (36 U.S.L.W. 101, June 4, 1968) [hereinafter cited as Truth in Lending Act].

[2] Id. §§ 101-45.

[3] E.g., Hearings on S. 5 Before the Subcomm. on Financial Institutions of the Senate Comm. on Banking and Currency, 90th Cong., 1st Sess. (1967); Hearings on S. 750 Before the Subcomm. on Production and Stabilization of the Senate Comm. on Banking and Currency, 88th Cong., 1st Sess., Part I & Part II (1963-64); Hearings on S. 1740 Before the Subcomm. on Production and Stabilization of the Senate Comm. on Banking and Currency, 87th Cong., 2d Sess. (1962); Hearings on S. 1740 Before the Subcomm. on Production and Stabilization of the Senate Comm. on Banking and Currency, 87th Cong., 1st Sess. (1961).

[4] Truth in Lending Act § 106.

[5] Id. § 107.

[6] See S. Rep. No. 392, 90th Cong., 1st Sess. 10 (1967); H.R. Rep. No. 1040, 90th Cong., 1st Sess. 9 (1967).

[7] Truth in Lending Act § 103(i).

[8] See authorities cited note 3 supra.

annual rate in these cases ordinarily overstates the effective cost of borrowing, thereby misleading the consumer rather than furnishing him with the information necessary accurately to evaluate the cost of credit. Specifically, it is pointed out that many plans allow a 30- to 90-day "free-ride" period with no charge at all. It would, therefore, be inequitable to include these periods in the calculation, for if, for example, a consumer repays his loan within the stipulated free period, there would be no credit charge at all. In addition, it is argued that the consumer is ordinarily unaware at the outset how soon he will pay back the balance and by how much he will enlarge the balance by subsequent purchases. As a result, if the consumer repays within a year, his actual interest charge will be well below 18 percent of the principal sum.[9] Specifically, if the buyer settles his debt in six months and there is a 30-day free-ride period, the rate at one and one-half percent per month will produce an actual charge of seven and one-half percent (5 months times one and one-half percent) rather than the disclosed rate of 18 percent. Finally, it is asserted that stores dealing in revolving-credit plans are at a distinct disadvantage in comparison with other credit sources by having to advertise such a high figure in their rate. In other words, if a bank charges 10 percent for a loan, it may turn out, as explained above, that the revolving-credit charge would effectively be the same or even lower. The stated rate of 18 percent, however, gives the creditor with the revolving-credit plan a competitive handicap.[10]

The legislative history of title I reveals the concern of Congress over the disclosure of an annual rate to open-end credit plans. Debates in the Senate on "truth in lending" began in 1960 and not until July 11, 1967, was a bill finally approved.[11] This bill, which passed by a vote of 92 to 0, established three categories of credit transactions. The first was the ordinary "consumer credit sale" which was defined as "a transaction in which credit is granted by a seller in connection with the sale of goods or services if such seller regularly engages in credit transactions as a seller, and such goods or services

[9] The following charts serve to illustrate the possible discrepancies between the annual rate and the effective rate of interest:

EXHIBIT A

*Financing of $80 purchase using J. C. Penney's revolving charge account*

[Method of billing: 1½ percent of opening balance less payments]

| Month | Opening balance | Payments | Purchases | Servicing charge | Closing balance |
|---|---|---|---|---|---|
| December | 0 | .......... | 80.00 | 0 | .......... |
| January | 80.00 | 10.00 | .......... | 1.05 | 71.05 |
| February | 71.05 | 10.00 | .......... | .92 | 61.97 |
| March | 61.97 | 10.00 | .......... | .78 | 52.75 |
| April | 52.75 | 10.00 | .......... | .65 | 43.40 |
| May | 43.40 | 10.00 | .......... | .50 | 33.90 |
| June | 33.90 | 10.00 | .......... | .36 | 24.26 |
| July | 24.26 | 10.00 | .......... | .21 | 14.47 |
| August | 14.47 | 10.00 | .......... | .07 | 4.54 |
| September | 4.54 | 4.54 | .......... | .......... | 0 |
| *Total* | .......... | 84.54 | .......... | 4.54 | .......... |

are purchased primarily for a personal, family, household, or agricultural purpose."[12] In other words, this is a simple credit sale transaction wherein the consumer periodically pays a fixed amount for the goods and credit charges. The disclosable annual rate was to be computed by the actuarial method[13] with a clause allowing the Federal Reserve Board to agree to a

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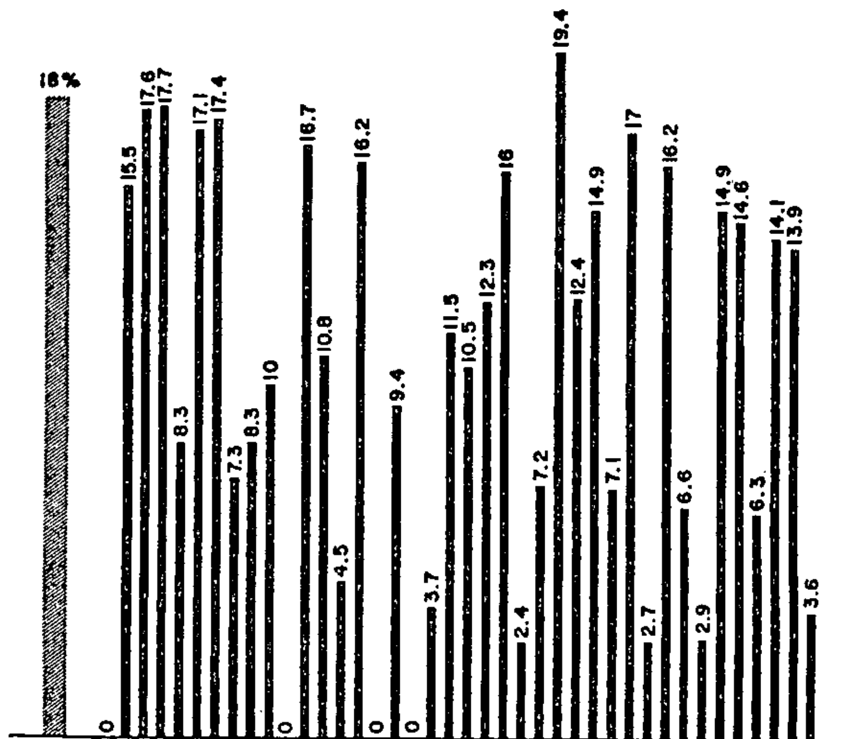
APPROXIMATE ANNUAL RATE (S-5)
COMPARED TO TRUE ANNUAL RATE
ANALYSIS OF 40 CONSECUTIVE REVOLVING CREDIT ACCOUNTS FROM RECORDS OF A SMALL DEPARTMENT STORE IN VIRGINIA




APPROXIMATE ANNUAL RATE UNDER S.5 FOR ALL 40 CUSTOMERS.

TRUE ANNUAL RATE PAID BY EACH OF THE 40 CUSTOMERS- FEB. 1966 TO FEB. 1967

Hearings on S. 5, supra note 3, at 222, 505 (1967). It should be noted that in the first chart the effective rate is 5.675% rather than 18%.

[10] For an informative statement of this viewpoint, see the dialogue between Senator Bennet and John P. Clair in id. at 169-85.

[11] 113 Cong. Rec. S9408 (daily ed. July 11, 1967).

[12] S. 5, 90th Cong., 1st Sess. § 3(c) (1967).

[13] The actuarial method is equivalent to multiplying the periodic rate times the number of periods per year. The drafters of the Senate bill felt it is the most accurate computation method even though other methods produce similar results. See Section-by-Section Summary, S. Rep. No. 392, supra note 6, at 13.

different method in a suitable case. The bill then established two categories of open-end credit plans. The first category is labeled "open-end credit plan" in which credit transactions are made "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 . . . ."[14] Secondly, a special classification is set up called an "installment open-end credit plan" which has one or more of three characteristics noted in the statute. Specifically, the "open-end credit plan" becomes an "installment open-end credit plan" if it

> (1) creates a security interest in, or provides for a lien on, or retention of title to, any property (whether real or personal, tangible or intangible), (2) provides for a repayment schedule pursuant to which less than 60 per centum of the unpaid balance at any time outstanding under the plan is required to be paid within twelve months, or (3) provides that amounts in excess of required payments under the repayment schedule are applied to future payments in the order of their respective due dates.[15]

As can be seen from these characteristics, an "installment open-end credit plan" is a long-term transaction which would ordinarily include only expensive items. In a compromise between disclosure and nondisclosure, the Act exempted "open-end credit plans" from the annual disclosure rate but did not exempt "installment open-end credit plans." The reasoning here is that if one of the defined characteristics of an "installment open-end credit plan" is complied with, then the sale is stable enough to justify the application of the fixed formula.[16] In other words, these relatively stable transactions are subjected to the annual rate since they are not likely to be repaid within a year; the possibility of their yielding a credit charge substantially below the statutory rate is minimized.

An additional concern here is to keep "installment open-end" retailers from obtaining a competitive advantage over "consumer credit sale" retailers, the first category set up in the Senate bill, which would occur if the former were allowed to disclose a periodic rate while subjecting the latter to the higher figure of the annual rate.[17] Take, for example, two retailers both of whom offer credit to their customers and both of whom offer for sale similar products. Suppose one creditor would be classified as an "installment open-end" retailer while the other would be a "consumer credit sale" retailer. Inasmuch as it may be true that the "consumer credit sale" retailer charges the consumer less for credit than his competitor, both the retailer and the consumer will be handicapped if the periodic rate of the "installment open-end" retailer is permitted to mislead potential debtors. Thus, while these "installment open-end credit plans" are technically akin to "open-end credit plans," the defined characteristics lend the former a stability and duration that makes them more suitable for yearly rate-disclosure treatment and for comparison to "consumer credit sale" finance charges. On the other hand,

[14] S. 5, 90th Cong., 1st Sess. § 3(g) (1967).

[15] Id. § 3(h).

[16] See Section-by-Section Summary, S. Rep. No. 392, supra note 6, at 14.

[17] S. Rep. No. 392, supra note 6, at 10.

the distinct category of "open-end credit plans" created a broad exception whereby most department store revolving-credit transactions would have been exempted under the Senate bill.[18]

When the Senate bill was sent to the House Committee on Banking and Currency, that committee, on December 13, 1967, introduced another variation to the treatment of revolving credit. The committee bill retained the three classifications as described above, but a new section was devised pertaining to the disclosure of "open-end credit sales." The section stated that lenders shall furnish consumers a written estimate of the approximate yearly percentage rate of the charge "if the party making the request specifies or identifies the repayments schedule involved and such other essential credit terms as may be prescribed in the regulations issued by the Board."[19] Since the Federal Reserve Board was to make applicable regulations, the section was vague in describing what the consumer must tell the creditor. The House Committee thus stepped between truly uniform disclosure and the Senate's approach by retaining the Senate's exception to the annual rate disclosure but allowing inquisitive consumers to eliminate the exception by request.

The House Committee's bill did not, however, meet with success when the House voted on it. The Representatives rejected the compromising approach taken by the Committee and voted to subject all credit sales, including short-term, revolving-credit sales, to the disclosure of an annual rate. In fact, this bill passed by an overwhelming majority of 382 to 4.[20] The predicted opposition to application of a disclosable annual rate to revolving-credit transactions was seemingly absent.

Title I, the product of a joint committee of the House and Senate, differs from the House and Senate bills in its treatment of the annual rate. The Act divides credit transactions into two groups: open-end consumer credit plans[21] and non-open-end consumer credit plans.[22] In the latter group, the annual rate is required to be disclosed, and it is to be computed by the actuarial method or any alternative prescribed by the Federal Reserve Board.[23] Thus, the Act is similar in this respect to the previous House and Senate bills. There is a change, however, in the treatment of open-end consumer credit plans. The Act requires such creditors to disclose "the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year."[24]

At first blush, this last provision seems to give little regard to the arguments of the retail industry against such a result, but the following section in the statute attempts to provide some relief for those problems. That section states that if the creditor so elects, he may also disclose the "average

[18] See H.R. Rep. No. 1040, supra note 6, at 50-59 (Supplemental Views of Representatives Patman, Multer, Barrett, Sullivan, Reuss, Moorhead, St. Germain, Gonzalez, Minish, Bingham and Halpern).

[19] H.R. 11601, 90th Cong., 1st Sess. § 203(d)(5) (1967).

[20] The bill was passed on Feb. 1, 1968. 114 Cong. Rec. H709 (daily ed. Feb. 1, 1968).

[21] Truth in Lending Act § 127.

[22] Id. § 128.

[23] Id. § 107(a)(1).

[24] Id. § 127(a)(4).

effective annual percentage rate of return received from accounts under the plan for a representative period of time"[25] or, if that would be misleading or meaningless, the creditor may disclose "a projected rate of return to be received from accounts under the plan."[26] While this statutory language is quite general, the Federal Reserve Board is to prescribe regulations to carry out the purpose of the section.[27] In short, this section seems to be aimed at enabling creditors to point out the fact that "free-ride" periods and final payment in less than a year may lead to a lower interest rate than the "nominal" annual percentage rate. As a result, the Truth in Lending Act attempts to draw the consumer's attention to the potential annual rate of these plans while permitting the creditor to explain that the effective annual percentage rate may be quite different.[28]

Title I of the Consumer Credit Protection Act, although the product of years of congressional debate, is in many respects a response to the rapidly developing, though diverse, state legislation in the area of consumer credit.[29] By far the most significant of the many recent state acts is the Massachusetts Retail Installment Sales Act[30] which requires all consumer lenders to disclose a uniform annual finance-charge rate regardless of the credit plan involved. Since the Massachusetts Act is the only such legislation in effect before January 1, 1968, it provides the only real yardstick by which one may estimate the impact of the federal Truth in Lending Act upon retailers and consumers.

## II. THE MASSACHUSETTS EXPERIENCE

It is apparent from the above that revolving credit persisted as the critical issue in the enactment of federal legislation. With this in mind, the writers have undertaken a survey among the major retailers of Eastern Massachusetts in order to make a tentative assessment of the merits of the arguments for and against the application of uniform rate disclosure to revolving credit.[31]

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[25] Id. § 127(a)(5)(A).

[26] Id. § 127(a)(5)(B).

[27] Id. § 127(a) (5).

[28] The charts note 9 supra illustrate how substantial this difference may be in any given instance.

[29] Present and future state laws are not affected by title I "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." Truth in Lending Act § 111(a).

[30] Mass. Gen. Laws Ann. ch. 255D, §§ 1-31 (Supp. 1967).

[31] The credit departments of the following major retail organizations were consulted: J. M. Fields Discount City; Filene's Department Stores; Jordan Marsh Company; Kennedy's of New England; Lechmere Sales, Inc.; Raymond's Inc., through the credit management of the Uni-card Corporation; Sears, Roebuck and Co.; Zayre Department Stores. In most instances the departmental credit manager was interviewed. One exception was Jordan Marsh Company, which preferred to speak through the agency of the Massachusetts Merchants Association. Another was Filene's Department Stores, where legal counsel provided a very thorough discussion of the topic.

In addition information was sought from several credit-card plans: State Street Bank and Trust Company, Bank Americard Department; Norfolk County Trust Company, Charge Account Plan; and Uni-card Corporation. The Massachusetts Consumers Council provided information from the borrower's viewpoint.

It will be recalled that the main argument for requiring revolving-credit rates to be expressed as a flat annual percentage is that the borrower is entitled to a simplified standard for comparison of alternate credit costs. Against this policy are marshalled several contentions. First, it is argued that the cost of computing such charges will be burdensome, especially among small businesses lacking in time and facilities. Second, it is feared that such increased costs will emerge in higher retail prices. Third, it is asserted that revolving-credit sales volume will decline because the high annual rate figure will inhibit potential consumers unwilling to pay cash. Fourth, and most emphatically, it is argued that the application of any set formula is inherently unfair to the creditor since the disclosable rate will typically be higher than the charge which the consumer will actually pay. Finally, on the issue of the borrower's right to know and to compare credit costs, some opponents have urged that the consumer will be confused or misled by a percentage rate.[32]

The typical charge account encountered in the survey permits the customer a 30- to 60-day interest-free or "free-ride" period before the rate goes into effect. Thereafter the customer is obligated to pay the annual rate on the balance of the debt at fixed monthly intervals. The typical rate is one and one-half percent per month or 18 percent per annum. The retailer or credit-card distributor complies with the law by announcing on the revolving-account application or contract the annual rate in 12 point bold-faced type.[33] At the time of inquiry the disclosure requirement had been in operation for slightly more than a year.[34]

The survey attempted two main lines of inquiry. First, the respective retail credit department was asked whether it had detected any appreciable change in consumer behavior visibly resulting from the disclosure of the annual rate figure.[35] Specifically, did the borrower voice concern over the

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All communication took place in the form of personal interviews, phone interviews and written questionnaires during the months of January, February and March 1968.

It will be noted that this sampling is confined to large retail concerns. The experience of these companies cannot be assumed applicable to smaller and more specialized businesses. However, while relatively few small stores have their own revolving-credit plans, many do participate in the crédit-card plans covered by interview.

Unless other or specific reference is given, statements of fact represent the reported general experience of respondents.

32 See authorities cited note 3 supra.

33 Mass. Gen. Laws Ann. ch. 255D, § 27E (Supp. 1967).

34 The Massachusetts Retail Installment Sales Act became effective January 1, 1967. Id. The typical statement of the annual rate on the credit application is as follows:

> When computed in accordance with the provisions of Chapter 255D of the General laws the simple interest per annum rate that approximates most closely the finance charge percentage rate is eighteen percent (18%) on balances of $500.00 or less, if the charge is not a minimum charge, and twelve percent (12%) on any excess over $500.00.

35 Admittedly there is some danger of distortion in asking one side of the credit transaction to describe the behavior of the other. However, the high rate of agreement among creditors suggests an accuracy in their view. For comparison see the following conclusion of the borrower's representative, the Massachusetts Consumers Council, a statutory body created within the executive department of the Commonwealth in 1963. Citing the figures below reported by the Federal Reserve Bank of Boston, the Council concluded that rate disclosure

> has given the consumer a yardstick by which it can comparison shop for credit

annual rate? And did he display a heightened awareness of competing sources of credit? It was hoped that the response to these questions would serve to gauge the success of the legislative purpose that a simplified basis of comparison would foster a more rational use of consumer credit. The second line of inquiry sought to measure the impact of the disclosure requirement on the practices of the creditor himself. Generally, had any of the arguments against the disclosure requirement proved valid? Specifically, had the costs of compliance proved burdensome? Had such costs resulted in higher retail prices? And, finally, did the retailer regard the disclosable rate figure as unfair on the ground that it announced a misleading high charge?

### A. *Consumer Behavior*

The principal question asked whether borrowers ever expressed concern over the relatively high annual rate, usually 18 percent, of consumer loans as compared to the traditionally low rate of mortgages or bank loans. All respondents reported any such consumer reaction to be extremely rare. Most offered reasons for the absence of consumer concern. The most common explanation was that the credit user remained uninfluenced by the annual rate figure when his desire to purchase was sufficiently strong. It was felt that the customer viewed credit simply as a consumer convenience and not as a determinant factor in the decision to buy.[36] Seeing credit as a charge for

> and this Federal Reserve Staff Report shows conclusively that this is being done. It states that the percentage gains of consumer credit of savings and commercial banks as compared to finance and loan companies have increased substantially.

Consumers Council News, Nov. 26, 1967, at 30.

By comparison the Federal Reserve itself is more cautious:

> Consumer credit has grown slower at all financial institutions in 1967 than in 1966. Perhaps consumer loan (small loan) companies have suffered the most, while savings banks have done the best, but this comparative trend seems to have been in existence already in 1966 and earlier. Savings banks have advertised more aggressively and they were bound to get an increasing share of the market in any case. In addition, commercial banks have begun to advertise credit cards and check credit aggressively so that they were probably also due to get a bigger share.

Letter from Paul S. Anderson of Federal Reserve Bank of Boston to Dermot P. Shea, Executive Secretary, Massachusetts Consumers Council, Nov. 15, 1967.

The Federal Reserve's figures are as follows:

CONSUMER CREDIT AT FINANCIAL INSTITUTIONS

| Percentage Gains | Commercial Banks | Finance Companies | Consumer Loan Companies | Savings Banks |
|---|---|---|---|---|
| Dec. 65 to Sept. 66 | 7 | 2 | 5 | 50 |
| Dec. 66 to Sept. 67 | 5 | —1 | 0 | 43 |

Consumers Council News, Nov. 26, 1967, at 30.

[36] This explanation received especial emphasis throughout the interview with the Filene's representative. Roughly analagous to this notion is the analysis in F. T. Juster &

a consumer convenience, the retail purchaser remained uninterested in the alternate, cheaper sources of credit for the purpose of his immediate purchase. Moreover, some retailers doubted the consumer's actual awareness of the flat annual rate as announced on credit applications and contracts. Where the consumer was aware of the annual rate, it was suggested, he continued to focus on the monthly rate also as stated on the application or contract or as mentioned orally. In the usual instance his attention centered on the rate of one and one-half percent per month, not 18 percent per year.

Almost all of the respondents did not feel that the disclosure law had made the borrower more aware of competitive credit sources or that generally it had fostered a more intelligent use of credit.[37] In this connection several took the occasion to argue that a genuinely intelligent use of credit could develop only from broadly based programs of consumer credit education, ideally in the public school system.[38] Some suggested that the present disclosure measure tended to breed a false sense of consumer protection among lawmakers who might assume that the borrower had already achieved the legislative goal of rational self-protection.[39]

One aspect of consumer behavior remains unknown to the retail creditor. He cannot estimate the number of borrowers who may be abandoning the high interest rates of the small loan and finance companies in order to gain cheaper consumer credit in bank loans and, possibly, revolving-charge accounts. Nevertheless, most retailers believed that the main impact of disclosure was falling upon those high interest sources.[40]

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R. Shay, Consumer Sensitivity to Finance Rates: An Empirical and Analytical Investigation, National Bureau of Economic Research Occasional Paper No. 88 (1964). The authors divided borrowers into two broad classes, "rationed" and "unrationed." "Rationed" consumers are defined as those who, given the finance rate, desire more credit than the major or "primary" credit sources (banks, sales finance companies) are willing to grant; "unrationed" consumers are those whose demand for credit is satisfied by their actual borrowing from primary credit sources. The authors' findings indicated that the limited amount of accurate rate information was heavily concentrated among unrationed consumers. Both rate knowledge and rate sensitivity were located mainly within the unrationed group. Rationed consumers showed "virtually no knowledge of rates." Id. at 3.

In terms of the offered explanation of why the revolving-credit user has failed to react to the newly disclosed annual rate, it might be argued that he belongs to the class of unrationed borrowers whose rate sensitivity seems submerged in his desire to buy.

[37] Only the representative of Lechmere Sales, Willet Smith, took exception to this view. Mr. Smith has testified before the Senate Subcommittee on this very point. Hearings in S. 5, supra note 3, at 230-38. On the other hand, the Zayre respondent suggested that the disclosure language actually confused most credit applicants.

[38] Interviews, Filene's Department Stores; Massachusetts Merchants Association; State Street Bank and Trust Company, Bank Americard Department; and Uni-card Corporation.

[39] Interviews, credit departments, Filene's Department Stores and Zayre Department Stores.

[40] This general belief is supported by an end-of-year report by the New York Times:

> Consumer loan companies, which once advertised dollar amounts for monthly repayments of loans, no longer do so, since they also would be required to disclose the annual percentage rate.
>
> Banks, on the other hand, which have lower rates than the lending companies do, have stepped up their advertising of dollar amounts and percentages.

In short, then, it was felt that the consumer was making little use of his newly available information. But if his performance thus far constituted a disappointment of statutory purpose, at least he was not confused by the rate disclosure, as some of its opponents had predicted. Generally, the consumer seemed to avoid either result by simply ignoring the annual rate.

### B. *The Impact on Retail Creditor Practices*

Inquiry into the cost of compliance produced the one major split of response. Since each respondent was a large retail concern, their response cannot be applied to the experience of smaller businesses.[41] A sizable minority reported that new costs consisted merely of printing new forms at negligible expense.[42] Several claimed heavier printing costs.[43] A third group maintained that their costs were considerable because of the volume of printing and the need for legal consultation.[44] However no respondent would report that such cost was passed on to the customer either in the form of higher prices or interest charges.

Among large retailers the volume of revolving-credit sales appears to have gone unaffected by the disclosure rate. The predominant opinion of the retailers was that generally disclosure had not altered the percentage of credit purchases to cash purchases, and that specifically it had not varied the percentage of open-end credit purchases.[45] Again, explanations were forth-

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> Bank rates range around 9 to 12 per cent on an annual basis while loan companies' rates go as high as 31 per cent for the year.

N. Y. Times, Dec. 26, 1967, at 27, col. 1.

[41] For example, one men's clothing chain attributed an appreciable decline in the percentage of revolving-credit purchases to the new disclosure requirement. The effect was felt throughout its New England stores because the company printed only one credit form for all its stores in the region. The disclosure law was said to be undercutting the original purpose of the revolving-credit plan, the increase of sales volume. The same respondent reported considerable cost in compliance, supposedly in the form of printing adjustments and time allocation. However no competitive adjustments were being undertaken.

In terms of consumer behavior, some customers were complaining about the high rate, but most were concerned primarily about a dollars-per-month interest figure. The rate discrepancy was explained to all complainants. The respondent felt that its customers consisted mainly of those who use credit primarily out of convenience rather than need. Thus they might be characterized as unrationed credit users. Interview, credit department, Kennedy's Clothing Store.

[42] Interviews, credit departments, J. M. Fields Discount City; Lechmere Sales; Unicard Corporation.

[43] Interviews, credit departments, Gilchrist Department Store; State Street Bank and Trust Company, Bank Americard Department.

[44] Interviews, credit departments, Filene's Department Stores; Massachusetts Merchants Association; Norfolk County Trust Company; Sears, Roebuck and Company; Zayre Department Stores.

[45] The following findings of the Federal Reserve Bank of Boston give general support to this view.

Dear Mr. Shea:

> Following is a short analysis we made to try to determine whether "Truth in Lending" had had any impact since its inception in Massachusetts.

coming in regard to the consumer's perception of the retail credit charge. The credit user was characterized as bent on making the immediate purchase and on viewing the credit cost as a service charge for customer convenience. The monthly rather than the annual rate still commanded his attention.

The main objection to the annual rate figure had been that it would be deceptively high. Respondents were asked whether they regarded the figure as unfair and whether they were taking steps to explain to customers the possible discrepancy between the rate of interest on an open-end account and the amount of interest actually paid. Most retailers did not view the annual figure as unfair so long as their retail competitors labored under the same disability. Usually they explained the possible discrepancy only in the rare instances where the customer initially inquired or complained. A few retailers did customarily take the initiative to explain that the customer would likely pay less than the rate of 18 percent because of his "free-ride" period, his dwindling principal, and his possible early payment. Generally, then, the large retail creditor expressed little resentment at being forced to state an annual interest rate.[46]

Nor were any respondents experiencing competitive affects or adopting competitive practices as a result of rate disclosure. Once again unchanging consumer behavior was cited as an explanation for the absence of competitive affects as was the attitude that the uniform impact of disclosure among major retailers would merely leave them in the same competitive relationship as existed before rate disclosure. No major retailer had adjusted his interest rate in response to competitive pressure from rival retailers or from less expensive credit sources, such as banks.[47] Similarly none had altered advertising policies regarding their open-end accounts.[48] Since the frequency of revolving-credit

| *Retail Sales:* per cent change January-August 1966 to January-August 1967. | *Total* | *Nondurable* |
|---|---|---|
| New England | +1.0 | +3.0 |
| Massachusetts | +3.0 | +4.0 |
| *Personal Income:* same period | | |
| New England | | +7.5 |
| Massachusetts | | +7.2 |

Thus, despite a somewhat smaller rise in personal income, Massachusetts had a better gain in retail sales, thus far in 1967 over 1966 than did New England as a whole.

Letter from Paul S. Anderson of Federal Reserve Bank of Boston to Mr. Dermot P. Shea, Executive Secretary, Massachusetts Consumers Council, Nov. 15, 1967.

[46] This finding contradicts the argument of those opponents who insisted that an annual rate of 18% was a "distortion" which would force them to lie to or mislead the customer. See especially the testimony of Mr. William M. Batten, Chairman of the Board, J.C. Penny Co., Inc., Hearings on S. 5, supra note 3, at 199-233, and the comments of Senator Bennet, id. at 212-13.

[47] But, as has been noted, the Banks are now advertising more aggressively. See notes 35 & 40 supra.

[48] As a matter of practice the retailers and credit-card distributors make no mention of rates in radio, television and newspaper advertisements. Usually the public is merely reminded of the ease with which it can apply for a revolving account.

sales has remained unaffected by disclosure of an annual rate, the larger retailers have felt little cause to respond to the increased advertising of the cheaper bank consumer loans. Typically, the advertisement of retail revolving credit by means of newspapers, television and radio omits all reference to interest rates.

## III. Conclusion

The examination of revolving credit among large retail businesses indicates that the statutory "truth in lending" requirements have had minimal impact on either creditor practices or consumer behavior. Under the heading of creditor practices, the inquiry centered on possible changes in the volume of credit services and in competitive policies adopted. In regard to consumer behavior, investigation concentrated on possible change in the borrower's awareness of relative credit costs and in his subsequent use of competing credit sources. The response to both sides of the inquiry compels the conclusion that neither creditor nor borrower has appreciably altered his behavior beyond the former's literal compliance with the law.

It has been pointed out that the consumer has so far failed to live up to the legislative hope that as a better informed borrower he will act as a more rational and discriminating borrower. But if the legislative policy has not yet been realized, neither have the fears embodied in the arguments directed against it. The absence of consumer benefit is matched by the absence of creditor harm. All benefits and detriments being equal, the "truth in lending" provisions deserve a longer period of time to demonstrate their efficacy. In the description of his retail creditor, the revolving credit customer has retained his predisclosure borrowing habits. But it was never pretended that a disclosure provision alone would reform his borrowing habits or that it would do so immediately. Clearly a longer period of operation coupled with consumer education programs is necessary for the full realization of the statutory policy. Moreover, it is likely that disclosure and education will have maximum impact on new entrants into the burgeoning credit market as opposed to more moderate success with the veteran consumer conditioned by his predisclosure habits. Or, in the alternative, the credit user may never choose to be the discriminating and self-regulating consumer desired by the law. But left uninformed he has no opportunity to exercise his right of choice. The opportunity for choice has now been available for more than a year under the Massachusetts Retail Installment Sales Act. Generally, it seems to have gone unexercised. Thus far the major retail concerns in the state can report that they are experiencing business as usual.

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