FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

January 22, 1986

Mr. Stephen W. Raver
Regional Director
National Credit Union Administration
Region 1
441 Stuart Street
Boston, Massachusetts 02116

Dear Mr. Raver:

This is in reply to your inquiry whether it is permissible under the Commission's Credit Practices Rule for a law firm to use confessions of judgment with respect to delinquent accounts that its client, a federal credit union, turns over to the law firm for collection. In such circumstances, a confession of judgment would be obtained from the delinquent consumer at the time of and in connection with an agreement that the consumer executes with the credit union to pay the amount due. Judgment would be entered pursuant to the confession only if the delinquent consumer failed to pay as agreed.

As you know, section 444.2(a)(1) of the Rule prohibits lenders from taking or receiving obligations containing confessions of judgment from consumers in connection with extension of credit to consumers. In our view, the Rule does not permit the taking of confessions of judgment unless a suit has been instituted on the debt and process has been served. This view is supported by the following discussion in the Commission's Statement of Basis and Purpose for the Rule:

> Finally, confessions of judgment prohibited by this rule provision should be distinguished from the cognovit actionem, or confession acknowledging liability following institution of suit and service of process. Unlike the latter, which is executed in negotiated settlements, the prohibited confessions of judgment involve anticipatory waivers of procedural due process protections in the context of credit obligations. (49 F.R. 7740, at 7755)

We believe that the confessions of judgment described in your inquiry would constitute "anticipatory waivers of procedural due process protections in the context of credit obligations" and thus would be prohibited by section 444.2(a)(1) of the Rule.

We appreciate the opportunity to respond to the issue you have raised. The views expressed in this letter constitute staff opinion that is advisory in nature and not binding upon the Commission. I hope the discussion will be of assistance.

Sincerely,

David G. Grimes, Jr.
Attorney
Division of Credit Practices

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

January 23, 1986

James H. Murray, Jr., Esq.
Anderson, Smith, Null & Stofer
One O'Connor Plaza, 7th Floor
P.O. Box 1969
Victoria, Texas 77902

Dear Mr. Murray:

This responds to your letter dated January 2, 1986, concerning the prohibition on retention of non-purchase money security interests in household goods set forth in the Commission's Credit Practices Rule, 16 C.F.R. §444.2(a)(4). You ask whether the Rule is violated when a creditor's contract with a consumer includes three elements -- (1) a purchase money security interest in household goods, (2) a cross-collateral or future advances clause applying that security to past or future credit extended, and (3) a clause precluding the household goods security from operating as to other consumer loans (with respect to which that security would not be a purchase money security interest) -- and the creditor makes or has made a business loan (i.e., a loan the purpose of which is not to acquire goods or services for personal, family, or household purpose) to the same debtor. Arguably, such a contract would give the creditor a non-purchase money security interest in household goods in connection with such business loans.

In the FTC staff's opinion, the creditor in the transactions you describe would not violate the Rule. While a literal argument can be made that the creditor has violated the Rule because the security interest was contained in a consumer credit agreement that included a non-purchase money security interest in household goods (i.e., the business debt is secured by the household goods purchased in the consumer transaction), we believe the Rule was intended to apply only to security acquired in connection with an extension of consumer credit. There is no question that the creditor could enter an agreement with the individual to take a non-purchase money security interest in household goods as collateral for a non-consumer (i.e., business) loan without violating the Rule, and thus it seems inappropriate to apply the Rule to that same security interest simply because it was also covered by another agreement between the same parties involving a grant of credit for consumer purposes.

The views expressed in this letter constitute informal staff opinion and are not binding on the Commission.

Sincerely yours,

Clarke Brinckerhoff

Clarke Brinckerhoff, Attorney
Division of Credit Practices

LAW OFFICES OF
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HOWARD R MARER
THOMAS J BARRY
MATTHEW T. WALL
JEROME A. BROWN
LYNN KNAUPP
MICKEY PACHTA
DOUGLASS L ANDERSON
BRENDA J. HEINOLD

January 2, 1986

Mr. Christopher W. Keller, Esq.
Division of Credit Practices
Bureau of Consumer Protection
Federal Trade Commission
Washington, D.C. 20580

Re: Credit Practices - 16 C.F.R.§444.2(a)(4)

Dear Mr. Keller:

In connection with the above described subsection of the Credit Practices Rule, I have a question regarding the language which is used by a national supplier of forms. As you know, this subsection of the rule provides that it is an unfair act or practice to take or receive from a consumer an obligation that contains (my emphasis) a nonpossessory security interest in household goods other than a purchase money security interest. In an attempt to restrict the application of the cross collateral and future advance clause in the security agreement used to finance the purchase of "household goods", the following sentence is inserted:

> However, this agreement will not secure another debt to the extent that this security interest is in "household goods" and the other debt to be secured is a "consumer" loan (as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices).

As can be seen, this effort to limit the cross-collateral and future advance clause is itself limited only to other loans which are "consumer" loans. Consequently, by the terms of the security agreement the consumer and the lender are agreeing that the household goods may serve to secure nonpossessory and nonpurchase money loans, so long as the purpose of the other loan is not to acquire goods, services, or money for personal, family or household use. My question is, must the restriction on the

operation of the cross collateral and future advance clause be extended to all other loans, both consumer and business purpose?

A literal reading of the relevant subsection of the rule prohibits the lender from taking or receiving from a consumer an obligation that contains a nonpossessory, nonpurchase money security interest in household goods. Obviously, the security agreement in which the security interest is created is a consumer obligation since it secures the purchase money loan for the household goods. Whether or not any prior or later loans are consumer or business purpose loans, or whether or not other such loans even exist, is not addressed by the rule. The rule seems to proscribe the inclusion of a nonpossessory, nonpurchase money security interest in household goods in a consumer obligation. The fact that the consumer may have previously obtained a business purpose loan, or may later obtain a business purpose loan, does not change the fact that his consumer obligation contains (my emphasis) a nonpossessory, nonpurchase money security interest in household goods.

On the other hand, the rule would not prevent a customer from using his household goods to secure a business loan since as to that transaction the customer is not a "consumer" and the rule deals only with consumers. While it is true that the security interest is contained in a consumer obligation, in a sense the customer has merely acknowledged that he has been or may later be a business customer. Furthermore, if he has been or later finds himself in that role, he is merely choosing to exercise his right to secure his business debt with household goods.

We have clients who are subject to FTC jurisdiction and other clients who are subject to Federal Reserve jurisdiction. For that reason, we are forwarding a copy of this letter to the Federal Reserve for their consideration in connection with the recent amendments to Regulation AA.

Very truly yours,

James H. Murray, Jr.

JHMjr:kc

cc: Ms. Susan J. Kraeger
Staff Attorney
Division of Consumer and Community Affairs
Board of Governors of the Federal Reserve System
Washington, D.C. 20551

FEDERAL TRADE COMMISSION
WASHINGTON, D C. 20580

BUREAU OF
CONSUMER PROTECTION

January 27, 1986

Edward C. McCarthy, Esquire
Joseph T. Ryerson and Son, Inc.
Box 8000-A
Chicago, Illinois 60680

Re: Credit Practices Trade Regulation Rule
16 C.F.R., Part 444

Dear Mr. McCarthy:

This is in reply to your letters of November 27, 1985 and January 17, 1986 requesting an opinion concerning the application of the provision of the Credit Practices Rule (16 CFR 444.2(a)(2)) that prohibits the use of wage assignments in connection with consumer credit obligations.

You write that, as an employer, you continue to be served with wage assignments, including some that appear to have been executed after the effective date of the Rule. You ask whether Ryerson would be in violation of the Credit Practices Rule if it honored such wage assignments.

The Rule forbids a lender or retail installment seller to take or receive from a consumer an obligation that constitutes or contains an assignment of wages with certain enumerated exceptions. The Rule defines a lender as "a person who engages in the business of lending money to consumers within the jurisdiction of the Federal Trade Commission." (12 CFR 444.1(a)). The Rule defines a retail installment seller as "a person who sells goods or services to consumers on a deferred payment basis or pursuant to a lease-purchase arrangement within the jurisdiction of the Federal Trade Commission." (12 CFR 444.1(b)). Assuming that Ryerson is not a lender or retail seller as defined by the Rule, Ryerson would not be subject to the Rule and would not violate the Rule by honoring a wage assignment executed after the effective date of the Rule.

I hope this information is helpful to you. The views expressed constitute informal staff opinion that is advisory in nature and not binding on the Commission. However, they do represent the staff's current enforcement position.

Sincerely,

Sandra M. Wilmore
Attorney
Division of Credit Practices

Mail Address: Box 9000 A
Chicago Illinois 60680

312 762-2121

Ryerson

RECEIVED

JAN 21 1986

January 17,1986

Mr. Christopher W. Keller
Division of Credit Practices
Bureau of Consumer Protection
Federal Trade Commission
Washington, D. C. 20580

SUBJECT: Wage Assignments -
16 C.F.R., Part 444

Dear Mr. Keller:

I have not yet received a reply to my letter of November 27, 1985 (copy attached). Any information you can give me concerning the FTC's recent rule on wage assignments would be appreciated.

Sincerely,

Edward C McCarthy

Edward C. McCarthy
Attorney

:c
encls.

November 27, 1985

Mr. Christopher W. Keller
Division of Credit Practices
Bureau of Consumer Protection
Federal Trade Commission
Washington, D. C. 20580

SUBJECT: Wage Assignments -
16 C.F.R., Part 444

Dear Mr. Keller:

As we discussed by phone, I am interested in the effect of the FTC's recent rule concerning wage assignments.

Joseph T. Ryerson & Son, Inc. is a steel service center employing approximately 5000 individuals at 26 plants across the country including several thousand in the Chicago area. We continue to receive wage assignments, even after the March 1, 1985 effective date of the rule, and we wish to fully comply with all federal and state laws and regulations. An example of a recently received wage assignment is enclosed. The names of the employee and assignor have been obscured, however, to preserve their privacy. Also, for your information, I enclose a copy of the Illinois Wage Assignment Act.

I believe that Ryerson cannot be sure from the wage assignment, if it is or is not in violation of the F.T.C. Rule. While you indicated in our conversation that the burden of complying with the FTC rule is on the creditor, not the employer, I would like to receive confirmation of this once you have reviewed the enclosed material. Also, any other information you might have on how the rule affects employers would be appreciated.

Thank you for your cooperation.

Sincerely,

Edward C. McCarthy
Attorney

:c
encls.

M[illegible] Avenue [illegible]
Chicago Illinois 60680

312 762 2121

DEC 3 1985

Ryerson

November 27, 1985

Mr. Christopher W. Keller
Division of Credit Practices
Bureau of Consumer Protection
Federal Trade Commission
Washington, D. C. 20580

SUBJECT: Wage Assignments -
16 C.F.R., Part 444

Dear Mr. Keller:

As we discussed by phone, I am interested in the effect of the FTC's recent rule concerning wage assignments.

Joseph T. Ryerson & Son, Inc. is a steel service center employing approximately 5000 individuals at 26 plants across the country including several thousand in the Chicago area. We continue to receive wage assignments, even after the March 1, 1985 effective date of the rule, and we wish to fully comply with all federal and state laws and regulations. An example of a recently received wage assignment is enclosed. The names of the employee and assignor have been obscured, however, to preserve their privacy. Also, for your information, I enclose a copy of the Illinois Wage Assignment Act.

I believe that Ryerson cannot be sure, from the wage assignment, if it is or is not in violation of the F.T.C. Rule. While you indicated in our conversation that the burden of complying with the FTC rule is on the creditor, not the employer, I would like to receive confirmation of this once you have reviewed the enclosed material. Also, any other information you might have on how the rule affects employers would be appreciated.

Thank you for your cooperation.

Sincerely,

Edward C. McCarthy

Edward C. McCarthy
Attorney

:c
encls.

WAGE ASSIGNMENT

CHICAGO, ILLINOIS — 3-29 Date 1985

Time Price Differential $ —

Amount of Debt $ 116.00 Payable in

Installments of $ 20.00

each ... ending 4-29, 1985

MY PRESENT EMPLOYER IS Lynn Steel

As security, to the above described debt which I owe on a Promissory Note of even date, I hereb... assign unto you, your successors and assigns fifteen percentum (15%) of all salary, wages, commissions or other compensation for services earned or to be earned by me from my above-named employer, whom I ... to be my present employer or any other employer that I may have within the next two years. I hereby constitute irrevocably you, your successors and assigns, my ... in my name, to take all legal measures which may be deemed to be necessary for the complete recovery of the claim hereby assigned, and I hereby authorize and direct my above-named employer to pay the said demand for wages or salary to you, your successors and assigns, and hereby authorize you or them to receipt for such wages or salary in my name.

Executed in duplicate, one copy of which was delivered to and retained by me.

S.S. # —

WITNESS —

(Purchaser Sign Here)

WAGE ASSIGNMENT

ASSIGNOR _____

EMPLOYER Peterson Steel Co
2558 W 16th St
Chgo. Ill.

Social Security No

Date of Notification 8.22.85

NOTICE OF INTENT TO ASSIGN WAGES

This notice is required by the Illinois Wage Assignment Act The notice has been sent to tell you that a creditor (name and address listed below) plans to have your wages assigned. This notice contains important information You should read the entire notice carefully

WHY THE CREDITOR WANTS TO ASSIGN YOUR WAGES

You signed a wage assignment on 3-29-, 19 85 The wage assignment was signed as security if you failed to make payment on the contract you signed on 3-29-, 19 85 A copy of the wage assignment is attached The creditor's records show that you have not made a payment since 7-11-, 19 85 and that you now owe $ 91.00 on the contract The creditor will send a demand for wages to your employer 20 days from the date you receive this.

WHAT YOU CAN DO TO PREVENT YOUR WAGES FROM BEING ASSIGNED

If you have a legal defense to the wage assignment you can stop the wage assignment by filling out the enclosed Notice of Defense Form and (1) sending it to the creditor by registered or certified mail and (2) giving a copy to your employer You must do those 2 things within 20 days of receiving this notice. You have the right to contact an attorney concerning the wage assignment In the event a false defense is made, you will be subject to payment of attorney's fees, court costs and other expenses.

The creditor's name and address is:

RECEIVED
BY: LEGAL DEPT.
SEP 9 1985
PM
1 2 3 4 5 6 8

_____
(Signed by)

AFFIDAVIT OF DEFENSE

STATE OF _____
COUNTY OF _____ ss.

To: _____ (Employer)

_____ (Creditor)

I, _____, hereby (swear)(affirm) that I have a bona fide defense to the claim of _____, which claim is based on a debt contracted on the _____ day of, 19___ and for security on which debt a wage assignment was executed

_____
(Address for Service of Summons)

_____
(Employee)

Subscribed and sworn to before me this _____ day of _____, 19___

_____
(Notary Public)

or by agreement with such employee plan, and who with intent to defraud the employees or their beneficiaries fails to make such payments within 30 days after they become due and payable, is guilty of a business offense for the first such failure for which the penalty is a $100 fine, and is guilty of a Class B misdemeanor for the second and subsequent such failure

The provisions of this Act shall not be applicable until and unless an authorized representative of the plan shall give 30 days written notice to the employer at his principal office by registered mail of any default in payment The employer shall have 30 days upon receipt of written notice to make proper payment

In any criminal proceeding brought to enforce this Section, it shall be an affirmative defense that the employer was prohibited from fulfilling the duty to make such payments by order of a court of competent jurisdiction or by reason of pendency of proceedings in bankruptcy or by reason of natural catastrophe

Nothing in this Act shall be construed to relieve an employer from civil liability for failure to make such payments

ASSIGNMENT OF WAGES DUE EMPLOYES

AN ACT to promote the welfare of wage-earners by regulating the assignment of wages, and prescribing a penalty for the violation thereof Laws 1935, p 208, approved and eff July 1, 1935

39.01. Short title

§ 01. Short Title This Act shall be known and may be cited as the Illinois Wage Assignment Act.

Added by P A 83-867, § 1, eff Jan 1, 1984.

39.1. Requisites to validity

§ 1 No assignment of wages earned or to be earned is valid unless

(1) Made in a written instrument (a) signed by the wage-earner in person and (b) bearing the date of its execution, the social security number of the wage-earner, the name of the employer of the wage-earner at the time of its execution, the amount of the money loaned or the price of the articles sold or other consideration given, the rate of interest or time-price differential, if any, to be paid, and the date when such payments are due.

(2) Given to secure an existing debt of the wage-earner or one contracted by the wage-earner simultaneously with its execution.

(3) An exact copy thereof is furnished to the wage-earner at the time the assignment is executed,

(4) The words "Wage Assignment" are printed or written in bold face letters of not less than ¼ inch in height at the head of the wage assignment and also one inch above or below the line where the wage-earner signs that assignment.

(5) Written as a separate instrument complete in itself and not a part of any conditional sales contract or any other instrument

The requirement of the social security number of the wage-earner imposed by this Act applies only as to wage assignments made after January 1, 1966.

Amended by Laws 1967, p 2049, eff Jan 1 1968

39.2. When demand may be made on employer

§ 2 Demand on an employer for the wages of wage-earner by virtue of a wage assignment may not be served on the employer unless

(1) There has been a default of more than 40 days in payment of the indebtedness secured by the assignment and the default has continued to the date of the demand;

(2) The demand contains a correct statement as to the amount the wage-earner is in default and the original or a photostatic copy of the assignment is exhibited to the employer, and

(3) Not less than 20 days before serving the demand, a notice of intention to make the demand has been served upon the employee, and an advice copy sent to the employer, by registered or certified mail

Service of any demand without complying with this Section has no legal effect.

A demand under this Section applies only to wages due at the time of service of the demand and upon subsequent wages until the total amount due under the assignment is paid or until the expiration of the employer's payroll period ending immediately prior to 30 days after service of such demand, whichever first occurs

Amended by Laws 1967, p 2049, eff. Jan 1, 1968

39.2a. Form of demand

§ 2 1 A demand shall be in the following form

"Demand is hereby made upon an assignment of salary, wages, commissions or other compensation for services, executed by . . . . . and delivered to . . . . . on the . . . day of . . ., 19 , to secure a debt contracted on the . . day of . . . . . ., 19 ..

The total amount of the debt is $. . . . . Payments in the amount of $ . . have been made. The duration of the contract is . . . months There is now due and owing without acceleration the sum of $ . . , the last payment having been made on the . . . . day of 19

The employee herein named has been in default in his payments in the amount of $ of which $. . . . . has been due and owing for more than 40 days.

Unless you have received within the past 20 days, or do receive within 5 days after the service hereof, a notice of defense from the employee herein named, you are required by law to make payment in accordance with such assignment . . . . . , first being duly sworn, deposes and says that the facts stated in the demand above are true and correct, and further deposes and says that he (or his principal, if he is an agent for the assignee) has no notice of any defenses of the debtor

Subscribed and sworn to before me this . day of . 19

Notary Public"

Amended by P A 79-405 § 1 eff Oct 1, 1975

39.2b Notice to employee—Form

§ 2.2 The notice to an employee required by Section 2.1 shall be in the following form

"NOTICE OF INTENT TO ASSIGN WAGES

This notice is required by the Illinois Wage Assignment Act. The notice has been sent to tell you that a creditor (name and address listed below) plans to have your wages assigned. This notice contains important information. You should read the entire notice carefully.

WHY THE CREDITOR WANTS TO ASSIGN YOUR WAGES

You signed a wage assignment on . . . . (date) . . . . The wage assignment was signed as security if you failed to make payment on the contract you signed on . . . . (date) . . . . A copy of the wage assignment is attached. The creditor's records show that you have not made a payment since . . . . (date) . . . . and that you now owe $ . . . . on the contract. The creditor will send a demand for wages to your employer 20 days from the date you receive this.

WHAT YOU CAN DO TO PREVENT YOUR WAGES FROM BEING ASSIGNED

If you have a legal defense to the wage assignment you can stop the wage assignment by filling out the enclosed Notice of Defense Form and (1) sending it to the creditor by registered or certified mail and (2) giving a copy to your employer. You must do those 2 things within 20 days of receiving this notice. You have the right to contact an attorney concerning the wage assignment. In the event a false defense is made, you will be subject to payment of attorneys' fees, court costs and other expenses.

The creditor's name and address are:

. . . . . .

. . . . . .

. . . . . .

(Signed by)"

Amended by P.A. 83-867, § 1, eff. Jan. 1, 1984.

[1] Paragraph 39.2 of this chapter.

39.3. Validity of assignment as to future employers

§ 3. No assignment of wages shall become invalid by reason of cessation of employment but shall be valid and collectible against any future employer of the wage-earner within a period of 2 years from the date of its execution.

Amended by Laws 1961, p. 1891, eff. July 25, 1961.

39.4. Maximum amount of compensation subject to collection by assignee

§ 4. The maximum wages, salary, commissions, bonuses and periodic payments pursuant to a retirement or pension plan that may be collected by an assignee for any work week shall not exceed the lesser of (1) 15% of such gross amount paid for that week or (2) the amount by which disposable earnings for a week exceed thirty times the Federal Minimum Hourly Wage prescribed by Section 206(a)(1) of Title 29, U.S.C., as amended in effect at the time the amounts are payable. This provision (and no other) applies irrespective of the place where the compensation was earned or payable and the State where the employee resides. No amounts required by law to be withheld may be taken from the amount collected by the creditor. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld. If there is more than one assignment demand received by the employer, the assignees shall collect in the order or priority of service of the demand upon the employer, but the total of all collections shall not exceed the amount that could have been collected if there had been one assignment demand.

A fee consisting of the greater of $4 or 2% of the amount required to be withheld by the employer under any one wage assignment shall be collected by and paid to the employer and the amount so paid shall be credited against the amount of the wage-earner's outstanding debt.

Amended by P.A. 80-552, § 1, eff. Oct. 1, 1977.

39.4a. Notice of defense—Form

§ 4.1 Within 20 days after receiving the notice required by Section 2.1 or within 5 days after service of the demand, the employee may notify his employer, in writing, of any defense he may have to the wage assignment. A copy of such notice shall be served upon the creditor by registered or certified mail. If served upon the creditor prior to the creditor's service of demand upon the employer, such demand shall not be served by the creditor. The notice shall be by affidavit and shall be in substantially the following form:

I . . . . hereby (swear) (affirm) that I have a bona fide defense to the claim of . . . . , which claim is based on a debt contracted on the . . . . day of . . . . , 19 . . . . and for security on which debt a wage assignment was executed.

. . . . . .

Address for service of summons

. . . . . .

Employee

Subscribed and sworn to before me this . . . . day of . . . . , 19 . . . .

. . . . . .

Notary Public

Amended by P.A. 77-2767, § 1, eff. Oct. 1, 1972.

Paragraph 39.2 of this chapter.

39.4b. Notice of defense—Effect of failure to give—Procedure upon giving of notice

§ 4.2 If the employee has not given notice of defense as provided in this Act within 20 days after receiving the notice of intention to make a demand, the creditor may proceed with his demand, and the employer shall commence payment to the creditor not sooner than 5 business days after service of such demand, unless a notice of defense is received within that 5 day period. If the

employee cures the default stated in the demand, the creditor shall notify the employer and release the demand No employer shall be liable for payments made in compliance with this Section

If a notice of defense is received by an employer within the period specified in Section 4 1,[1] no wages are subject to a demand served by the creditor described in that notice of defense, unless the employer receives a copy of a subsequent written agreement between the creditor and employee authorizing such payments. If such an agreement is not reached, the creditor may not institute further proceedings on the wage assignment If a notice of defense has been given, service of summons in any subsequent proceeding on the debt for which the wage assignment was given as security may be made by registered or certified mail.

Amended by Laws 1967, p. 2049, eff. Jan 1, 1968.

[1] Paragraph 39 4a of this chapter

39.4c. Wrongful giving or failure to release demand—Liability

§ 4 3. If any person wrongfully· (1) serves a notice on an employee or serves a notice which does not conform with the requirements of Section 2 2,[1] (2) causes a demand to be served for the wages of an employee, or (3) fails to release a demand, he shall be liable to the employee and the employer for statutory damages in the sum of $500 and all actual damages occasioned by such action including reasonable attorney's fees

Amended by P.A. 83-867, § 1, eff. Jan 1, 1984

[1] Paragraph 39 2b of this chapter

39.5. Discharge in bankruptcy—Assignment invalid after three years

§ 5. A discharge in bankruptcy shall be a valid defense to any suit brought upon a wage assignment executed by the bankrupt prior to the adjudication in bankruptcy; no assignment of wages shall be valid after three years from the date of its execution and shall be void after such period of three years.

39.6. Serving demand without assignment

§ 6. Any person who wilfully and wrongfully serves a demand as assignee for wages when no assignment has been made to him or under an assignment which is invalid as provided by this Act knowing such assignment to be invalid with intent to obtain for himself or any other person the wages of an employee, is guilty of a petty offense

Amended by P.A. 77-2422, § 1, eff Jan 1. 1973

39.7. Partial invalidity

§ 7 If any of the provisions of this Act are unconstitutional it is the intent of the General Assembly that so far as possible the remaining provisions of the Act be given effect.

39.8. Prior assignments not invalidated

§ 8. Nothing herein contained shall be construed as making invalid any assignment of wages executed prior to July 1, 1935

39.9. § 9. Repealed by Laws 1961, p. 1891, eff. July 25, 1961.

39.10. Exemptions

§ 9 All wages, salary amounts or other compensation paid by the State, any unit of local government or school district to any of its employees are exempt and not subject to collection under a wage assignment

Added by P.A. 79-502, § 1, eff Oct 1, 1975

39.11. Discharge or suspension of employee

§ 10 No employer may discharge or suspend any employee by reason of the fact that his earnings have been subjected to wage demands on his employer for any indebtedness Any person violating this Section shall be guilty of a Class A misdemeanor.

Added by P.A. 79-502, § 1, eff Oct 1, 1975

39.12. Orders for withholding of income under other Acts

§ 11. The provisions of this Act do not apply to orders for withholding of income entered by the court under provisions of The Illinois Public Aid Code,[1] the Illinois Marriage and Dissolution of Marriage Act,[2] the Non-Support of Spouse and Children Act,[3] the Revised Uniform Reciprocal Enforcement of Support Act [4] and the Paternity Act [5] for support of a child or maintenance of a spouse

Added by P.A. 83-658, § 6, eff Jan. 1, 1984.

[1] Chapter 23, ¶ 1-1 et seq
[2] Chapter 40, ¶ 101 et seq
[3] Chapter 40, ¶ 1101 et seq
[4] Chapter 40, ¶ 1201 et seq
[5] Chapter 40, ¶ 1401 et seq

40 to 46. §§ 1 to 8. (L.1893, p. 99). Repealed by Laws 1937, p. 552, eff. July 13, 1937.

47 to 52. §§ 1 to 6. (L.1897, p. 250). Repealed by Laws 1935-36, Third Sp.Sess., p. 29, eff. July 1, 1936.

52.1 to 52.10. §§ 1 to 10. (L.1935-36, Third Sp.Sess., p. 29). Repealed by Laws 1939, p. 1175, eff. July 13, 1939.

53 to 57. (L.1907, p. 309). Repealed by P.A. 77-1670, § 1, eff. July 1, 1972.

58, 59. (L.1907, p. 310). Repealed by Laws 1955, p. 2175, eff. July 18, 1955.

SAFETY INSPECTIONS AND EDUCATION

AN ACT in relation to safety inspections and education in industrial and commercial establishments and to repeal an Act therein named Laws 1955, p 2175, approved and eff July 18, 1955

Laws 1955, p 2175, as amended by Laws 1957, p 2683, incorporated in this chapter as paragraphs 59 1 to 59 16, was amended by Laws 1961, p 2049, § 1 to appear as set out herein under present paragraph numbers 59 1 to 59 9 of this chapter

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

BUREAU OF
CONSUMER PROTECTION

March 10, 1986

Mr. R. E. Topoluk, Staff Attorney
Office of the General Counsel
ITT Consumer Financial Corporation
400 South County Road 18, Suite 800
Minneapolis, Minnesota 55440

Dear Mr. Topoluk:

This is in response to your letter of February 3, 1986, inquiring as to whether ITT's proposed "Notice to Cosigner" is in compliance with Part 444.3 of the Commission's Trade Regulation Rule Concerning Credit Practices (16 CFR Part 444).

You state that the Iowa Attorney General recently promulgated a Rule which permits consolidation of the Federal and Iowa notices to cosigners. The Iowa Rule permits a combined notice to be given if it complies with 16 CFR 444.3 and if it contains the debt identification language specified by Iowa statutes.

You ask whether the proposed "Notice to Cosigner" consolidating the requirements of the Commission and Iowa Rules, including the Iowa debt identification data, would satisfy the Commission's Notice to Cosigner requirements.

In my judgment your proposed "Notice to Cosigners" complies with Part 444.3 of the Commission's Credit Practice Rule. I am enclosing for your information a previous staff opinion which holds that State and Commission notices to cosigners may be included on a single document, unless forbidden by State law. (See enclosed letter to William Campo dated December 21, 1984, and citations to the Commission's Statement of Basis and Purpose therein).

Additionally, the inclusion of identification language required by Iowa statute, that is set out in your proposed notice, is also in compliance with the Rule. The staff has previously construed the Rule to permit the addition of identifying information, such as the date of the transaction or the account number, if that information does not distract the consumer from the thrust of the message that the required cosigner notice seeks to convey. Similarly the cosigner's acknowledgment of reciept lines and the witness line at the bottom of the proposed form does not contravene the requirements of the Rule. (See enclosed letters to J. Robert Gwynne, dated July 12, 1985, and to Maryann Kaswell, dated March 20, 1985, and the citations therein to the Commissions statement of Basis and Purpose authorizing the use of additional identifying information and signature lines).

I hope this information will be helpful. Please be advised that this is an informal opinion of the staff and as such does not bind the Commission. It does represent, however, the present enforcement position of the staff.

Thanking you for the opportunity to respond to your inquiry, I am

Sincerely,

Roger J. Fitzpatrick
Attorney
Division of Credit Practices

Enclosures

400 South County Road 18 Suite 800
P O Box 9394
Minneapolis, Minnesota 55440
Telephone (612) 540-0800

Office of the General Counsel

February 3, 1986

Ms. Beverly Childs
Credit Practices Technician
FTC Division of Credit Practices
633 Indiana Avenue
Washington, D.C. 20580

RE: Notice to Cosigner

Dear Ms. Childs:

The Iowa Attorney General, Thomas F. Miller, recently promulgated Rule 120-15.1(537) (copy attached) which permits a consolidation of the Federal and Iowa notices. Currently, we provide two notices to co-signers: one which satisfies Iowa's requirements and one which complies with 16 CFR 444.3. The Iowa rule permits one notice be given if it complies with 16 CFR 444.3 and also contains the debt identification provision specified in ISA §537.3208(2).

I drafted the attached form consolidating the requirements of the FTC and Iowa rules. Would this form, with the debt identification language, satisfy the FTC Notice to Cosigner requirement and obviate two notices in Iowa? Please advise.

Cordially,

R. E. Topoluk
Staff Attorney

RET:jan
7402/77

Attachment

CHAPTER 15

REGULATION OF AGREEMENTS AND PRACTICES

120-15.1(537) Notice to Co-signers. Pursuant to section 537.3208(2) and section 537.6117, the administrator of the Iowa Consumer Credit Code finds that a creditor subject to section 537.3208 is in compliance with section 537.3208 if the creditor uses a notice to co-signer which complies with any one of the following federal regulations: Reg. AA, 12 CFR § 227.14 subchapter B; 12 CFR § 535.3; or 16 CFR § 444.3 provided that the written notice is given to the co-signer as a separate document and the notice contains, as additional information, an "identification of the debt provision" in substantially the form set out in section 537.3208(2). The "identification of the debt" provision must contain the language, "I have received a copy of this notice."

December 20, 1985
DATE

THOMAS J. MILLER
Attorney General
Department of Justice
1300 East Walnut, Hoover Bldg.
Des Moines, IA 50319
(515) 281-5926

NOTICE TO COSIGNER

You are being asked to guarantee the debt identified below.

Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part or your credit record.

This notice is not the contract that makes you liable for the debt.

IDENTIFICATION OF DEBT YOU MAY HAVE TO PAY

_____
(Name of Debtor)

_____
(Name of Creditor)

_____
(Date of Transaction)

Kind of Debt

☐ LOAN:

$_____
(Total of Payments)

☐ RETAIL INSTALLMENT CONTRACT:

_____
(Goods or Services Purchased)

$_____
(Total of Payments)

I have received a copy of this notice.

_____
Witness

_____
Cosigner Date

_____
Cosigner Date

7402/74
RET/jan

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

BUREAU OF
CONSUMER PROTECTION

March 18, 1986

Mr. Robert A. Burgess
Superintendent
Department of Business, Occupational
and Professional Regulation
Bureau of Consumer Credit Protection
State House Station 35
Augusta, Maine 04333

Dear Mr. Burgess:

I am responding to your letter addressed to Clarke Brinckerhoff of this Division in which you seek our opinion concerning the applicability of the Federal Trade Commission's Credit Practices Rule, particularily the cosigner provision, to consumer leases. You maintain that the Rule applies or should apply to consumer leases. We have given your views careful consideration but conclude that neither the terms of the Rule nor its statement of basis and purpose supports your interpretation. Indeed, the Rule's language clearly limits its application to loans or to sales of goods or services to consumers, either on a deferred payment basis, or pursuant to a lease-purchase arrangement.

You base your interpretation of the Rule's applicability to consumer leases on the fact that the phrase "lease-purchase arrangement" is included in the definition of "retail installment seller,"[1] one of the two types of creditors subject to the Rule's requirements.[2] You maintain that the phrase "lease-purchase arrangement" is a generic term that could include leases with purchase options, and you believe all consumer leases should be covered by the Rule.

---

[1] Section 444.1(b) defines "retail installment seller" to include those who sell consumers goods or services on a deferred payment basis or "pursuant to a lease-purchase arrangement."

[2] The term "creditor" is defined in Section 444.1(f) as a lender or a retail installment seller. The requirements of Section 444.2 (unfair credit practices) and Section 444.3 (cosigner practices) apply to "a lender or retail installment seller" and the requirements of Section 444.4 (pyramiding of late charges) apply to "a creditor."

The Rule covers creditors and credit transactions, not lessors and consumer leases. Consumer leases were not the subject matter of the rulemaking proceeding, which, as the Commission stated, focused on terms and conditions in written contracts consumers sign when they obtain credit.[3] Regardless of whether consumer leases may be subject to the abuses that you claim, we cannot arbitrarily broaden the scope of the Rule to cover such transactions.

The language of the Rule also supports our conclusion that it does not cover consumer leases. By its terms, the Rule applies only to credit extensions or debts arising out of credit extensions.[4] The requirements of the Rule are imposed only on "creditors," not on lessors. The phrase "lease-purchase arrangement," on which you rely, appears in the definition of "retail installment seller," a term describing creditors (not lessors) subject to the Rule's requirements. The language defining "retail installment seller" limits it to one who "sells" (not leases) goods or services to consumers.

The factors discussed above compel the conclusion that the phrase "lease-purchase arrangement" merely denotes a type of sale (not lease) that constitutes a consumer credit transaction subject to the Rule. The terminology used by a seller or lender to describe a transaction does not determine whether the Rule applies to it. Unless the transaction is, in fact, a sale (or loan), the Rule does not apply. For there to be a sale of goods or property, the consumer must be obligated to pay a specified amount and permitted to become the owner of the goods or property upon payment of the amount for little or no additional consideration. Any other transaction (such as a lease) involving goods or property is not and cannot be made subject to the Rule without violating its clear intent.

---

[3] See "Credit Practices Rule: Statement of Basis and Purpose and Regulatory Analysis," 49 Fed. Reg. 7740, 7741 (1984).

[4] The prohibitions in Sections 444.2 and 444.3 apply only "in connection with the extension of credit," and the prohibition in Section 444.4 applies only "in connection with collecting a debt arising out of an extension of credit."

We appreciate the opportunity to respond to the issue you have raised. The views set forth constitute staff opinion that is advisory in nature and not binding upon the Commission.

Sincerely yours,

Anne P. Fortney

Anne P. Fortney
Associate Director
for Credit Practices

DEPARTMENT OF BUSINESS, OCCUPATIONAL AND PROFESSIONAL REGULATION
BUREAU OF CONSUMER CREDIT PROTECTION
207 289-3731

December 23, 1985

Clark Brinkerhoff, Esq.
Credit Practices Division
Federal Trade Commission
Washington, DC 20580

Re: Applicability of Credit Practices Rule to Leases

Dear Clark:

I am writing to follow up our earlier telephone conversation regarding the applicability of the Credit Practices Rule, particularly the cosigner provision, to leases with purchase options, and even those without.

Section 444.3(c) of the Rule requires lenders and retail installment sellers to give cosigners the notice specified. A retail installment seller is a person who "sells goods or services to consumers on a deferred payment basis or pursuant to a lease-purchase arrangement" (emphasis added). I am uncertain as to the meaning of the term "lease-purchase" arrangement - whether it is a term of art or simply a generic term that could sweep within it any lease in which an option to buy exists.

For the last two or three years there have been efforts under way in Congress to create a new type of hybrid consumer credit transaction variously known as a "rental-purchase" or "lease-purchase" transaction. Such a creation would be subject to its own, specialized disclosure and advertising provisions, separate from those in Regulations Z or M. To date, nothing has been enacted and thus, to my knowledge, there is no federal law or regulation that defines a "lease-purchase" transaction. If I am correct, then "lease-purchase" in the Credit Practices Rule is a generic term that could include leases with purchase options.

While that might be true, it occurred to me while preparing to write to you that the real transactional liability a cosigner needs warning of is the lease itself. The purchase option in a

lease is, in fact, an option requiring a separate sale transaction to exercise. Typically, at that point, the lease cosigner would be free of liability for the lease would have been fulfilled. It would require a separate, conscious act for the cosigner to again become obligated on the sale option part of the arrangement. And, if he did, he would necessarily get the cosigner notice anyway because the transaction is a sale, and the lessor would be a "retial installment seller." (I am assuming, of course, for the sake of this discussion, that the purchase option at the end of the lease has been exercised by way of a retail installment sale from the lessor.)

If the Credit Practices Rule covers this type of transaction as a "lease-purchase" transaction, fine. But if the Rule's scope stops here, I submit it is putting form over substance. From my vantage point, all consumer leases should be covered by the Rule.

In the typical automobile lease, I have reviewed the consumer (and cosigner) obligates himself to a contract, that, at first blush, is much like an installment sales contract. The duration, and monthly payment amounts, are similar. The similarities soon end. In some of these leases, for example, the total of payments may well exceed the financed price of the vehicle in question. Beyond that, the penalties associated with early termination and default can be particularly severe, often much worse than the liability in defaulted installment sale contracts (where at least unearned finance charges are deducted from the balance owing). Ford Motor Credit's lease, for example, provides for additional penalties of up to $600 for early termination early in the lease term. (The penalty decreases to $200 for termination near the end of the lease.) Because there is serious question whether or not the UCC provisions on repossession and disposition of collateral (principally §9-504) apply to leases (the lessors' contracts indicate they think not), the standard protections from large deficiency balances present in sale transactions may not apply in leases. Typically, liability at default or upon early termination is determined by adding the residual value of the vehicle to the amount still owed on the lease and subtracting the proceeds of the sale of the vehicle <u>at wholesale</u>. The lessee is liable for any deficiencies yet the lessor can keep any surplus.

I could point out further unfavorable consumer provisions in these agreements. Suffice it to say, however, that the agreements are quite different from, and far more onerous than, credit sales. If cosigners are deserving of fair warning of exposure in sales, leases cry out for coverage.

I realize there has been much proselytizing in what should have been a simple request for clarification, but as I got further into the issue I couldn't avoid it. I am sure, however, you can separate the legal issues from the moral in answering my request. As you do, however, I hope you will keep those moral ones in mind so as to address, as well as the Rule will allow, an increasingly popular form of consumer transaction.

Thank you for considering this request. My best wishes to you and your colleagues for the holidays.

Sincerely,

Robert A. Burgess
Superintendent

RAB:as

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

April 30, 1986

Maurice L. Shevin, Esq.
SIROTE, PERMUTT, FRIEND, FRIEDMAN,
HELD & APOLINSKY
2222 Arlington Avenue South
Post Office Box 55727
Birmingham, Alabama 35255

Dear Mr. Shevin:

This responds to your letter dated March 20, 1986. You asked if the FTC's Credit Practices Rule would apply to a physician group that (1) enters into agreements with its patients that call for consumers to compensate the group for medical services by periodic installment payments or (2) takes a promissory note for an amount due for services, in some cases.

1. The Rule defines "retail installment seller" as "A person who sells goods or services to consumers on a deferred payment basis or pursuant to a lease-purchase arrangment within the jursidiction of the Federal Trade Commission." 16 C.F.R. §444.1(b). A for-profit group that "sells . . . (medical) services to consumers on a deferred payment basis . . .", as in the case you described, would thus be covered by the Rule, if it is within our jurisdiction.

2. The Rule defines "lender" as "A person who engages in the business of lending money to consumers within the jursidiction of the Federal Trade Commission." 16 C.F.R. §444.1(a). The fact that a party occasionally takes a note for services due would not cause it to be included within the definition and thereby covered by the Rule, because it is not in the "business" of making consumer loans. Of course, this may be academic if that party is covered by the Rule because it is a retail installment seller, as discussed in the previous paragraph.

This is an informal staff opinion that is not binding on the Commission, but it does represent the staff's present enforcement policy.

Sincerely yours,

Clarke Brinckerhoff

Clarke Brinckerhoff, Attorney
Division of Credit Practices

LAW OFFICES OF
SIROTE, PERMUTT FRIEND, FRIEDMAN HELD & APOLINSKY, P.C.
2222 ARLINGTON AVENUE SOUTH
REPLY TO
POST OFFICE BOX 55727
BIRMINGHAM, ALABAMA 35255
205/933-7111

ANNISTON ALABAMA-1000 QUINTARD AVENUE 36202-205/237-4129
HUNTSVILLE, ALABAMA-100 WASHINGTON STREET 35801-205/536-1711
TUSCALOOSA ALABAMA-600 LURLEEN WALLACE BLVD SO 35401-205/339-7111

March 20, 1986

Federal Trade Commission
Bureau of Consumer Protection
Washington, D.C. 20580

Re: Federal Trade Commission Trade Regulation Rule, Title 16, Code of Federal Regulations, Part 444 -- Credit Practices

Gentlemen:

I seek clarification concerning the effect of the Credit Practices Rule under the following circumstances:

Assume that an OB-GYN physician group enters into agreements with its OB-GYN patients which calls for the installment payment for medical services to be rendered by the physicians to the patients prior to and including the delivery of a baby. Assume that the physician group is very much a for-profit professional corporation. Does this type of agreement make the physician group a "creditor" as that term is used at Section 441.1(f) so as to make the Trade Regulation Rule on Credit Practices applicable to this physician group, at least in this type of transaction?

A subsidiary question follows: In the above circumstances, if the patient does not pay for all services prior to delivery, and thereafter enters into a promissory note with the physician group for repayment of the amount previously due for services rendered by the physician group, does the execution of such note, as an incidental part of the physician group's business, constitute that physician group a "lender" under the Trade Regulation Rule?

I would greatly appreciate your opinion with respect to these issues.

Very truly yours,

Maurice L. Shevin
FOR THE FIRM

MLS:law

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON D.C. 20580

BUREAU OF
CONSUMER PROTECTION

May 9, 1986

Charles P. Werner, Esquire
Kiefer, Oshima, Chun & Webb
2128 Hawaii Building
745 Fort Street
Honolulu, Hawaii 96813

Dear Mr. Werner:

Your letter to the Commission's San Francisco Regional Office concerning your client, Bancorp Finance of Hawaii, Inc. (BFH), has been referred to me for reply. BFH is an industrial loan company that is chartered, licensed and regulated by the State of Hawaii. BFH's accounts are currently insured by the Federal Deposit Insurance Corporation (FDIC), pursuant to pertinent provisions of the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.). You express the view that BFH is under the jurisdiction of the FDIC rather than the Commission with respect to compliance with the Equal Credit Opportunity Act (ECOA) and implementing Regulation B, promulgated by the Board of Governors of the Federal Reserve System (Board). You inquire whether BFH is within the jurisdiction of the Federal Trade Commission with respect to enforcement of its Credit Practices Rule (16 CFR Part 444). You believe that BFH is subject to the Board's Credit Practices Rule (12 CFR Part 227), as enforced by the FDIC, rather than to the Commission's Rule.

With regard to the question of whether BFH is under the jurisdiction of the FDIC with respect to the ECOA, Section 704 of the ECOA (15 U.S.C. 1691c) provides that compliance with the ECOA by state chartered banks insured by the FDIC that are not members of the Federal Reserve System shall be enforced by the FDIC under Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818). Section 8 applies the term "State bank" to institutions such as BFH, as can be seen clearly from the definition of that term in Section 3 (12 U.S.C. 1813).[1] Thus, we agree with your view that because BFH is a "State bank" insured by the FDIC, it is subject to the FDIC's ECOA enforcement authority.

---

[1] The term "State bank" includes any "industrial bank or similar financial institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank."

Similarly, we believe that BFH is subject to the Board's Credit Practices Rule as enforced by the FDIC. The Board promulgated its Rule pursuant to Section 18(f)(1) of the Federal Trade Commission Act, (15 U.S.C. 57a(f)(1)) which requires, inter alia, that unless it makes certain findings, the Board must issue regulations with respect to banks that are substantially similar to Commission trade regulation rules.[2] Section 18(f)(2)(C) of the Act (15 U.S.C. 57a(f)(2)(C) empowers the FDIC to enforce the Board's trade regulation rules (such as its Credit Practices Rule) under Section 8 of the Federal Deposit Insurance Act as to state chartered banks insured by the FDIC that are not members of the Federal Reserve System. Because BFH is such a bank (as discussed above), we conclude that BFH is subject to the Board's Credit Practices Rule, as enforced by the FDIC, and not to the Commission's Credit Practices Rule.

The views set forth in this letter constitute staff opinion that is advisory in nature and not binding upon the Commission.

Sincerely,

David G. Grimes, Jr.
Attorney
Division of Credit Practices

---

[2] The Commission promulgated its Credit Practices Rule pursuant to Section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

KIEFER OSHIMA CHUN & WEBB
ATTORNEYS AT LAW

DEBORAH MACER CHUN
ANGELA FONG
JOSEPH T KIEFER*
ALAN M OSHIMA
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8502887248 MCI

February 13, 1986

Mr. Harold Sodergren
Legal Department
Federal Trade Commission
450 Golden Gate Avenue
San Francisco, California 94102

Re: Bancorp Finance of Hawaii, Inc.

Dear Mr. Sodergren:

This letter is a follow up on our January 8 and 9, 1986 conversations regarding whether our client, Bancorp Finance of Hawaii, Inc. ("BFH"), is under the jurisdiction of the Federal Trade Commission ("FTC") or the Federal Deposit Insurance Corporation ("FDIC") for purposes of compliance with the Equal Credit Opportunity Act and Regulation B of the Federal Reserve Board.

BFH is an industrial loan company which is chartered, licensed and regulated by the State of Hawaii. Section 703 of the Garn-St. Germain Depository Institutions Act of 1982 amended Section 3(a) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)) to make an "industrial bank or similar financial institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank" eligible for FDIC insurance. Pursuant to this authority, BFH, together with 10 other Hawaii state-chartered industrial loan companies, have since applied for and currently have their accounts insured by the FDIC.

Section 202.9 of Regulation B of the Federal Reserve Board requires a creditor to give an applicant for credit notice if adverse action is taken with respect to the application. Among other things, the notice must specify the federal agency that administers compliance with the law for the creditor. Appendix A to Regulation B provides that the federal enforcement agency is, as applicable here, the FDIC with respect to "non-member insured banks" and the FTC with respect to "all other creditors."

My initial inquiry to you was prompted by the fact that, while it is clear that BFH and the other Hawaii industrial loan companies have FDIC insurance, it is not altogether clear whether they are a non-member insured bank as defined by the Federal Deposit Insurance Act or whether they are some other type of financial institution likewise eligible for FDIC insurance. In my discussions with you, and also with representatives of the Legal Department of the FDIC, I have been advised that the position of both agencies, at least with respect to Regulation B and the Equal Credit Opportunity Act, is that BFH is subject to regulation by the FDIC so long as it maintains FDIC insurance.

I am sending this letter to inquire as to whether that determination has more general applicability. For example, the FTC's Credit Practices Rule (16 CFR Part 444) is binding upon persons engaged in the business of lending money to consumers "within the jurisdiction of the Federal Trade Commission." A companion Credit Practices Rule of the Federal Reserve Board (12 CFR Part 227) is applicable to, and enforced by the FDIC with respect to, "banks insured by the FDIC other than national banks and banks which are members of the Federal Reserve System (12 CFR Section 227.11(c)(3)).

Following the reasoning of our discussions with respect to Regulation B, it would seem that BFH would be subject to the Federal Reserve Board's Credit Practices Rule and regulation by the FDIC thereunder, rather than to FTC rule and regulation.

If possible, I would appreciate an expression of the FTC's position with respect to regulation of BFH under the Credit Practices Rules. In addition, to the extent the FTC can take a position with respect to the general matter of which will be the controlling agency with respect to financial institutions with FDIC insurance, it would certainly be helpful to us and our clients with respect to future matters.

I have sent a similar inquiry to Ms. Rene Revkis of the Legal Department of the Federal Deposit Insurance Corporation, a copy of which is enclosed for your reference.

Please let me know if you have any questions.

Cordially,

Charles P. Werner

Charles P. Werner

Enclosure

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

BUREAU OF
CONSUMER PROTECTION

May 22, 1986

Michael D. Lozoff, Esquire
9400 South Dadeland Blvd.
Suite 102
Miami, Florida 33156

Dear Mr. Lozoff:

This is in reply to your letter of April 14, 1986, discussing further whether the "Notice to Cosigner" form required by the Commission's Credit Practices Rule misstates Florida law and should therefore be altered for cosigners subject to the provisions of Florida law.

By letter of February 22, 1985, you stated:

> The Rule states that every applicable cosignor must receive the required disclosure in no other form than that provided by the Rule. However, a portion of the Rule informs the cosignors that the creditor, in the course of pursuing collection of the indebtedness against the cosignor, could resort to "garnishing your wages". Florida Statute Section 222.11 provides an absolute exemption from garnishment as to the wages of persons who are the heads of their households. Accordingly, if the disclosure required by the Credit Practices Rule were given verbatim to a cosignor who was the head of his or her household, the disclosure would be patently false in Florida where such a remedy is prohibited.

By letter of March 6, 1985, based on the statements in your letter, I suggested it would be appropriate, for notices given to cosigners subject to Florida law, to amend the "Notice to Cosigner" provision by adding the parenthetical phrase that appears in the following sentence:

> The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages (unless you are the head of a family and reside in Florida), etc.

My letter further stated that the notice must inform all cosigners of the possibility of future garnishment, and that a Florida cosigner who is a "head of family" could become subject to garnishment by ceasing to be a "head of family" or ceasing to reside in Florida.

By letter of October 17, 1985, Michael D. LaBarbera took issue with the position stated in my letter of March 6, to you, and expressed the view that the "Notice to Cosigner" as promulgated by the Commission could be used without amendment in Florida. Mr. LaBarbera stated:

> Under the Florida law that is now effective, the exemption from garnishment of wages of a head of household is far from automatic. Fla. Stat. 222.11 does indeed provide that the wages of a head of household are exempt from garnishment. However, the exemption is far from automatic. Under Fla. Stat. (copies not enclosed) a garnishment is initiated after Judgment by the filing of an unverified Motion, which does not negative a person's exemptions. Under the procedure effective October 1, 1985, the creditor's attorney, upon receiving an answer, must provide a notice to the defendant that his wages, bank account, or other tangible personal property has been garnished. The notice must further provide that he has twenty (20) days to file his Motion to dissolve the Writ of Garnishment.
>
> If a debtor does not file his Motion to Dissolve the Writ of Garnishment within that twenty (20) day period, he loses all rights to claim head-of-family status. (See 77.07(2)). In addition, if the debtor does file a response to the Writ of Garnishment, but does not claim his exemption as head of family, the exemption is likewise lost.

By letter of November 19, 1985, I informed Mr. LaBarbera of the staff view that, unless the exemption from garnishment of wages of a head of household under Florida law was both automatic and absolute, the "Notice to Cosigner" as it appears in the Rule should be used without amendment in Florida.

I also set forth three principles that we apply in evaluating proposed amendments to the "Notice to Cosigner." First, use of the "Notice to Cosigner" as it appears verbatim in the Rule is sufficient to comply with the Rule, regardless of the circumstances. Second, if a portion of the language in the Rule's "Notice to Cosigner" would result in an inaccurate statement of provisions of state law, the notice language may be amended to eliminate the inaccuracy, although such amendment is not required to comply with the Rule. Third, any such amendment must change the "Notice" as little as is necessary to eliminate the inaccuracy and must not materially lengthen or complicate it. I also stated that "Generally, we do not attempt to interpret or hold ourselves out as experts about the laws of all fifty states."

Assuming Mr. LaBarbera's letter accurately summarizes the relevant provisions of current Florida law, the view expressed in my letter of November 19, 1985, to Mr. LaBarbera, remains unchanged. The addition to the notice suggested in my letter of March 6 "(unless you are the head of a family and reside in Florida)" is inappropriate because it would mislead cosigners to believe that they would automatically avoid garnishment if they resided in Florida and were the head of a family. Based on the assumption stated above we recommend use of the "Notice to Cosigner" as set forth in the Rule. The Rule does not preclude a creditor from providing cosigners an explanation, on a document other than that containing the "Notice," of Florida law provisions concerning garnishment of wages of the head of a family.

Should you disagree with the assumption that Florida law is as characterized in Mr. LaBarbera's letter, or should provisions of Florida law change, my letter of November 19, 1985, provides a basis upon which you can apply the Rule's requirements concerning the "Notice to Cosigner."

The views set forth in this letter constitute staff opinion that is advisory in nature and not binding upon the Commission.

Sincerely,

David G. Grimes, Jr.
Attorney
Division of Credit Practices

LAW OFFICES
MICHAEL D LOZOFF
9400 SOUTH DADELAND BLVD
SUITE 102
MIAMI FLORIDA 33156

MICHAEL D LOZOFF
STACEY F SOLOFF

TELEPHONE 662 1936
AREA CODE 305

April 14, 1986

David G. Grimes, Jr.
Attorney, Division of Credit Practices
Bureau of Consumer Protection
Federal Trade Commission
Washington, D.C. 20580

RE: FTC Credit Practice Rule
16 C.F.R. Part 444
Notice to Co-Signer

Dear Mr. Grimes:

This is in reply to your correspondence of November 19, 1985, to Michael D. LaBarbera, Esq., of Tampa, Florida, a copy of which you forwarded to me. I have enclosed a copy of your letter to Mr. LaBarbera for your ease of reference.

As you will note, your letter to Mr. LaBarbera concerned my previous correspondence to you, dated February 22, 1985, questioning the accuracy and use in Florida of the "Notice to Co-Signer" form required by the Commission's Credit Practice Rule, 16 C.F.R. Part 444.

In my previous correspondence, I had stated that Florida,

> "...provides an absolute exemption from garnishment as to the wages of persons who are the heads of their households. Accordingly, if the disclosure required by the credit practices rule were given verbatim to a co-signer who is the head of his or her household, the disclosure would be patently false in Florida where such a remedy is prohibited."

Apparently, Mr. LaBarbera, in a correspondence to you dated October 17, 1985, took issue with this position, stating that Florida law had "changed" and that the exemption which I had previously described as "automatic" and "absolute" is far from being either automatic or absolute. Mr. LaBarbera's position, according to your correspondence of November 19, 1985, is apparently based upon the fact that a head of household wage earner must declare himself as such for the exemption to apply. In Mr. LaBarbera's view, and apparently yours, this requirement that eligible wage earners identify themselves as such at the time the creditor seeks to garnish their wages makes the exemption granted by Florida Statute Section 222.11 "far from automatic".

The fact that a debtor must identify himself as being among the group whom the statute is intended to protect hardly creates an implicit condition precedent to the statute's application. The debtor's declaration of his status as a wage earning head of household is merely the means -- the only means-- by which the Court can identify those persons entitled to absolute and automatic exemption from wage garnishment. Without any type of identifying procedure, or requirement that a timely declaration of status be made, the wage exemption statute cannot be applied to anyone. However, once the Court is able to determine a debtor's eligibility, from the debtor's declaration, the exemption is absolute and automatic.

In my view, the Notice to Co-Signer is inaccurate without the further disclosure that those co-signers who truthfully assert their status as wage earning heads of households are absolutely and unconditionally exempt from wage garnishment in the State of Florida. That is the law. Moreover, I believe it would be consistent with the underlying policies of the FTC to inform consumers, at the time they enter a transaction, that they may be entitled to a statutory exemption from a particular type of judgment enforcement if they fall within a particular group of people. As it is, the notice gives all co-signors the impression that they are subject to wage garnishment, whether they assert their status as wage earning heads of households or not. In light of the fact that most co-signors against whom creditors have sought garnishments almost always declare their eligibility for the exemption, it seems deceptive not to inform those co-signers of that right at the inception of the transaction.

I realize that some creditors would prefer not to disclose the exemption to co-signers at the outset of the transaction. Without the disclosure, the co-signer is without a known port of refuge which has been abused by some. Perhaps this is Mr. LaBarbera's point in arguing against an altered notice. I can understand any attorney's desire to vigorously protect the interests of his clients. However, it is my view that Florida law requires clear disclosures of the rights and obligations of borrowers and co-signers. A knowing non-disclosure of a right which the co-signer, as a result of the non-disclosure, subsequently fails to exercise, is, in my view, unlawfully deceptive in this State.

Although my practice is devoted to the representation of lenders and other creditors, and although I believe in vigorously defending the rights of my clients, too, I can see no useful purpose in omitting from the required disclosure language which clearly qualifies a creditor's right to garnish the wages of a co-signer. The fact is that the notice is worded in a way in which the creditor's right to garnish appears unqualified. Considering how severely qualified this right is, it seems unconscionable not to disclose the rights of co-signers who are wage earning heads of households simply because their right is qualified by the requirement that they let the court know who they are within a reasonably prompt period of time.

I am extremely reluctant to advise my clients to continue using the standard disclosure, without alteration, in light of the foregoing. Accordingly, I would appreciate further clarification from your office at this time. If necessary, and if it will assist you in this determination, I will be happy to prepare a more formal legal memorandum upon which you may base your review.

Very truly yours,

MICHAEL D. LOZOFF

MDL:pdp

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

November 19, 1985

Michael D. LaBarbera, Esquire
LaBarbera and Campbell
Attorneys and Counselors at Law
1907 West Kennedy Boulevard
Tampa, Florida 33606

Dear Mr. LaBarbera:

This is in reply to your letter of October 17, 1985, on behalf of Tampa Bay Federal Credit Union in Tampa, Florida, concerning use of the "Notice to Cosigner" form required by the Commission's Credit Practices Rule (16 C.F.R. Part 444) by credit unions located in Florida. This issue was first raised in a letter dated February 22, 1985, from Michael D. Lozoff, Esquire, which I answered by letter of March 6, 1985.

Mr. Lozoff's letter stated, in part:

> Florida Statute Section 222.11 provides an absolute exemption from garnishment as to the wages of persons who are the heads of their households. Accordingly, if the disclosure required by the Credit Practices Rule were given verbatim to a cosigner who was the head of his or her household, the disclosure would be patently false in Florida where such a remedy is prohibited.

Mr. Lozoff stated that the reference to "garnishing your wages," in the following sentence from the "Notice to Cosigner" is inaccurate with respect to cosigners in Florida who are heads of households:

> The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc.

In my letter of March 6, 1985, I expressed to Mr. Lozoff the staff view that:

> We believe it would be appropriate to amend the sentence in the notice by adding the material in parentheses below, so that the notice reads as follows:
>
> > The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages (unless you are the head of a family and reside in Florida), etc.
>
> With the suggested amendment, the notice is changed as little as is necessary to alert the consumer to the "head of family" exemption from garnishment, while making clear that such exemption applies only to such cosigners residing in Florida.

My letter of March 6, was not intended to suggest that the "Notice to Cosigner" as set forth in the Rule could not be used in Florida, but only that it would be permissible to change it slightly to reflect more accurately Florida law as Mr. Lozoff represented it.

We generally apply three principles in evaluating preposed amendments to the "Notice to Cosigner." First, appropriate use of the "Notice to Cosigner" as it appears verbatim in the Rule is sufficient to comply with the Rule, under any circumstances. Second, if a portion of the verbatim language in the "Notice to Cosigner" would result in an inaccurate statement of provisions of state law, the language of the notice may be amended to eliminate the inaccuracy, although such amendment is not required to comply with the Rule. Third, to receive staff approval, any such amendment must change the "Notice" as little as is necessary to eliminate the inaccuracy and must not materially lengthen or complicate the "Notice." Generally, we do not attempt to interpret or hold ourselves out as experts about the laws of all fifty states.

My letter of March 6 to Mr. Lozoff was based on the statement in his letter, that Florida law provides an "absolute" (i.e. automatic and unqualified) exemption for heads of households from garnishment of wages and that the phrase "garnishing your wages" in the Commission's "Notice to Cosigner" "would be patently false in Florida where such a remedy is prohibited" with respect to heads of households. Based on this information, I suggested language that creditors might choose to add to the "Notice to Cosigner" to eliminate the problem presented with as little change as possible to the "Notice."

Your letter states that Florida law has changed and that the exemption under Florida law from garnishment of wages of a head of household is far from automatic. You state that a debtor loses his head of household exemption if he fails to file a Motion to Dissolve the Writ of Garnishment within 20 days of receipt of notice of garnishment from the creditor's attorney, or if such Motion fails to claim the debtor's head of household exemption. You conclude that the original Notice to Cosigner set forth in the Rule is appropriate and that use of language suggested in my letter of March 6, 1985, to Mr. Lozoff, is not appropriate because it will mislead cosigners who are heads of households to believe that their wages are unconditionally exempt from garnishment.

In our view, unless the exemption under Florida law from garnishment of wages of a head of household is both automatic and unconditional, the "Notice to Cosigner" as it appears verbatim in the Credit Practices Rule should be used without amendment in the State of Florida. The views expressed above constitute staff opinion that is advisory in nature and not binding upon the Commission.

Sincerely,

David G. Grimes, Jr.

David G. Grimes, Jr.
Attorney
Division of Credit Practices

cc: Michael D. Lozoff, Esquire

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

BUREAU OF
CONSUMER PROTECTION

June 26, 1986

William M. Klewin, Esq.
CUDIS INSURANCE SOCIETY, INC.
Post Office Box 391
Madison, Wisconsin 53701

Dear Mr. Klewin:

This responds to your letter dated June 10, 1986, in which you asked whether the FTC's Credit Practices Rule (16 C.F.R. §444) "allows for mandatory irrevocable payroll deduction repayment plans with regard to consumer credit transactions."

The Rule generally prohibits the inclusion of an "assignment of wages or other earnings" in consumer obligations [16 C.F.R. §444.2(a)(3)], but specifically excepts the following situation, among others:

> "The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment" [16 C.F.R. §444.2(a)(3)(ii)].

It is the FTC staff's view that the foregoing exception means that the Rule would not prohibit any payroll deduction plan, including the "mandatory irrevocable" one you described in your letter, because the quoted passage specifically excludes all such plans from the Rule's coverage.

This informal opinion is not binding on the Commission, but it does reflect the staff's current enforcement policy.

Sincerely yours,

Clarke Brinckerhoff

Clarke Brinckerhoff, Attorney
Division of Credit Practices

CUDIS INSURANCE SOCIETY, INC.

POST OFFICE BOX 391 • (608) 238-5851

MADISON, WISCONSIN 53701

OFFICE OF GENERAL COUNSEL

WILLIAM M. KLEWIN
ASSISTANT COUNSEL
(608) 231-7009

June 10, 1986

Mr. Clarke Brinckerhoff
Division of Credit Practices
Bureau of Consumer Protection
Federal Trade Commission
Washington, DC 20580

In Re: Fair Credit Practices Act
16CFR Part 444

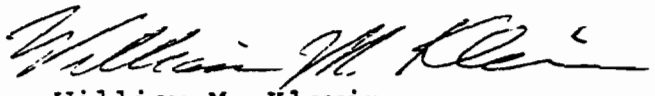
Dear Mr. Brinckerhoff:

The purpose of this letter is to request an opinion of the FTC staff with regard to Part 444.2 dealing with unfair credit practices, more particularly Section 444.2 (a)(3)(ii).

We would request an interpretation of this section by the FTC staff as to whether or not this provision allows for mandatory irrevocable payroll deduction repayment plans with regard to consumer credit transactions.

If you have any questions or I can be of assistance in clarifying my question, do not hesitate to call me.

Very truly yours,



William M. Klewin

WMK:sr

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

BUREAU OF
CONSUMER PROTECTION

July 29, 1986

Mr. Robert C. Wilson, Jr., Consultant
Mississippi Credit Union League
512 Meadowbrook Circle
Amory, Mississippi 38821

Re: Credit Practices Trade Regulation Rule
16 C.F.R. Part 444

Dear Mr. Wilson:

This is in response to your letter of July 1, 1986 to Anne P. Fortney, requesting information about the wage assignment provisions of the Credit Practices Rule.

Your letter refers to the fact that the Rule permits wage assignment if it is part of a "payroll deduction plan or pre-authorized payment plan" [16 C.F.R. § 444.2(a)(3)(ii)] and asks if the wage assignment you enclose constitutes such a plan. You also ask whether a wage assignment, in order to be permissible under the Rule, must be revocable at the will of the debtor.

With respect to your first question, I am unable to determine from the information provided whether the assignment of wages that you enclose is a permissible "payroll deduction plan or pre-authorized payment plan". Such a plan must "commenc(e) at the time of the transaction (rather than subsequently in connection with consumer default or delinquency) and the consumer must "authorize a series of wage deductions as a method of making each payment." The assignment of wages that you enclose does not describe a series of periodic payments or state that it commences at the time of the transaction. Consequently, we are not able to determine whether it is a permissible payroll deduction or pre-authorized payment plan. The final paycheck provision referred to in your letter may be used in connection with such a plan to permit the last paycheck to be applied toward the outstanding balance of the obligation if employment ceases before the debt is paid in full.

Even if the assignment of wages you enclose would not qualify as a payroll deduction plan, it is nonetheless permissible under the Rule because, by its terms, it is revocable at the will of the debtor. The Rule permits an assignment of wages that

is either "revocable at the will of the debtor" [16 C.F.R. § 444.2(a)(3)(ii)] or is a payroll deduction plan. The Rule requires that a permissible wage assignment belong to one of those categories; it does not require both.

In response to your second question, the Rule states that a revocable wage assignment must be revocable "at the will of the debtor." Any time limitation placed on a debtor's ability to revoke the wage assignment would make it revocable but not "at the will of the debtor" and, therefore, not in compliance with the Rule. However, as stated above, a payroll deduction plan need not be revocable at the will of the debtor since it falls within another exception to the general rule. If your credit union wishes to employ a payroll deduction plan that is not revocable, as the Rule permits, the problem raised in your letter about the possibility of an employee revoking the assignment after his employment is terminated, but before the last paycheck is received, would be resolved.

I hope that this is responsive to your inquiry. This is an informal staff opinion that is not binding on the Commission. However, it does reflect the staff's current enforcement policy.

Sincerely,

Sandra M. Wilmore

Sandra M. Wilmore
Attorney
Division of Credit Practices

512 Meadowbrook Circle
Amory, Mississippi 38821
July 1, 1986

Ms Anne P. Fortney
Associate Director for Credit Practices
Federal Trade Commission
Washington, D. C. 20580

Dear Ms Fortney:

I am a consultant with the Mississippi Credit Union League and one of my duties is to advise credit unions in North Mississippi on matters relating to their operation.

Many of the credit unions that I call on are confused about a couple of aspects of the FTC Credit Practices Rule, specifically on the subject of wage assignments.

Reference your letter of March 20, 1985 to the Credit Union National Association in which you addressed a question concerning applying a credit union borrower's last paycheck to his outstanding loan balance upon termination of employment. (This is question 6 of referenced letter).

Your reply to the question was as follows: "Thus, if the final paycheck provision forms a part of the payroll deduction plan, as defined in the qualifying language of the wage assignment provision (444.2 (a)(3)(ii), "... a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction ...", it does not violate the Rule."

Enclosed is an assignment of wages form used by many Mississippi credit unions in accordance with state law. (However, the sentence highlighted in yellow concerning revocation was added due to an earlier ruling regarding the Credit Practices Rule). This form is completed each time a loan is made and before the proceeds of the loan are disbursed to the borrower.

I have two questions that I very badly need answers to and I would appreciate your providing them. They are:

(1) Does the enclosed assignment of wages form meet Credit Practices Rule requirements as a "preauthorized payment plan" in order for the credit union to receive the borrower's last paycheck from the company upon termination of employment?

(2) In order for the wage assignment to be legal under the Credit Practices Rule, must it contain a statement that allows it to be revocable at any time. If so, at what point in

the process is it not revocable? For instance, could the borrower revoke the wage assignment after employment termination but before the final paycheck is delivered to the credit union?

Your clarification of the above will be greatly appreciated.

Sincerely,

Robert C. Wilson, Jr.

Robert C. Wilson, Jr., Consultant
Mississippi Credit Union League

ASSIGNMENT OF WAGES

FOR value received and in order to secure the prompt payment of that certain Promissory Note executed by the undersigned on the_____ day of _____, 19_____ in favor of the Bryan Packing Employees Credit Union, a Mississippi Corporation, the undersigned does hereby transfer, assign and convey to said Credit Union all Salary due to the undersigned by Bryan Packing Company, Inc., a Subsidiary of Consolidated Foods Corporation, the employer of the undersigned, in an amount not exceeding the sum of $_____, until said note and all interest thereon has been fully paid, and the undersigned does further authorize said Bryan Packing Company to deliver said salary to said Credit Union, and authorizes said Credit Union to receive and endorse such salary, paying out of the proceeds, such note, including principal and interest or charges thereon, delivering to the undersigned or to the authorized representative of the undersigned the balance, if any. This assignment to be effective immediately.

I understand that this wage assignment may be revoked at any time.

WITNESS the execution of this Assignment by the undersigned on this the _____day of _____, 19 _____.

_____

_____

ACKNOWLEDGMENT OF RECEIPT OF NOTICE AND ACCEPTANCE OF TERMS OF ASSIGNMENT OF WAGES

The undersigned Bryan Packing Company, acting by and through its only authorized agent, does hereby acknowledge receipt of the foregoing Assignment of Wages, accept notice of such assignment, and agree to be bound by the terms thereof.

WITNESS the execution of this instrument on this, the_____day of _____ , 19_____.

BRYAN PACKING COMPANY, INC.

By_____
Duly Authorized Agent

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

BUREAU OF
CONSUMER PROTECTION

December 9, 1986

Mr. Robert E. Mintz, Assistant Attorney General
Alaska Office of Attorney General
Consumer Protection Section
1031 W. 4th, Suite 300
Anchorage, Alaska 99501

Re: Credit Practices Rule, 16 CFR 444

Dear Mr. Mintz:

I am responding to your letter of November 28, 1986 relating to the cosigner provisions of the FTC's Trade Regulation Rule on Credit Practices (16 CFR Part 444.3). You ask whether a consumer who signs a retail installment sales contract to enable her daughter and son-in-law to purchase a car is a cosigner within the meaning of the Rule if she is described as a buyer on the retail installment sales contract. We believe that she is a cosigner under the Rule and, as such, is entitled to the Rule's Notice to Cosigner.

In enacting the cosigner provisions of the Rule, the Commission recognized that creditors might attempt to evade the Rule by designating cosigners as co-applicants.[1] To avoid this result, the Commission modified the definition of cosigner in the final rule to include "any person whose signature is requested as a condition to granting credit to another person ..." The consumer you describe appears to come within that definition.

You ask whether the fact that the consumer is described as a buyer means that she receives "compensation" and is excluded from the definition of cosigner on that basis. Absent any actual ownership interest in the property being purchased or other material benefit, the consumer would not receive compensation as a result of being designated a buyer on the retail installment sales contract.

---

[1] Statement of Basis and Purpose, 49 Fed. Reg. 7778 (March 1, 1984).

This is an informal opinion that is not binding on the Commission, but it does represent the staff's present enforcement policy.

Sincerely,

Sandra M. Wilmore

Sandra M. Wilmore
Attorney
Division of Credit Practices

BILL SHEFFIELD, GOVERNOR

XX REPLY TO

1031 W 4th SUITE 300
ANCHORAGE, ALASKA 99501
PHONE (907) 279-0428

1st NATIONAL CENTER
100 CUSHMAN, SUITE 400
FAIRBANKS, ALASKA 99701
PHONE (907) 456-8588

S S FULLER BLDG
4th & HARRIS, SUITE 214
POUCH K
JUNEAU, ALASKA 99811
PHONE (907) 465-3692

STATE COURTHOUSE ROOM 26
P O BOX 671
VALDEZ, ALASKA 99686
PHONE (907) 835-2462

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

November 28, 1986

Federal Trade Commission
Credit Practices Division
Attn: John LeFevre
6th and Pennsylvania NW
Washington, D.C. 20580

Re: Credit Practices Rule
Our file: CC0198-F87-A

Dear Mr. LeFevre:

I am writing to ask for your (informal, non-binding) opinion on an application of the cosigner provisions of the FTC Credit Practices Rule, 16 C.F.R. § 444.3.

I have become aware of the following situation in the course of handling a consumer complaint against a local car dealer. The consumer's son-in-law went to the dealer to buy a car and was told that, possibly because of his age and lack of credit history, he would have to get a cosigner or guarantor in order to buy the car on credit. (I'm not sure either of these exact terms was used at this point.) He then asked our consumer complainant, his mother-in-law, to perform that function, which she did by signing the papers that had already been prepared. However, the retail installment sale contract which she signed did not show her as a cosigner, but rather as a buyer along with her son-in-law and daughter. I very much doubt that she was given the Notice To Cosigner required by 16 C.F.R. § 444.3.

The question is this: was the consumer a cosigner under this rule or was she taken out of the definition because she arguably received "compensation" in the form of an ownership interest, at least on paper, of the car? Alternatively, even if the consumer does not literally fall within the definition of cosigner, could it be argued that it is in an unlawful evasion of the Credit Practices Rule to designate as a buyer someone whose real function is that of a cosigner?

I enclose a copy of the first page of the retail installment contract in question, for your reference. Thank you very much for your assistance.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Robert E. Mintz
Robert E. Mintz
Assistant Attorney General

REM/ssr
Encl.

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

March 6, 1987

Mr. Howard A. Lax, Law Department
National Bank of Detroit
200 Renaissance Center
Suite 2612
P.O. Box 1789
Detroit, Michigan 48232

Re: Credit Practices Rule, 16 CFR 444

Dear Mr. Lax:

I am responding to your letter of January 20, 1987 to John LeFevre relating to the provision of the FTC's Trade Regulation Rule on Credit Practices that limits a creditor's ability to take security interests in household goods (16 CFR 444.2(a)(4)). You present three factual situtions involving lenders subject to the Commission's Rule and ask in each instance whether the Rule would apply to the situation described, and if so, whether the security interest described is prohibited by the Rule. I will respond to your questions in the order that you have presented them.

1. In the refinance of a manufactured (mobile) home purchase money loan by a new lender, may the new lender take a security interest in the entire mobile home, including all of the accessories, accessions and attachments?

Your question assumes that the mobile home is defined as personal property under the relevant state law and, as such, is subject to the Rule. You assume that the mobile home contains items that fall within the Rule's definition of household goods.

The Rule's prohibition against the taking of a security interest in household goods does not apply to a purchase money security interest in such goods. In the opinion of the Federal Trade Commission staff, the creditor in a subsequent transaction may retain a purchase money security interest, if permitted by law, where a part of the proceeds is used to consolidate or refinance the original sales contract. Such a purchase money security interest may be retained in a refinancing made by a creditor other than the original creditor. That creditor would have the responsibility to determine that the purchase money security interest in the previous loan was bona fide.

2. Referring to your discussion of item 3 in your Staff Advisory Letter dated March 20, 1988 (regarding cross-collateralization clauses), may a lender secure future loans with household goods taken as security in an earlier purchase money transaction?

Cross-collateralization clauses are permitted by the Rule to the extent that they allow retention of purchase money security interests in refinancings or consolidations of the transactions in which the interests arose. Cross-collateral clauses that go beyond refinancings or consolidations of purchase money transactions, and that include items that the Rule defines as household goods, violate the Rule.

3. Is a residential construction loan exempt from the Credit Practices Rule?

Your question assumes that a part of the construction loan proceeds will be used to purchase items that will subsequently become a part of the residence to be constructed, but which, at the time of purchase, are separate items that fall within the Rule's definition of household goods. Your question also assumes that the loan contract contains a cross-collateralization provision.

Loans for the purchase of real estate or the primary financing of real estate are not subject to the Rule. If the household goods which are purchased to become a part of the realty are financed separately, making the transaction subject to the Rule, this would be a purchase money transaction in which the Rule would permit the taking of a security interest in the items purchased. Cross-collateralization would be permitted in connection with such a purchase money transaction to the extent described in response to your second question.

This is an informal opinion of the FTC staff and does not bind the Commission. It does, however, represent the current enforcement position of the staff.

Sincerely,

Sandra M. Wilmore

Sandra M. Wilmore
Attorney
Division of Credit Practices

National Bank of Detroit
200 Renaissance Center Suite 2612
P.O. Box 1789
Detroit, Michigan 48232

Law Department

January 20, 1987

John LeFevre
Division of Credit Practices
Federal Trade Commission
Washington, D.C. 20580

Re: Credit Practices Rule, 16 C.F.R. Part 444

Dear Mr. LeFevre:

I recently discussed several complex issues regarding security interests in household goods with Clark Brinckerhoff of your office. Due to the unique nature of these issues and their potential impact on the clients which I represent, I have decided to ask for formal opinions for the following questions:

1. In the refinance of a manufactured (mobile) home purchase money loan by a new lender, may the new lender take a security interest in the entire mobile home, including all of its accessories, accessions and attachments?

For my question, please assume the following. The mobile home and its contents are personal property under State law and under the terms of the loan agreement. The mobile home, as originally sold and delivered to the consumer, contains certain accessions (fixtures) as defined by UCC Section 9-314(1). These accessions remain affixed (bolted) to the mobile home at all times. Examples of these items are cabinets, sinks, refrigerators, microwave ovens, etc. The mobile home also contains items which are delivered with the home but which are not bolted down, such as sofas, chairs, tables, etc.

The mobile home is a certificated item, like an automobile, and the creditor perfects its security interest by having its name printed on the certificate of title issued by the State. Repossession is accomplished by application for a new certificate of title if the home is abandoned, or a "claim and delivery" action against the owner in State court if repossession is opposed. The State issues a new certificate of title to the Lender in either instance.

The owners of these mobile homes typically purchased them when interest rates were high. They now wish to refinance these loans to achieve a lower interest rate. The purchase money lenders generally will not do this.

The refinance lender is a "mortgage company," an unlicensed financial institution. Loans are made pursuant to (and in compliance with) O.C.C. ARM Regulations (12 C.F.R. Part 29), F.H.L.B.B. ARM regulations (12 C.F.R. Section 545.33), Section 501 of the Depository Institution Deregulation and Monetary Control Act of 1980 (DIDMCA) (Public Law 96-221, 94 Stat. 161), and F.H.L.B.B. Regulations promulgated under this Section (12 C.F.R. Part 590). The refinance loans are sold to another financial institution (a mortgage company or a bank).

The consumer uses the proceeds of the refinance loan to prepay the original purchase money financing and, in some cases, to purchase improvements to the mobile home and/or to finance a reasonable application fee ($300.00). There are also a few "cash out" transactions in which the consumer is given funds for other purposes.

The refinance loans are fixed or adjustable rate loans of varying terms and conditions. The consumers, in each case, achieve a lower interest rate by refinancing their original purchase money loan. The reduction may be temporary or permanent, depending on market conditions and their chosen loan terms (the loan term and periods between interest rate adjustments, if any, are chosen by the consumer).

In your consideration of this question, please consider the following:

1. The disruption of mortgage funds due to low state usury ceilings was found by Congress to "frustrate national housing policies and programs. Senate Report No. 96-368, pg. 19, found in 1980 U.S. Cong. and Admin. News, Vol. 2, pg. 254. Congress therefore eliminated state usury limitations for purchase money lenders (and refinance lenders).

   The housing market may also be disrupted by limitations on competitive refinancing (thereby unnecessarily inflating the cost of housing in periods of economic stability), or by limitations on the ability of lenders to acquire an identifiable, marketable security interest in the dwelling. Any such limitations frustrate the intent of Congress as expressed in the legislative history of DIDMCA.

2. Mr. Brinckerhoff recognized that the security interest of the purchase money lender would not be limited in a refinance transaction with that lender. There is no legitimate reason to distinguish between the purchase money lender and a competing lender in a refinance transaction, other than (1) to protect the purchase

money lender's return on its investment at the expense of the consumer and (2) to inhibit lending competition. These rationales seem antagonistic to the function of the F.T.C.

3. Identification of the collateral at the time of a refinance transaction is easiest if the refinance lender is allowed to retain the same security as the purchase money lender. The collateral in a purchase money mobile home transaction is usually defined as the dwelling plus itemized accessories and accessions (and replacements of these items). Identification of the collateral is also possible as the dwelling and all accessions (plus replacements for these items).

   Exceptions from these descriptions in a refinance transaction would make it difficult for a lender to receive a security interest in a marketable item. Furthermore, enforcement of the refinance contract would be very difficult if the items of collateral might become excepted items after the closing of the loan. For example, if the security interest allowed by your rule only extends to the dwelling and accessions existing at the time of repossession, a debtor could thwart a lender by "stripping" the dwelling.

   For these reasons, we urge you to interpret your rule such that (1) a refinance lender may acquire the security interest of the purchase money lender, and (2) a security interest in a "mobile home" includes all accessions at the time of the transaction.

4. Please note that mobile home loans, whether for purchase money or refinancing, are approved or disapproved in a matter of hours to a maximum of a few days. The service to the consumer in this respect far exceeds the service available to real estate purchasers. Your rule should not be interpreted in a manner which would frustrate the lender's ability to provide prompt service to consumers.

5. The disclosures and consumer protections now required by Federal law for the type of transaction described above far exceed the requirements for any other type of consumer loan. These include the protection of your Rule, Regulation Z (including the right of rescission), O.C.C. ARM regulations, and special protections for mobile home loan debtors found in 12 C.F.R. Part of the lender's security interest through its title certification procedures.

6. You should consider the effect of your restrictions on VA loan guarantees and FHA loan insurance. Restructions on security interests could undermine mobile home improvement loans and refinance loans authorized by 24 C.F.R. Part 201 (FHA insured loans) and 38 USC Section 1819 (OVA guaranteed loans).

In light of the degree of regulation of the previously described loan, and the trend among the Federal regulatory agencies to treat property which is used as a residence as a "dwelling" (or a non-dwelling) instead of as "real estate" or "personal property," you may wish to change your interpretation of a mobile home as "personal property," and redefine it as a "dwelling," giving it the same exception from your Rule as "real estate." This would further the national housing policies of Congress, and it would recognize that "housing" encompasses more than historic real estate interests. A change of this nature would also recognize the change in the product, from a "mobile" home to manufactured housing, and its present similarity to fixed frame housing.

2. Referring to your discussion of item 3 in your Staff Advisory Letter dated March 20, 1985 (regarding cross-collateralization clauses), may a lender secure future loans with household goods taken as security in an earlier purchase money transaction?

Basically, I am asking whether a cross-collateralization clause in a consumer loan agreement will inadvertently violate the Credit Practices Rule if the same lender has a purchase money security interest in household goods from another unrelated credit transaction. You response seems to imply that once household goods are secured in a purchase money transaction, they are available as security for any other loan between the same parties or their assigns.

3. Is a residential construction loan exempt from the Credit Practices Rule?

This question might be divided into two examples; (1) where the borrower hires a builder to build a dwelling according to specifications in a dwelling purchase agreement, and (2) where the borrower is performing most of the labor and all of the construction contracting and purchasing of materials. In both instances, the borrower acquires household goods as part of the purchase transaction. In the former case, they are directly purchased by the builder in a business transaction and incorporated into the real estate. In the latter case, the materials and household goods are purchased by the borrower directly in a consumer transaction. The lender has a purchase money interest in all of these items (both before and after they are incorporated into the dwelling), and a security interest in the real estate on which the dwelling is built. The lender also has a cross-collateralization clause in the loan agreement which covers all other collateral (except a principal residence) from all other loans made by the same lender.

Does the interest taken in the goods before they become part of the real estate make this loan subject to the rule? (This security interest is taken to allow the lender to complete the construction of the residence if the loan goes bad). This question assumes that the cross-collateralization clause inadvertently violates the Credit Practice Rule.

I would appreciate an answer to these questions as soon as possible. Please feel free to call me if you need more information about our specific circumstances, or if you need to assume additional facts in order to answer any of these questions.

Very truly yours,

Howard A. Lax

Howard A. Lax
(313) 225-3770

HAL/jmh

Enclosure

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D C 20580

BUREAU OF
CONSUMER PROTECTION

June 12, 1987

Ms. Deborah J. Harter
Assistant General Counsel
New York Credit Union League
Credit Union Center
2 Wall Street
Box 15021
Albany, NY 12212

Re: Credit Practices Rule, 16 CFR 444

Dear Ms. Harter:

I am responding to your letter of June 4, 1987 relating to the provision of the FTC's Trade Regulation Rule on Credit Practices that requires a notice to cosigners (16 CFR 444.3(c)). As your letter states, the Federal Trade Commission granted the state of New York an exemption from this provision of the Rule for transactions up to $25,000 because New York has its own cosigner law, which applies to those transactions. The FTC Rule continues to apply to transactions involving more than $25,000, which are not covered by New York's law.

You ask two questions. The first is whether the notice required by New York law and the notice required by the Rule may be placed on the same form. The Commission, in the Statement of Basis and Purpose accompanying the Rule, specifically permits a creditor to put both notices in the same document, 49 Fed. Reg. 7740, 7778 (March 1, 1984).

Your second question is whether you may place on the document, between the two notices, the following statement:

> NOTE: If the credit limit (or amount financed) exceeds $25,000, you are required by law to complete the notice below.

In other staff interpretation letters, we have permitted creditors to add information to the notice that is in summary form and that would not detract from the notice required by the Rule. This statement falls within that category. However, the statement that you propose to include is not permissible because it is an inaccurate statement of the Rule's requirements.

The Rule does not require the cosigner to sign the notice. The Rule requires the creditor to provide the notice to the cosigner. While creditors are permitted to obtain the cosigner's

signature as evidence that the notice was provided, the Rule does not require this. You may wish to consider language such as "...we are required to give you the notice below." rather than "... you are required by law to complete the notice below".

This is an informal opinion of the FTC staff and does not bind the Commission. It does, however, represent the current enforcement position of the staff.

Sincerely,

Sandra M. Wilmore

Sandra M. Wilmore
Attorney
Division of Credit Practices

CREDIT UNION CENTER

NEW YORK STATE CREDIT UNION LEAGUE INC
LEAGUE MARKETING GROUP INC
EMPIRE CORPORATE FEDERAL CREDIT UNION

June 4, 1987

Sandra M. Wilmore, Esq.
Division of Credit Practices
Bureau of Consumer Protection
Federal Trade Commission
Washington, D.C. 20580

Dear Ms. Wilmore:

This letter will serve to confirm our telephone conversation this date pertaining to the New York State exemption granted August, 1986, by the FTC on the Credit Practices Rule that pertains to cosigners.

It is my request that a staff opinion letter be drafted to answer the following questions:

1) Can both the federal and state co-signer notice be included on one form?

2) If both notices are on one form, pursuant to the exception to the exemption granted by your agency to NYS for credit limits or amount financed exceeds $25,000.00, then a notice will be required to that effect. Please review the attached copies of co-signer notice that includes the provision: "NOTE: If the credit limit (or amount financed) exceeds $25,000.00, you are required by law to complete the notice below". Is this wording on the form in violation of the requirement of the FTC rule that the co-signer statement contain no other statement?

If it is in violation, please suggest a possible alternative to reflect the exception to the exemption given by the FTC to NYS.

Thank you for your time and attention.

Sincerely,

Deborah Jo Harter
Assistant General Counsel
New York State Credit Union League, Inc.

DJH:jaj
Enc.

2 Wall Street • Box 15021 • Albany, NY 12212 • (800) 342-9835 • (518) 869-0941

NOTICE OF COSIGNER RESPONSIBILITY: OPEN-END LOAN

NOTICE

You agree to pay the debts incurred from time to time on the account identified below although you may not personally receive any property, services, or money. You may be sued for payment although the person opening the account is able to pay. This notice is not the agreement, or other writing that obligates you to pay. Read that writing for the exact terms of your obligations and of your rights to limit or end your obligations.

IDENTIFICATION OF ACCOUNT YOU MAY HAVE TO PAY

_____
(Name of Debtor)

_____ Credit Union
(Name of Creditor)

_____
(Date)

_____ $ _____
(Kind of Account) (Limit of Liability)

I have been given a completed copy of this notice and of each writing that obligates me or the Debtor on this account.

_____ _____
(Date) (Signed)

NOTE: If the credit limit exceeds $25,000.00 (Twenty Five Thousand and 00/100 Dollars), you are required by law to complete the notice below.

Name and address
of credit union:

NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay this debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

_____
Cosigner's Signature Date

I mailed or delivered this notice to _____ before he/she

Principal borrower:

Account number:

NOTICE OF COSIGNER RESPONSIBILITY: CLOSED-END LOAN

NOTICE

You agree to pay the debt identified below although you may not personally receive any property, services, or money. You may be sued for payment although the person who receives the property, services, or money is able to pay. This notice is not the note, contract, or other writing that obligates you to pay the debt. Read that writing for the exact terms of your obligation.

IDENTIFICATION OF DEBT YOU MAY HAVE TO PAY

_____
(Name of Debtor)

_____ Credit Union
(Name of Creditor)

_____
(Date)

_____ $ _____
(Kind of Debt) (Total of Payments)

I have been given a completed copy of this notice and of each writing that obligates me or the Debtor on this debt.

_____ _____
(Date) (Signed)

NOTE: If the amount financed exceeds $25,000.00 (Twenty Five Thousand and 00/100 Dollars), you are required by law to complete the notice below.

ame and address
credit union·

NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay this debt, you will ave to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or ollection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same ollection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

_____
Cosigner s Signature Date

I mailed or delivered this notice to

_____ before he/she

became obligated as cosigner _____

Principal borrower:

Account number:

Date of loan·

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

June 17, 1987

Mr. Sam Kelley
Attorney at Law
Mauro, Wendler, Sheets, Blume
and Gutow
301 Congress Avenue, Suite 2100
Austin, Texas 78701

Re: Credit Practices Rule, 16 CFR 444

Dear Mr. Kelley:

I am responding to your letter of May 12, 1987, to Jean Noonan relating to the provision of the FTC's Trade Regulation Rule on Credit Practices that limits a creditor's ability to take an assignment of wages [16 CFR 444.2(a)(3)].

According to your letter, the state of Texas pays its employees by means of a device that resembles a payroll check, but that is described as a "warrant" drawn on state funds. You state that Texas law permits such warrants to be assigned as security for debts. You ask whether the use of a series of such warrant assignments, whereby by the consumer assigns his entire paycheck or "warrant" at the time the loan is made as a means of repaying a consumer credit obligation, would violate the Credit Practices Rule. We conclude that the use of warrant assignments in consumer credit transactions as described in your letter would violate the Rule.

You feel that the use of such warrant assignments would not violate the Rule's prohibition against the taking of wage assignments because the practice would fall within the Rule's exception for:

> a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment. [444.2(2)(3) (ii)]

The exception to the general prohibition against the taking of wage assignments quoted above

> is intended to permit credit unions and other creditors to use voluntary payroll deduction plans as a repayment device and to clarify that the rule does not prohibit pre-authorized electronic fund transfers. Statement of Basis and Purpose, 49 Fed. Reg. 7740, 7760.

The warrant assignment program that you describe differs from payroll deductions and similar pre-authorized payment plans that are permissible under the Rule in one important respect. As you describe it, the warrant assignment would require that the consumer's entire paycheck or warrant be assigned and paid to the creditor each month during the loan repayment period. The creditor would then take the monthly installment due from the consumer's wages and give the balance of the consumer's wages to the consumer. The time and manner of payment to the consumer are not specified, nor is it clear what protection, if any, the consumer would have from financial loss resulting from errors and delays in this process. An assignment of all of the consumer's wages to a creditor is not a wage "deduction" as described in the Rule.

In analyzing whether the use of warrant assignments constitutes a permissible preauthorized payment plan, it is also useful to consider the Commission's basis for exempting such plans from the general prohibition against the taking of wage assignments. The Commission found, when it prohibited wage assignments, that

> the potential for severe, substantial disruption of employment, the pressure that results from threats to file wage assignments, and the disruption of family finances constitute significant consumer injury. Statement of Basis and Purpose, 49 Fed. Reg. 7740, 7759.

From your description, the use of warrant assignments appears to have the same potential for consumer injury as the wage assignments the Commission decided to prohibit. Having the consumer's entire wages paid to the creditor each month could potentially disrupt family finances. The threat to refuse to give the remaining wages to the consumer by the creditor could exert the type of pressure on the consumer that the Rule's provision was intended to ban. Warrant assignments would appear to have the same potential for injury to the employment relationship as the wage assignments the Commission decided to ban.

With that analysis in mind, we conclude that, based on your description, a warrant assignment is not a plan "in which the consumer authorizes a series of wage deductions as a method of making each payment," which the Rule permits, but is rather an assignment or series of assignments of the consumer's entire wages to the creditor, which the Rule prohibits.

This is an informal opinion of the FTC staff and does not bind the Commission. It does, however, represent the current enforcement position of the staff.

Sincerely,

Sandra M. Wilmore

Sandra M. Wilmore
Attorney
Division of Credit Practices

Mauro, Wendler, Sheets, Blume & Gutow
Attorneys at Law

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Suite 580
Dallas, Texas 75204
214/824-6922

James D Blume
Steve Gutow
Craig Hoffman

May 12, 1987

Ms. Jean Noonan
Federal Trade Commission
4th Floor
601 Pennsylvania Avenue
Washington, D.C.

Dear Ms. Noonan:

I represent the Texas Warrant Company (TWC), a corporation authorized to do business in Texas. Pursuant to the provisions of Article 5069-Chapter 3, V.T.C.S., TWC is licensed by the Office of the Consumer Credit Commissioner of the State of Texas (OCCC) to engage in the business of making direct cash loans to members of the public in Texas. TWC is supervised and examined by the OCCC.

TWC is located in Austin, Texas, the state capital, and a large portion of its loan customers are employed by the State of Texas. The State of Texas pays its employees once a month by means of "warrants" drawn on state funds. These instruments are almost identical in resemblance to a typical payroll check, but are by Texas statute identified as "warrants".

The majority of the loans made by TWC to state employees are made subject to the provisions of Article 5069-Chapter 3, V.T.C.S. Article 3.20(1) (copy enclosed) of that chapter provides as follows:

> "No authorized lender shall take an assignment of wages as security for any loan made under this Chapter, but warrants drawn against any state fund, or any claim against a state fund or a state agency, may be assigned as security for any such loan".

As can be seen from this provision, Texas law does not prohibit assignments of warrants drawn on state funds as security for loans made pursuant to Article 5069-Chapter 3, V.T.C.S.

FTC Trade Regulation Rule, Part 444, Section 444.2(a)(3) (CFR, Title 16, §444) makes it an unfair act or practice for a lender to take an assignment of wages except under the certain circumstances

set out in that section. Section 444.2(a)(3)(ii) permits a wage assignment if it is a ". . . payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment. . ."

TWC makes installment loans, repayable in substantially equal monthly paments, typically over a period of twelve (12) months. It is our view that TWC could, at the time the loan is made, take a series of separate warrant assignments (one for each scheduled payment) authorizing TWC to be delivered the borrower's monthly warrants as they are paid and further authorizing TWC to deduct from the borrower's warrants (wages) the amount of each payment. After such deductions, the remainder of the monthy wages would be paid by TWC directly to the borrowers. It would seem that this procedure would meet the test of a "preauthorized payment plan" as set out in Section 444.2(a)(3)(ii) of the Trade Regulation Rule. It would be a (1) preauthorized payment plan, (2) commencing at the time of the transaction, and (3) the consumer would authorize a series of wage deductions as a method of making each payment.

I would appreciate having an opinion letter from you as to whether the above described practice would meet the criteria set out in §444.2(a)(3)(ii).

Sincerely,

Sam Kelley

Sam Kelley
Attorney at Law

87/2/rwh/OPINION

(3) At any time during regular business hours, the lender shall permit any loan to be prepaid in full, or, if less than a prepayment in full, in an amount equal to one or more full installments.

(4) When a loan is repaid in full, the lender shall cancel and return to the borrower, within a reasonable time, any note, assignment, security agreement, mortgage, property pledged, or other instrument securing such loan which no longer secures any indebtedness of the borrower to the lender.

Sec. (1) amended by Acts 1979, 66th Leg., p. 1561, ch. 672, § 9, eff. Aug. 27, 1979. Amended by Acts 1983, 68th Leg., p. 832, ch. 194, § 20, eff. May 24, 1983.

Art. 5069–3.20. Prohibited practices

(1) No authorized lender shall take an assignment of wages as security for any loan made under this Chapter, but warrants drawn against any state fund, or any claim against a state fund or a state agency, may be assigned as security for any such loan.

(2) No authorized lender shall take a lien upon real estate as security for any loan made under this Chapter, except such lien as is created by law upon the recording of an abstract of judgment.

(3) No authorized lender shall take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for a borrower in a judicial proceeding. This prohibition shall not apply to powers of attorney contained in insurance premium finance contracts when limited to the authority to cancel casualty insurance financed under such contract.

(4) No authorized lender shall take any promise to pay or loan obligation that does not disclose the amount financed and the schedule of payments.

(5) Except as specifically provided in Article 3.15(4) no authorized lender shall take any instrument in which blanks are left to be filled in after the loan is made.

(6) No authorized lender shall take any instrument whereby a borrower waives any right accruing to him under the provisions of this Chapter.

Sec. (4) amended by Acts 1979, 66th Leg., p. 1561, ch. 672, § 10, eff. Aug. 27, 1979. Amended by Acts 1983, 68th Leg., p. 832, ch. 194, § 21, eff. May 24, 1983.

Law Review Commentaries

Assignment of wages: Retreat from Sniadach and Consumer Credit Protection Act. 12 Houston L.Rev. 122 (1974).

Notes of Decisions

1. Construction and application

Proscription in this article and art. 5069–4.04 against taking of assignment of wages as security for certain loans applied only to installment type consumer loans and did not apply to loans repaid by single payment. Miro v. Allied Finance Co. (App.1983) 650 S.W.2d 938.

Trial court did not err in finding that employee's wage assignments were not intended to be used as security for loans made to employee by employer, in violation of this article and art. 5069–4.04, and that wage assignments were used only at employee's option, given language in payroll deduction agreement which constituted request by employee that payroll deductions be made and which inferred that payroll deduction agreement would become void if employee left employment, and hence, assignment would not follow employee from job to job, and in light of fact that requirement that all repayment be made on salary deduction basis was not applicable to employee in question, who, in fact, repaid several of the subject notes by personal check. Id.

Art. 5069–3.21. Limitation of loan period

(1) No authorized lender shall enter any contract of loan having a cash advance of Fifteen Hundred Dollars or less under this Chapter, under which the borrower agrees to make any scheduled payment of principal more than thirty-seven calendar months from the date of making such contract.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D C. 20580

BUREAU OF
CONSUMER PROTECTION

July 16, 1987

Channing J. Martin, Esq.
WILLIAMS, MULLEN, CHRISTIAN & DOBBINS
Post Office Box 1320
Richmond, Virginia 23210

Dear Mr. Martin:

This responds to your letter dated July 10, 1987, in which you asked about the applicability of the FTC's Credit Practices Rule (16 C.F.R. §444) to your client, a contractor who renovates kitchens and baths for consumers, a service that includes the installation of new applicances and fixtures. Generally, your client requires a 25% downpayment when a contract is signed, 25% when the work reaches an agreed stage of construction, and the balance on completion, which is within 60 days of the execution of the contract.

The Rule defines "retail installment seller" as "A person who sell goods or services to consumers on a deferred payment basis or pursuant to a lease-purchase arrangement within the jursidiction of the Federal Trade Commission." 16 C.F.R. §444.1(b). Since your client sells both goods (the items installed) and services (construction work) to consumers on a deferred payment basis, as you described, it would be covered by the Rule, if it is within our jurisdiction.

This is an informal staff opinion that is not binding on the Commission, but it does represent the staff's present enforcement policy.

Sincerely yours,

Clarke Brinckerhoff

Clarke Brinckerhoff, Attorney
Division of Credit Practices

LAW OFFICES

WILLIAMS, MULLEN, CHRISTIAN & DOBBINS

A PROFESSIONAL CORPORATION

P O BOX 1320

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JAMES MULLEN (1876-1967)
STUART G CHRISTIAN (1883-1967)

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FRED G POLLARD
R E CABELL, JR
COUNSEL

July 10, 1987

John Lefever, Esquire
Federal Trade Commission
Division of Credit Practices
Washington, D.C.

Dear Mr. Lefever:

This letter seeks a Federal Trade Commission Staff Advisory Letter regarding whether a corporate client of mine is a "retail installment seller" as that term is defined under 16 CFR § 444.1(b). My client is a general contractor who specializes in renovating residential kitchens and baths and installing new appliances and fixtures. It customarily requires consumers to execute a contract before work begins and to pay a downpayment of 25% at that time. It requires another 25% of the price once the work has reached a certain stage of construction, and then the balance upon completion. The time that elapses from the date the contract is signed to the date the job is completed can be as long as 60 days or as short as 10 days. The actual construction itself usually takes no more than a week.

I am familiar with the Federal Trade Commission Staff Advisory Letter of April 30, 1986 authored by Clark Binckerhoff, Esq., regarding whether a physicians' group that collected medical payments on a periodic installment basis prior to and including infant delivery was a "retail installment seller." That letter would seem to indicate my client falls within the definition of a "retail installment seller" and would have to comply with the Credit Practices Rule.

I look forward to receiving an Advisory Letter from you at your earliest convenience.

Very truly yours,

Channing J. Martin

Channing J. Martin

CJM/mr

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

BUREAU OF
CONSUMER PROTECTION

December 3, 1987

Mr. Irving Ward-Steinman
Attorney at Law
1130 Ninth Street
Alexandria, Louisiana 71301

Re: Credit Practice Trade Regulation Rule

Dear Mr. Ward-Steinman:

Thank you for your letter of November 20, 1987, requesting information about the provision of the FTC's Credit Practices Rule that prohibits a creditor in a consumer credit transaction from taking a non-purchase money security interest in the debtor's household goods. You ask if we are aware of cases in which trustees in bankruptcy have declared items defined as "household goods" under the Rule to be exempt from creditor attachment in bankruptcy proceedings. You ask whether trustees should be required to declare such items as exempt.

Section 444.2(a)(4) of the Rule prohibits a creditor from taking a security interest in items defined as household goods. If no such security interest is taken, that provision of the Rule would not apply. Section 444.2(a)(2) of the Rule prohibits a creditor from requiring a consumer to waive exemptions available to the consumer at state law. You describe a situation where no security interest has been taken and where the items are not exempt under state law. In the opinion of the FTC staff, the Rule would not prevent a creditor from attaching these items to satisfy a debt or require a trustee in bankruptcy to declare the items to be exempt from attachment.

We are also not aware of cases in which courts have required a bankruptcy trustee to treat items defined as "household goods" under the Rule as exempt from creditor attachment.

This is an informal staff opinion that is not binding on the Commission. However, it does reflect the staff's current enforcement position.

Sincerely,

Sandra M. Wilmore

Sandra M. Wilmore
Attorney
Division of Credit Practices

IRVING WARD-STEINMAN
Attorney at Law
OFFICE 1130 NINTH STREET
ALEXANDRIA, LOUISIANA 71301

P. O BOX 188
PHONE. (318) 448-1600

11/20/87 a.d.

Ms Sandra M Wilmore
Attorney/Di ision Credit Practices
FTC/Washington DC 20580

Dear Ms Wilmore:

Referring to our previous correspondence and submittals, do you have any cases where a Bankruptcy Trustee is required to follow the FTC LLL dealing with the items ruled exempt.

No creditor is involved, but some Trustees are denying the exemption of one TV and one radio on the grounds that Louisiana Does not exempt these items under RS 13:3881 or RS 13:3885.

In your opinion are these exemptions binding on a Trustee. With the denial (no chattel mortgage or lien is involved) he would pick same up or sell them back to the Debtor(s).

Please advise.

With kindest regards

Irving Ward-Steinman

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

BUREAU OF
CONSUMER PROTECTION

September 27, 1988

Joseph P. Henry, Esquire
Legal Aid Society of Northwest North Carolina, Inc.
216 West Fourth Street
Winston-Salem, N.C. 27101

Re: Credit Practices Rule

Dear Mr. Henry:

Thank you for your letter of August 24, 1988, requesting information about the Federal Trade Commission's Trade Regulation Rule on Credit Practices, 16 C.F.R. Part 444. The Credit Practices rule prohibits a creditor in a consumer credit transaction from taking or receiving a credit obligation that constitutes or contains, among other things, a non-purchase money security interest in household goods.

You ask if it is permissible to include such a security interest in a consumer credit contract if the contract also contains exclusionary language to the effect that the household goods security interest does not apply if a non-purchase money security interest is being taken on a loan for a personal, family or household purpose. You include an example of such exclusionary language in your letter.

In the opinion of the FTC staff, the addition of the exclusionary language you describe would not be sufficient to bring an otherwise violative contract into compliance. If the contract contains the prohibited language and is used in connection with a non-purchase money transaction for a personal, family or household purpose, that would violate the Rule. While the exclusionary language might be found by a court to invalidate the prohibited security agreement, consumer injury might still occur. In enacting the Rule, the Commission found the primary consumer injury to occur as a result of the creditor's threat to seize household goods, rather from the rare instances in which such goods were actually seized. (See Statement of Basis and Purpose, 49 Fed. Reg. 7740, 7762-7765, March 1, 1984.) The language of the disclaimer included in your letter is not sufficiently clear for us to expect a consumer to understand it

and not be susceptible to a creditor's threats to take household goods.

We are also concerned about creditor efforts to evade the Rule. In our experience, a security interest in household goods is rarely taken in connection with business credit. Hence, we fail to see the necessity for including a household goods security interest provision in a contract and then creating an exclusion for the transactions as to which the security interest would be most likely to apply. The use of such a device might be regarded as an effort to evade the Rule and, as such, an unfair or deceptive practice under the FTC Act.

This is an informal staff opinion that does not bind the Commission. However, it does represent the staff's current enforcement posture.

Sincerely,

Sandra M. Wilmore
Attorney
Division of Credit Practices

LAW OFFICES

THE LEGAL AID SOCIETY OF NORTHWEST NORTH CAROLINA, INC.

216 WEST FOURTH STREET
WINSTON-SALEM, NORTH CAROLINA 27101
(919) 725-9166

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OFFICE MANAGER
Linda H Mecum

VOLUNTEER LAWYER COORDINATOR
Shirley F Causer

August 24, 1988

Consumer Protection Division
of the Federal Trade Commission
Sixth and Pennsylvania Avenues, N.W.
Washington, D. C. 20580

TO WHOM IT MAY CONCERN:

Is it permissible to include in a listing of items in which a security interest is taken in a non-purchase money contract, household goods prohibited by 16 C.F.R. 444.2(a)(4) if the listing is followed by the following disclaimer:

> **EXCLUSIONS:** Secured Party specifically excludes from this security agreement the following items on a loan for a personal, family or household purpose, unless Secured Party has a purchase money security interest in the items:
> Clothing, furniture (except antiques), appliances, one radio, one television, linens, crockery, china, kitchenware, impersonal effects (including wedding rings but excluding other jewelry).
> If any items listed under "c" fall within the excluded items listed here and the Secured Party does not have a purchase money security interest in the item(s), then this preprinted language will supersede the items typed or written under "c" and Secured Party does not take a security interest in the excluded item.

Please note: "c" in line 8 and 11 above refers to a Blocked Listing of Collateral designated "c. Non-Purchase Money Security:"

Sincerely,

Joseph P. Henry
Staff Attorney

JPH/cw

BUREAU OF
CONSUMER PROTECTION

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 14, 1988

Ms. Mary Ann B. Clancy, General Counsel
Massachusetts Credit Union Association, Inc.
304 Turnpike Road
Southborough, MA 01772-1709

Re: Credit Practices Rule

Dear Ms. Clancy:

Thank you for your letter of November 16, 1988, requesting information about the Federal Trade Commission's Trade Regulation Rule on Credit Practices, 16 C.F.R. Part 444. The Credit Practices Rule prohibits a creditor in a consumer credit transaction from taking or receiving a credit obligation that constitutes or contains, among other things, a confession of judgment, a warrant of attorney, or any other waiver of the right to notice and the opportunity to be heard in the event of suit.

You state that standard consumer credit contracts used by credit unions in the state of Massachusetts contain a clause "... waiving rights of demand and notice ..." in the sentence containing the consumer's promise to pay. You ask whether this phrase constitutes a prohibited confession of judgment. You state that the clause does not affect a borrower's ability to raise defenses on the contract or provide the lender with the authority to act as an attorney for the borrower. You also state that the borrower retains the due process right to notice and the opportunity to be heard in the event of suit, and waives notice only of default and of the creditor's intention to pursue its contractual remedies.

Such a contract provision would not constitute a prohibited confession of judgment or otherwise violate the FTC's Credit

Practices Rule. The Commission described the device that the Rule is intended to prohibit as one:

> whereby the debtor, by means of a provision included in the contract, consents in advance to the creditor obtaining a judgment without prior notice or hearing. The debtor either confesses judgment in advance of default or authorizes the creditor or an attorney designated by the creditor to appear and confess judgment against the debtor. Statement of Basis and Purpose, 42 Fed. Reg. 7740, 7748-7749, March 1, 1984.

A waiver of notice of default would not constitute such a device.

This is an informal staff opinion that does not bind the Commission. However, it does represent the staff's current enforcement position.

Sincerely,

Sandra M. Wilmore

Sandra M. Wilmore
Attorney
Division of Credit Practices

Massachusetts CUNA Credit Union Association, Inc.

304 Turnpike Road, Southborough, MA 01772-1709
Phone (508) 481-6755 • Toll Free 1-800-842-1242

November 16, 1988

Ms. Sandra Wilmore
FEDERAL TRADE COMMISSION
Division of Credit Practices
Washington, D.C. 20580

Dear Ms. Wilmore:

This request letter seeks a written opinion from the Federal Trade Commission concerning the validity of certain language contained in a form used in Massachusetts by both state and federally-chartered credit unions as a promissory note/disclosure statement to make extensions of credit. Specifically, the issue is whether the clause "...waiving rights of demand and notice...", highlighted on the enclosed form, violates provisions of the Fair Credit Reporting Act and corresponding regulations relating to unfair credit practices of the Federal Trade Commission and Part 706 of the Rules and Regulations of the National Credit Union Administration.

It is the position of this Association that the clause "...waiving rights of demand and notice..." is not a confession of judgment. The subject clause does not affect a borrower's ability to raise defenses on the contract or provide the lender with the authority to act as an attorney for the borrower. The clause operates only as a waiver of notice to the borrower of the decision of the lender to proceed in accordance with the terms and conditions of default under the credit agreement. Each consumer entering into a contract containing this clause is still entitled to the due process requirements of a right to notice and an opportunity to be heard in the event of subsequent legal action.

Your attention to this request is appreciated. If you have any questions, please contact me at your convenience.

Sincerely,

Mary Ann B. Clancy

Mary Ann B. Clancy
General Counsel

MC/nw

cc: Ms. Julie Tamuleviz, National Credit Union Administration

Federal Form FORM # 11516

PROMISSORY NOTE/DISCLOSURE STATEMENT

NAME OF MAKER	(RESIDENCE-NUMBER AND STREET)	(CITY OR TOWN)	(STATE)	(ZIP CODE)

NOTE NUMBER	DATE	ACCOUNT NUMBER

(CREDIT UNION'S NAME)

(NUMBER AND STREET) (CITY AND STATE) (ZIP CODE)

Note: Boxes checked if applicable.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. %	**FINANCE CHARGE** The dollar amount the credit will cost me. $	Amount Financed The amount of credit provided to me or on my behalf. $	Total of Payments The amount I will have paid after I have made all payments as scheduled. $

I have the right to receive at this time an itemization of the Amount Financed.

☐ I want an itemization. ☐ I do not want an itemization.

My payment schedule will be:

Number of Payments	Amount of Payments	When Payments are Due

Security: I am giving a security interest in my shares and/or certificates in this credit union;

Late Charge: _____

Prepayment: If I pay [illegible] early, I will not have to pay a penalty.

☐ **Required Deposit:** The annual percentage rate does not take into account my required deposit.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment penalties.

e means estimate

For value received, I/We _____ as maker and _____ and comaker(s), waiving rights of demand and notice, jointly and severally promise to pay to the order of _____ Credit Union the sum of $_____ _____ with interest on unpaid balances at the rate of _____% per year payable in _____ consecutive monthly/weekly installments of $_____ ☐ which includes principal and interest ☐ plus interest. The first payment to be made on _____ and a like amount will be due the same day each month/_____ thereafter until the full amount has been paid

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

BUREAU OF
CONSUMER PROTECTION

February 16, 1989

Kate Mewhinney, Esquire
Legal Aid Society of Northwest North Carolina, Inc.
216 West Fourth Street
Winston-Salem, N.C. 27101

Re: Credit Practices Rule

Dear Ms. Mewhinney:

Thank you for your letter of January 25, 1989, requesting information about the Federal Trade Commission's Trade Regulation Rule on Credit Practices (the Rule), 16 C.F.R. Part 444. The Rule prohibits a creditor in a consumer credit transaction from taking or receiving a credit obligation that constitutes or contains, among other things, a non-purchase money security interest in "household goods", as defined by the Rule.

You enclose a finance company loan contract and ask whether that contract violates the Rule's prohibition against security interests in household goods. Included with the contract is a Collateral Listing, incorporated by reference into the security agreement. The items on the Collateral Listing include a television set, a lawnmower, and an edger. You believe that it is not clear from the Listing whether the consumer owns more than one television set, in which case a second set could be taken as security, or whether it is the consumer's only television set, in which case a security interest in the set would violate the Rule. You also ask whether a lawnmower is an appliance, and as such, included in the Rule's definition of household goods.

On the Collateral Listing, a footnote under the reference to a television says "In excess of 1." This suggests that the creditor is attempting to comply with the Rule by excluding one television set from the security interest being taken. Whether the consumer, in fact, has more than one television is not apparent on the face of the document. Clearly, if the debtor has only one television set, obtaining a security interest in that set would violate the Rule.

In response to your second question, I am enclosing a series of FTC staff interpretations in which we have answered questions concerning what constitutes household goods. You will note that we have stated that lawn equipment is not included in the definition of household goods.

This is an informal staff opinion that does not bind the Commission. However, it does represent the staff's current enforcement posture.

Sincerely,

Sandra M. Wilmore

Sandra M. Wilmore
Attorney
Division of Credit Practices

Enclosures

LAW OFFICES

THE LEGAL AID SOCIETY OF NORTHWEST NORTH CAROLINA, INC.

216 WEST FOURTH STREET
WINSTON-SALEM, NORTH CAROLINA 27101
(919) 725-9166

January 25, 1989

Division of Credit Practices
Consumer Protection Division
Federal Trade Commission
6th and Pennsylvania Avenues, N.W.
Washington, DC 20580

Dear Sir/Madam:

I represent a consumer who entered into a loan and security agreement with a finance company, giving a security interest in a television, a riding lawn mower, and two motor vehicles. I am writing to ask your opinion about whether the collateral listing complies with 16 C.F.R. 444.2(a)(4) in two respects. First, it seems that a lawnmower is an appliance; in any case, it does not fall within any of the four exceptions to the term "household goods" listed in the regulation. Secondly, it is not clear from the form that the consumer even owned more than one television. The form doesn't indicate clearly that the secured television is and could only be a second television.

I appreciate your consideration of these matters and look forward to hearing from you.

Sincerely,

Kate Mewhinney

Kate Mewhinney
Staff Attorney

KM/cw

Creditor/Lender

DEBTOR ___ _____ _____

The property listed herein is hereby offered and accepted as collateral for a Loan, and by reference is included in Security Agreement(s) entered into between named Creditor-Lender and Debtor

Collateral Listing

No.	ARTICLE	DESCRIPTION	VALUE
	Answering Machine		
	Antiques		
	Binoculars		
	Coin Collection		
	Elec. Entertain. Eqpt.:		
	Cassette Recorder		
	Public Address Syst.		
	Radio (1)		
	Stereo		
	Tape Rec./Play		
1	TV (2) Zenith Blue Screen		800.
	VCR, etc.		
	Encyclopedia		
	Exercise Equipment		
	Garden Equipment:		
	Edger	Ser# 210267512	
1	Lawnmower Craftsman Riding		1400.
	Weedeater, etc.		
	Home Computer		
	Home Workshop Tools:		
	Chain Saw		
	Paint Sprayer		
	Reversible Drill		
	Table Saw		
	Tools, etc.		
	Rototiller		
	Firearms		
	Jewelry (3)		
	Luggage		
	Microscope		
	Mopeds		

No.	ARTICLE	DESCRIPTION	VALUE
	Musical Instruments:		
	Amplifiers		
	Drums		
	Guitar		
	Organ		
	Piano		
	Trumpet, etc.		
	Photographic Equipment:		
	Camera		
	Projector, etc.		
	Pool Table		
	Stamp Collection		
	Sports Equipment:		
	Archery Gear		
	Bicycle		
	Camping Gear		
	Fishing Gear		
	Golf Clubs		
	Ping Pong Table		
	Ski Gear (water or snow)		
	Snowmobile		
	Tennis Gear, etc.		
	Telephone (privately owned)		
	Telescope		
	Trailer		
	Typewriter		
	Water Purifier		
	Works of Art or Figurines		
	OTHER — DESCRIBE BELOW		

(1) In excess of 1.

(2) In excess of 1.

(3) Not to include wedding ring

$ 2200.00
Debtor's Total Value

Debtor's Signature Date

Debtor's Signature Date

5-5116

Due Date								
14th								

Date of Note	Amount of Note	Number of Monthly Payments	Amount of First Payment	Amount of Other Payments	First Payment Due	Others Due Same Day Each Month	Final Payment Due	Total of Payments
/14/88	$ 4983.84	30	$ 217.00	$ 217.00	4/14/88		9/14/90	$ 6510.00

Excludable Non-Finance Charges

Insurance							
Credit Life	Accident & Health	Property	24 Vehicle		Official Fee Filing-Releasing	Other Cash Advanced	Amount (Principal Amount of Loan)
$ 113.93	$ 255.19	$ -0-	$ 313.00	$	$ title 3.00	$ 4227.72	$ 4983.84

LE 2.00	$	Property $		FINANCE CHARGE $ 1526.16	ANNUAL PERCENTAGE RATE 21.82 %

Finance Charge Components

NOTE

FOR VALUE RECEIVED, the undersigned jointly and severally promise to pay to the order of payee named above, at its above office, the actual amount of the note as stated above together with interest at the annual percentage rate as shown above until fully paid. Interest will be charged and collected at the following actuarial rate: With respect to a loan not exceeding $7,500, 30% per annum on that part of the unpaid principal balance not exceeding $1,000 and 18% per annum on the remainder of the unpaid principal balance. With respect to a loan exceeding $7,500, 18% per annum on the outstanding principal balance. Interest will be collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule. Interest will be computed and paid on the number of days actually elapsed. A month shall be that period of time from one date in a month to the corresponding date in the following month, and if there is no corresponding date, then to the last day of the following month. A day is 1/30 of a month for computation of a fractional part of a month. The rate of interest shall be reduced to 8% per annum on the unpaid principal balance remaining unpaid after the final maturity date.

Payment shall be made in consecutive monthly installments as indicated above beginning on the above stated due date for the first payment and continuing on the same day of each succeeding month to and including the above stated due date for the final payment. The final payment shall be in the amount of the unpaid principal balance remaining unpaid plus all accumulated and unpaid interest charges as of the date of final payment. The unpaid balance of this note, or any part thereof, plus accrued charges, if any, may, at the option of the undersigned, be paid at any time.

Default in the payment of any installment of the principal or interest hereof, or any part of either, shall, at the option of the holder hereof, and without notice or demand, render the then unpaid balance of the principal hereof, and accrued charges, if any, thereon, at once due and payable. In the event of default on this contract, the undersigned agree that if a judgment is entered against the undersigned, such judgment shall bear interest from the date of undersigned's breach of this contract, and such interest shall be at the contractual rate herein, all as allowed by law.

Cause of action hereon shall arise only with respect to the entire amount remaining unpaid hereunder, same being the unpaid balance and any accrued charges or interest thereon. Undersigned further agree that Payee or its assignee may remove this contract and other related instruments from the State of North Carolina and instigate legal action in any court having jurisdiction in any other state in which the filing of such action may be legal, as determined by the laws of the state in which legal action is filed by the Payee. In the event any insurance covering the security for this loan, credit life insurance on any Debtor's life, accident and health insurance and/or any other insurance written in conjunction with this loan, or purchased with any proceeds of this loan is cancelled, undersigned debtors herewith authorize and direct the insurance companies and their agents to pay direct to the Payee any and all refunds of premiums for such cancelled insurance for application on any unpaid balance on this note. Undersigned, jointly and severally, waive any right to notice of such cancellation and payments to Payee. The makers, sureties, endorsers and guarantors hereof severally waive demand for payment, notice on non-payment, protest and notice of protest of this note, release of all or a part of the security and/or any co-signer or co-maker and consent to extensions of time of payment without notice; all parties hereto further agree, both jointly and severally, to waive any and all rights of exemption of every kind to which they may be entitled under the laws of this or any other state, as to the property which is subject to the security interest herein, in which legal action may be instigated under this agreement and/or any underlying agreement.

This loan has been made and this note is subject to the provisions and terms of the North Carolina Consumer Finance Act and to the Rules and Regulations of the North Carolina State Banking Commission and the Commissioner of Banks.

Payee will charge and collect a $10 processing fee for checks tendered to payee on which payment has been refused by the payor bank because of insufficient funds or because its drawer did not have an account at that bank. Effective September 1, 1987, the $10 processing fee for checks tendered to payee on which payment has been refused by the payor bank will be increased to $15.

Witnessed By:

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

NORTH CAROLINA 2/87

SEE REVERSE SIDE FOR OTHER IMPORTANT INFORMATION

Account Number	Borrower			
5116	[redacted] (Deceased)			
Due Date				
14th	SS# [redacted]			

Date of Note	Amount of Note	Number of Monthly Payments	Amount of First Payment	Amount of Other Payments	First Payment Due	Others Due Same Day Each Month	Final Payment Due	Total of Payments
4/88	$ 4983.84	30	$ 217.00	$ 217.00	4/14/88		9/14/90	$ 6510.00

SECURITY AGREEMENT

The Debtors above named are indebted upon their promissory negotiable note, above described, payable to the order of the Secured Party at its above office in an amount which is stated above as Amount of Note By the terms thereof, default in making any payment shall, at the option of the holder of the note and without notice or demand, render it at once due and payable.

In consideration of said loan and to further secure the payment of said note, the Debtors hereby convey and mortgage to said Secured Party named herein, its successors and assigns, the property and chattels hereinafter described, and all proceeds and products therefrom.

Debtors covenant that if required by the Secured Party, they will keep the property and chattles insured against any perils designated by the Secured Party in such sums as required by the Secured Party and will cause the policy or policies therefore to be assigned or made payable to the Secured Party by standard mortgage clause attached hereto and deliver same with all premiums fully paid to the Secured Party to be held as additional collateral for this loan. The debtors hereto further agree and hereby do waive any and all exemptions to which they may be entitled in this state or in any other state, as to the property which is subject to the security interest herein, in which any type legal action may be instigated against them under the terms of this security agreement or under the terms of the note secured hereby.

Debtors covenant and agree to retain the care and custody of said mortgaged property, take good and proper care of same, and not sell or pledge any of said property, or remove same from the aforesaid address without the written consent of the Secured Party. Should the debtors violate or fail to strictly comply with any of the provisions or covenants herein, or if at any time when a default in payment exists, the entire balance remaining unpaid on said note together with all accumulated charges and interest, if any, shall be due and payable, either by the exercise of the option of acceleration as above provided or otherwise, the Secured Party or its agents and assigns may enter in and on the premises where said property is located and take possession of it without demand or notice, and may sell said property and the Debtors' equity therein with or without notice, at public or private sale, either for cash or upon credit, or may bring an action to collect the indebtedness for which this mortgage is given, or may foreclose said mortgage by a decree of Court. The proceeds of any sale hereunder shall first be applied on the indebtedness secured hereby, and any surplus shall be paid to the Debtors; should there be any deficiency or balance due, then debtor hereby agrees to be liable therefor At any time default exists, the Secured Party may require the Debtor to assemble the collateral and make it available to the Secured Party at a place to be designated by the Secured Party. The Secured Party's rights hereunder shall not be exclusive, and Secured Party shall have all other rights upon default provided for under North Carolina law.

This Security Agreement and any Financing Statement filed in connection herewith also secures future advances made by the Secured Party to the Debtors, or any of them, from time to time, not to exceed the sum of $10,000.00 cash advance. The Security Agreement and any such Financing Statement further covers any new loan or loans to Debtors, or any one of them, made by Secured Party within 30 days after payment of any note covered hereunder.

The Debtors covenant that they exclusively possess and own said property and chattels, free and clear of all encumbrances except as otherwise noted, and that they will warrant and defend the same against all persons except the Secured Party. Any failure of the Secured Party to enforce any of its rights or remedies hereunder shall not be a waiver of its rights to do so thereafter.

Description of encumbered property:

1 Zenith Blue Screen TV
1 Yardman Riding mower Ser # 210267512

YEAR-MODEL	MAKE	BODY TYPE	SERIAL NO	MOTOR NO.
1973	Ford	trk	[redacted]	[redacted]
1981	Chev	4 d hatch	[redacted]315	

together with all the equipment of every kind now on said automobile or which may be hereafter attached, and all replacements made, by the Debtors or any of their agents during the life of the Security Agreement.

With the following conditions to-wit:

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seal on the day written above.

Witness _____ _____ (SEAL)

Witness _____ _____ (SEAL)

(Second Party)

BY: _____ (SEAL)

Its bookkeeper

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C 20580

BUREAU OF
CONSUMER PROTECTION

February 16, 1989

Kate Mewhinney, Esquire
Legal Aid Society of Northwest North Carolina, Inc.
216 West Fourth Street
Winston-Salem, N.C. 27101

Re: Credit Practices Rule

Dear Ms. Mewhinney:

Thank you for your letter of January 26, 1989, requesting information about the Federal Trade Commission's Trade Regulation Rule on Credit Practices (the Rule), 16 C.F.R. Part 444. The Rule prohibits a creditor in a consumer credit transaction from taking or receiving a credit obligation that constitutes or contains, among other things, a non-purchase money security interest in "household goods", as defined by the Rule.

You enclose a finance company loan contract and ask whether that contract violates the Rule's prohibition against security interests in household goods. The security agreement section of the loan contract, under the heading Collateral Goods Pledged as Security, states "Personal Property - For Detailed Listing, See Manager's Appraisal Form." The document entitled Manager's Appraisal Form has a section entitled "Furniture Owned by Borrower", which describes items such as a dining table and bedroom furniture that fall within the Rule's definition of household goods. Below that section is a separate section entitled "Personal Property Given as Collateral/Security", which lists items that are generally not household goods as defined in the Rule.[1]

---

[1] However, we note that one of the items listed is a "microwave." We have previously stated that a microwave oven is an appliance and is included in the Rule's definition of household goods. A copy of that interpretation is enclosed for your reference.

By referring to items that are clearly household goods on the Manager's Appraisal form, which is incorporated by reference into the security agreement, the contract may suggest that a prohibited security interest is being taken in those items. However, the fact that they are listed separately from other items described as collateral would probably be interpreted by a court to mean that no such security interest exists. Further, If the contract does not constitute or contain a security interest in household goods, it does not violate the Rule.

This is an informal staff opinion that is not binding on the Commission. However, it does represent the staff's current enforcement position.

Sincerely,

Sandra M. Wilmore
Attorney
Division of Credit Practices

Enclosure

Sandra

LAW OFFICES

THE LEGAL AID SOCIETY OF NORTHWEST NORTH CAROLINA, INC.

216 WEST FOURTH STREET
WINSTON-SALEM, NORTH CAROLINA 27101
(919) 725-9166

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Charlene S. Whetstone

OFFICE MANAGER
Linda H. Mecum

VOLUNTEER LAWYER COORDINATOR
Shirley F. Causer

January 26, 1989

Division of Credit Practices
Consumer Protection Division of
the Federal Trade Commission
6th & Pennsylvania Avenues, N.W.
Washington, D. C. 20580

Dear Sir/Madam:

I represent a consumer who entered into a loan agreement with a finance company, giving a car and some personal property as security. I have attached a copy of the loan agreement and the "Manager's Appraisal Form" referred to in the agreement. As you can tell, this form purports to identify secured personal property separately from the consumer's other personal property. It seems to me that this appraisal form is deceptive because it would appear to most consumers that they have given as security all of the property listed on that form.

I am writing to request your opinion as to whether this non-purchase money contract attempts to take a security interest in household goods prohibited by 16 C.F.R. 444.2(a)(4).

If there's any further information that you need, please do not hesitate to contact me. Thank you for your help.

Sincerely,

Kate Mewhinney

Kate Mewhinney
Staff Attorney

KM/cw

Enclosure

finance corp. MANAGER'S APPRAISAL FORM

FURNITURE OWNED BY BORROWER'(S)

Refrigerator _____ Couch Brown Bedroom Suits No. 1 OAK -

Range _____ Chair Brown Dining Table OAK

Washer Speed Queen Tables _____ Chairs No. 4 OAK

Dryer _____ TV (exempt) Philco 12" Radio (exempt) GE

PERSONAL PROPERTY GIVEN AS COLLATERAL / SECURITY

MAKE	ITEM	REPLACE VALUE
ELECTRONIE EQUIPMENT		
Philco.	2nd TV	25"
	Cassett R/C	
	Tape Player	
	V. C. R.	
N/A	Micro-Wave	
	Telephones	
	Camera	
Craig	STERO	W/2 Speakers
	.	
FARM / LAWN / GARDNER EQUIPMENT		
	TRACTOR w/attachment	
	RIDING MOWER	
	LAWN MOWER	
	TILLER	
	CHAIN SAW	
	TRAILER	
	.	
	.	
MUSICAL INSTRUMENTS		
	PIANO	
	ORGAN	
	.	
	.	

MAKE	ITEM	REPLACE VALUE
FIRE ARMS		
	SHOT GUNS	
	RIFLES	
	PISTOLS	
	.	
	.	
	.	
HOME WORKSHOP & TOOLS		
	TABLE SAW	
	SKILL SAW	
	DRILLS	
	.	
	.	
	.	
RECREATION EQUIPEMNT		
	GOLF CLUBS	
	CAMPING EQP.	
	EXERCISE EQP.	
	BICYCLES .	
	.	
	.	
	.	

Verbal Listing : Date 10-6-86

Personal Insp: Date _____

Inspected By: _____

THE ABOVE DESCRIBED COLLATERAL / SECURITY IS LOCATED AT MY ADDRESS AND WILL NOT BE MOVED FROM SAID ADDRESS WITHOUT PERMISSION FROM GREENE FINANCE CORP. UNTIL THIS INDEBTEDNESS IS SATISFIED. _____ _____ (BOR

WITNESS

EXHIBIT B

BORROWER

THE CREDITOR MAKING THESE DISCLOSURES LENDER
COMPANY NAME
ADDRESS
CITY & STATE

mh

BORROWER(S) NAME AND ADDRESS

6176460

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total Of Payments The amount you will have paid after you have made all payments as scheduled.
24.62 %	$ 561.29	$ 2030.71	$ 2592.00

YOUR PAYMENT SCHEDULE WILL BE:

ACCOUNT NO.	DATE OF LOAN	FIRST PAYMENT DUE DATE	ALL PAYMENTS ARE DUE ON THE SAME DAY OF EACH MONTH	FINAL PAYMENT DUE
7902	10-6-86	11-6-86		10-6-88

PAYABLE IN	AMOUNT OF FIRST PAYMENT	AMOUNT OF OTHER PAYMENTS
24 MONTHLY PAYMENTS	$ 108.00	$ 108.00

SECURITY: You are giving a security interest in: [X] your automobile
[X] your collateral goods [ ] the goods or property being purchased
[ ] your real estate located at: _____
[ ] other property: _____

PREPAYMENT: If you pay off early, you will not have to pay a penalty. If you pay off early, you may be entitled to a part of the finance charge.

[ ] ASSUMPTION (applicable only if a real estate mortgage is given as security)
Someone buying your real estate cannot assume the remainder of the mortgage on the original terms unless the creditor agrees in writing to the assumption. See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, prepayment refunds, penalties, and security interests. "E" means an estimate.

ITEMIZATION OF AMOUNT FINANCED

1. Amount Financed. The Amount Financed will be disbursed to or for Borrower as follows	$ 2030.71
2. Credit Life Ins. Premium	
Single Premium	$ 41.47
Joint Premium	$
3. Credit Acc. & Health Ins. Prem.	$ 103.68
4. Personal Property Ins.	
(a) Single Interest Premium	$ .00
(b) Dual Interest Premium	$
5. Auto Physical Damage Ins.	
(a) Single Interest Premium	$ 314.00
(b) Dual Interest Premium for the following checked coverages and for a term of _____ months	$
[ ] Comprehensive	[ ] Fire and Broad Form Theft
[ ] $_____ Deductible Collision	[ ] Combined Additional Coverage
[ ] Towing and Labor	[ ] Other (Describe)
6. Official Fees	$
7. Certificate of Title Fee	$ 3.00
8. Documentary Stamps	$
9. Net Bal. Former Acc't No.	$ 1322.02
10. Amount Authorized to be Paid to Others:	
_____	$
_____	$
_____	$
_____	$
11. Cash to Borrower	$ 246.54
12. Total Disbursed to or for Borrower	$ 246.54

FOR VALUE RECEIVED, the undersigned jointly and severally promise to pay to the order of Lender named above at its above office, the actual amount of the loan (amount financed), it being the principal amount of this note, together with a Finance Charge (interest) at rates not exceeding the rates shown below:

[X] three percent (3%) per month on that part of the unpaid principal balance of any loan not in excess of six hundred dollars ($600.00) and one and one quarter percent (1¼%) per month on any remainder of such unpaid principal balance not exceeding three thousand ($3000.00) as in G.S. 53-173.

[ ] (a) With respect to a loan not exceeding seven thousand five hundred dollars ($7,500), thirty percent (30%) per annum on that part of the unpaid principal balance not exceeding one thousand dollars ($1,000) and eighteen percent (18%) per annum on the remainder of the unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.
(b) With respect to a loan exceeding seven thousand five hundred dollars ($7,500), eighteen percent (18%) per annum on the outstanding principal balance, as in G.S. 53-176.

The Finance Charge is computed on the basis of the number of days actually elapsed, a month shall be that period of time from one date in a month to the corresponding date in the following month, but if there is no corresponding date, then to the last day of such following month, a day shall be one thirtieth of a month where computation is made for a fraction of a month.

The FINANCE CHARGE as shown above, which is included in the Total of Payments, is the total amount of interest which will become due on this loan based upon the assumptions that the loan will be paid to maturity and that all installment payments will be made on the dates they are due.

Payment of principal and interest shall be made in consecutive monthly payments, beginning on the due date for the first payment and continuing on the same day of each succeeding month to and including the due date for the final payment all as indicated and stated in the above captioned boxes.

In the event the undersigned tenders a check in payment of any amount due under this loan and upon presentment to the named drawee, such check is returned due to insufficient funds or credit, the Lender, in addition to the assessment of the aforesaid charge, shall have the right to assess against the customer an additional charge of $10.00 for the dishonor or processing fee of the returned item, Sec. 12 G.S. 53-175(C) and G.S. 25-3-512.

PREPAYMENT: Payment may be made in advance in any amount equal to one or more full monthly installments.

The Finance Charge represents estimated total charges which will be deducted from monthly payments, based upon the application of the monthly Finance Charge rates listed above to the unpaid amount financed. In the event of prepayment, Borrower will not be required to pay any unearned portion of the Finance Charge.

DEFAULT: Default in making any payment shall, at the option of the holder hereof and without notice or demand, render the entire unpaid principal balance (amount financed) and all accrued charges immediately due and payable. If this note is not paid at maturity, it shall bear interest on any unpaid amount financed at the rate of 8% per annum until fully paid.

INSURANCE AGAINST LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE TO OTHERS IS NOT INCLUDED IN THIS TRANSACTION

[ ] This Loan is Unsecured

[X] This Loan is secured by a Security Agreement of even date which covers: (1) the following described property, (2) the proceeds thereof, (3) all property of the same type or character in which Borrower acquires rights, provided that as to consumer goods, other than accessions, such rights are acquired within 10 days after Lender advances funds to or for Borrower upon this loan or upon any future loan made to Borrower by Lender, (4) all equipment, accessories and parts added or attached thereto.

SECURITY

The undersigned, hereinafter referred to as "Debtor", hereby grants to Lender, hereinafter referred to as "Secured Party", a security interest in the personal property described below, hereinafter referred to as "Collateral", which shall be kept at the address where Debtor now resides, as set forth above, as security for the payment of the Note, set forth above in the amount, date and terms stated herein. It is agreed by the parties hereto that future advances in the form of extensions or renewals of the original indebtedness may be made to Debtor and the same shall be secured hereby. Secured Party shall maintain a security interest in any and all accessions thereto of the Collateral described below.

DESCRIPTION OF COLLATERAL GIVEN AS SECURITY. A certain vehicle, complete with all attachments and equipment, now located at the address of the Borrower(s) Debtor(s) indicated above, to wit:

NEW OR USED	Year of Model	MAKE		SERIES NAME (Also "No" if applicable)	BODY TYPE & MODEL NO (If truck, tons capacity)	NO CYL	H/P 55 & LATER	IDENTIFICATION NO (Serial or Motor No.)
U	1976	Cadi			2S			6D47S6E626583

and/or the following described chattels now located at the address of the Debtors indicated above, to wit:

Property to be Repaired with Money Borrowed	Property to be purchased or Released from Lien
Collateral Goods Pledged as Security	**Other Collateral (not tools of trade or business) Pledged**
Personal Property - For Detailed Listing, See Manager's Appraisal Form.	

TO BE KEPT AT	COUNTY OF	If at other than Customer's address enter location	NUMBER AND STREET, CITY AND STATE
	Surry		

This Agreement is subject to the additional provisions set forth on the reverse side hereof, the same being incorporated herein by reference.

All the covenants and obligations contained herein shall be considered joint and several covenants and obligations of each of the undersigned persons and shall be binding on their heirs, legal representatives, successors and assigns. All rights of Lender-Secured Party shall inure to the benefit of its successors and assigns. This agreement is to be interpreted according to the laws and statutes of North Carolina.

Exhibit 3

INSURANCE DISCLOSURE

Cred.. life insurance and credit disability insurance are not required to obta n credit, and will not be provided unless you sign and agree to pay the additional c st.

TYPE	(✓)	PREMIUM	SIGNATURE
Single Credit Life	X	$ 41.47	I/We want credit life insurance. Signature
Joint Credit Life			
Credit Disability		$ 103.68	I want credit disability insurance. Signature

You may obtain property insurance from anyone you want, provided the insurance con..n, is acceptable to the creditor. If you get pr.. rty insurance from or through the creditor, it will be for a term of XX months and you will pay $ .00.

Credit Life and Credit Accident and Health insurance provided by Lender may be cancelled within 15 days of the date of the loan by written request signed by all obligors and upon return of all Certificate(s) to the above named Lender. In the event of such cancellation the entire premium cost of such insurance shall be refunded to the Borrower(s).

The following notice applies only if the proceeds of this loan have been applied in whole or substantial part to the purchase of goods and/or services from a person who, in the ordinary course of his business sells such goods and/or services to consumers, and Borrower has been referred to the Lender by the Seller, or Lender is affiliated with the Seller by common control, contract, or business arrangement

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

The undersigned authorize the disbursements as stated above and acknowledge receipt of a copy of this instrument and that it was completely filled in prior to the execution thereof.

Signed, sealed and delivered the day and year above set forth.

_____ (SEAL)
Witness — Borrower-Debtor

_____ (SEAL)
Witness — Borrower-Debtor

_____ (SEAL)
Secured Party

_____ (SEAL)

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

COPY