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The Long History of “Truth in Lending”

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The Long History of “Truth in Lending”

Abstract: This article offers the first comprehensive history of the development of mandatory disclosure rules for the cost of consumer credit. In contrast to prior studies, which begin with the creation of federal disclosure rules in 1968, this story starts with state-level laws that were drafted before World War I. By looking back over a longer time period, it reveals the challenges involved in defining “truth” in lending, and how the perceived purpose of a regulatory technique like mandatory disclosure may change over time. Although the modern APR disclosure metric has come to seem natural and inevitable, history shows that lenders and policymakers once hotly debated the design of disclosure rules, with each faction claiming the mantle of “truth.” Moreover, policymakers did not always view disclosure as a means to increase price competition, obviating the need for direct price controls. Disclosure was once a complement to usury laws, rather than a substitute.

Keywords: Truth in Lending Act, mandatory disclosure, “Consumer Credit Labeling Bill,” annual percentage rate (APR)

In 1960, Senator Paul Douglas (D-Ill.) introduced a short, four-page proposal for consumer protection legislation that would require lenders to disclose the cost of credit to borrowers in terms of “simple annual interest.” He surely had

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no idea that the bill would prompt eight years of public and legislative debate, generate tens of thousands of dollars in printing and travel costs, and ultimately outlive its author's term in office. At the time, Douglas viewed his "Consumer Credit Labeling Bill" as a commonsense measure.¹ There were already a number of other federal laws that endorsed disclosure as a means of protecting consumers, such as the Wool Products Labeling Act, the Fur Labeling Act, and the Textile Fiber Products Identification Act.² Meanwhile, state-level usury laws set upper limits on the price of credit. Douglas described his bill's "objective" as removing "the disguises and camouflage which frequently hide or distort the true price of credit." In other words, the bill would vindicate borrowers' right to "the truth."³

Douglas later rebranded the bill the "Truth in Lending Act," or TILA, and renamed the disclosure metric the "annual percentage rate," or APR.⁴ Eight years after its initial adoption, when Congress finally enacted a revised version of the measure, the bill's stated objectives had also changed. The original 1960 preamble to the bill emphasized the goals of avoiding consumer deception and dampening demand for credit by warning of its high cost. It stated that the "excessive use of credit results frequently from a lack of awareness of the cost thereof to the user" and the "purpose" of the law was to "assure a full disclosure of such cost."⁵ But thereafter, the bill's "declaration of purpose" shifted, slowly pivoting away from Douglas's original objectives. Douglas himself amended the bill in 1963, in response to a statement from the President's Council of Economic Advisors, to clarify that the problem was not "excessive" credit but rather the "untimely use of credit."⁶ Four years later, after Douglas was voted out of office and Senator William Proxmire (D-Wisc.) took over the campaign for Truth in Lending in 1967, the stated "purposes" changed again, to strengthening "competition among the various financial institutions and other firms engaged in lending."⁷ In this iteration of the bill, increasing consumer awareness of the cost of credit was not its own objective, but rather a means to increase price competition. Douglas's 1969 statements in favor of model state credit legislation and his memoir, published in 1972, belatedly embraced this revised understanding of the primary purpose behind the bill.⁸

Nearly all studies of mandatory disclosure rules start here, with the congressional debate over and passage of the federal Truth in Lending Act.⁹ But disclosure rules for the cost of credit have a much longer history. In the states, contests over mandatory disclosure began six decades before TILA's 1968 enactment. When placed within the context of this longer history, TILA's

shifting preamble captures a moment of transition—from one way of thinking about disclosure to another. The long history of “truth in lending” also challenges existing narratives about the history and purpose of mandatory disclosure rules in at least two respects.

First, this history undercuts the claim that federally mandated disclosure was the first step in a “revolution” to abandon “substantive regulation.”¹⁰ Although the lack of scholarly consensus on the purpose behind TILA invites researchers to ascribe modern motives to legislators in the past and to construct a narrative that links TILA with the deregulation that followed a decade later, TILA was not understood at the time of its enactment as the first step toward dismantling substantive credit regulation.¹¹ This interpretation is a product of hindsight. In 1968, supporters of disclosure did not understand TILA in these terms and saw no inherent conflict between mandating disclosure and retaining existing price ceilings. The 1960s did witness a major shift in thinking about the primary purpose of disclosure and its place in the regulatory regime for consumer credit. Yet even policymakers who embraced the competition rationale for TILA stopped short of promoting disclosure as a means to obviate the need for direct controls on the price of credit, which had coexisted with disclosure rules at the state level for decades. In fact, disclosure and substantive credit regulation drifted apart quite late in the century, after traveling hand-in-hand for decades, and their separation came about largely by coincidence, rather than through lawmakers’ careful calculation. When this split occurred, with the erosion of direct price controls in the late 1970s and ‘80s, it caused disclosure to assume a much greater role in the overall regulatory scheme for consumer credit than the TILA drafters had ever imagined. Thus, it was only after TILA’s enactment that policymakers came to embrace disclosure as an alternative to more direct forms of cost regulation, affecting a substitution that TILA’s original proponents did not intend.¹²

Second, the long history of “truth in lending” also shows that, in the six decades leading up to TILA, lenders and policymakers did not perceive disclosure as a value-neutral form of regulation, as some do today.¹³ They recognized that designing disclosures entailed making decisions about what knowledge borrowers required and valued, selecting among the many “truths” in lending. Accordingly, lenders and policymakers fiercely argued over the design of state-level cost disclosure mandates for decades, with each segment of the lending industry advocating for the form that best served its interests. It has only been since 1968, when the form of cost disclosure became fixed and wide-ranging political debates over the design of these rules were

silenced, that the policy choices embedded in disclosure rules have become less visible. Since then, disclosure has become even more deeply entrenched as a pillar of our consumer protection regime, while the value judgments that underlie these seemingly-neutral rules are ignored. Yet, as the following narrative shows, the meaning of “truth in lending” and the relationship of “truth” to substantive regulation were far from settled for most of the twentieth century. The battle to define truth was long and started early in the century, with the advent of the organized small-sum cash-lending business and the creation of the first mandatory disclosure rules for consumer credit.

THE ORIGINS OF MANDATORY DISCLOSURE RULES: SMALL LOANS AND STATE LAW

The history of mandatory disclosure rules, and debates over the design of those rules, begins in the 1910s, when small-dollar loans were essentially outlawed in most states by rigid usury laws that limited the rate of interest that lenders could charge on all types of loans. Most states set the maximum rates at 6 percent or 7 percent per year—too low for lenders to profitably lend small sums of money given their fixed administrative costs. So, in 1916, a group of small-sum lenders formed a national trade association, the American Association of Small Loan Brokers, to professionalize and legitimize their business through the creation of better lending laws.¹⁴ The lenders’ association appointed a delegation to meet with a group of reformers from the recently established Russell Sage Foundation, to put the business under a new scheme of regulation that would allow it to operate openly and profitably.

Based on its own research, the Sage Foundation shared the lenders’ belief that legal reform was necessary. Established by Olivia Sage in 1907 and named after her late husband, the foundation had a broad mission: “the improvement of social and living conditions in the United States.” It was among the first to fund the study of the small-sum lending industry and its regulation and, in the decades to come, would become the preeminent source of small-sum lending research and policy proposals. To address the “loan shark problem,” the foundation did not want to exterminate the small-sum lending business, which offered a valued service to low-wage workers. Rather, beginning in the 1910s, it sought to devise a new scheme of regulation that would drive out those lenders who charged excessively high rates, while encouraging “honest capital” to enter the business. The foundation worked with the lenders’ association to draft a mutually-acceptable model law that would include both limits on how much lenders could charge and rules for how they

must disclose their charges to borrowers. The law, which became known as the Uniform Small Loan Law, could then be introduced and enacted in state legislatures across the country.¹⁵

To design the disclosure rules, the drafters of the law needed to identify the goals they hoped to achieve through price disclosure, and which of the many "true" methods of disclosure best achieved those goals. The debate that ensued between the Sage Foundation and the lenders' association was the first of many fights over the form of disclosure mandates. As in the conflicts that would later arise, both sides agreed on the need to disclose the cost of credit. The dispute was over the question of *how*, not *if*, lenders should present this information to borrowers.

The lenders preferred a method of calculating their charges and disclosing their rates that both tracked their current business practices and made their charges sound "better" than the alternatives.¹⁶ At the time, most lenders calculated and stated their charges in terms of a "discount" rate plus an origination or investigation fee.¹⁷ This method made the rate of charge seem smaller than if the lender disclosed the cost of the loan as a single, all-inclusive rate.¹⁸ As one lender explained, "2% and fees of \$1 or \$2 sounds better than 3-1/2% or 4% per month, though it may actually yield a greater revenue."¹⁹ They predicted that "the legislature is more likely to permit [interest plus fees] than to permit a flat rate of interest yielding an equivalent revenue."²⁰ In addition, separating out fee charges also would allow lenders to split a loan into multiple smaller loans so as to "gain a larger revenue through repetition of the fee charge."²¹

The Sage Foundation rejected this method, however. Instead, it demanded that lenders calculate and disclose their charges as a single, all-inclusive monthly rate to be applied to the declining loan balance. This method of disclosure served two purposes. First, it offered lenders a means to "overcome the stigma which has long been attached to the small loan business."²² By using a different method of cost disclosure, lenders licensed under the law could distance themselves from their "loan shark" precursors in the eyes of borrowers and, more important, investors. Indeed, transparent cost disclosure was one of several features of the law that lenders later advertised to potential investors, along with minimum capital requirements and state supervision. The law also required lenders to disclose both the borrower's interest rate and the legal maximum rate, to further police against deception and overcharging.²³

Second, in addition to burnishing the lending industry's tarnished reputation, the all-inclusive rate method of disclosure alerted consumers to the

total (high) cost of borrowing. It ensured that borrowers understood that the lenders' charges were greater than usually allowed under state usury laws, and so lessened the potential for deception. It also stated the cost of credit in the least flattering terms, treating every fee the lender received from the borrower as part of the interest charge, and thereby discouraging borrowing. Reflecting back on the uniform law's history in 1960, one lender's attorney observed that the "all-inclusive" method of rate statement was the law's "most important innovation." It yielded a "highly overstated rate of charge" that "was designed to shock the borrower and deter him from non-necessitous loans."²⁴

Spurring price competition was not among the goals of the drafters of the Uniform Small Loan Law. Although the all-inclusive rate disclosure bears some resemblance to the modern Truth in Lending Act's APR metric, stated in monthly rather than annual terms, the drafters of the Uniform Law did not intend that this method of price disclosure would keep down prices by encouraging borrowers to comparison shop. It would not have been worthwhile for borrowers to comparison shop among licensed lenders because almost all of them charged the legal maximum rate of 3.5 percent per month in the 1910s and 1920s. The Uniform Law set the legal maximum rate lenders could charge, rather than rely on disclosure to spur price competition. Borrowers were also unlikely to compare prices between licensed lenders and other types of lending institutions because there were few other lenders that offered small loans.²⁵

In the 1910s, when the Uniform Law was drafted, the licensed lenders' only real competitors were pawnshops and Morris Plan banks, also known as "industrial banks." Both offered small loans to ordinary people, like licensed lenders, but each required borrowers to provide a different form of security to ensure the loan was repaid. Pawnshops required borrowers to hand over some type of valuable collateral to the lender, such as jewelry, and generally did not cater to the same clientele as licensed lenders.²⁶ The Morris Plan banks likewise expected each loan applicant to provide a specific form of security—namely, one or two co-signers on the loan who would be jointly liable for the borrower's debt and from whom the bank could seek repayment if the debtor defaulted. The Morris Plan banks also used their own method of cost disclosure, which they argued was superior to the Uniform Law method.²⁷

OTHER LENDERS, OTHER "TRUTHS" IN LENDING

As the number of consumer lending institutions grew over the first three decades of the twentieth century, each type of lender devised its own system

of cost disclosure that best served its interests and each pursued the passage of special legislation that would sanction its disclosure methods. Each method incorporated different assumptions about what knowledge consumers needed to decide if and where to borrow, and which choices the law should promote. Disclosure rules never traveled alone, however. They were always paired with substantive constraints on the cost of credit.

Morris Plan banks, which first appeared in the 1910s, calculated and expressed their charges in the same form used by many small-sum lenders in the era before the Uniform Small Loan Law: as a discount rate plus fees. This method of disclosure, along with the banks' clever, two-part structuring of their loans, allowed them nominally to charge no more than "6%." Unlike lenders licensed under the Uniform Law, the banks structured each loan and its repayment as two separate transactions, one for a loan and the other for the sale of stock certificates on credit.²⁸ This structure was designed to sustain a useful legal fiction: the claim that the borrower had use of the full loan principal for the entire length of the loan, rather than possessing an average sum of only half the principal amount. For example, imagine a loan with a rate of charge stated as "6% discount plus fees." For a \$100 loan at a discount rate of 6 percent, plus a \$2 fee, repaid over the course of a year, the borrower would receive \$92 at the outset (\$100 minus the \$2 fee and \$6 interest) and then repay the bank a little each month.²⁹ In total, he would pay \$8 for the use of an average monthly balance of \$46. In contrast, if the cost of the loan (\$8) were instead expressed as a percentage of the average outstanding loan balance (\$46), it would be more than twice as large—over 17 percent. Thus, by expressing their rates as a "discount plus fees" and pretending that the borrower had use of the entire loan amount for the duration of the loan, Morris Plan banks could disclose to prospective borrowers a "6%" rate of charge, the legal limit in many states.

Commercial banks began making small-dollar loans later, in the 1920s and '30s, after gradually overcoming their reluctance to extend lesser amounts of credit to individuals.³⁰ In the absence of enabling legislation, commercial banks employed devices similar to those used by the Morris Plan banks to keep their disclosed rates at "6%." One method was to apply the borrower's payments to a savings deposit account, rather than immediately applying them to reduce the outstanding principal balance. Like the Morris Plan banks' sale of stock certificates, the savings account device helped to maintain the fiction that the borrower had use of the full amount loaned for the entire loan term. At maturity, the bank would apply the sum collected in the borrower's savings account to pay off the loan in full.³¹

Both Morris Plan banks and commercial banks pursued legislation to allow them to calculate and express their rates in terms of a discount rate plus fees. Both wanted to avoid operating under the Uniform Small Loan Law, which would have limited the size of their loans to \$300, eliminated their separate fee charges, and required them to disclose the cost of credit in terms of an all-inclusive monthly rate.³² In New York, for example, Morris Plan banks initially operated under the general law governing “investment companies,” which sanctioned the “discount plus fees” method of calculating the rate, allowing a discount of “six per centum per annum.”³³ The banks later secured an amendment to the law that specified the maximum fees they could charge in addition to discounted interest.³⁴ In other states, the banks operated under the general corporation law or the banking law.³⁵ By the late 1960s, about half the states had adopted legislation specially drafted for industrial banks, which included price ceilings and permitted the banks to calculate and express their charges using the “discount plus fees” method.³⁶ For commercial banks, most states likewise adopted rules that limited credit charges and either explicitly or silently sanctioned the banks’ preferred rate calculation and statement method.³⁷

Retailers who sold goods on credit adopted yet another method of disclosing their charges: as an “add-on” rate. When a customer bought something on credit, the credit charges were “added on” to the cash price at the time of the sale.³⁸ (In contrast, in the case of a discount rate, the credit charge was deducted from the loan principal at the outset of the loan.) Like a discount rate, the add-on rate would be expressed in dollars per hundred or as a percent. For example, if a retailer charged a 6 percent annual add-on rate, an item that cost \$100 in cash would cost \$106 if purchased using a twelve-month installment contract. Of course, a retailer could easily manipulate the size of its add-on rate by including some of the finance charge in the cash sales price. In the above example, a retailer might claim that it charged nothing for credit by selling the item for \$106 to all customers, both those paying cash and those buying “on time.”

The add-on method of rate calculation and disclosure provided several advantages to retailers. First, it was relatively easy for a retailer to compute the credit charge using the add-on method. Second, many retailers would immediately sell the buyer’s debt to a company that specialized in buying installment sales contracts. These debt buyers, known as sales finance companies, purchased installment contracts from retailers at a discount, and recommended that retailers use the add-on method because of its simplicity.³⁹

Unlike bans, retailers did not need to seek legal sanction for their add-on method of price disclosure because they operated under very limited state oversight. Before World War II, credit sales were essentially unregulated because they were not legally recognized as loans. Retailers often charged different prices for "cash" sales and for customers buying "on time," but the law did not recognize the difference between the "cash" and "time" prices as interest.⁴⁰ According to the "time-price" doctrine, the transaction was outside the scope of state usury laws because the seller was not making a loan.⁴¹ Thus, retailers were free to charge whatever they wished for financing, and had no obligation to disclose these charges to borrowers in any particular way.

This variety of disclosures concerned the Russell Sage Foundation and lenders licensed under the Uniform Law, who worried that expressing prices in terms of an "add-on" or "discount" rate would confuse borrowers. Some also feared that their "idealistic form" of rate disclosure, required by the Uniform Law, had saddled them with "a very severe handicap in attracting business as well as in fighting off annual attacks from legislative sources."⁴² To overcome this imbalance, they urged other lenders to tell the "truth," by adopting the Uniform Law's all-inclusive method of disclosing their prices. As one lender explained, "The burden of telling the truth may be a cross we bear, but surely it will lead to a much longer existence."⁴³ The meaning of "truth" was not so easily decided, however.

THE UNIFORM LAW METHOD UNDER ATTACK

Arguments soon broke out within the lending industry over which group of lenders provided the most "truthful" form of cost disclosure. As a wider array of lenders began offering small loans, licensed lenders and the Russell Sage Foundation launched a campaign to convert other lenders to the Uniform Law method of disclosure. In support of this effort, they emphasized the original rationale behind their chosen form of disclosure: avoidance of deception, and the advancement of "truth" and transparency. On occasion, they also mentioned that disclosure would aid competition, but never proposed that better, more truthful disclosures could substitute for direct price controls. Rather, the question at the heart of these debates was the meaning of "truth" and its inverse, deception.

The fight that ensued over the Morris Plan bank method of disclosure captures the arguments on both sides. Almost as soon as Morris Plan banks began operating, the Sage Foundation and the lenders licensed under the Uniform Law came out strongly against the banks' method of disclosure.

The Foundation doubted the “truth” of the Morris Plan banks’ “discount plus fees” rate disclosure. “The fee is one of the bulwarks of the loan shark,” a Sage Foundation official warned in 1916.⁴⁴ The following year, the official wrote to one of the early investors in the Morris Plan scheme, outlining his concerns about the banks. The problem was neither the absence of disclosure nor the high rate of charge, which was actually less than licensed lenders demanded. Rather, the foundation official objected to the Morris Plan *method* of disclosure. He argued that the rate on the Morris Plan loans was “considerably more than 6 per cent”—“the real interest rate is over 19 per cent.”⁴⁵ Furthermore, he added, “any company doing a loan business, especially when it is dealing with persons who have not had much business experience and training, should be required to state in the clearest possible way what the real charge to the borrower is.”⁴⁶ Calculating and stating charges in terms of a discount and fees was likely to mislead borrowers, the foundation contended.

Morris Plan officials responded that their methods were truthful and more accurate than those employed by the licensed lenders. One Morris Plan banker seemed puzzled by the Sage Foundation’s objections to the lending scheme. As he put it, the foundation did “not criticize the cost of loans under the Morris Plan System, but only the mode of stating it.”⁴⁷ While acknowledging the logic of the Sage Foundation’s total rate calculation, the banker insisted that the assumptions on which it relied were faulty. The rate that Morris Plan banks disclosed was correct because the loan and the sale of the stock certificates were “separate and distinct” transactions, he claimed.⁴⁸ Furthermore, he argued that the “interest cost” should not include the investigation fee, which is “an expense to the borrower” but not part of the “interest” on the loan.⁴⁹

The Sage Foundation engaged in a slightly different version of the same debate with commercial banks after the foundation drafted a model bill in the early 1940s that followed its preferred disclosure method. In response, the American Bankers Association (ABA) drafted its own competing bill, which permitted rates to be stated on the discount and fee basis.⁵⁰ As with the Morris Plan banks, both sides claimed the mantle of the defenders of “truth” in lending.⁵¹

The Sage Foundation presented its proposal for bank disclosures in terms of the consumer’s interest in transparency, raising many of the same arguments deployed against the Morris Plan banks. A foundation official accused the bankers of refusing “to tell the truth about their interest rates.”⁵² The president of Household Finance Corporation wrote an open letter to the ABA, extolling the benefits of the “Simple Interest Method.”⁵³ The “Discount-Plus

Method" "conceals the rate," he explained.⁵⁴ Furthermore, its use would drive other lenders to state their charges in the same disguised manner, to remain competitive for borrowers' business. The banks would set off a race to the bottom, with all lenders "dragged toward the level of the worst."⁵⁵ Academic William Trufant Foster backed the licensed lenders' position, arguing that other methods provided "easy possibilities of clouding or evading the simple truth."⁵⁶

Advocates also occasionally referenced the link between "truth" in labeling and effective competition, as a secondary rationale for uniformity. Household Finance claimed that "honest weights and measures and honest labeling" were necessary to make "competition effective."⁵⁷ A Sage Foundation official likewise compared its proposal to laws mandating the labeling of goods for sale: "It requires those who make loans to consumers to use the same scales in weighing out and pricing their wares."⁵⁸

The American Bankers Association also claimed to represent the best interests of borrowers, however. According to the ABA, the discount and fees method was "the *only method* whereby the exact cost of a loan can be clearly understood and computed in advance" by the borrower.⁵⁹ They deemed the foundation's all-inclusive method "deceptive" and "confusing" because "it does not and cannot tell the borrower how many dollars the loan will cost him."⁶⁰ Stating the rate in terms of dollars discounted fulfilled the banks' responsibility to "tell the public the truth."⁶¹ In contrast, the licensed lenders' method "does not tell the whole truth," a state banking trade association explained.⁶² Another banker argued that the licensed lenders were the ones guilty of deception because "the public believed 3 per cent a month mean[s] 3 per cent a year."⁶³

Writing the rules for sales finance disclosures proved equally contentious. The push for greater regulation of sales finance charges began in the 1930s among consumer advocates working within the National Recovery Administration, or NRA, the New Deal agency charged with writing codes of conduct for various industries. The agency included a Consumers' Advisory Board, which urged inclusion of cost of credit disclosure rules in the retail trade codes. Among the Consumer Advisory Board members who backed this proposal was Paul Douglas, then-economist and future author of the federal Truth in Lending Act.⁶⁴ The board's proposed rules would have required retailers and finance companies to adopt the Uniform Small Loan Law method of rate disclosure, expressing their charges for credit as "a given percentage on the current unpaid monthly balance."⁶⁵ The proposal failed, however. Industry dominated the code-making process and the Consumer

Advisory Board had little influence within the NRA.⁶⁶ The NRA “retail trade” code included only a brief mention of disclosure, requiring that sellers not “misrepresent” their “credit terms” in advertisements; the finance company industry did not approve a code before the NRA was disbanded in 1935.⁶⁷ A handful of state legislatures did adopt some form of credit sales regulation in the 1930s. These laws included ceilings on credit charges, but did not specify a particular form of price disclosure.⁶⁸

The Federal Trade Commission introduced some of the earliest restraints on sales finance rate disclosures in 1939, after the FTC investigated the rate-disclosure practices of several major American car manufacturers and their affiliated finance companies. It was common practice for car dealers to state their finance charges in terms of a “discount rate,” much like commercial banks used.⁶⁹ The FTC concluded that advertisements for buying a car on the “six percent plan” were likely to deceive consumers, since many buyers would not understand that the rate was a discount rate. (Advertising the discount rate made the cost of credit appear to be lower than if the rate were stated as an “equivalent annual rate,” a metric invented by the FTC.)⁷⁰ The FTC had no authority to require that car dealers use a particular form of rate disclosure and could not regulate their charges directly. It did, however, demand that dealers stop using the discount rate in their ads beginning in 1939.⁷¹

A year later, in 1940, the Sage Foundation drafted a model state law that would have required sales finance charges to be disclosed using the Uniform Law method.⁷² The law met with stiff resistance from the sales finance industry, however, and failed to garner legislative support.⁷³ After World War II, perhaps to quiet demands for its adoption of the Uniform Law method of disclosure, the sales finance industry supported a requirement for mandatory disclosure of its credit charges, but stated in terms of the dollar amount of the charge.⁷⁴ More broadly, lenders and retailers continued to employ a multitude of methods for disclosing their rates of charge and evidenced little willingness to jump on the Uniform Law bandwagon.

Indeed, by 1960, the Uniform Law method and the campaign for uniform cost of credit disclosure seemed to be in retreat. The campaign faltered for several reasons. First, fractures within the association of lenders licensed under the Uniform Law weakened the calls for the spread of their method of disclosure, which some licensed lenders had come to oppose.⁷⁵ Second, the Sage Foundation, which might have brokered a compromise among the competing factions of lenders and their methods of disclosure, largely withdrew from policy advocacy work in the mid-1930s, and closed its lending division entirely in 1946, following the sudden and unexpected death of the lending

division director.⁷⁶ (Even without the director's untimely death, the foundation would likely have closed the division as part of its reorganization in the late 1940s, and to avoid further conflict with commercial bankers who vocally opposed the Foundation meddling in their business affairs.⁷⁷) Third, the drafters of a model set of state commercial laws, called the Uniform Commercial Code, decided to avoid the sticky issue of rate disclosure altogether when they hammered out their proposed code in the 1940s and early 1950s.⁷⁸ Fourth, by the end of World War II, commercial banks and other lenders had formed powerful trade associations, which each advocated for their own practices to continue.

Finally, consumer groups were not pushing for uniform cost disclosure rules by the early 1960s, focusing instead on other concerns related to credit sales.⁷⁹ Although borrowers lacked a uniform, all-inclusive metric that would allow them to compare the price of different types of loans, few consumers lobbied for such a measure in the late 1950s or early 60s. This may be because many lenders already operated under some form of state regulation governing how much they could charge and how they must disclose their charges to borrowers—either in terms of absolute dollars or in dollars per hundred. If lenders complied with these regulations, borrowers would know how much each type of loan would cost them in dollars, and could rest assured that lenders' charges would not exceed certain limits. For example, by 1960, almost all states had adopted some form of retail installment sales regulation that mandated the disclosure of both the cash sales price and the amount of the credit service charge.⁸⁰ These laws also often placed limits on the amount of the charge, stated in terms of an add-on rate in dollars per hundred.⁸¹ A handful of states also regulated a new form of sales credit—revolving credit—that provided borrowers with greater flexibility, allowing repayment of a debt in irregular amounts over time with no set payment schedule or end date.⁸² As one scholar described, these laws attempted to limit rates of charge “not by providing buyers with a uniformly applied yardstick of credit costs,” but by granting the government authority “to limit and watch overcharges.”⁸³

By 1960, consumers' more pressing complaints were about shady sales practices, such as false or misleading advertising, bait-and-switch sales tactics, high prices, and retailers' substitution of inferior goods for those ordered. Furthermore, consumers complained, credit sellers commonly included a provision in their sales contracts that insulated finance companies and other entities that purchased the consumer's debt from liability for the seller's misdeeds.⁸⁴ Consumers also objected to abuses involving wage garnishment and the repossession practices of some creditors, who encouraged customers to

make a new credit purchase just before their older debts were fully repaid so as to increase the likelihood that the creditor could repossess the merchandise.⁸⁵ Mandating a uniform method for disclosing the cost of credit solved none of these problems. Thus, consumer groups were not the primary impetus behind the introduction of federal cost of credit disclosure regulation in the early 1960s. Rather, as legal scholar Edward Rubin concluded, the origins of what became the Truth in Lending Act “can be definitively traced to a single person, Senator Paul Douglas of Illinois.”⁸⁶

(RE)DEFINING THE FORM AND FUNCTION OF “TRUTH” IN CONGRESS

Although Douglas’s interest in disclosure dated back to his work in the National Recovery Administration in the 1930s, new calls for disclosure in other areas of consumer law likely inspired him to put forth his credit “labeling” bill in 1960, nearly a decade after he had joined the U.S. Senate.⁸⁷ Only two years prior, in 1958, Congress enacted the Automobile Information Disclosure Act, which required that all new cars display a window sticker that provided certain price and cost disclosures, nicknamed “Monroney stickers” after the senator who authored the bill.⁸⁸ The 1960 Douglas “Consumer Credit Labeling Bill” similarly would have granted consumers the right to receive certain information prior to completing a transaction.⁸⁹ It required lenders to disclose to borrowers two pieces of information: the total finance charge in dollars, and the relation of that charge to the unpaid loan balance “expressed in terms of simple annual interest.”⁹⁰ The second requirement was novel and ultimately proved to be the most controversial; no jurisdiction, including the District of Columbia, required price disclosure in this form.

According to scholar Edward Rubin’s research, Douglas’s legislative assistant drafted this original version of the bill, without the advice of industry or consumer-interest groups.⁹¹ In 1960, Douglas introduced the bill in the Senate Banking subcommittee that he chaired, on Production and Stabilization. In the course of the ensuing debates, Douglas hoped to win the support of other powerful subcommittee members, including committee chairman Senator A. Willis Robertson, a Dixiecrat from Virginia, and Senator Wallace Bennett from Utah, who became the committee’s highest ranking Republican after the departure of Republican Homer Capeheart in 1962.

What goals did Douglas hope to achieve through disclosure? Originally, Douglas conceived of the benefits of disclosure in then-familiar terms, as advancing the same objective as the Uniform Small Loan Law: avoiding

deception and warning borrowers of the high cost of credit. Douglas also briefly mentioned a secondary goal: encouraging "price competition" in the consumer credit market.⁹² But Douglas did not originally intend that the "simple annual rate," later renamed the "annual percentage rate," would provide an exact measure of the cost of credit so as to aid consumers in making precise cost comparisons. As he wrote to one banker in 1961, "We do not expect great accuracy in the annual percentage rate." Rather, Douglas hoped to impress upon borrowers a more general sense of the high cost of credit, furthering his primary goal of avoiding deception and preventing excessive borrowing. "We are concerned with letting the borrower know that the rate is 12 percent rather than 6 percent, or 18 percent rather than 1½ percent," he explained. He fully agreed that the agency administering the bill should provide a "little leeway" for creditors, allowing rounding to the nearest whole number.⁹³ In 1962, he proposed an amendment to the legislation that would allow "some flexibility or 'approximation' of the annual rate."⁹⁴

At this time and during the years that the bill was under debate, Douglas viewed disclosure as a complement to price ceilings and other consumer protection laws, not a substitute for them. In 1964, four years into the long congressional debate over the Douglas bill, Douglas remained convinced of the value of legal limits on the price of credit. He wrote to the Illinois attorney general in regard to a constituent's credit problem, noting that Truth in Lending would provide a "much stronger arm for enforcement" against high-rate lenders, especially organized crime, assuming that these lenders failed to disclose the "true annual interest" rate "on the face of the contract." He advised the constituent that Truth in Lending would provide grounds for federal prosecution of those lending at "exorbitant" rates.⁹⁵ Two years later, in 1966, Douglas noted that his bill would "require uniform listing of credit costs," but it would still be "up to the States to provide protections for most of the many other abuses" in the credit field.⁹⁶

The stated goals behind Douglas's disclosure legislation shifted over the course of the eight years that Congress debated the bill, however. As Edward Rubin concluded, Douglas became fixated on advancing disclosure for its own sake, rather than on achieving a goal or set of goals *through* disclosure. The subcommittee that debated the legislation did not explore other methods of regulating consumer loans, but "was willing to consider alternative goals by which its chosen methods could be justified."⁹⁷ In Rubin's words, "The bill began as a disclosure statute, and a disclosure statute it remained."⁹⁸ In an inversion of the usual relationship between means and ends, the means remained fixed, while the purported ends and rationale linking ends and

means changed. It took nearly seven years, but supporters of the bill eventually hit upon a more appealing “ends” for their chosen “means.” Rather than curtailing excessive use of credit and combating deception, they instead emphasized the goal of spurring price competition.

The original framing of the “purposes” for the measure yielded Douglas few supporters, but he quickly amassed an army of critics.⁹⁹ These included Republican Senator Wallace F. Bennett. Bennett’s family had numerous connections to the business community, and Bennett himself was the former president of the National Retail Merchants Association. Viewing the law from the creditor’s perspective, Bennett argued that expressing credit charges in terms of a simple annual rate would require complex calculations and would place a huge burden on business. To illustrate the difficulty, Bennett asked a few experts to calculate the simple annual rate on a basic transaction: a \$20 battery sale with a \$2 finance charge, repaid over two months. Their answers ranged from 118.9 to 129.5 percent, and the task reportedly took at least twenty-five minutes to complete.¹⁰⁰ After Bennett showcased the problems with Douglas’s “simple interest” metric, the bill failed to emerge from committee and Douglas struggled over the next two years to rally support for the measure, which he renamed the Truth in Lending Act.¹⁰¹

Douglas’s critics repeatedly scolded him for wasting time and money on legislation that no one wanted. Committee chairman A. Willis Robertson, for instance, derided Truth in Lending as one of Douglas’s “pet schemes.” Although President Kennedy publicly backed the bill, Robertson characterized the administration’s support as “lip service.”¹⁰² Robertson strongly objected when Douglas requested authorization to hold field hearings on the bill in several cities across the country, and complained in 1962 about the mounting cost of debating a bill that Congress had twice rejected.¹⁰³ The monthly magazine of the Chamber of Commerce of the United States, *Nation’s Business*, asked in 1963: “Why, despite more than three years of lobbying, do even proponents concede that consumers are not excited about this legislation?”¹⁰⁴ Douglas eventually succeeded in scheduling field hearings over the fall and winter of 1963–64, which raised public awareness of the bill. But, shortly after the hearings concluded, the *Boston Globe* opined that there “is no deep-seated public backing” for the bill.¹⁰⁵

Although Douglas attempted to portray his opponents as antidiscovery, the point of contention was not *whether* the cost of credit should be disclosed, but *how*. It was the same question that had animated prior wars over disclosure, such as the battle between the Morris Plan banks and the Russell Sage Foundation in the 1930s and ‘40s, as well as between the foundation and

retailers selling goods on credit. Everyone agreed that creditors must provide information to borrowers about the cost of taking on debt. As Bennett explained in 1963, “I am not opposing the bill because I am opposed to truth.”¹⁰⁶ Rather than opposing disclosure, lenders objected to the *method* of disclosure that Douglas demanded, the APR metric.

Most creditors supported cost of credit disclosure, but with the cost stated in dollars rather than percentages. They insisted that there were many ways to express the “truth” about the cost of a loan and criticized Douglas for his single-minded pursuit of the APR method. Bennett objected to Douglas’s assumption that “there is only one way in which this information can be given and that somehow you are not telling the truth if you tell the buyer how much the credit will cost in dollars, or if you tell him the rate of interest he is paying by the month.”¹⁰⁷ Lenders argued that consumers were accustomed to budgeting in dollars and cents and did not think in terms of percentage rates.¹⁰⁸ Providing rates to customers would be costly for creditors and offer little value to consumers. Bennett warned that merchants selling goods “on time” might just add the cost of credit to the price of the goods, making the credit buying process even less—not more—transparent.¹⁰⁹ Some stores threatened that they would no longer be able to offer certain types of credit if the Douglas bill were adopted.¹¹⁰ Bennett succinctly explained to a constituent that the bill “is one of these things where it sounds like a good idea, but it just won’t work out.”¹¹¹

Creditors also complained that calculating the effective rate on “revolving” credit accounts was particularly difficult, and likely to yield an “untrue” result. One witness, a professor at Harvard Business School, explained how the interest rate would be calculated on a revolving account when the borrower made payments and new purchases at irregular intervals. As drafted, the bill required the creditor to disclose an 18 percent APR if a creditor charged a fee of 1.5 percent of the account balance at the beginning of each month (1.5 percent/month x 12 months = 18 percent/year). But, the witness explained, the “real” interest rate might be higher or lower, depending on how the account balance changed over time. Most stores assessed a monthly service charge based on the account balance at the beginning of the month, not based on the average daily unpaid balance. The effective rate might be higher than 18 percent if the borrower made a payment on her account early in the month and a purchase late in the month.¹¹² In light of these distortions, one opponent suggested that the bill would be more accurately called “Lies in Lending,” or “Approximate Truth in Lending.”¹¹³ Another dubbed it the “confusion-in-lending” bill.¹¹⁴ Bennett proclaimed: “I can’t support a law that would force businessmen to lie.”¹¹⁵

Opponents also argued that legislation focusing on disclosure alone was inferior to measures that followed a more holistic approach, such as the proposed Uniform Consumer Credit Code (U3C). The U3C was a project of the National Conference of Commissioners on Uniform State Laws (NCCUSL), which aimed to draft a comprehensive regulatory code that would address both disclosure and substantive limits on interest rates, loan terms, and debt collection practices.¹¹⁶ Walter D. Malcolm, then-president of the NCCUSL, took a particularly dim view of the Douglas disclosure-only approach in his testimony on the Truth in Lending Act. After noting that the states had experimented with various methods of preventing creditor overreaching, he complained that the Truth in Lending Act “picks one of these methods, disclosure, and it adds to it a new feature; namely, requirement of a single simple annual rate plus a disclosure of dollars and cents.” In his view the drafters of the bill had ignored the wealth of information and experience gained by the states in their experiments with various techniques of credit regulation. Instead, the drafters selected “one of the techniques that has been developed from experience—namely, disclosure—and sa[id], this is it.” Moreover, the chosen disclosure metric, the APR, seemed to be “pick[ed] out of the wind, out of the wide blue yonder.”¹¹⁷ Piling on, a banking industry witness also noted that requiring lenders to state their rates in terms of APR would raise difficult questions about whether the rates violated states usury laws, which were usually not framed in terms of APR but rather in dollars-per-hundred.¹¹⁸

Despite the many arguments raised against the bill, however, Wallace Bennett conceded that “the emotional appeal” was “all on Douglas’ side.”¹¹⁹ One retailer and Douglas opponent complained in November 1963 that it was “apparent that Douglas has the popular side of the story, at least with the writers of Washington news.”¹²⁰ Douglas made the case for the bill by spotlighting general abuses in the consumer credit market, which had little to do with the lack of APR disclosures. (There were likely few customers with problems that arose because they knew the dollar cost of credit, but were unable to comparison shop using APR. Moreover, even if such witnesses existed, their problems would have been far less compelling than those that were presented at the hearings.) Some witnesses described instances of outright fraud, or of creditors who failed to make any price or credit cost disclosures whatsoever, contrary to the existing law in most states.¹²¹ Consumers also wrote letters to Douglas, recounting similar woes that had little to do with the absence of an APR disclosure. Their testimony illustrates the power of what legal scholars Omri Ben-Shahar and Carl Schneider have called “trouble stories,” narratives of individual problems presented to prove the need for systemic legal reform.¹²²

Douglas's opponents recognized that the testimony offered at the 1963–64 hearings had emotional appeal, but failed to establish the need for a federally mandated APR disclosure. They then grew frustrated as the "horror witnesses" helped Douglas garner more popular support. As Bennett observed in late 1963, "Ninety per cent of the examples of credit abuse that have been brought to the committee involve violations of present law and depict situations which would not be affected if [Truth in Lending] were passed."¹²³ Alfred A. Buerger, a member of the NCCUSL, likewise noted that "many of these stories may be true, but on the whole they seem to involve abuses in selling practices rather than in credit practices."¹²⁴ To draw attention to this issue, in November 1963, Bennett asked an attorney at Arnold, Fortas and Porter to help him draft questions "to get [the] Douglas horror witnesses who [testified that they] would not buy 'if I had only known the interest rate,' to also admit that they would not buy if 'I had only known the dollar charges.'"¹²⁵

The 1963–64 hearings on the bill carried Douglas further along the path to its enactment, but the real turning point came a few years later, after Douglas had left the Senate. By the time Douglas lost his reelection bid in 1966, he had managed to get the bill voted out of subcommittee, but the measure failed to emerge from the full committee over the course of his six-year struggle.¹²⁶ The breakthrough came after Douglas left office in 1967, when his ally, Senator William Proxmire, took up the charge, reintroducing a revised version of the bill.¹²⁷ By this time, the composition and dynamics on the Banking Committee had shifted in favor of the measure.¹²⁸ Furthermore, Massachusetts had adopted its own "truth in lending" legislation, which proved that such a law could work in practice, without disrupting the consumer credit market.¹²⁹ The Department of Defense had also adopted a rule requiring lenders extending credit to military service members to disclose their charges in terms of dollar cost and a simple annual interest rate.¹³⁰

Perhaps most important, Proxmire was willing to compromise with his opponents on the most contentious issue: the treatment of revolving credit accounts. Rather than a one-size-fits-all rule, Proxmire agreed to exempt certain revolving credit plans from the annual rate disclosure requirement, allowing those lenders to disclose a monthly rate instead. This compromise garnered Wallace Bennett's approval of the bill, after a seven-year "stalemate."¹³¹ Under Proxmire's guidance, the Truth in Lending bill cleared the Senate in 1967, shortly before the House passed its own version, in 1968.¹³² After the two chambers reconciled the differences in the two bills, the final version of Truth in Lending was signed into law in May 1968, as Title I of the Consumer Credit Protection Act.

The final bill did not include the Proxmire compromise on revolving credit, however. Instead, it required all creditors to disclose the cost of credit as an annual percentage rate, with special calculation instructions for revolving accounts.¹³³ It also took an exacting approach to disclosure accuracy, contrary to Douglas's original idea that lenders should have a "little leeway" in the APR disclosure, rounding to nearest whole number percentage.¹³⁴ The final bill specified that the tolerance for error in the APR disclosure was $\frac{1}{4}$ of 1 percent for most loans.¹³⁵ Such precision was unnecessary to meet Douglas's original objectives, but this approach better served the new stated purpose of the bill: strengthening "competition among the various financial institutions and other firms engaged in the extension of consumer credit."¹³⁶

Yet, even as the bill's stated purpose shifted, lawmakers made no mention of removing price ceilings for credit charges, which continued to exist at the state level. Congress expected that the states would continue to regulate other aspects of consumer lending, just as they had before TILA.¹³⁷ Federal legislation would govern the form of cost disclosure, while state law would continue to police the substance of loan agreements. TILA was born into a world with usury laws and other state-level limits on loan terms, and did little to alter the protections in place in the states. Indeed, TILA specified that the APR had no bearing on state definitions of "interest" and that the APR did not constitute an interest rate for the purpose of state usury laws.¹³⁸

THE 1970S AND BEYOND: DISCLOSURE AND SUBSTANCE DRIFT APART

Thus, after 1968, the states and federal government divided responsibility for form and substance in consumer credit regulation. Before the Truth in Lending Act, under state law, disclosure rules had traveled hand-in-hand with substantive legal limits on loan terms. The same legal authority determined both the form and substance of lending agreements, including constraints on the rate of charge. Now, federal law dictated the form of cost disclosure, and state law policed the amount lenders could charge. States also continued to govern the process of debt collection, while federal law now set a nationwide ceiling on the amount a creditor could deduct or "garnish" from a worker's wages each month to repay a debt.¹³⁹

Since the Truth in Lending disclosure rules did not grant borrowers any new substantive protections, a number of scholars and government officials predicted that they would be of little use to many consumers, particularly the poor. These critics observed that disclosure of a uniform price metric, to

facilitate comparison shopping, was no help to those with limited access to credit or ability to shop around for a bargain.¹⁴⁰ The more significant problems for poor consumers involved fraud and price gouging. Studies conducted after the law went into effect supported the skeptics' claims. After TILA, consumers were, at best, slightly more aware of the cost of credit and middle-class consumers showed the greatest improvement in awareness.¹⁴¹ Furthermore, even for middle-class consumers, the disclosures were provided too late in the borrowing process to encourage comparison shopping.¹⁴² Six years after TILA's adoption, law professor William Warren concluded that the idea of disclosure as an "aid to credit shopping" was "simple and appealing," but "it appears that the idea probably doesn't work."¹⁴³

Yet, the TILA disclosure rules ultimately proved valuable to low-income borrowers, as well as middle-income ones, for a purpose other than discouraging excessive borrowing or comparison shopping: they offered a strong defense to debt collection lawsuits. The real value of Truth in Lending to these groups became apparent on July 1, 1969, or "Z-day," the effective date for the regulations adopted by the Federal Reserve Board to implement the Truth in Lending Act, known as Regulation Z.¹⁴⁴ On Z-day, consumer advocates immediately filed a TILA violation lawsuit in New York, after the Harlem Consumer Protection Union sent a representative into a furniture store on 125th Street to buy a television on credit. When the store disclosed the credit charge in dollars, but not as an APR, attorney Philip Schrag of the NAACP sued on the buyer's behalf in federal court.¹⁴⁵ Other consumer advocacy organizations followed suit.

One lawyer, Mark Pettit, later described the process of raising a TILA defense as the "disclosure defense game." As he described, a low-income borrower might have other defenses to a debt collection suit based on the lender's misconduct or the quality of the goods sold on credit, but disclosure-based claims were often superior for a few reasons. For one, the remedies for disclosure violations were more generous, including minimum damages and attorneys' fees. In addition, proving a disclosure claim did not require an elaborate fact-finding expedition; the violation appeared on the face of the loan documents. Finally, creditors had few defenses to borrowers' disclosure claims.¹⁴⁶ Disclosure claims were "almost always available" because of the difficulty for creditors of complying with TILA.¹⁴⁷ Although borrowers often had substantive complaints, TILA claims were easier to assert, offering borrowers a "rough sense of justice."¹⁴⁸ Congress later enacted the Truth-in-Lending Simplification and Reform Act in 1980, to address lenders' difficulties in complying with the law and also stem the rising tide of TILA litigation.¹⁴⁹

Meanwhile, in the decade after the passage of the Truth in Lending Act, the composition of the lending market was changing. The bank-issued credit card, a form of revolving credit, was a relatively new product at the time that Congress began debating the Truth in Lending Act in 1960.¹⁵⁰ But credit card usage increased dramatically in the decade between 1967 and 1977, when consumer use of all varieties of credit cards increased at an average annual rate of 12.2 percent.¹⁵¹ Although the credit card system was a “legal infant” in 1960, its growth prompted the states to begin regulating this new species of credit, either interpreting their existing rules on revolving credit to apply to bank-issued cards or drafting new card-specific rules.¹⁵² By the mid-1970s, most states set limits on how much card issuers could charge (1 percent or 1.5 percent per month).¹⁵³ The Truth in Lending Act then required issuers to disclose this rate in terms of an APR.

This regime of state-level substantive interest-rate regulation and federal disclosure rules soon started to unravel, however. About a decade after passage of the Truth in Lending Act, judges and lawmakers began to limit the reach of state-level interest-rate caps. Changes in the American economy and in ideas about economic regulation set the stage for the rollback of rate caps in the late 1970s and ‘80s. The prosperity of the 1960s had given way to the rampant inflation and rising unemployment of the 1970s. Legislators feared that restrictive state usury laws were hindering consumers’ access to credit, especially mortgage loans, as market rates soared above state rate ceilings. Several recent studies by economists validated these concerns, finding that usury laws were inefficient and burdensome on growth.¹⁵⁴ More generally, Democrats and Republicans both pressed for deregulation in a variety of markets. Their push was backed by the research of economists like Alfred Kahn and George Stigler, who documented how poorly designed regulation could hinder competition and how industry could “acquire” regulation for its own benefit.¹⁵⁵

The system of state-level price controls began to crumble in 1978 with the Supreme Court’s landmark decision in *Marquette National Bank of Minneapolis v. First of Omaha Service Corporation*. Interpreting the National Bank Act of 1864, the Court held that the law allowed a federally chartered bank to export the usury law of its home state when lending to residents of other states.¹⁵⁶ This meant that federally chartered banks could escape unfavorable state interest-rate caps by relocating to states with more permissive usury laws. Congress further limited the reach of state usury laws in 1980, with the passage of the Depository Institutions Deregulation and Monetary Control Act (DIDMCA).¹⁵⁷ DIDMCA preempted the application of state

usury laws to loans secured by a first lien home mortgage, and granted state-chartered federally insured banks the same ability as national banks to "export" their home-state's interest rates.¹⁵⁸

Together, *Marquette* and DIDMCA set off a regulatory race between the states, many of which vied to create the most attractive interest-rate climate for banks.¹⁵⁹ South Dakota and Delaware were the leaders in this contest.¹⁶⁰ New York eliminated its interest-rate cap in 1980, but it was too late to prevent Citibank from relocating its credit card operations to South Dakota. Even after some states reintroduced rate caps, once the inflationary pressures of the late 1970s abated, they were unable to control lending by national banks to their residents under the *Marquette* doctrine. To put state-chartered financial institutions on the same footing as their federal counterparts, the vast majority of states enacted parity laws, also called "wild card statutes," which allowed state institutions to engage in the same activities as national banks.¹⁶¹ Legal scholar James White aptly described the state usury laws that remained on the books as "*trompe l'oeil*," creating the illusion of cost of credit regulation for most financial institutions without any substance.¹⁶² Accordingly, within little more than a decade of TILA's adoption, disclosure became the principal means of controlling the cost of credit for all but the small subset of loans still subject to state-level interest-rate caps.

Developments in the study of economic regulation in the 1970s and '80s further bolstered the case for allowing legally mandated disclosure to substitute for direct price controls. The 1970s witnessed the flowering of research on the "economics of information," which provided a theoretical foundation for legally mandated disclosure.¹⁶³ Truth in Lending also resonated with the ideas of economists and politicians who wanted to free markets from government meddling. When framed as an aid to market-based competition and substitute for command-and-control regulation, Truth in Lending exemplified the latest thinking about good regulatory design. It seemed to anticipate economist Milton Friedman's exhortation in his 1980 PBS television series, *Free to Choose*: "Let the government give us information, but let us decide for ourselves what chances we want to take with our own lives."¹⁶⁴

CONCLUSION

Thus, the long history of mandatory disclosure rules for the cost of credit shows how the perceived purpose of this regulatory tool has shifted over time, in concert with changes in prevailing economic ideas and legal context. The eight-year evolution of the Truth in Lending Act captures a key moment

of transition in the decades-long history of debate over and experimentation with disclosure rules. Over the course of the 1960s, the dominant way of thinking about disclosure shifted from an older, individual-focused perspective toward a more modern, market-oriented one. Like the Uniform Small Loan Law of the 1910s, the 1960 Douglas bill championed disclosure as a means to prevent deception and to discourage unnecessary borrowing—two objectives that earlier generations of disclosure advocates also endorsed. According to this way of thinking, disclosure prevented problems that could arise in the interface between individual borrowers and lenders by requiring the lender to speak the truth to the borrower and the borrower to hear the true cost of taking on new debt before the transaction proceeded. But the final version of the bill, enacted eight years after the first draft appeared, emphasized a different rationale for disclosure: to encourage consumers to comparison shop for credit, thereby increasing price competition among lenders. According to this view, the primary impetus for mandating disclosure was not to protect the individual borrower from harm, but rather to ensure that borrowers' choices, in the aggregate, spurred competition among lenders and thereby pushed down prices for all. Moreover, once the law was enacted, policymakers discovered that mandatory disclosure rules actually served a third, unintended purpose: providing consumers with a defense against debt collection lawsuits. Finally, with the erosion of state usury laws and the ascendance of free market regulatory ideas during the decade after TILA's adoption, disclosure came to be understood as a substitute for direct price controls rather than as a complement to them. These shifting rationales for mandatory disclosure suggest an underlying change in how policymakers framed the problem of consumer credit between 1910 and 1980, from emphasizing the dangers of deception and improvident borrowing to stressing the harms caused by an absence of price competition within the marketplace.

The long history of mandatory disclosure also underscores the challenges involved in deploying disclosure as a means of regulation and in reckoning with the political choices it entails. It shows that lenders and policymakers once hotly debated the proper form of lending disclosure mandates, with various factions each claiming the mantle of "truth." Each method of cost disclosure offered a different trade-off between ease of price comparison and transparency of cost calculation, and between encouraging and discouraging borrowing by making the cost of a loan seem larger or smaller.¹⁶⁵ The contests among competing factions of lenders and policymakers reveal that there was no single "truth" in lending to disclose, but rather many competing "truths." But debate over how to select among these competing truths ended abruptly

in 1968 with the passage of the federal Truth in Lending Act, which declared disclosure's primary purpose to be the promotion of price competition and mandated that lenders disclose the cost of credit in terms of an APR.

Since then, the battles that once raged over the meaning of "truth" have been largely forgotten and the modern form of these mandates has come to seem natural and inevitable, rather than contested and political.¹⁶⁶ Also forgotten were the other objectives that policymakers had once hoped to achieve through mandatory disclosure, and their resulting conception of the relationship between disclosure and substantive price controls. Hence, for contemporary policymakers and reformers, the long history of truth in lending offers a useful reminder that the path to the present was not deliberately mapped out in the 1960s, and that choosing disclosure as a regulatory tool entails making political choices, but does not require the wholesale rejection of other, more direct means of regulating the price of consumer credit.

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NOTES

1. S. 2755, 86th Cong. (1960).
2. *Consumer Credit Labeling Bill: Hearings Before a Subcomm. of the Comm. on Banking and Currency, United States Senate*, 88th Cong. 20–21 (1960) (Memorandum from Paul Douglas to Co-Sponsors of S. 2755) (hereafter *Consumer Credit Labeling Bill Hearings* [1960]); Paul Douglas to Mr. Daniel Small, 24 March 1964, Folder: Truth in Lending 1964 January, Box 431, Paul H. Douglas Papers, Chicago History Museum (hereafter Douglas Papers).
3. *Consumer Credit Labeling Bill Hearings* (1960) at 1–2.
4. In essence, the APR is the total cost of borrowing a given sum of money for one year, expressed as a percentage of the outstanding loan balance.
5. S. 2755, 86th Cong. (1960).
6. S. 750, 88th Cong. (1963).
7. S. 5, 90th Cong. (1967).
8. *State Usury Ceilings: Hearing Before the House Subcomm. on Financial Institutions Supervision, Regulation, and Insurance of the Committee on Banking, Finance, and Urban Affairs*, 96th Cong. 149 (1979) (quoting Douglas's 1969 statement on Uniform Consumer Credit Code), Paul H. Douglas, *In the Fullness of Time: The Memoirs of Paul H. Douglas* (New York, 1972).
9. For examples of studies beginning the history of mandatory lending disclosure rules with TILA, see Hosea H. Harvey, "Opening Schumer's Box: The Empirical Foundations of Modern Consumer Finance Disclosure Law," *University of Michigan Journal of Law Reform* 48 (2014): 69; Christopher L. Peterson, "Truth, Understanding, and High-Cost Consumer Credit: The Historical Context of the Truth in Lending Act," *Florida Law Review*

55 (2003): 875–78. Although a few scholars have noted the absence of APR disclosures before TILA, none has explored the state-level discussions among lenders and policy-makers about the various methods of cost disclosure that existed before TILA. See, e.g., Edward L. Rubin, “Legislative Methodology: Some Lessons from the Truth-in-Lending Act,” *Georgetown Law Journal* 80 (1991): 236; Christopher L. Peterson, “Federalism and Predatory Lending: Unmasking the Deregulatory Agenda,” *Temple Law Review* 78 (2005): 51; Thomas A. Durkin and Gregory E. Elliehausen, *Truth in Lending: Theory, History, and a Way Forward* (New York, 2011), 1–8; Peterson, “Truth, Understanding, and High-Cost Consumer Credit: The Historical Context of the Truth in Lending Act,” 875–76.

10. Todd Zywicki, “The Consumer Financial Protection Bureau: Savior or Menace?,” *George Washington Law Review* 81 (2013): 868 (describing TILA as representative of a “new” regulatory approach and part of a “revolution”).

11. Historians do not share a singular understanding of TILA’s purpose. According to one scholar, TILA required disclosure for disclosure’s sake. Disclosure at first “represented a means for achieving an independently-defined goal,” but “became an independent, unchallengeable purpose through a failure of methodology.” Rubin, “Legislative Methodology,” 285. According to others, Congress’s primary purpose was to promote “enhanced competition,” as stated in the law’s preamble. Thomas A. Durkin, Gregory Elliehausen, Michael E. Staten, and Todd J. Zywicki, *Consumer Credit and the American Economy* (Oxford, 2014), 470.

12. E.g., William N. Eskridge Jr., “One Hundred Years of Ineptitude: The Need for Mortgage Rules Consonant with the Economic and Psychological Dynamics of the Home Sale and Loan Transaction,” *Virginia Law Review* 70 (1984): 1098–99 (describing the substitution of disclosure for price controls in the mortgage market).

13. On the “informed choice” understanding of how disclosure works, see Ryan Bubb, “TMI? Why the Optimal Architecture of Disclosure Remains TBD,” *Michigan Law Review* 113, no. 6 (2015): 1035; Todd J. Zywicki, “The Consumer Financial Protection Bureau and the Return of Paternalistic Command-and-Control Regulation,” *Engage: The Journal of the Federalist Society Practice Groups* 16 (July 2015): 49 (suggesting that there are disclosure rules that merely “enable informed consumer choice” without trying to “shape consumer behavior”).

14. American Association of Small Loan Brokers, *Yearbook* (1917), 18.

15. John M. Glenn, Lilian Brandt, and F. Emerson Andrews, *Russell Sage Foundation, 1907–1946* (New York, 1947), 11, 65–66, 145–46; Arthur H. Ham, “The Year’s Progress,” *Bulletin of the National Federation of Remedial Loan Associations*, 1915, 8. For explanations of why the Uniform Law was so widely adopted, see Elisabeth Anderson, “Experts, Ideas, and Policy Change: The Russell Sage Foundation and Small Loan Reform, 1909–1941,” *Theory and Society* 37, no. 3 (2008): 300–305; Timothy W. Guinnane, Bruce G. Carruthers, and Elisabeth Anderson, “An Unlikely Alliance: How Experts and Industry Transformed Consumer Credit Policy in the Early Twentieth Century U.S.,” *Social Science History* 39, no. 4 (Winter 2015): 591–94.

16. Chairman, American Association of Small Loan Brokers to Association Members, 10 January 1917, Folder 203, Box 26, Russell Sage Foundation records, Rockefeller Archive Center (hereafter RAC RSF).

17. Rolf Nugent (RSF) to Shelby Harrison (RSF), 14 October 1942, Folder 188, Box 24, RAC RSF.

18. For example, imagine a loan with a rate of charge stated as "6% discount plus fees." For a \$100 loan at a discount rate of 6 percent, plus a \$2 fee, repaid over the course of a year, the borrower would receive \$92 at the outset (\$100 minus the \$2 fee and \$6 interest) and then pay down the principal of the loan a little each month. In total, he would pay \$8 for the use of an average monthly balance of \$46. In contrast, if the cost of this loan (\$8) were instead expressed as a percentage of the average outstanding loan balance (\$46), it would be more than twice as large—over 17 percent.

19. L. C. Harbison (Household Finance Corp.) to Arthur Ham (RSF), 27 December 1916, Folder 193, Box 25, RAC RSF.

20. Ibid.

21. Ibid.

22. Arthur Ham (RSF) to James Ferguson (St. Bartholomew's Loan Association), 2 January 1917, Folder 193, Box 25, RAC RSF.

23. E.g., "Display Ad, Household Finance Corp.," *New York Times*, 10 October, 1928, 37.

24. Speech by F. B. Hubachek, Consumer Credit Management Conference, Columbia University, Arden House, 18 February 1960, Folder 168: NCCUSL Correspondence 1965, 8 March, Box 17, Persia Campbell Papers, Manuscript Group Number 0011, Consumers Union, Yonkers, New York. See also Carl A. Dauten, *The Consumer Finance Industry in a Dynamic Economy* (St. Louis, 1959), 62.

25. C. W. Phelps, "How Should Interest Rates Be Stated?" *Banking*, April 1943, 44. Commercial banks did not lend small sums of money. Credit unions did, but they lent only to their members and there were few in existence in the United States before the 1920s. Once credit unions became more widespread, they were among the only other lenders to express their charges in the same terms as licensed lenders, in terms of a rate per month on a declining balance.

26. Pawnshops also made small loans, but they required borrowers to pledge an item of value as collateral for the loan and to leave the item with the pawnbroker. Pawnbroker regulations varied from state to state and some states, like New York, did require disclosure of the cost of credit on the borrowers' pawn ticket in terms of an all-inclusive monthly rate. N.Y. Gen. Bus. Law §§44, 46 (1909). The Sage Foundation drafted a Uniform Pawnbroking Law in the 1920s but did not actively promote its adoption on a state-by-state basis. By 1935, the Uniform Pawnbroking Law was in operation in only four states. Draft of Uniform Pawnbroking Bill, 1922, Folder: 1922, Box 1, Russell Sage Foundation Records, Manuscript Division, Library of Congress (hereafter RSF LOC); Shelby M. Harrison (RSF) to Jeremiah Milbank (president, Provident Loan Society), 25 April 1935, Folder 186, Box 24, RAC RSF.

27. David Mushinski and Ronnie J. Phillips, "The Role of Morris Plan Lending Institutions in Expanding Consumer Microcredit in the United States," in *Entrepreneurship in Emerging Domestic Markets*, ed. Glenn Yago, James R. Barth, and Betsy Zeidman (New York, 2008), 122; Louis N. Robinson, "The Morris Plan," *American Economic Review* 21, no. 2 (June 1931): 222.

28. Under the loan terms, the borrower received a lump sum of cash and repaid the lump sum at the end of the loan. Thus, technically, the borrower had use of the full cash sum for the entire life of the loan. At the same time, the borrower agreed to buy stock "certificates" from the bank and to pay for them in installments over time. The borrower would pay off the certificates over the life of the loan. At the end of the loan term, when the borrower had paid off the full purchase price of the stock certificates, he would then

sell the certificates back to the bank and use the funds to repay the loan. As critics of the scheme noted, the borrower had use of only half of the full loan amount, on average, over the course of the loan term.

29. Technically, to maintain the legal fiction, these payments were not for repayment of the debt but were installment payments on the stock certificates the borrower purchased on credit.

30. Rolf Nugent (RSF) to Shelby Harrison (RSF), 27 April 1943, Folder 188, Box 24, RAC RSF.

31. Brief from Missouri Bankers Association on proposed legislation (House Bill 158), 27 April 1943, Folder 217, Box 28, RAC RSF; "6% is Not 11.7%" by R. B. Stewart, president, Miami Deposit Bank, Yellow Springs, Ohio, reprinted from *Banking*, April 1941, Folder 216, Box 28, RAC RSF; John Martin Chapman, *Commercial Banks and Consumer Instalment Credit*, 1940, 53.

32. Robinson, "The Morris Plan," 229. Morris Plan banks were "compelled" to operate under the Uniform Law in Massachusetts and Pennsylvania. *Ibid.*

33. N.Y. Banking Law § 293 (1914).

34. N.Y. Laws of 1931, Ch. 490 (codified at N.Y. Banking Law 292 [1931]). Additional amendments granted industrial banks most of the powers of state-chartered savings banks, including FDIC insurance and qualification for membership in a Federal Reserve Bank. N.Y. Laws of 1934, Ch. 500–511.

35. Robinson, "The Morris Plan," 230.

36. Barbara A. Curran and American Bar Foundation, *Trends in Consumer Credit Legislation* (Chicago, 1965), 52–58.

37. Wallace Peter Mors, *Consumer Credit Finance Charges: Rate Information and Quotation* (National Bureau of Economic Research, 1965), 14–15; F. B. Hubachek, "The Drift toward a Consumer Credit Code," *University of Chicago Law Review* 16 (1949): 622; Curran and American Bar Foundation, *Trends in Consumer Credit Legislation*, 69–75. New York was unusual in that, at one time, it required banks to express their maximum rate in terms of an all-inclusive rate. Mors, *Consumer Credit Finance Charges*, 54. But New York amended its law in 1957 to allow the rate to be stated in terms of a discount rate. N.Y. Laws of 1957, Ch. 597.

38. Mors, *Consumer Credit Finance Charges*, 9.

39. *Ibid.*, 23–24.

40. Barbara A. Curran, "Legislative Controls as a Response to Consumer-Credit Problems," *Boston College Industrial and Commercial Law Review* 8 (1967): 413.

41. E.g., *McAnsh v. Blauner*, 226 N.Y.S. 379 (1st Dep't 1928).

42. Walter Schafer (Connecticut Assoc. of Personal Finance Companies) to Rolf Nugent (RSF), 17 October 1936, Folder: "U.S.L.L. General, 1936 (September thru Dec.) Rate of Interest Restatement," Box 5, RSF LOC.

43. American Association of Personal Finance Companies, Minutes of the Hot Springs Conference, General Roundtable Session, 29 September 1936, Folder: "U.S.L.L. General, 1936 (September thru Dec.) Rate of Interest Restatement," Box 5, RSF LOC (remarks of Thomas D. Griffin).

44. John Glenn (RSF) to B. F. Schlesinger (The Emporium, San Francisco), 21 August 1916, Folder 199, Box 26, RAC RSF.

45. John Glenn (RSF) to Julius Rosenwald (Sears Roebuck), 4 January 1917, Folder 190, Box 24, RAC RSF.

46. Ibid.
47. Clark Williams (president, Industrial Finance Corp.) to Robert W. deForest (RSF), Folder 191, Box 25, RAC RSF.
48. Ibid.
49. Ibid.
50. Rolf Nugent (RSF) to Shelby Harrison (RSF), 27 April 1943, Folder 188, Box 24, RAC RSF.
51. E.g., Charles F. Speare, “A Banker’s Stand: System of ‘Discount Plus’ Is Defended,” *Baltimore Sun*, 1 July 1942, in Folder: Interest—Statement of Rate, Box 1, RSF LOC.
52. Ibid.
53. B. E. Henderson (president, Household Finance Corp.), “Charge on Small Instalment Loans to Consumers,” 2 April 1942, Folder 216, Box 28, RAC RSF.
54. Ibid.
55. Ibid.
56. William Trufant Foster (director, Pollack Foundation for Economic Research), “Clearly State the Rate,” *Banking*, February 1941, Folder 216, Box 28, RAC RSF.
57. B. E. Henderson (president, Household Finance Corp.), “Charge on Small Instalment Loans to Consumers,” 2 April 1942, Folder 216, Box 28, RAC RSF.
58. Rolf Nugent, “Why Not Candor in Small Bank Loans?” *Survey Graphic*, March 1943, Folder 216, Box 28, RAC RSF.
59. “Stating Rates on Instalment Loans,” Excerpts from Bulletin No. 38, American Bankers Association by Walter B. French, deputy manager, Consumer Credit Dept., Folder 216, Box 28, RAC RSF.
60. Ibid.
61. Ibid.
62. Brief from Missouri Bankers Association on proposed legislation (House Bill 158), 27 April 1943, Folder 217, Box 28, RAC RSF.
63. J. Glenn Donaldson (RSF) to Shelby Harrison (RSF), 23 July 1942, Folder 187, Box 24, RAC RSF.
64. Douglas joined the CAB in October 1933. “Profiteers Curb Due: Drive Launched Under N.R.A.,” *Los Angeles Times*, 10 October 1933. Years later, during the hearings on the Truth in Lending Act in 1962, Douglas said he drafted a code for “the personal loan industry and for installment selling” as “a member of the consumers’ advisory board of the NRA.” *Truth in Lending—1962: Hearings Before a Subcomm. of the Comm. on Banking and Currency, United States Senate*, 87th Cong. 101 (1962) (statement of Paul H. Douglas). He later stated, in April 1967, that he was on the “code authority for the credit industry” and that his proposal for a “simple annual rate” disclosure was rejected at a springtime meeting. *Truth in Lending—1967: Hearings Before the Subcomm. on Financial Institutions of the Comm. on Banking and Currency, United States Senate*, 90th Cong. 44 (1967) (statement of Paul H. Douglas) (hereafter *Truth in Lending Hearings* [1967]). The licensed lenders trade association submitted a proposed code for the “personal finance industry” on 31 August 1933, before Douglas joined the CAB. The code was not approved before the NRA disbanded. I have found no records of code authority meetings for the personal finance industry.
65. John S. Bradway, “The Development of Regulation,” *Annals of the American Academy of Political and Social Science* 196 (1 March 1938): 184; William Trufant Foster

and LeBaron R. Foster, "Rate Aspects of Instalment Legislation," *Law and Contemporary Problems* 2 (1935): 193–94; "Clause in Code Urged to Show Finance Costs: Consumers Board Thinks Buyer Should Know of Credit Charge," *Washington Post*, 2 November 1933.

66. Ellis W. Hawley, *The New Deal and the Problem of Monopoly* (Princeton, 1966), 56–57.

67. National Recovery Administration, Code of Fair Competition for the Retail Trade, No. 60 (approved 21 October 1933), at 8–9.

68. Wilbur Clayton Plummer, *Sales Finance Companies and Their Credit Practices* (New York, 1940), 232. The federal government enacted some wartime constraints on sales financing but did not require retailers to disclose the finance charge as a rate. Regulation W, 12 CFR 222.4(f)(5) (1941).

69. Donald Werner Scotton, "A Study of the Regulation of Consumer Instalment Credit" (PhD diss., University of Illinois at Urbana-Champaign, 1952), 200. The FTC feared that consumers were likely to mistake the discount rate for the equivalent annual rate (the finance charge in dollars divided by the "annual equivalent effective principal in the hands of the instalment buyer"). Wallace P. Mors, "State Regulation of Retail Instalment Financing—Progress and Problems I," *Journal of Business of the University of Chicago* 23, no. 4 (1 October 1950): 213.

70. Mors, "State Regulation of Retail Instalment Financing—Progress and Problems I," 213 n. 45 (noting the "equivalent annual rate" is a term borrowed from the FTC).

71. *Ibid.* at 214. E.g., *Ford Motor Co.*, 30 F.T.C. 49–64 (1939), *aff'd* 120 F. 2d 175 (4th Cir 1941). The agency also later issued trade-practice rules requiring the disclosure of certain loan terms in credit automobile sales. Trade Practice Conference Rule Relating to the Sale and Financing of Motor Vehicles, 16 C.F.R. § 197 (1951); "Protection of Automobile Installment Buyers: The FTC Steps In," *Yale Law Journal* 61 (1952): 724–25. The FTC's jurisdiction did not extend to banks, however. Banks were free to engage in the very same practices that the FTC found deceptive when used by car dealers. Rolf Nugent, "I'm for a frank interest charge," *Retailing*, 8 March 1937, Folder "Interest—Statement of Rate," Box 1, RSF LOC.

72. The "rate statement reform group" included Sage Foundation officials, William T. and LeBaron R. Foster of the Pollak Foundation, Evans Clark of the Twentieth Century Fund, the "National Educational Association, the General Federation of Women's Clubs, the American Legion, the Farm Federation Bureau, the American Federation of Labor, the League of Women Voters, and the Congress of Parents and Teachers." Mors, "State Regulation of Retail Instalment Financing—Progress and Problems I," 212 n. 43. "Preliminary Draft of a Uniform Law to Regulate Instalment Selling," 1 November 1940, Folder 217, Box 28, RAC RSF. Shelby Harrison, "Memo of Information Requested by Trustees' Committee on Small Loan Question," 28 April 1943, Folder 216, Box 28, RAC RSF. Shelby Harrison (RSF) to Leon Henderson (SEC), 4 June 1940, Folder 187, Box 24, RAC RSF.

73. F. B. Hubachek, "Progress and Problems in Regulation of Consumer Credit," *Law and Contemporary Problems* 19, no. 1 (1954): 10.

74. For demands that sale finance use the Uniform Law method, see, e.g., "Note, Usury Statutes and Instalment Sales," *Yale Law Journal* 48 (1939): 1105; J. Glenn Donaldson, "An Analysis of Retail Installment Sales Legislation," *Rocky Mountain Law Review* 19 (1947): 139. Mors, "State Regulation of Retail Instalment Financing—Progress and Problems I," 207–12; Scotton, "A Study of the Regulation of Consumer Instalment Credit," 174.

75. American Association of Personal Finance Companies, Minutes of the Hot Springs Conference, General Roundtable Session, 29 September 1936, Folder: "U.S.L.L. General, 1936 (September thru Dec.) Rate of Interest Restatement," Box 5, RSF LOC (remarks of Thomas D. Griffin); Rolf Nugent (RSF) to Shelby Harrison (RSF), 14 October 1942, Folder 188, Box 24, RAC RSF.

76. Hubachek, "Progress and Problems in Regulation of Consumer Credit," 7. Shelby Harrison (RSF), Memo of Information Requested by Trustees' Committee on Small Loan Question, 28 April 1943, Folder 216, Box 28, RAC RSF; Secretary-Treasurer of RSF to William Henry Beatty (Alabama House of Representatives), 27 June 1951, Folder 190, Box 24, RAC RSF.

77. Wisconsin Bankers Association to RSF Trustees, 28 May 1943, Folder 216, Box 28, RSF RAC (objecting to foundation's support for a uniform bank lending law); John Glenn (RSF) to RSF Board of Trustees, 21 April 1943, Folder 217, Box 28, RSF RAC. On the foundation's reorganization, see Alice O'Connor, *Social Science for What? Philanthropy and the Social Question in a World Turned Rightside Up* (New York, 2007), 48; Stanton Wheeler, "The Commitment to Social Science: A Case Study of Organizational Innovation," in *Social Science in the Making: Essays on the Russell Sage Foundation, 1907-1972*, ed. David C. Hammack and Stanton Wheeler (New York, 1994), 132.

78. Allen R. Kamp, "Uptown Act: A History of the Uniform Commercial Code: 1940-49," *SMU Law Review* 51 (1998): 343.

79. Rubin, "Legislative Methodology," 243 (noting that Paul Douglas knew there was "no established constituency for 'consumer credit labeling'" in 1960).

80. Curran and American Bar Foundation, *Trends in Consumer Credit Legislation*, 95-96, 293-300 (chart 17).

81. N.Y. Pers. Prop. Law §303, §404 (1957).

82. The most common form of revolving consumer credit today is the credit card, but revolving accounts in the 1960s were more commonly offered by retailers such as department stores. In a traditional installment sale, the borrower would agree to repay the amount borrowed, plus the finance charge, over a set period of time in regular weekly or monthly payments. In contrast, a borrower using revolving credit could pay off the loan in a lump sum, or could "revolve" a balance from month to month. The lender would then assess a monthly "service" or finance charge on the debt that remained outstanding at the end of each monthly cycle. New York, the first state to regulate revolving credit, required revolving creditors to disclose the dollar amount of their service charge in the borrower's monthly account statement, and limited the maximum charge to 1.5 percent per month for balances up to \$500, and 1 percent for balances above that amount. N.Y. Pers. Prop. Law §413(3) (1957).

83. Foster and Foster, "Rate Aspects of Instalment Legislation," 195; Robert L. Jordan and William D. Warren, "Disclosure of Finance Charges: A Rationale," *Michigan Law Review* 64 (1966): 1292.

84. Grant Gilmore and Allan Axelrod, "Chattel Security: I," *Yale Law Journal* 57 (1948): 545. Mary B. Tarcher, "Protecting the Instalment Buyer," *Legal Aid Review* 55, no. 2 (1957): 12.

85. Gilmore and Axelrod, "Chattel Security: I," 547.

86. Rubin, "Legislative Methodology," 242.

87. *Ibid.*, 242 n. 38.

88. 72 Stat. 325 (1958).
89. Rubin, "Legislative Methodology," 242–43.
90. S. 2755, 86th Cong. (1960).
91. Rubin, "Legislative Methodology," 242–43.
92. *Consumer Credit Labeling Bill Hearings* (1960) at 2.
93. Paul Douglas to R. L. Mullins (The Independent Bankers Assoc.), 2 August 1961, Folder: Misc. Correspondence 1961, Box 1300, Douglas Papers.
94. Paul Douglas to Co-Sponsors of S.1740, Re: Proposed Changes to in S. 1740, 1 May 1962, Folder: Douglas correspondence—1962, Box 1303, Douglas Papers.
95. Paul Douglas to Kenneth Johnson, 22 June 1964; Paul Douglas to William Clark (Illinois attorney general), 22 June 1964; both in Folder: Truth in Lending June 1964, Box 431, Douglas Papers.
96. Paul Douglas to Karen Krinick (Jewish Community Council, Newark, N.J.), 1 September 1966, Folder: Truth in Lending Third Folder 1964, Box 431, Douglas Papers.
97. Rubin, "Legislative Methodology," 281.
98. *Ibid.*
99. E.g., Jackson R. Collins, "The Meaning of Interest: Reality—Not Semantics," *Personal Finance Law Quarterly Report* 14 (Summer 1960): 105.
100. *Consumer Credit Labeling Bill Hearings* (1960) at 408, 452–55.
101. Rubin, "Legislative Methodology," 246.
102. A. Willis Robertson to Paul Douglas, 12 December 1961, Folder: Douglas Correspondence 1961, Box 1299, Douglas Papers. Kennedy also delivered a special message to Congress in 1962 that identified four basic consumer rights, including the right to be informed. John F. Kennedy, Special Message to the Congress on Protecting the Consumer Interest (15 March 1962), available at The American Presidency Project, <http://www.presidency.ucs.edu>. Lyndon B. Johnson continued Kennedy's support for consumer protection, after Kennedy's assassination in 1963.
103. A. Willis Robertson to Paul Douglas, 12 December 1961, Folder: Douglas Correspondence 1961, Box 1299, Douglas Papers; A. Willis Robertson to Paul Douglas, 1 December 1962, Folder: Douglas correspondence—1962, Box 1303, Douglas Papers.
104. "This Proposal Shortchanges Your Customers," *Nation's Business*, March 1963.
105. Peter Greenough, "'Truth-in-Lending' Impractical," *Boston Globe*, 24 January 1964, Folder 5, Box 407, Series 2, Wallace F. Bennett Papers (MSS 20), Brigham Young University (hereafter Bennett Papers).
106. Wallace F. Bennett to David W. Salmon (St. Louis), 11 March 1963, Folder 9, Box 304, Series 2, Bennett Papers.
107. *Ibid.*
108. *Truth in Lending Hearings* (1967) at 285 (statement of William J. Pierce, chairman, Executive Comm., Nat'l Conference of Commissioners on Uniform State Laws); M. R. Neifeld, "Dollars, Sense, and Interest Rates," *Banking* 59, no. 12 (June 1967): 60.
109. Wallace F. Bennett to David W. Salmon, 11 March 1963 (St. Louis), Folder 9, Box 304, Series 2, Bennett Papers.
110. E.g., Harry W. Krotz Jr. (treasurer, J. W. Robinson Co.) to Wallace F. Bennett, 9 April 1963, Folder 9, Box 304, Series 2, Bennett Papers; "Modified 'Truth' Bill Starts on Its Way," *Banking* 60, no. 2 (August 1967): 64.

111. Wallace F. Bennett to Belva Barlow (Salt Lake City), 25 March 1963, Folder 9, Box 304, Series 2, Bennett Papers.

112. *Truth in Lending—1963–64: Hearings Before a Subcomm. of the Comm. on Banking and Currency, United States Senate*, 88th Cong. 1108 (1964) (testimony of Richard F. Vancil, Harvard Business School, on behalf of the Boston Retail Trade Board) (hereafter *Truth in Lending Hearings* [1963–64]).

113. *Truth in Lending Hearings* (1967) at 204 (statement of William M. Batten, chairman of the board, J. C. Penney Co., complaining that APR disclosure rules “prevent[] us from stating the truth to our customers”); Neifeld, “Dollars, Sense, and Interest Rates,” 60.

114. Walter F. Carey (president, Chamber of Commerce of the United States) to Wallace F. Bennett, 25 June 1964, Folder 24, Box 307, Series 2, Bennett Papers.

115. Statement by Senator Wallace F. Bennett Regarding S. 750 (sent to Utah State AFL-CIO, 5 December 1963, Folder 9, Box 304, Series 2, Bennett Papers.

116. Peter J. Driscoll, “Securing the Guarantees of Consumer Credit Legislation,” *Notre Dame Lawyer* 44 (1969): 574.

117. *Truth in Lending Hearings* (1963–64) at 1048 (statement of Walter D. Malcolm, president, Nat’l Conference of Commissioners on Uniform State Laws). See also *Truth in Lending Hearings* (1967) at 289 (statement of William J. Pierce, chairman, Executive Comm., Nat’l Conference of Commissioners on Uniform State Laws).

118. *Truth in Lending Hearings* (1967) at 405 (statement of J. O. Elmer of Wells Fargo, on behalf of the American Bankers Association); Thomas W. Miles, “Truth and Truth-in-Lending; What the Proxmire Bills Calls For,” *Banking* 59, no. 12 (June 1967): 22–24. In response, the drafters amended TILA to make clear that APR was not the same as “interest” under state usury laws.

119. Wallace F. Bennett to Fred Auerbach (Auerbach’s Department Store, Salt Lake City), 26 June 1964, Folder 24, Box 307, Series 2, Bennett Papers.

120. John C. Hazen (National Retail Merchants Association, VP-Govt) to Joseph T. Meek (president, Illinois Retail Merchants Association), 19 November 1963, Folder 9, Box 304, Series 2, Bennett Papers.

121. See, e.g., Rosemary Conforti to Paul Douglas, 8 July 1966, Folder: Truth in Lending Third Folder 1964, Box 431; Mrs. Elmer Sculley (Belleville, Ill.) to Paul Douglas, 1 November 1966, Folder: Truth in Lending Third Folder 1964, Box 431; Dorothy Ruff (Pasadena) to Paul Douglas, 28 July 1961, Folder: Douglas Correspondence 1961, Box 1299; Daniel Sullivan to Paul Douglas, 31 August 1966, Folder: Truth in Lending Third Folder 1964, Box 431; all in Douglas Papers.

122. Omri Ben-Shahar and Carl Schneider, *More Than You Wanted to Know: The Failure of Mandated Disclosure* (Princeton, 2014), 140. The same types of complaints surfaced when the New York attorney general held a hearing a few years later, in 1967, to rally support for a state version of truth in lending. Public Hearing Re: Truth in Lending, before Louis J. Lefkowitz, 27 November 1967.

123. Wallace F. Bennett to Harley Gillman (Orem, Utah), 3 December 1963, Folder 9, Box 304, Series 2, Bennett Papers; Rubin, “Legislative Methodology,” 281.

124. Alfred A. Buerger, “The Uniform Law Commissioners’ Consumer Credit Project,” *Personal Finance Law Quarterly Report* 19, no. 2 (Spring 1965): 47.

125. Wallace F. Bennett to Norman Diamond, Esq. (Arnold, Fortas and Porter), 14 November 1963, Folder 9, Box 304, Series 2, Bennett Papers.

126. Rubin, "Legislative Methodology," 251.
127. Truth in Lending Act, S.5, 90th Cong. (1967).
128. Rubin, "Legislative Methodology," 251–52.
129. *Truth in Lending Hearings* (1967) at 223–24 (testimony of Paul C. Menton, Massachusetts House of Representatives). But note that the Massachusetts law specified a different method for calculating the annual finance charge. Albert W. Driver Jr., "The New Massachusetts Retail Installment Sales Act Requires Service Charge to Be Stated as a Simple Annual Rate," *Personal Finance Law Quarterly Report* 20, no. 3 (1966): 111; Robert W. Johnson, "The New Legislative Finance Charges: Disclosure, Freedom of Entry, and Rate Ceilings," *Law and Contemporary Problems* 33 (1968): 676 (quoting report).
130. Sylvia Porter, "Truth in Lending Movement Grows," *Milwaukee Sentinel*, 7 July 1966, reprinted in Cong. Rec. 14409–10 (11 July 1966).
131. Truth in Lending—1967, S. Rep. No. 90–392, at 10, 23–24.
132. Consumer Credit Protection Act, H.R. 11601, 90th Cong. (1967).
133. P.L. 90–321.
134. Paul Douglas to R. L. Mullins (The Independent Bankers Assoc.), 2 August 1961, Folder: Misc. Correspondence 1961, Box 1300, Douglas Papers.
135. TILA specified this tolerance for "credit transactions payable in substantially equal installments when the 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." P.L. 90–321, sec. 107(c). The Federal Reserve Board's implementing regulation, Regulation Z, provided for the same low error tolerance for other loans. 12 C.F.R. 226.5 (1969).
136. P.L. 90–321.
137. Elizabeth Renuart and Diane E. Thompson, "The Truth, the Whole Truth, and Nothing but the Truth: Fulfilling the Promise of Truth in Lending," *Yale Journal on Regulation* 25 (2008): 186.
138. P.L. 90–321, sec. 111.
139. TILA was adopted as Title I of the Consumer Credit Protection Act. Other titles of the act added additional protections, including limits on the maximum amount of a worker's wages that could be garnished. P.L. 90–321, sec. 303 (Title III).
140. See, e.g., Robert L. Jordan, "Consumer Credit: Some of the Major Problem Areas in Modern Consumer Credit Statutes," *Personal Finance Law Quarterly Report* 20, no. 1 (1965): 13; *Consumer Credit Protection Act, Part 1: Hearings on H.R. 11601 Before the Subcomm. on Consumer Affairs of the H. Comm. on Banking & Currency*, 90th Cong. 242 (1967) (statement of Hon. R. Sargent Shriver, director, Office of Econ. Opportunity); *Consumer Credit and the Poor: Hearings on the Federal Trade Commission Report on Credit Practices Before the Subcomm. on Fin. Insts. of the S. Comm. on Banking & Currency*, 90th Cong. 10 (1968) (statement of Paul Rand Dixon, chairman, FTC); Jordan and Warren, "Disclosure of Finance Charges," 1320; Robert L. Jordan and William D. Warren, "A Proposed Uniform Code for Consumer Credit," *B.C. Indus. & Com. L. Rev.* 8 (1967): 449; Homer Kripke, "Gesture and Reality in Consumer Credit Reform," *New York University Law Review* 44 (1969): 2–13.
141. William C. Whitford, "The Functions of Disclosure Regulation in Consumer Transactions," *Wisconsin Law Review* (1973): 414 (reviewing studies of TILA's impact).

142. Ralph J. Rohner, "Truth in Lending 'Simplified': Simplified?" *New York University Law Review* 56 (1981): 1020.

143. William D. Warren, "Consumer Credit Law: Rates, Costs, and Benefits," *Stanford Law Review* 27 (1975): 962.

144. *Consumer Credit Regulations (Truth-in-Lending Regulations) Part 2: Hearings Before the Subcomm. on Consumer Affairs of the Comm. on Banking and Currency, House of Representatives*, 91st Cong. 377 (1969) (Statement of Hon. J. L. Robertson, Federal Reserve Board).

145. Peter Millones, "'Truth in Lending' Begins with a Suit: Harlem Store Sued on Day Truth-in-Lending Law Takes Effect," *New York Times*, 2 July 1969, 1; "Harlem Store Sued Right After Start of Consumer Law: NAACP, Local Unit Send Aide to Buy TV Set, Then Charge Violation of Truth-in-Lending," *Wall Street Journal*, 2 July 1969, 8.

146. Mark Pettit Jr., "Representing Consumer Defendants in Debt Collection Actions: The Disclosure Defense Game," *Texas Law Review* 59 (1981): 279.

147. *Ibid.*, 291.

148. *Ibid.*, 260 (quoting Jonathan M. Landers, "Some Reflections on Truth in Lending," *University of Illinois Law Forum* [1977]: 686).

149. Congress also amended the law in 1974 to cut back the damages available for class actions. Pub. L. No. 93-495. The Truth-in-Lending Simplification and Reform Act was part of the larger Depository Institutions Deregulation and Monetary Control Act, Pub. L. No. 96-221. The change did stem the tide of litigation. Griffith L. Garwood, "Federal Consumer Financial Regulation: In the Eye of the Deregulation Storm," *Business Lawyer* 39 (1984): 1297.

150. "Regulation of Consumer Credit: The Credit Card and the State Legislature," *Yale Law Journal* 73 (1964): 887. At the time TILA was adopted, the volume of credit outstanding on bank-issued credit cards was small, \$828 million. Gillian Garcia, "Credit Cards: An Interdisciplinary Survey," *Journal of Consumer Research* 6, no. 4 (1980): 328 (1967 data).

151. Garcia, "Credit Cards," 328. This number includes cards issued by retailers and gas stations, "travel and entertainment" cards like Diner's Club and American Express, as well as general purpose cards issued by banks belonging to either the Visa or MasterCard payment networks.

152. Donald H. Maffly and Alex C. McDonald, "The Tripartite Credit Card Transaction: A Legal Infant," *California Law Review* 48 (1960): 459. "Regulation of Consumer Credit: The Credit Card and the State Legislature," 886. John J. Wheatley and Guy G. Gordon, "Regulating the Price of Consumer Credit," *Journal of Marketing* 35, no. 4 (1 October 1971): 21.

153. Lawrence G. Goldberg, "The Effect of State Banking Regulations on Bank Credit Card Use: Comment," *Journal of Money, Credit and Banking* 7, no. 1 (February 1975): 108 (table of state interest-rate limits).

154. E.g., *Usury Lending Limits: Hearing on S. 988 Before the S. Comm. on Banking, Housing, and Urban Affairs*, 96th Cong. 226-70 (1979) (report by the United States League of Savings Associations, "Usury Ceilings: The Threat to Housing").

155. Alfred E. Kahn, *The Economics of Regulation: Principles and Institutions* (New York, 1970); George J. Stigler, "The Theory of Economic Regulation," *Bell Journal of Economics and Management Science* 2, no. 1 (1971): 3-21.

156. 439 U.S. 299 (1978).

157. Pub. L. 96-221, sec. 501. States could opt out of federal mortgage rate preemption before 1 April 1983. Thirteen states have opted out, plus Puerto Rico. See National

Consumer Law Center, *Mortgage Lending* (2d ed., 2014), sec. 8.3.6. The Alternative Mortgage Transaction Parity Act of 1982 further preempted the application of state laws limiting mortgage terms, and also allowed for states to opt out. Five states did. See *ibid.* at sec. 8.5.3. National Consumer Law Center, *Consumer Credit Regulation* (2012), sec. 3.4.2.3.2.

158. Pub. L. 96-221, sec. 521. States were also allowed to opt out of the provision granting state-chartered federally insured banks the same ability as national banks to “export” their home-state interest rates. Two did.

159. James J. White, “The Usury Trompe L’Oeil,” *South Carolina Law Review* 51 (2000): 454 n. 65 (listing states that amended their usury laws).

160. David S. Swayze and David B. Ripsom, “The Delaware Banking Revolution: Are Expanded Powers Next?” *Delaware Journal of Corporate Law* 13 (1988): 42.

161. On the “ricochet effects” of these laws, see National Consumer Law Center, *Consumer Credit Regulation* (2012), sec. 3.6.5.

162. White, “The Usury Trompe L’Oeil,” 445.

163. Paul L. Joskow and Roger G. Noll, “Regulation in Theory and Practice: An Overview,” in *Studies in Public Regulation*, ed. Gary Fromm, 1981, 42; Howard Beales, Richard Craswell, and Steven C. Salop, “The Efficient Regulation of Consumer Information,” *Journal of Law & Economics* 24, no. 3 (1981): 513–14, 522–31.

164. Milton Friedman, Episode 7: Who Protects the Consumer? *Free to Choose* (PBS television broadcast, aired 11 January 1980), <http://www.freetochoose.tv/ftc80.php>.

165. Special Committee on Retail Installment Sales, Consumer Credit, Small Loans and Usury, Report to the National Conference of Commissioners on Uniform State Laws at Its Annual Conference Meeting in Its Seventy-Fourth Year, in Hollywood, Fla., 2–7 August 1965, at 19.

166. For a similar observation about the 1913 creation of the Federal Reserve System, which “decisively moved monetary politics out of the center of political discourse, where it had been for much of the nineteenth century,” see Sven Beckert, *The Monied Metropolis: New York City and the Consolidation of the American Bourgeoisie, 1850–1896* (Cambridge, 2001), 327.