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REGULATING HOME EQUITY LOAN ADVERTISEMENTS, APPLICATIONS AND AGREEMENTS

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I. Introduction

Consumers are bombarded with advertisements for home equity loans. Lenders advertise home equity loans through newspapers, brochures, direct mailings, and by cross-selling with other financial products. These advertisements often do not provide information about such loan features as balloon payments, repayment periods, negative amortization, rate ceilings, change of term clauses and, most importantly, that the consumer risks losing his or her home in the event of default. Such features, if misunderstood, pose great financial risk to many consumers, particularly those with little excess disposable income and savings.

The home equity loan market has increased dramatically since the Tax Reform Act of 1986.[1] The phase-out of the interest deduction for non-mortgaged consumer debt made home equity loans an enormously popular device for consumers to continue deducting interest payments. The Federal Reserve estimated that there was $75 billion in outstanding home equity debt at the end of 1988, and that the total was growing approximately 20% per year.[2] The continued proliferation of home equity loans, combined with lenders' aggressive marketing techniques and the lack of information available to consumers at the time the buying decision is made, threatens the very foundation of home ownership. Consumers must be afforded a first-glance basic understanding of home equity loans and the inevitable consequences of default if home ownership and true consumer protection is to be sustained.

This article examines the current regulation of home equity loan marketing. Sections II and III discuss the mechanics and potential abuses in home equity loan marketing. Section IV reviews previous federal regulation and recent state statutes governing home equity loans. Sections V and VI analyze the newly implemented federal Home Equity Loan and Consumer Protection Act ("the FHEL Act") and identify two of its major short-comings. Finally, Section VII discusses the application of the Illinois Consumer Fraud and Deceptive Practices Act to misleading advertisements not governed by the FHEL Act, and concludes that the federal act must be amended to properly protect consumers.

II. The Mechanics of Home Equity Loans

Lenders typically structure home equity loans as "consumer lines of credit." The consumer secures the loan by providing a second mortgage on his or her principal residence. The lender appraises the residence and loans approximately 80% of the difference between the appraisal value and the outstanding balance on the first mortgage. When the lender fully disburses the home equity loan or the consumer exhausts the line of credit, the consumer has pledged all the equity in the residence. Home equity loans generally carry a variable interest rate with a balloon payment due in one to seven years. In addition, the consumer is confronted with complicated documents including a line of credit agreement, a promissory note, and documents outlining the mortgage. Each document contains complex terms and features including negative amortization, draw-down periods and changes of terms clauses.[3]

III. Potential Problem Areas

Consumer advocates have criticized home equity loans in five respects. First, they argued that the Truth in Lending Act disclosure requirements were inadequate to protect the consumer against the inherent risks of residence-secured loans. Second, they pushed for legislation mandating a rate cap on variable-rate loans. Third, "negative amortization" (when interest cost exceeds repayment charges) was condemned for allowing homeowners to finance their current consumption using long term-debt. Fourth, consumer advocates urged changes in the timing of disclosures in order that consumers would be provided necessary information at the time they were solicited for the loan. Finally, they sought regulations which would prohibit misleading home equity loan advertisements.[4]

The rapid expansion of home equity loans precipitated some serious abuses. In 1988, Consumers Union conducted a survey of 45 lending institutions, including the ten largest banks and five largest savings and loans institutions in Washington, D.C., New York, and San Francisco. Consumers Union pinpointed several common features of home equity loans which potentially confuse consumers. These features included balloon payments, repayment periods, negative amortization, rate ceilings, change of term clauses and, most importantly, that consumers may be unaware that they risk losing their homes in the event of default.

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The Consumers Union report emphasized that the vast assortment of home loan features confounded even the most conscientious consumer's efforts to comparison shop. For example, line of credit periods, drawdown periods and repayment plans varied greatly from one institution to another. Some lenders offered several product options that forced the consumer to choose between a higher margin, an interest rate cap, or the costs of closing the loan. The complexity of these features, combined with the frequently unassisted methods of applying, caused many consumers to make poor decisions when executing home equity loans.[5]

Moreover, the report illustrated that many consumers did not understand critical provisions common to most home equity loans. A majority of lenders reserved the right to change key loan terms at any time after the loan was signed. As a result, these lenders could, at will, change the interest rate formula, the repayment terms, or the amount of the consumer's line of credit. Further, home equity loans appeared to give the consumer a life-time right to borrow against his or her line of credit (a "drawdown period"). However, by invoking its right to change terms, the lender could abruptly terminate the consumer's drawdown privilege. Additionally, the lender could terminate the entire home equity account immediately after the drawdown period expired and require full repayment of the outstanding balance.

Finally, the Consumers Union report stressed the inherent risks in provisions governing the drawdown period. Many home equity loans limited the drawdown period while others imposed no such limits. Both situations posed risks for consumers. The vast majority of loans with no fixed drawdown period required little or no principal repayments, thereby stringing out the borrower's indebtedness for decades at excessively high interest costs. On the other hand, the consumer with a limited drawdown period suffered severe "payment shock" when the minimum repayment requirements of the drawdown period ended and the higher repayment period began. Home equity loans which included a balloon payment at the end of the drawdown period exacerbated this "payment shock." Thus, it became clear that lenders needed to disclose rudimentary facts about their product during the initial solicitation period in order that consumers could make informed and proper buying decisions.[6]

IV. Background of Home Equity Loan Regulation

A. The Truth in Lending Act's Regulation Z Requirements

Prior to 1988, no statute or regulation exclusively governed the home equity loan market. Instead, home equity loans were incidently controlled by various federal regulations promulgated under the general banking acts.[7] For example, the Federal Reserve Board, pursuant to the Truth in Lending Act,[8] promulgated Regulation Z to govern all adjustable rate mortgages.[9] Because home equity loans are a type of adjustable interest rate loan, they fell under the purview of Regulation Z.[10]

Regulation Z mandates that lenders specify the maximum annual percentage rate ("APR") that they can charge on any consumer credit contract secured by a dwelling.[11] Specifically, lenders must state the maximum interest rate if the APR may increase during the term of the loan, either through a contractual right to change terms or an automatic increase based on an index.[12] Regulation Z does not establish a maximum rate, but allows lenders to set individual rate caps.[13]

Regulation Z allows the lender to modify the maximum rate only if the loan is refinanced or if a new credit plan is opened.[14] In addition, lenders must disclose the specific contractual events or index variations which change the interest rate.[15] The lender must also disclose the effects of an increase on the consumer's minimum periodic payment.[16] Finally, Regulation Z mandates that the lender give the consumer fifteen days notice before a change in the loan terms goes into effect.[17]

B. Recent State Legislation Regulating Home Equity Loans

Two state legislatures recently enacted specific home equity loan statutes in response to the lack of federal regulation. California's Home Equity Loan Disclosure Act requires that lenders provide a written disclosure statement to the consumer at the time the application is made if the consumer applies in person, or within three business days if the consumer applies by mail or telephone.[18] The disclosure statement must either include the following language: "This home equity loan that you are applying for will be secured by your home and your failure to repay the loan for any reason could cause you to lose your home!" or similar language that tells consumers they risk losing their homes in the event of a default.[19] The disclosure statement must be clear and conspicuous on the application or be provided in a separate document that accompanies the application.[20]

Rhode Island amended its Truth in Lending and Retail Selling Act to require lenders to disclose basic information during the marketing and application process.[21] The statute requires that lenders disclose the maximum APR (if a limit is set), the initial APR or the manner in which it will be computed, and the time and manner in which any changes in the rate will occur.[22] Lenders must indicate how much the consumer's maximum interest payment would be for a 30-day period based on the maximum rate and credit available.[23] The lender must also disclose any fees to apply for, open or maintain a line of credit account.[24] The disclosures must be provided in a separate document on or before closing the loan.[25]

Like the California statute, the Rhode Island statute requires that the lender indicate the loan is secured by the consumer's dwelling and, in the event of default, the

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consumer risks losing his or her home.[26] The consumer must be told whether the lender has the right to change the terms and conditions of the home equity loan.[27] The lender also must explain that, although interest-only payments may be less on a monthly basis, these payments do not decrease the principal, but instead prolong the obligation and result in a larger total interest expense over the life of the loan.[28]

In addition, the Rhode Island statute sets standards for home equity loan advertisements.[29] Any advertisement which states a specific monthly payment based on a variable rate of interest must also disclose the annual percentage rate and the maximum or fixed amount which could be imposed on the consumer.[30] Any advertisement which includes a statement about the tax deductibility of the interest expense must make clear that the interest expense may not be completely deductible for all taxpayers.[31] Finally, the statute prohibits any references to the loan as "free money" or "easy money."[32]

V. The Federal Home Equity Loan Consumer Protection Act

In 1988, the United States Congress responded to consumer advocates, state legislatures and the Federal Reserve Board's Consumer Advisory Council by enacting the FHEL Act.[33] The Federal Reserve Board's regulations pursuant to the FHEL Act became effective on November 7, 1989.[34] The FHEL Act and the regulations take a three-pronged approach to regulating home equity loans. First, the FHEL Act establishes advertising standards for lenders. Second, the regulations require detailed disclosures about the home equity loan at the time an application is provided to the consumer. Third, both the FHEL Act and the regulations provide several substantive limitations on home equity loans.

A. Advertisement Disclosure Requirements

The FHEL Act governs all advertisements for home equity loans where the loan is secured by the consumer's principal dwelling and the advertisement states any specific term of the loan.[35] The advertisement must include any fee which is determined as a percentage of the credit limit, as well as an estimate of other fees charged to execute the loan.[36] Additionally, the advertisement must contain the periodic interest rate expressed as an annual percentage rate[37] and the highest APR which may be charged to the consumer.[38] Finally, the advertisement must include any other information the Federal Reserve Board requires by regulation.[39]

Any advertisement which includes an initial discounted rate must also state, with equal prominence, the period of time the initial discounted rate applies[40] and the current non-discounted rate.[41] Any advertisement which refers to a minimum monthly payment must disclose whether the loan plan includes a balloon payment.[42] The statute also prohibits any misleading statements concerning the tax deductibility of the interest payments.[43] No advertisement may make any reference to the home equity loan as "free money" or use any other term the Federal Reserve Board determines to be misleading.[44]

B. Application Disclosure Requirements

Both the FHEL Act and the regulations also govern home equity loan applications and other initial inquiries by interested consumers.[45] The FHEL Act applies to loans secured by the consumer's "principal residence,"[46] whereas the regulations apply to any loan secured by the consumer's "dwelling."[47] Under both the Act[48] and the regulations,[49] the loan may be secured by a vacation or second home. However, under the regulations, the dwelling need not be the consumer's principal residence.[50]

The disclosures required by the regulations must be clear and conspicuous, and must be grouped together and separated from other information.[51] The disclosures may be provided on the loan application or on a separate form,[52] but the disclosures need not be in a form that the consumer can keep.[53] If the disclosures are included in the application that the consumer sends to the lender, the application must suggest that the consumer keep a copy of the disclosures.[54]

The lender must provide the required disclosures, and an educational brochure created by the Federal Reserve Board,[55] to the consumer at the time the lender distributes the home equity loan application.[56] In the case of telephone applications, or applications contained in magazines or other publications, the lender must provide the required information to the consumer within three days of receiving the application.[57] However, the lender need not provide the disclosure information if the lender denies the consumer's application within the three day period.[58]

The regulations require that the lender specify whether the terms of the loan are subject to change before the loan becomes effective,[59] and that the consumer may elect not to enter the plan if any term (except the variable interest rate) changes before the agreement becomes final.[60] The lender must itemize any fees imposed on the consumer to open, use, or maintain the loan.[61] If the consumer may incur costs from third parties in opening the loan, the lender must estimate those costs and provide an itemization of the estimated costs upon request.[62] However, the lender need not disclose to the consumer the amount of fees charged for making a late payment, exceeding the credit limit, or closing out the account.[63] The lender must also warn the consumer that the loan is secured by the consumer's dwelling and that the consumer risks losing his or her home in the event of a default.[64]

The lender must disclose the payment terms of the plan, including the length of the drawdown period, the repayment period,[65] any limitation on the amount of credit that may be obtained in any time period, and any minimum withdrawal amount or minimum outstanding balance required.[66] The lender must inform the consumer how the minimum payment is calculated, when it must be paid, and what balloon payment would result, if any.[67]

In the case of a fixed-rate loan, the lender must disclose a recent APR imposed under the plan and a statement that the rate does not include costs imposed on the consumer in addition to the interest.[68] A "recent rate" is one that has been in effect under the plan twelve months prior to the time of the disclosure.[69]

In the case of a variable-rate loan, the lender must inform the consumer that the APR may change,[70] what index is used to determine the amount of the change,[71] how the APR is computed,[72] and the frequency with which the lender may change the APR.[73] Because the pre-printed forms may not contain the current APR, consumers also must be told to ask about the current APR.[74] The lender must disclose the maximum amount by which the annual rate may change, or that there is no maximum change.[75] The lender must indicate the maximum interest rate that may be charged over the life of the plan,[76] and the earliest date the maximum rate could be imposed.[77] In addition, the lender must indicate the amount of the payment required if the consumer has a $10,000 outstanding balance and is paying the maximum interest rate.[78] Moreover, the lender must provide to the consumer an example illustrating how the index affected the annual percentage rate and the periodic payments over the past 15 years, based upon a $10,000 loan.[79]

For both fixed-rate and variable-rate loans, the lender must provide an example of the minimum payment required, the time it would take to pay off the balance, and the amount of any balloon payment, based upon a $10,000 outstanding balance and a recent APR.[80] The "recent" APR is defined as the most recent interest rate in the case of variable-rate plans, or the interest rate in effect for the previous twelve months in the case of fixed-rate plans.[81]

Finally, the lender must indicate whether it may change the terms of the plan, prohibit an extension of credit, reduce the credit limit, or terminate the plan and require full payment of the outstanding balance.[82] However, the lender need not list the circumstances upon which the action may be taken, but must instruct the consumer that the information will be provided upon request.[83]

C. Substantive Limitations

In addition to the disclosure requirements, the FHEL Act and the regulations impose several substantive limitations on the terms of home equity loans. First, the lender may not unilaterally terminate the loan and demand immediate payment except in the case of fraud or material misrepresentation,[84] failure to meet repayment terms for any outstanding balance,[85] or any other conduct which threatens the lender's security for the account.[86] Second, home equity loans which include a variable interest rate must be based on an index or interest rate which is publicly available[87] and not under the lender's control.[88] Third, the lender must provide a list of the material contract obligations to the consumer.[89]

The FHEL Act and the regulations also restrict the lender's ability to change loan terms.[90] The lender may change the index only if the prior index is not available and the new index will result in substantially similar interest rates.[91] The lender may prohibit additional extensions of credit or reduce the credit limit only if the value of the consumer's dwelling is substantially lower than the initial appraised value,[92] if the lender has reason to believe the consumer will not be able to fulfill the repayment obligations,[93] or if the consumer is delinquent in payments.[94] The lender may not change any other loan term unless the change will unequivocally benefit the consumer.[95]

VI. Analysis of the Act

A. A Framework for Protecting Consumers

The FHEL Act and the regulations create a unified regulatory framework to govern the way in which home equity loans are marketed and thus address many of the criticisms posed by consumer advocates. The consumer must be warned about the risks of home equity loans and provided basic information concerning the terms and obligations of the loans. Lenders cannot specify some terms of the loan in an advertisement without providing other significant terms. In addition, the Act curtails the lender's ability to change the terms of the loan or to abruptly terminate the loan and demand full payment of the outstanding balance. The lender may terminate the agreement only when the consumer's actions place the security of the loan in doubt. This limitation reduces the risk that lenders will arbitrarily terminate loans based on the bank's financial performance or because the loan terms are unfavorable to the bank.

B. The Timing Loophole

The disclosure rules are "meant to assist consumers in shopping for credit; thus, it is important to provide information early in the shopping process."[96] In enacting the FHEL Act, Congress implicitly recognized that consumers received insufficient information and that the information the consumer did get came too late in the shopping process. Consequently, consumers were subject to abuse.

The required disclosures and educational brochure attempt to improve the consumer's understanding of confusing loan terms and increase the consumer's ability to comparison shop. With this information, consumers will be better able to understand the terms of the loans and thus be better prepared to compare home equity loans. As a result, consumers will become aware of the vast differences among plans and be induced to seek the best deal. Unfortunately, the positive impact of these requirements will be reduced due to

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an exception in the timing provision.

If the consumer's application is taken by telephone, or if the application appeared in a magazine or other publication, the lender must provide the required disclosures and the educational brochure three business days after receiving the consumer's application.[97] In both of these instances, however, the lender need not send the required information to the consumer if the lender rejects the application within three days of receiving it.[98] This loophole allows lenders to avoid making the required disclosures to unqualified applicants and to postpone disclosures to qualified consumers. As a result, most consumers will receive the brochure and disclosure statement only if their applications are approved. The three day provision will induce lenders to use mail and telephone applications in order to minimize the number of disclosures and brochures distributed.

The consumer's needs do not change simply because the application is made by telephone or by mail. Likewise, the timing of the required disclosure should not change. A consumer is less likely to shop comparatively or go through the burdensome application process after one bank has approved his or her application. Moreover, the disclosures and the educational brochure are much less effective when accompanied by the bank's approval of the consumer's application. Therefore, this three-day loophole frustrates the FHEL Act's objective of informing consumers and encouraging comparison shopping.

C. The Advertising Loophole

The FHEL Act's provisions governing advertising are a step forward for consumers. The Act prevents lenders from stating a few particularly favorable terms, but not other significant and less advantageous terms. However, the Act's objective of informing consumers can be easily frustrated because the disclosures are required only if the advertisement states specific terms of the loan.[99] Lenders need not reveal detrimental terms and obligations if the advertisements make vague references to the loan terms or do not refer to terms at all. Due to this triggering requirement, lenders will be induced either to include no references to loan terms or make vague references to loan terms in their advertisement.

Many advertisements currently refer to home equity loans as loan consolidation programs by which consumers remedy their credit card problems. Consumers are only informed how to spend the new loan money without indicating the complexity of the plan or the risks involved. These advertisements allow lenders to sell a "remedy" to consumers before the consumers realize the problems with the remedy. Consumers will more likely respond to an advertisement which answers "their credit card problems" than an advertisement which lists a home equity loan's specific terms. Similarly, once a consumer is sold on the remedy, he or she is less likely to be dissuaded by the specific terms of the loan.

This loophole will induce lenders to use vague and possibly misleading advertisements instead of providing necessary information about their products to consumers. Therefore, the FHEL Act, as currently written, will have the unintended effect of reducing the amount of substantive information being communicated to the consumer during the critical solicitation process.

VII. Possible Solutions

A. The Illinois Consumer Fraud and Deceptive Practices Act and Proposed Illinois Legislation

The Illinois legislature enacted the Consumer Fraud and Deceptive Business Practices Act ("Illinois Consumer Fraud Act") to protect consumers from unfair business practices.[100] The Illinois Supreme Court has stated that the legislature intended that the Illinois Consumer Fraud Act be broadly applied.[101] Illinois courts have applied the Illinois Consumer Fraud Act to lenders in general, but never to home equity loan advertisements specifically. Nevertheless, the Illinois Consumer Fraud Act is "a clear mandate from the Illinois legislature to utilize it to the utmost degree in eradicating all forms of deceptive and unfair business practices and to grant appropriate remedies to defrauded consumers." [102] Because the FHEL Act does not sufficiently regulate home equity loan advertisements, the Illinois courts can and should apply the Illinois Consumer Fraud Act to protect consumers from misleading advertisements not covered by the FHEL Act.

In *Lanier v Associates Finance Inc.*, 114 Ill. 2d 1, 499 N.E.2d 440 (1986), the Illinois Supreme Court held that compliance with the federal Truth in Lending Act may be a defense to liability under the Illinois Consumer Fraud Act. In *Lanier,* the consumer claimed that the lender's method of calculating the APR was misleading and violated the Illinois Consumer Fraud Act.[103] The court noted that Section 10b(1) of the Illinois Consumer Fraud Act does not apply to "[a]ctions or transactions specifically authorized by laws administered by any regulatory body or officer acting under statutory authority of this State or the United States."[104] The court stated that the Illinois Consumer Fraud Act's "general prohibition of fraud and misrepresentation [does] not require more extensive disclosure . . . than the disclosure required by the comprehensive provisions of the Truth in Lending Act."[105] The court held that because the lender's method of calculating the APR complied with the Truth in Lending Act's Regulation Z requirements, the defendant was exempt from liability under the Illinois Consumer Fraud Act.[106]

Lanier, however, does not preclude applying the Illinois Consumer Fraud Act to home equity loan advertisements that are not regulated by the FHEL Act. Subsequent to *Lanier,* the United States District Court for the Northern District of Illinois held that the federal Truth in Lending Act ("TILA") does not preempt the Illinois Consumer Fraud Act. *Heastie v. Community Bank of Greater Peoria,* 690 F. Supp. 716 (N.D. Ill. 1988). The *Heastie* court held that the TILA preempts state disclosure laws only to the extent that the state laws are inconsistent with the TILA requirements.[107] A state law is inconsistent, for example, if it requires the lender to make disclosures that contradict the TILA requirements.[108] To the extent that the state disclosure law is not inconsistent with the TILA, the state law is not affected by the TILA.[109] The *Heastie* court held that the TILA "[p]reemption does not extend to general state statutes prohibiting fraud" and thus the TILA does not preempt the Illinois Consumer Fraud Act.[110]

The *Heastie* court further held that if the conduct complained of is not specifically authorized by the TILA, then it does not fall under the Illinois Consumer Fraud Act's exemption for conduct authorized by federal law.[111] The court noted that, unlike in *Lanier,* the defendant's conduct in *Heastie* was not specifically authorized by the TILA, and therefore was governed by the Illinois Consumer Fraud Act.[112] The court stated that although "compliance with federal regulations may be a complete defense to [Illinois] Consumer Fraud Act complaints centering on particular technical issues . . . , it should not be a complete defense to allegations of fraudulent schemes."[113] Therefore, the Illinois Consumer Fraud Act is applicable to home equity loan advertisements that do not state specific terms but are nonetheless misleading.

The *Heastie* court recognized that the TILA allows state legislatures to require disclosures in addition to those mandated by the TILA.[114] As discussed above, the FHEL Act encourages lenders to use vague, potentially misleading statements in home equity loan advertisements because it applies only to advertisements that state specific terms of the loan. To the extent that these advertisements are overtly deceptive, many consumers can be protected by the Illinois Consumer Fraud Act. However, because the consumer risks losing his or her home as a result of advertisements that are misleading, the Illinois legislature should take affirmative steps to protect consumers against misleading advertisements. The misleading effect of home equity loan advertisements can be eliminated by requiring informative warnings with every loan advertisement. Such warnings should inform the consumer that the loan is secured by the consumer's home, that the consumer may lose his or her home upon default, and that the consumer should inquire about significant loan provisions and terms before applying for a home equity loan. This warning would protect consumers from potentially misleading advertisements and induce consumer to practice informed comparison shopping.

B. Amending the FHEL Act

The FHEL Act should be amended to close the loophole in the timing provision. Congress and the Federal Reserve Board have recognized the need to provide loan information at the time of solicitation rather than at the time of the first transaction or at the closing. The three-day exception moves back the time the information must be provided and, therefore, does not fulfill the goal of the Act.

The FHEL Act also should be amended to curtail mail and telephone applications unless and until the consumer has received the disclosures and the educational brochure. Telephone and mail solicitation should be limited to requests for applications. In this way, the consumer would receive the disclosures and educational brochure before beginning the application process. Thus, the information would assist the consumer in the shopping process and fulfill the purpose of the Federal Reserve Board's regulations.[115]

Similarly, the loophole in the advertising requirements should be closed. These advertising requirements are inadequate because they do not require that significant loan terms be set forth in advertisements for home equity loans. In contrast, Congress affirmatively requires that ingredients be identified on food labels, that health warnings be placed on cigarettes, and that other consumer products contain detailed labeling information. Lenders should be similarly required to present basic information and warnings in their advertisements because consumers frequently complete applications through the mail or over the phone, without assistance, and because the loan agreements contain complicated terms that are likely to confuse the consumer.

VIII. Conclusion

The increase in home equity loans presents a serious threat to home ownership because the loans involve terms that many consumers do not understand. Consumers frequently enter into these loans with little or no assistance, and lenders have taken advantage of this situation by retaining the right to change terms and terminate the loan at will. Congress recognized the need to regulate home equity loan advertisements, provide consumers basic information about the loans at the earliest stage of the application process, and limit the lenders' ability to incorporate unfair loan terms. Under the FHEL Act, advertisements that state specific terms must also provide other basic information. Lenders must disclose specific terms and obligations, and provide an educational brochure within three days of receiving an application, unless the lender denies the application. The Act also limits the lender's ability to unilaterally terminate the loan or change the terms of the loan.

Although the FHEL Act provides much needed consumer protection, it has two faults that undermine its objectives. First, a lender need not make the required disclosures or provide the educational brochure if the lender rejects the consumer's application within

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three days. This allows the lender to withhold necessary information and rely on a consumer's tendency to enter into a loan once approved. This limits the effectiveness of the disclosures and the educational brochure. Second, the FHEL Act's advertisement disclosures need not be made if the advertisement is vague about the loan terms or does not mention loan terms at all. This allows lenders to make their most effective sales pitch without revealing the detrimental terms of the loan.

The Illinois Consumer Fraud Act applies to advertisements that do not state specific loan terms but are nonetheless misleading. However, because consumers risk losing their homes if misled by loan advertisements, the Illinois legislature should provide further protection to consumers by requiring that advertisements include warnings about the risks of home equity loans. In addition, Congress should amend the FHEL Act to require that the consumer receive the required disclosures and the educational brochure before applying for a home equity loan by telephone or mail. Finally, the FHEL Act should be amended to require that all loan advertisements include basic information about the terms and obligations of home equity loans.

ENDNOTES

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3. Guerard, *Home Equity Loans in Illinois*, 33 I.S.B.A. Sec. Comm. Bank. & Bankr. L. 1 (1988).
4. *Home Equity Credit Line Developments*, 43 A.B.A. The Business Lawyer 1048 (May, 1988).
5. *The Inequities of Home Equity Loans: Results of the 1988 Home Equity Loan Survey*, Consumers Union (October, 1988).
6. *Id.* at 2.
7. *See, e.g.*, Competitive Equality Banking Act, Pub. L. No. 100-86, 101 Stat. 552 (1987) (codified at 12 U.S.C. § 226 (1988)); Truth in Lending Act, Pub. L. No. 98-479, § 205, 98 Stat. 2234 (codified at 15 U.S.C. §§ 1601-1693r (1988)); Illinois Banking Act, Ill. Rev. Stat. ch. 17, pars. 301-394 (1981 & Supp. 1989).
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9. 12 C.F.R. §§ 226.1 to 226.30, Supp. I (Official Staff Interpretations) (1989).
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11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.* at § 226.6(a)(2) n.12.
16. *Id.*
17. *Id.* at § 226.9(c).
18. Cal. Civ. Code §§ 2970-2971, 2971(a) (West Supp. 1989).
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26. *Id.* at § 6-27-11(2)(F).
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28. *Id.* at § 6-27-11(2)(I).
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30. *Id.* at § 6-27-11(3)(A)(2).
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36. *Id.* at § 1665b(a)(1).
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39. *Id.* at § 1665b(a)(4).
40. *Id.* at § 1665b(d)(3).
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42. *Id.* at § 1665b(e).
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45. *Id.* at § 1637a.
46. *Id.*
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48. 15 U.S.C. § 1637a(d).
49. 54 Fed. Reg. at 24672.
50. *Id.*
51. 12 C.F.R. § 226.5(a).
52. *Id.* at § 226.5b(a)(1).
53. *Id.* at § 226.5b(d)(1) n.8.
54. *Id.* at § 226.5b(d)(1).
55. 15 U.S.C. § 1637a(e).
56. *Id.*
57. *Id.* 15 U.S.C. § 1637a(b)(1)(B).
58. 54 Fed. Reg. at 24674.
59. 15 U.S.C. § 1637a(a)(6)(A)(ii).
60. *Id.* at § 1637a(a)(6)(A)(i).
61. *Id.* at § 1637a(a)(3).
62. *Id.* at § 1637a(a)(4)(A).
63. 54 Fed. Reg. at 24676.
64. 15 U.S.C. § 1637a(a)(5).
65. 12 C.F.R. § 226.5b(d)(5)(i).
66. *Id.* at § 226.5b(d)(10).
67. 12 C.F.R. § 226.5b(d)(5)(ii).
68. 15 U.S.C. § 1637a(a)(1).
69. 12 C.F.R. § 226.5b(d)(6) n.10c.
70. *Id.* at § 226.5b(d)(12)(i).
71. *Id.* at § 226.5b(d)(12)(iii).
72. *Id.* at § 226.5b(d)(12)(iv).
73. *Id.* at § 226.5b(d)(12)(vii).
74. *Id.* at § 226.5b(d)(12)(v).
75. *Id.* at § 226.5b(d)(12)(ix).
76. *Id.*
77. *Id.* at § 226.5b(d)(12)(x).
78. *Id.*
79. *Id.* at § 226.5b(d)(12)(xi).
80. 15 U.S.C. § 1637a(a)(9).
81. 12 C.F.R. § 226.5b(d)(5)(ii) n.10c.
82. *Id.* at § 226.5b(d)(4)(i).
83. *Id.* at § 226.5b(d)(4)(ii).
84. *Id.* at § 226.5b(f)(2)(i).
85. *Id.* at § 226.5b(f)(2)(ii).
86. *Id.* at § 226.5b(f)(2)(iii).
87. *Id.* at § 226.5b(f)(1)(ii).
88. *Id.* at § 226.5b(f)(1)(i).
89. 15 U.S.C. § 1647(c)(3).
90. *Id.* at § 1647(c)(1).
91. *Id.* at § 1647(c)(2)(A).
92. *Id.* at § 1647(c)(2)(B).
93. *Id.* at § 1647(c)(2)(C).
94. *Id.* at § 1647(c)(2)(D).
95. 12 C.F.R. § 226.5b(f)(3)(iv).
96. 54 Fed. Reg. at 24673.
97. *Id.* at 24673-74.
98. *Id.*
99. *Id.* at 24684.
100. Ill. Rev. Stat. ch. 121 1/2, pars. 261-272 (1981 & Supp. 1989).
101. *Scott v. Assoc. for Childbirth at Home, International*, 88 Ill. 2d 279, 284, 43 N.E.2d 1012, 105 (1982).
102. *Duhl v. Nash Realty, Inc.*, 102 Ill. App. 3d 483, 495, 429 N.E.2d 1267, 1277 (1982).
103. *Lanier*, 114 Ill. 2d at 5, 499 N.E.2d at 441.
104. *Id.* at 17, 499 N.E.2d at 447 (quoting Ill. Rev. Stat. ch. 121 1/2, par. 270b(1)).
105. *Id.*
106. *Id.* at 18, 499 N.E.2d at 447.
107. *Heastie*, 690 F. Supp. at 720 (1988).
108. *Id.* (quoting 12 C.F.R. § 226.28(A)).
109. *Id.*
110. *Id.*
111. *Id.* at 721.
112. *Id.*
113. *Id.*
114. *Id.*
115. 54 Fed. Reg. at 24673.