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Basic Facts About Registering a Trademark

U.S. Department of Commerce/Patent and Trademark Office

U.S. DEPARTMENT OF COMMERCE

PATENT & TRADEMARK OFFICE

See:

What is a Trademark?

A TRADEMARK is either a word, phrase, symbol or design, or combination of words, phrases, symbols or designs, which identifies and distinguishes the source of the goods or services of one party from those of others. A service mark is the same as a trademark except that it identifies and distinguishes the source of a service rather than a product. Throughout this booklet the terms "trademark" and "mark" are used to refer to both trademarks and service marks whether they are word marks or other types of marks. Normally, a mark for goods appears on the product or on its packaging, while a service mark appears in advertising for the services.

A trademark is different from a copyright or a patent. A copyright protects an original artistic or literary work; a patent protects an invention. For copyright information call the Library of Congress at (202) 707-3000.

See:

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Information Numbers

Establishing Trademark rights

Trademark rights arise from either (1) actual use of the mark, or (2) the filing of a proper application to register a mark in the Patent and Trademark Office (PTO) stating that the applicant has a bona fide intention to use the mark in commerce regulated by the U.S. Congress. (See below, under "Types of Applications," for a discussion of what is meant by the terms commerce and use in commerce.) Federal registration is not required to establish rights in a mark, nor is it required to begin use of a mark. However, federal registration can secure benefits beyond the rights acquired by merely using a mark. For example, the owner of a federal registration is presumed to be the owner of the mark for the goods and services specified in the registration, and to be entitled to use the mark nationwide.

There are two related but distinct types of rights in a mark: the right to register and the right to use. Generally, the first party who either uses a mark in commerce or files an application in the PTO has the ultimate right to register that mark. The PTO's authority is limited to determining the right to register. The right to use a mark can be more complicated to determine. This is particularly true when two parties have begun use of the same or similar marks without knowledge of one another and neither has a federal registration. Only a court can render a decision about the right to use, such as issuing an injunction or awarding damages for infringement. It should be noted that a federal registration can provide significant advantages to a party involved in a court proceeding. The PTO cannot provide advice concerning rights in a mark. Only a private attorney can provide such advice.

Unlike copyrights or patents, trademark rights can last indefinitely if the owner continues to use the mark to identify its goods or services. The term of a federal trademark registration is 10 years, with 10-year renewal terms. However, between the fifth and sixth year after the date of initial registration, the registrant must file an affidavit setting forth certain information to keep the registration alive. If no affidavit is file, the registration is canceled.

Types of Applications for Federal Registration

An applicant may apply for federal registration in three principal ways. (1) An applicant who has already commenced using a mark in commerce may file based on that use (a "use" application). (2) An applicant who has not yet used the mark may apply based on a bona fide intention to use the mark in commerce (an "intent-to-use" application). For the purpose of obtaining federal registration, commerce means all commerce which may lawfully be regulated by the U.S. Congress, for example, interstate commerce or commerce between the U.S. and another country. The use in commerce must be a bona fide use in the ordinary course of trade, and not made merely to reserve a right in a mark. Use of a mark in promotion or advertising before the product or service is actually provided under the mark on a normal commercial scale does not qualify as use in commerce. Use of a mark in purely local commerce within a state does not qualify as "use in commerce." If an applicant files based on a bona fide intention to use in commerce, the applicant will have to use the mark in commerce and submit an allegation of use to the PTO before the PTO will register the mark (See page 12). (3) Additionally, under certain international agreements, an applicant from outside the United States may file in the United States based on an application or registration in another country. For information regarding applications based on international agreements please call the information number provided on page 4.

A United States registration provides protection only in the United States and its territories. If the owner of mark wishes to protect a mark in other countries, the owner must seek protection in each country separately under the relevant laws. The PTO cannot provide information or advice concerning protection in other countries. Interested parties may inquire directly in the relevant country or its U.S. offices or through an attorney.

Who May File an Application?

The application must be filed in the name of the owner of the mark; usually an individual, corporation or partnership. The owner of a mark controls the nature and quality of the goods or services identified by the mark. See below in the line-by-line instructions for information about who must sign the application and other papers.

The owner may submit and prosecute its own application for registration, or may be represented by an attorney. The PTO cannot help select an attorney.

Foreign Applicants

Applicants not living in the United States must designate in writing the name and address of a domestic representative - a person residing in the United States "upon whom notices of process may be served for proceedings affecting the mark." The applicant may do so by submitting a statement that the named person at the address indicated is appointed as the applicant's domestic representative under 1(e) of the Trademark Act. The applicant must sign this statement. This person will receive all communications from the PTO unless the applicant is represented by an attorney in the United States.

Searches for Conflicting Marks

An applicant is not required to conduct a search for conflicting marks prior to applying with the PTO. However, some people find it useful. In evaluating an application, an examining attorney conducts a search and notifies the applicant if a conflicting mark is found. The application fee, which covers processing and search costs, will not be refunded even if a conflict is found and the mark cannot be registered.

To determine whether there is a conflict between two marks, the PTO determines whether there would be likelihood of confusion, that is, whether relevant consumers would be likely to associate the goods or services of one party with those of the other party as a result of the use of the marks at issue by both parties. The principal factors to be considered in reaching this decision are the similarity of the marks and the commercial relationship between the goods and services identified by the marks. To find a conflict, the marks need not be identical, and the goods and services do not have to be the same.

The PTO does not conduct searches for the public to determine if a conflicting mark is registered, or is the subject of a pending application, except as noted above when acting on an application. However, there are a variety of ways to get this same type of information. First, by performing a search in the PTO public search library. The search library is located on the second floor of the South Tower Building, 2900 Crystal Drive, Arlington, Virginia 22202. Second, by visiting a patent and trademark depository library (at locations listed on pages 14 and 15). These libraries have CD-ROMS containing the trademark database of registered and pending marks. Finally, either a private trademark search company, or an attorney who deals with trademark law, can provide trademark registration information. The PTO cannot provide advice about possible conflicts between marks.

Laws & Rules Governing Federal Registration

The federal registration of trademarks is governed by the Trademark Act of 1946, as amended, 15 U.S.C. 1051 et seq.; the Trademark Rules, 37 C.F.R. Part 2; and the Trademark Manual of Examining Procedure (2d ed. 1993).

Other Types of Applications

In addition to trademarks and service marks, the Trademark Act provides for federal registration of other types of marks, such as certification marks, collective trademarks and service marks, and collective membership marks. These types of marks are relatively rare. For forms and information regarding the registration of these marks, please call the appropriate trademark information number indicated below.

Where to Send the Application and Correspondence

The application and all other correspondence should be addressed the "The Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513." The initial should be directed to "Box NEW APP/FEE." An AMENDMENT TO ALLEGE USE should be directed to "Attn. AAU." A STATEMENT OF USE or REQUEST FOR AN EXTENSION OF TIME TO FILE A STATEMENT OF USE should be directed to "Box ITU/FEE." (See page 5 for an explanation of these terms.) The applicant should indicate its telephone number on the application form. Once a serial number is assigned to the application, the applicant should refer to the serial number in all written and telephone communications concerning the application.

It is advisable to submit a stamped, self-addressed postcard with the application specifically listing each item in the mailing, that is, the written application, the drawing, the fee, and specimens (if appropriate). THE PTO will stamp the filing date and serial number of the application on the postcard to acknowledge receipt. This will help the applicant if any item is later lost if the applicant wishes to inquire about the application. The PTO will send a separate official notification of the date and serial number for every application about two months after receipt.

Use of the "TM," "SM" and "R" Symbols

Anyone who claims rights in a mark may use the TM (trademark) or SM (service mark) designation with the mark to alert the public to the claim. It is not necessary to have a registration, or even a pending application, to use these designations. The claim may or may not be valid. The registration symbol, R, may only be used when the mark is registered in the PTO. It is improper to use this symbol at any point before the registration issues. Please omit all symbols from the mark in the drawing you submit with your application; the symbols are not considered part of the mark.

Information Numbers

General Trademark or Patent Information (703)308-HELP

Automated (Recorded) General Trademark or Patent Information (703)557-INFO

Automated Line for Status Information on Trademark (703)305-8747

Applications (Additional status information is available at (703)308-9400)

Assignment & Certification Branch (Assignments, Changes of (703)308-9723

Name, and Certified Copies of Applications and Registrations) Trademark Assistance Center (703)308-9000

Information Regarding Renewals [Sec. 9], Affidavits of Use [Sec. 8], Incontestability [Sec. 15], or Correcting a Mistake on a Registration (703)308-9500

Information Regarding Applications Based on International (703)308-9000

Agreements or for Certification, Collective, or Collective Membership Marks Trademark Trial and Appeal Board (703)308-9300

Assistant Commissioner for Trademarks (703)308-8900

THE REGISTRATION PROCESS

Filing Date - Filing Receipt

The PTO is responsible for the federal registration of trademarks. When an application is received, the PTO reviews it to determine if it meets the minimum requirements for receiving a filing date. If the application meets the filing requirements, the PTO assigns it a serial number and sends the applicant a receipt about two months after filing. If the minimum requirements are not met, the entire mailing, including the filing fee, is returned to the applicant.

See:

Examination

Publication for Opposition

Issuance of Certificate of Registration or Notice of Allowance

Examination

About four months after filing, an examining attorney at the PTO reviews the application and determines whether the mark may be registered. If the examining attorney determines that the mark cannot be register, the examining attorney will issue a letter listing any grounds for refusal and any corrections required in the application. The examining attorney m ay also contact the applicant by telephone if only minor corrections are required. The applicant must respond to any objections within six months of the mailing date of the letter, or the application will be abandoned. If the applicant's response does not overcome all objections, the examining attorney will issue a final refusal. The applicant may then appeal to the Trademark Trial and Appeal Board, an administrative tribunal within the PTO.

A common ground for refusal is likelihood of confusion between the applicant's mark and a registered mark. This ground is discussed on pages 2 and 3. Marks which are merely descriptive in relation to the applicant's goods or services, or a feature of the goods or services, may also be refused. Marks consisting of geographic terms or surnames may also be refused. Marks may be refused for other reasons as well.

Publication for Opposition

If there are no objections, or if the applicant overcomes all objections, the examining attorney will approve the mark for publication in the Official Gazette, a weekly publication of the PTO. The PTO will send a NOTICE OF PUBLICATION to the applicant indicating the date of publication. In the case of two or more applications for similar marks, the PTO will publish the application with the earliest effective filing date first. Any party who believes it may be damaged by the registration of the mark has 30 days from the date of publication to file an opposition to registration. An opposition is similar to a formal proceeding in the federal courts, but is held before the Trademark Trial and Appeal Board. If no opposition is filed, the application enters the next stage of the registration process.

Issuance of Certificate of Registration or Notice of Allowance

If the application was based upon the actual use of the mark in commerce prior to approval for publication, the PTO will register the mark and issue a registration certificate about 12 weeks after the date the mark was published, if no opposition was filed.

If, instead, the mark was published based upon the applicant's statement of having a bona fide intention to use the mark in commerce, the PTO will issue a NOTICE OF ALLOWANCE about 12 weeks after the date the mark was published, again provided no opposition was filed. The applicant then has six months from the date of the NOTICE OF ALLOWANCE to either (1) use the mark in commerce and submit a STATEMENT OF USE, or (2) request a six-month EXTENSION OF TIME TO FILE A STATEMENT OF USE (see forms and instructions in this booklet). The applicant may request additional extensions of time only as noted in the instructions on the back of the extension form. If the STATEMENT OF USE is filed a approved, the PTO will then issue the registration certificate.

FILING REQUIREMENTS

WARNING: BEFORE COMPLETING AN APPLICATION, READ THE INSTRUCTIONS CAREFULLY AND STUDY THE EXAMPLES PROVIDED. ERRORS OR OMISSIONS MAY RESULT IN THE DENIAL OF A FILING DATE AND THE RETURN OF APPLICATION PAPERS, OR THE DENIAL OF REGISTRATION AND FORFEITURE OF THE FILING FEE.

To receive a filing date, the applicant must provide all of the following:

1. A Written application form;

2. A drawing of the mark on a separate piece of paper;

3. The required filing fee (see page 11 for fee information); and

4. If the application is filed based upon prior use of the mark in commerce, three specimens for each class of goods or services. The specimens must show actual use of the mark with the goods or services. The specimens may be identical or they may be examples of three different uses showing the same mark.

1. WRITTEN APPLICATION FORM [PTO FORM 1478]

The application must be in English. A separate application must be filed for each mark the applicant wishes to register. Likewise, if the applicant wishes to register more than one version of the same mark, a separate application must be filed for each version. PTO Form 1478 included in the back of this booklet may be used for either a trademark or service mark application. It may be photocopied for your convenience. See the examples of completed applications on pages 16 and 17 with references to the following line-by-line instructions.

LINE-BY-LINE INSTRUCTIONS FOR FILLING OUT PTO FORM 1478, ENTITLED "TRADEMARK/SERVICE MARK APPLICATION, PRINCIPAL REGISTER, WITH DECLARATION"

Space 1 -- The Mark

It is not necessary to fill in this box. The PTO will determine the proper International Classification based upon the identification of the goods and services in the application. However, if the applicant knows the International Class number(s) for the goods and services, the applicant may place the number(s) in this box. The International Classes are listed inside of the back cover of this booklet. If the PTO determines that the goods and services listed are in more than one class, the PTO will notify the applicant during examination of the application, and the applicant will have the opportunity to pay the fees for any additional classes or to limit the goods and services to one or more classes.

Space 3 -- The Owner of the Mark

The name of the owner of the mark must be entered in this box. The application must be filed in the name of the owner of the mark or the application will be void, and the applicant will forfeit the filing fee. The owner of the mark is the party who controls the nature and quality of the goods sold, or services rendered, under the mark. The owner may be an individual, a partnership, a corporation, or an association or similar firm. If the applicant is a corporation, the applicant's name is the name under which it is incorporated. If the applicant is a partnership, the applicant's name is the name under which it is organized.

Space 4 -- The Owner's Address

Enter the applicant's business address. If the applicant is an individual, enter either the applicant's business or home address.

Space 5 -- Entity Type and Citizenship/Domicile

The applicant must check the box which indicates the type of entity applying. In addition, in the blank following the box, the applicant must specify the following information:

Space 5(a) -- for an individual, the applicant's national citizenship;

Space 5(b) -- for a partnership, the names and national citizenship of the general partners and the state where the partnership is organized (if a U.S. partnership) or country (if a foreign partnership);

Space 5(c) -- for a corporation, the state of incorporation (if a U.S. corporation), or country (if a foreign corporation); or

Space 5(d) -- for another type of entity, specify the nature of the entity and the state where it is organized (if in the U.S.) or county where it is organized (if a foreign entity).

Space 6 -- Identification of the Goods and/or Services

In this blank the applicant must state the specific goods and services for which registration is sought and with which the applicant has actually used the mark in commerce, or in the case of an "intent-to-use" application, has a bona fide intention to use the mark in commerce. Use clear and concise terms specifying the actual goods and services by their common commercial names. A mark can only be registered for specific goods and services. The goods and services listed will establish the scope of the applicant's rights in the relevant mark.

The goods and services listed must be the applicant's actual "goods in trade" or the actual services the applicant renders for the benefit of others. Use language that would be readily understandable to the general public. For example, if the applicant uses or intends to use the mark to identify "candy," "word processors," "baseballs and baseball bats," "travel magazines," "dry cleaning services" or "restaurant services" the identification should clearly and concisely list each such item. If the applicant uses indefinite terms, such as "accessories," "components," "devices," "equipment," "food," "materials," "parts," "systems," "products," or the like, then those words must be followed by the word "namely" and the goods or services listed by their common commercial name(s). Note that the terms used in the classification listing on the inside of the back cover of this booklet are generally too broad. Do not use these terms by themselves.

The applicant must be very careful when identifying the goods and services. Because the filing of an application established certain presumptions of rights as of the filing date, the application may not be amended later to add any products or services not within the scope of the identification. For example, the identification of "clothing" could be amended to "shirts and jackets," which narrows the scope, but could not be amended to "retail clothing store services," which would change the scope. Similarly, "physical therapy services" could not be changed to "medical services" because this would broaden the scope of the identification. Also, if the identification includes a trade channel limitation, deleting that limitation would broaden the scope of the identification.

The identification of goods and services must not describe the mode of use of the mark, such as on labels, stationery, menus, signs, containers or in advertising. There is another place on the application, called the "method-of-use clause," for this kind of information. (See information under Space 7a, fourth blank, described on the next page.) For example, in the identification of goods and services, the term "advertising" usually is intended to identify a service rendered by advertising agencies. Moreover, "labels," "menus," "signs" and "containers" are specific goods. If the applicant identifies these goods or services by mistake, the applicant may not amend the identification to the actual goods or services of the applicant. Thus, if the identification indicates "menus," it could not be amended to "restaurant services." Similarly, if the goods are identified s "containers or labels for jam," the identification could not be amended to "jam."

NOTE: If nothing appears in this blank, or if the identification does not identify any recognizable goods or services, the application will be denied a filing date and returned to the applicant. For example, if the applicant specifies the mark itself or wording such as "company name," "corporate name," or "company logo," and nothing else, the application will be denied a filing date and returned to the applicant. If the applicant identifies the goods and services too broadly as, for example, "advertising and business," "miscellaneous," "miscellaneous goods and services," or just "products," or "services," the application will also be denied a filing date and returned to the applicant.

Space 7 -- Basis for Filing

The applicant must check at least one of the four boxes to specify a basis for filing the application. The applicant should also fill in all blanks which follow the checked box(es). Usually an application based upon either (1) use of the mark in commerce (the first box), or (2) a bona fide intention to use the mark in commerce (the second box). You may not check both the first and second box. If both the first and second boxes are checked, the PTO will not accept the application and will return it. If an applicant wished to

apply to register a mark, for certain goods and services for which it is already using the mark in commerce, and also for other goods and services based on future use, separate applications must be filed to separate the relevant goods and services from each other.

Space 7(a)

If the applicant is using the mark in commerce in relation to all of the goods and services listed in the application, check this first box and fill in the blanks.

In the first blank specify the date the trademark was first used to identify the goods and services in a type of commerce which may be regulated by Congress.

In the second blank specify the type of commerce, specifically a type of commerce which may be regulated by Congress, in which the goods were sold or shipped, or the services were rendered. (See page 2 for a discussion of the meaning of "use in commerce.") For example, indicate "interstate commerce" (commerce between two or more states) or commerce between the United Stats and a specific foreign country, for example, "commerce between the U.S. and Canada."

In the third blank specify the date that the mark was first used anywhere to identify the goods or services specified in the application. This date will be the same as the date of the first use in commerce unless the applicant made some use, for example, within a single state, before the first use in commerce.

In the fourth blank specify how the mark is placed on the goods or used with the services. This if referred to as the "method-of-use clause," and should not be confused with the identification of the goods and services described under Space 6. For example, in relation to goods, state "the mark is used on labels affixed to the goods," or "the mark is used on containers for the goods," whichever is accurate. In relation to services, state "the mark is used in advertisements for the services."

Space 7(b)

If the applicant has a bona fide intention to use the mark in commerce in relation to the goods or services specified in the application, check this second box and fill in the blank. The applicant should check this box if the mark has not been used at all or if the mark has been used on the specified goods or services only within a single state.

In the blank, state how the mark is intended to be placed on the goods or used with the services. For example, for goods, state "the mark will be used on labels affixed to the goods," or "the mark will be used on containers for the goods," whichever is accurate. For services, state "the mark will be used in advertisements for the services."

Spaces 7(c) and (d)

These spaces are usually used only by applicants from foreign countries who are filing in the United States under international agreements. These applications are less common. For further information about treaty-based applications, call the trademark information number listed in this booklet on page 4, or contact a private attorney.

Space 8 -- Verification and Signature

The applicant must verify the truth and accuracy of the information in the application and must sign the application. The declaration in Space 8, on the back of the form, is for this purpose. If the application is not signed, the application will not be granted a filing date and will be returned to the applicant. If the application is not signed by an appropriate person, the application will be found void and the filing fee will be forfeited. Therefore, it is important that the proper person sign the application.

Who should sign?

If the applicant is an individual, that individual must sign.

If the applicant is a partnership, a general partner must sign.

If the applicant is a corporation, association or similar organization, an officer of the corporation, association or organization must sign. An officer is a person who holds an office established in the articles of incorporation or the bylaws. Officers may not delegate this authority to non officers.

If the applicants are joint applicants, all joint applicants must sign.

The person who signs the application must indicate the date signed, provide a telephone number to be used if it is necessary to contact the applicant, and clearly print or type their name and position.

2. THE DRAWING PAGE

Every application must include a single drawing page. If there is no drawing page, the application will be denied a filing date and returned to the applicant. The PTO uses the drawing to file the mark in the PTO search records and to print the mark in the Official Gazette and on the registration.

The drawing must be on pure white, durable, non-shiny paper that is 8 1/2 (21.59 cm) inches wide by 11 (27.94cm) inches long. There must be at least a one-inch (2.54cm) margin on the sides, top and bottom of the page, and at least one inch between the heading and the display of the mark.

At the top of the drawing there must be a heading, listing on separate lines, the applicant's complete name, address, the goods and services specified in the application, and in applications based on use in commerce, the date of first use of the mark and the date of first use of the mark in commerce. This heading should be typewritten. If the drawing is in special form, the heading should include a description of the essential elements of the mark.

The drawing of the mark should appear at the center of the page.

The drawing of the mark may be typewritten, as shown on page 19, or it may be in special form, as shown on page 18.

If the mark included words, numbers or letters, the applicant can usually elect to submit either a typewritten or a special-form drawing. To register a mark consisting of only words, letters or numbers, without indication any particular style or design, provide a typewritten drawing. In a typewritten drawing the mark must be typed entirely in CAPITAL LETTERS, even if the mark, as used, included lower-case letters. Use a standard typewriter or type of the same size and style as that on a standard typewriter.

To indicate color, use the color linings shown below. The appropriate lining should appear in the area where the relevant color would appear. If the drawings is lined for color, insert a statement in the written application to indicate so, for example, "The mark is lined for the colors red and green." A plain black-and-white drawing is acceptable even if the mark is used in color. Most drawings do not indicate specific colors.

Be careful in preparing the drawing. While it may be possible to make some minor changes, the rules prohibit any material change to the drawing of the mark after filing.

To register a word mark in the form in which it is actually used or intended to be used in commerce, or any mark including a design, submit a special-form drawing. In a special-form drawing, the mark must not be larger than 4 inches by 4 inches (10.16 cm by 10.16 cm). If the drawing of the mark is larger than 4 inches by 4 inches, the application will be denied a filing date and returned to the applicant. In addition, the drawing must appear only in black and white, with every line and letter black and clear. No color or gray is allowed. Do not combine typed matter and special form in the same drawing.

The drawing in special form must be a substantially exact representation of the mark as it appears on the specimens. The applicant may apply to register any portion of a mark consisting of more than one element, provided the mark displayed in the drawing creates a separate impression apart from other elements it appears with on the specimens. For example, generally it is possible to register a word mark by itself even though the specimen shows the work mark used in combination with a design or as part of a logo. Do not include non trademark matter in the drawing, such as informational matter which may appear on a label. In the end, the applicant must decide exactly what to register and in what form. The PTO considers the drawing controlling in determining exactly what mark the application covers.

3. FEES

Filing Fee

The application filing fee is $245.00 for each class of goods or services listed. See the International Classification of Goods and Services listed n the inside of the back cover.) At least $245.00 must

accompany the application, or the application will be denied a filing date and all the papers returned to the applicant. Fee increases, when necessary, usually take effect on October 1 of any given year. Please call the general information number listed on page 4 for up-to-date fee information if filing after September 1995. The PTO receives no taxpayer funds. The PTO's operations are supported entirely from fees paid by applicants and registrants.

Additional Fees Related to Intent-To-Use Applications

In addition to the application filing fee, applicants filing based on a bona fide intention to use a mark in commerce must submit a fee of $100.00 for each class of goods or services in the application when filing any of the following:

an AMENDMENT TO ALLEGE USE

a STATEMENT OF USE

a REQUEST FOR AN EXTENSION OF TIME TO FILE A STATEMENT OF USE

Form of Payment

All payments must be made in United States currency, by check, post office money order or certified check. Personal or business checks may be submitted. Make checks and money orders payable to: The Assistant Commissioner for Trademarks.

NOTE: FEES ARE NOT REFUNDABLE.

4. SPECIMENS

The following information is designed to provide guidance regarding the specimens required to show use of the mark in commerce.

When to File the Specimens

If the applicant has already used the mark in commerce an files based on this use in commerce, then the applicant must submit three specimens per class showing use of the mark in commerce with the application. If, instead, the application is based on a bona fide intention to use mark in commerce, the applicant must submit three specimens per class at the time the applicant files either an AMENDMENT TO ALLEGE USE or a STATEMENT OF USE.

What to File as a Specimen

The specimens must be actual samples of how the mark is being used in commerce. The specimens may be identical or they may be examples of three different uses showing the same mark.

If the mark is used on goods, examples of acceptable specimens are tags or labels which are attached to the goods, containers for the goods, displays associated with the goods, or photographs of the goods showing use of the mark on the goods themselves. If it is impractical to send an actual specimen because of its size, photographs or other acceptable reproductions that show the mark on the goods, or packaging for the goods, must be furnished. Invoices, announcement, order forms, bills of lading, leaflets, brochures, catalogs, publicity releases, letterhead, and business cards generally are not acceptable specimens for goods.

If the mark is used for services, examples of acceptable specimens are signs, brochures about the services, advertisements for he services, business cards or stationery showing the mark in connection with the services, or photographs which show the mark either as it is used in the rendering or advertising of the services. In the case of a service mark, the specimens must either show the mark and include some clear reference to the type of services rendered under the mark in some form of advertising, or show the mark as it is used in the rendering of the service, for example on a store front or the side of a delivery or service truck.

Specimens may not be larger than 8 1/2 inches by 11 inches (21.59 cm by 27.94 cm) and must be flat. See pages 18 through 22 for samples of some different types of specimens. Smaller specimens, such as labels, may be stapled to a sheet of paper and labeled "SPECIMENS." A separate sheet can be used for each class.

ADDITIONAL REQUIREMENTS FOR INTENT-TO-USE APPLICATIONS

An applicant who files its application based on having a bona fide intention to use a mark in commerce must make use of the mark in commerce before the mark can register. After use in commerce begins, the applicant must submit:

1. three specimens evidencing use as discussed above;

2. a fee of $100.00 per class of goods or services in the application; and

3. either (1) an AMENDMENT TO ALLEGE USE if the application has not yet been approved for publication (use PTO form 1579) or (2) a STATEMENT OF USE if the mark has been published and the PTO has issued a NOTICE OF ALLOWANCE (use PTO Form 1580).

If the applicant will not make use of the mark in commerce within six months of the NOTICE OF ALLOWANCE, the applicant must file a REQUEST FOR AN EXTENSION OF TIME TO FILE A STATEMENT OF USE, or the application is abandoned. (Use PTO Form 1581, which in intended only for this purpose.)

See the instructions and information on the back of the forms. The previous information about specimens, identifications of goods and services and dates of use is also relevant to filing an AMENDMENT TO ALLEGE USE or STATEMENT OF USE. Follow the instructions on these forms carefully. Failure to file the necessary papers in proper form within the time provided may result in abandonment of the application.

PATENT AND TRADEMARK OFFICE SERVICES

Trademark Assistance Center

In order to provide improved service to trademark applicants, registrants, and the general public, the Patent and Trademark Office has implemented a pilot program called the "Trademark Assistance Center." The Center provides general information about the trademark registration process and responds to inquiries pertaining to the status of specific trademark applications and registrations. The location of the Center is 2900 Crystal Drive, Room 4B10, Arlington, Virginia 22202-3513. Assistance may be obtained in-person or by dialing (703)308-9000, Monday through Friday, 8:30 a.m. - 5:00 p.m. eastern time, except holidays. Please note that personal assistance concerning trademark as well as patent matters will continue to be available at (703)308-HELP and recorded information will continue to be available at (703)557-INFO. Also, automated information about the status of trademark applications and registrations will continue to be available at (703)305-8747.

Patent and Trademark Depository Libraries

The following libraries, designated as Patent and Trademark Depository Libraries (PTDLs) receive patent and trademark information in various formats from the U.S. Patent and Trademark Office. Many PTDLs have on file all full-text patents issued since 1790, trademarks published since 1872, and select collections of foreign patents. All PTDLs have both the patent and trademark sections of the Official Gazette of the U.S. Patent and Trademark Office. The full-text utility and design patents are distributed numerically on 16 mm microfilm, and plant patents on color microfiche. Patent and trademark search systems on CD- ROM format are available at all PTDLs to increase utilization of and enhance access to the information found in patents and trademarks. It is through the CD-ROM systems that preliminary patent and trademark searches can be conducted through the numerically arranged collections.

All information is available for use by the public free of charge. Facilities for making paper copies of patent and trademark information are generally provide for a fee.

State/Name of Library/Telephone Contact

Alabama Auburn University Libraries (205) 844-1747

Birmingham Public Library (205) 226-3620

Alaska Anchorage: Z.J. Loussac Public Library (907) 562-7323

Arizona Tempe: Noble Library, Arizona State University (602) 965-7010

Arkansas Little Rock: Arkansas State Library (501) 682- 2053

California Los Angeles Public Library (213) 228-7220

Sacramento: California State Library (916) 654-0069

San Diego Public Library (619) 236-5813

San Francisco Public Library Not Yet Operational

Sunny vale Patent Clearinghouse (408) 730-7290

Colorado Denver Public Library (303) 640-8847

Connecticut New Haven: Science Park Library (203) 786-5447

Delaware Newark: University of Delaware Library (302) 831-2965

Dist. of Columbia Washington: Howard University Libraries (202) 806-7252

Florida Fort Lauderdale: Broward County Main Library (305) 357-7444

Miami-Dade Public Library (305) 375-2665

Orlando: University of Central Florida Libraries (407) 823-2562

Tampa: Tampa Campus Library, University of South Florida (813) 974-2726

Georgia Atlanta: Price Gilbert Memorial Library, Georgia Institute of Technology (404) 894-4508

Hawaii Honolulu: Hawaii State Public Library System (808) 586-3477

Idaho Moscow: University of Idaho Library (208) 885-6235

Illinois Chicago Public Library (312) 747-4450

Springfield: Illinois State Library (217) 782-5659

Indiana Indianapolis-Marion County Public Library (317) 269-1741

West Lafayette: Purdue University Libraries (317) 494-2873

Iowa Des Moines: State Library of Iowa(515) 281-4118

Kansas Wichita: Ablah Library, Wichita State University (316) 689-3155

Kentucky Louisville Free Public Library (502) 574-1611

Louisiana Baton Rouge: Troy H. Middleton Library, Louisiana State University (504) 388-2570

Maine Orono: Raymond H. Fogler Library, University of Maine Not Yet Operational

Maryland College Park: Engineering and Physical Sciences Library, University of Maryland (301) 405-9157

Massachusetts Amherst: Physical Sciences Library, University of Massachusetts (413) 545-1370

Boston Public Library (617) 536-5400 Ext. 265

Michigan Ann Arbor: Engineering Transportation Library, University of Michigan (313) 764-5298

Big Rapids: Abigail S. Timme Library, Ferris State University (616) 592-3602

Detroit Public Library (313) 833-1450

Minnesota Minneapolis Public Library and Information Center (612) 372-6570

Mississippi Jackson: Mississippi Library Commission (601) 359-1036

Missouri Kansas City: Linda Hall Library (816) 363-4600

St. Louis Public Library(314) 241-2288 Ext. 390

Montana Butte: Montana College of Mineral Science and Technology Library (406) 496-4281

Nebraska Lincoln: Engineering Library, University of Nebraska-Lincoln (402) 472-3411

Nevada Reno: University of Nevada-Reno Library (702) 784-6579

New Hampshire Durham: University of New Hampshire Library (603) 862-1777

New Jersey Newark Public Library (201) 733-7782

Piscataway: Library of Science and Medicine, Rutgers University (908) 445-2895

New Mexico Albuquerque: University of New Mexico General Library (505) 277-4412

New York Albany: New York State Library (518) 474-5355

Buffalo and Erie County Public Library (716) 858-7101

New York Public Library (The Research Libraries) (212) 930-0917

North Carolina Raleigh: D.H. Hill Library, North Carolina State University (919) 515-3280

North Dakota Grand Forks: Chester Fritz Library, University of North Dakota (701) 777-4888

Ohio Cincinnati and Hamilton County, Public Library of (513) 369-6936

Cleveland Public Library (216) 623-2870

Columbus: Ohio State University Libraries (614) 292-6175

Toledo/Lucas County Public Library(419) 259-5212

Oklahoma Stillwater: Oklahoma State University Library (405) 744-7086

Oregon Salem: Oregon State Library (5030 378-4239

Pennsylvania Philadelphia, The Free Library of (215) 686-5331

Pittsburgh, Carnegie Library of (412) 622-3138

University Park: Pattee Library, Pennsylvania State University (814) 865-4861

Rhode Island Providence Public Library (401) 455-8027

South Carolina Charleston: Medical University of South Carolina Library (803) 792-2372

Clemson University Libraries (803) 656-3024

South Dakota Rapid City: Devereaux Library, South Dakota School of Mines and Technology Not Yet Operational

Tennessee Memphis & Shelby County Public Library and Information Center (901) 725-8877

Nashville: Stevenson Science Library, Vanderbilt University (615) 322-2775

Texas Austin: McKinney Engineering Library, University of Texas at Austin (512) 495-4500

College Station: Sterling C. Evans Library, Texas A & M University (409) 845-3826

Dallas Public Library (214) 670-1468

Houston: The Fondren Library, Rice University (713) 527-8101 Ext 2587

Utah Salt Lake City: Marriott Library, University of Utah (801) 581-8394

Virginia Richmond: James Branch Cabell Library, Virginia Commonwealth University(804) 828-1104

Washington Seattle: Engineering Library, University of Washington (206) 543-0740

West Virginia Morgantown: Evansdale Library, West Virginia University (304) 293-4510

Wisconsin Madison: Kurt F. Wendt Library, University of Wisconsin Madison (608) 262-6845

Milwaukee Public Library (414) 286-3247

Wyoming Casper: Natrona County Public Library Not Yet operational

SAMPLE WRITTEN APPLICATION BASED ON USE IN COMMERCE

(Two classes)

TRADEMARK/SERVICE MARK

APPLICATION, PRINCIPAL

REGISTER, WITH DECLARATION

MARK (Word(s) and/or Design)

PINSTRIPES AND DESIGN

CLASS NO. 2

(If known)

16 & 35

TO THE ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS:

APPLICANTS NAME:

APPLICANTS BUSINESS ADDRESS (Display address exactly as it should appear on registration)

APPLICANTS ENTITY TYPE: (Check one and supply requested information)

Individual - Citizen of (Country):

Partnership - State where organized (Country, of appropriate):

Names and Citizenship (Country) of General Partners:

Corporation - State (Country, if appropriate) of Incorporation:

Other (Specify Nature of Entity and Domicile):

GOODS AND/OR SERVICES:

Applicant requests registration of the trademark/service mark shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et. seq., as amended) for the following goods/services (SPECIFIC GOODS AND/OR SERVICES MUST BE INSERTED HERE):

BASIS FOR APPLICATION: (Check boxes which apply, but -----

Applicant is using te mark in commerce on or in connection with the above identified goods/services. (15 U.S.C. 1051(a), as amended.) Three specimens showing the mark as used in commerce are submitted with this application.

Date of first use of the mark in commerce which the U.S.

7(a) Congress may regulate (for example, interstate or between the U.S. and a foreign country):

Specify the type of commerce: (for example, interstate or between the U.S. and a specified foreign country)

Date of first use anywhere (the -------

Specify manner or mode of use of mark on or in connection with the goods/services: (for exemple, trademark is applied to labels, service mark is used in advertisements)

[] Applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods/services. (15 U.S.C. 1051(b), as amended.)

7(b) Specify intended manner or mode of use of mark on or in connection with the goods/services: (for example, trademark will be applied to labels, service mark will be used in advertisements)

[] Applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods/services, and asserts a claim of priority based upon a foreign application in accordance with 15 U.S.C. 1126(d), as amended.

7(c) Country of foreign filing: Date of foreign filing:

[] Applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods/services, and accompanying this application, submits a certification or certified copy of a foreign registration in accordance with 15 U.S.C. 1126(e), as amended.

7(d) Country of registration: Registration number:

NOTE: Declaration, on Reverse Side, MUST be Signed

SAMPLE WRITTEN APPLICATION BASED ON INTENT TO USE IN COMMERCE

(One class)

TRADEMARK/SERVICE MARK

APPLICATION, PRINCIPAL

REGISTER, WITH DECLARATION

MARK (Word(s) and/or Design)

PINSTRIPES AND DESIGN

CLASS NO. 2

(If known)

16 & 35

TO THE ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS:

APPLICANTS NAME:

APPLICANTS BUSINESS ADDRESS (Display address exactly as it should appear on registration)

APPLICANTS ENTITY TYPE: (Check one and supply requested information)

Individual - Citizen of (Country):

Partnership - State where organized (Country, of appropriate):

Names and Citizenship (Country) of General Partners:

Corporation - State (Country, if appropriate) of Incorporation:

Other (Specify Nature of Entity and Domicile):

GOODS AND/OR SERVICES:

Applicant requests registration of the trademark/service mark shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et. seq., as amended) for the following goods/services (SPECIFIC GOODS AND/OR SERVICES MUST BE INSERTED HERE):

BASIS FOR APPLICATION: (Check boxes which apply, but -----

Applicant is using the mark in commerce on or in connection with the above identified goods/services. (15 U.S.C. 1051(a), as amended.) Three specimens showing the mark as used in commerce are submitted with this application. Date of first use of the mark in commerce which the U.S. 7(a) Congress may regulate (for example, interstate or between the U.S. and a foreign country): Specify the type of commerce: (for example, interstate or between the U.S. and a specified foreign country) Date of first use anywhere (the ------- Specify manner or mode of use of mark on or in connection with the goods/services: (for example, trademark is applied to labels, service mark is used in advertisements)

[] Applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods/services. (15 U.S.C. 1051(b), as amended.)

7(b) Specify intended manner or mode of use of mark on or in connection with the goods/services: (for example, trademark will be applied to labels, service mark will be used in advertisements)

[] Applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods/services, and asserts a claim of priority based upon a foreign application in accordance with 15 U.S.C. 1126(d), as amended.

7(c) Country of foreign filing: Date of foreign filing:

[] Applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods/services, and accompanying this application, submits a certification or certified copy of a foreign registration in accordance with 15 U.S.C. 1126(e), as amended.

7(d) Country of registration: Registration number:

NOTE: Declaration, on Reverse Side, MUST be Signed

SAMPLE DRAWING - SPECIAL FORM

8 1/2" x 11" (21.6 cm x 27.9 cm)

APPLICANTS NAME:

APPLICANTS ADDRESS:

GOODS AND SERVICES:

FIRST USE:

FIRST USE IN COMMERCE:

DESIGN:

SAMPLE DRAWING - TYPEWRITTEN

8 1/2" x 11" (21.6 cm x 27.9 cm)

APPLICANT'S NAME:

APPLICANT'S ADDRESS:

GOODS:

DATE OF FIRST USE:

DATE OF FIRST USE IN COMMERCE:

THEORYTEC

SAMPLE SPECIMEN FOR GOODS (Issue of magazine)

April - May 1992 $2.00

PINSTRIPES

"The magazine for the Business Professional"

IN THIS ISSUE:

Managing business in tough times.

The need for quality in everything redefines priorities.

Managing turned inside out.

Employee ideas can really count.

Our business report on Washington, D.C.

Working together to create new markets and new jobs.

In business to stay.

Investing feature: future outlook on futures.

"Pinstripes forever" (our humor column).

SAMPLE SPECIMEN FOR SERVICES (Advertisement)

If better business management solutions are what you're after, then think of Pinstripes for consulting. We'll come wherever you are to offer a wide range of consulting services for diverse industries, including high-tech fields. You'll like the results, as well as our competitive price.

The more you get to know us, the more you'll realize that we're a best choice for consulting that can make a big difference. k Call or write us.

Pinstripes Inc.

(123)456-7890 100 Main St., Anytown, MO 12345

SAMPLE SPECIMEN FOR SERVICES

(Business card showing mark and reference to service)

PINSTRIPES

Business Management Consultants

John Doe, President

100 Main Street

Any town, MO 12345 U.S.A.

(123)456-7890

SAMPLE SPECIMENS FOR GOODS

(Label affixed to computer disc)

THEORYTEC tm

Version 5.0

A-OK Software

Development Group

THEORYTEC tm

Version 5.0

A-OK Software

Development Group

INSTRUCTIONS AND INFORMATION FOR APPLICANT

In an application based upon a bona fide intention to use a mark in commerce, applicant must use its mark in commerce before a registration will be issued. After use begins, the applicant must submit, along with evidence of use (specimens) and the prescribed fee(s), either:

(1) an Amendment to Allege Use under 37 CFR 2.76, or

(2) a Statement of Use under 37 CFR 2.88.

The difference between these two filings is the timing of the filing. Applicant may file an Amendment to Allege Use before approval of the mark for publication for opposition in the Official Gazette, or, if a final refusal has been issued, prior to the expiration of the six-month response period. Otherwise, applicant must file a Statement of Use after the Office issues a Notice of Allowance. The Notice of Allowance will issue after the opposition period is completed if no successful opposition is filed. Neither Amendment to Allege Use or Statement of Use papers will be accepted by the Office during the period of time between approval of the mark for publication for opposition in the Official Gazette and the issuance of the Notice of Allowance.

Applicant may call (703) 305-8747 to determine whether the mark has been approved for publication for opposition in the Official Gazette.

Before filing an Amendment to Allege Use or a Statement of Use, applicant must use the mark in commerce on or in connection with all of the goods/services for which applicant will seek registration, unless applicant submits with the papers, a request to divide out from the application the goods or services to which the Amendment to Allege Use or Statement of Use pertains. (See: 37 CFR 2.87, Dividing an application)

Applicant must submit with an Amendment to Allege Use or a Statement of Use:

(1) the appropriate fee of $100.00* per class of goods/services listed in the Amendment to Allege Use or the Statement of Use, and

(2) three (3) specimens or facsimiles of the mark as used in commerce for each class of goods/services asserted (e.g., photograph of mark as it appears on goods, label containing mark which is placed on goods, or brochure or advertisement showing mark as used in connection with services).

Cautions/Notes concerning completion of this Amendment to Allege Use form:

(1) The goods/services identified in the amendment to allege use must be identical to the goods/services identified in the application currently Applicant may delete goods/services. Deleted goods/services may not be reinstated in the application at a later time.

(2) Applicant may list dates of use for only one item in each class of goods/services identified in the Statement of Use.

However, applicant must have used the mark in commerce on all the goods/services in the class. Applicant must identify the particular item to which the dates apply.

(3) Only the following person may sign the verification of the amendment to Allege Use, depending on the applicant's legal entity: (a) the individual applicant; (b) an officer of corporate applicant; (c) one general partner of partnership applicant; (d) all joint applicants.

MAIL COMPLETED FORM TO:

ASSISTANT COMMISSIONER FOR TRADEMARKS

ATTN: AAU

2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513

*Fees are effective through 9/30/95 and subject to change, usually on October 1.

This form is estimated to take 15 minutes to complete including time required for reading and

understanding instructions, gathering necessary information, record keeping and actually providing the information. j Any comments on the amount of time you require to complete this form should be sent to the Office of Management and Organization, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington D.C. 20231, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington D.C. 20503. Do not send forms to either of these addresses.

INSTRUCTIONS AND INFORMATION FOR APPLICANT

In an application based upon a bona fide intention to use a mark in commerce, applicant must use its mark in commerce before a registration will be issued. After use begins, the applicant must submit, along with evidence of use (specimens) and the prescribed fee(s), either:

(1) an Amendment to Allege Use under 37 CFR 2.76, or

(2) a Statement of Use under 37 CFR 2.88.

The difference between these two filings is the timing of the filing. Applicant may file an Amendment to Allege Use before approval of the mark for publication for opposition in the Official Gazette, or, if a final refusal has been issued, prior to the expiration of the six-month response period. Otherwise, applicant must file a Statement of Use after the Office issues a Notice of Allowance. The Notice of Allowance will issue after the opposition period is completed if no successful opposition is filed. Neither Amendment to Allege Use or Statement of Use papers will be accepted by the Office during the period of time between approval of the mark for publication for opposition in the Official Gazette and the issuance of the Notice of Allowance. Applicant may call (703) 305-8747 to determine whether the mark has been approved for publication for opposition in the Official Gazette.

Before filing an Amendment to Allege Use or a Statement of Use, applicant must use the mark in commerce on or in connection with all of the goods/services for which applicant will seek registration, unless applicant submits with the papers, a request to divide out from the application the goods or services to which the Amendment to Allege Use or Statement of Use pertains. (See: 37 CFR 2.87, Dividing an application)

Applicant must submit with an Amendment to Allege Use or a Statement of Use:

(1) the appropriate fee of $100.00* per class of goods/services listed in the Amendment to Allege Use or the Statement of Use, and

(2) three (3) specimens or facsimiles of the mark as used in commerce for each class of goods/services asserted (e.g., photograph of mark as it appears on goods, label containing mark which is placed on goods, or brochure or advertisement showing mark as used in connection with services).

Cautions/Notes concerning completion of this Amendment to Allege Use form:

(1) The statement of Use must be received in the PTO within six months of the mailing of the Notice of Allowance or within a granted extension period.

(2) The goods/services identified in the amendment to allege use must be identical to the goods/services identified in the application currently Applicant may delete goods/services. Deleted goods/services may not be reinstated in the application at a later time.

(3) Applicant may list dates of use for only one item in each class of goods/services identified in the Statement of Use. However, applicant must have used the mark in commerce on all the goods/services in the class. Applicant must identify the particular item to which the dates apply.

(4) Only the following person may sign the verification of the amendment to Allege Use, depending on the applicant's legal entity: (a) the individual applicant; (b) an officer of corporate applicant; (c) one general partner of partnership applicant; (d) all joint applicants.

MAIL COMPLETED FORM TO:

ASSISTANT COMMISSIONER FOR TRADEMARKS

ATTN: AAU

2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513

*Fees are effective through 9/30/95 and subject to change, usually on October 1.

This form is estimated to take 15 minutes to complete including time required for reading and understanding instructions, gathering necessary information, record keeping and actually providing the

information. j Any comments on the amount of time you require to complete this form should be sent to the Office of Management and Organization, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington D.C. 20231, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington D.C. 20503. Do not send forms to either of these addresses.

INSTRUCTIONS AND INFORMATION FOR APPLICANT

Applicant must file a Statement of Use within six months after the mailing of the Notice of Allowance in an application based upon a bona fide intention to use a mark in commerce, UNLESS, within that same period, applicant submits a request for a six-month extension of time to file the Statement of Use. The written request must:

(1) be received in the PTO within six months after the mailing of the Notice of Allowance.

(2) include applicant's verified statement of continued bona fide intention to use the mark in commerce.

(3) specify the goods/services to which the request pertains as they are identified in the Notice of Allowance, and

(4) include a fee of $100* for each class of goods/services.

Applicant may request four further six-month extensions of time. No extensions may extend beyond 36 months from the issue date of the Notice of Allowance. Each further request must be received in the PTO within the previously granted six-month extension period and must include, in addition to the above requirements, a showing of GOOD CAUSE. This good cause showing must include:

(1) applicant's statement that the mark has not been used in commerce yet on all the goods or services specified in the Notice of Allowance with which applicant has a continued bona fide intention to use the mark in commerce, and

(2) applicant's statement of ongoing efforts to make such use, which may include the following: (a) product or service research or development, (b) market research, (c) promotional activities, (d) steps to acquire distributors, (e) steps to obtain required governmental approval, or (f) similar specified activity.

Applicant may submit one additional six-month extension request during the existing period in which applicant files the Statement of Use, unless the granting of this request would extend the period beyond 36 months from the issue date of the Notice of Allowance. as a showing of good cause for such a request, applicant should state its belief that applicant has made valid use of the mark in commerce, as evidenced by the submitted Statement of Use. but that if the Statement is found by the PTO to be defective, applicant will need additional time in which to file a new statement of use.

Only the following person may sign the verification of the Request for Extension of Time, depending on the applicant's legal entity: (a) the individual applicant; (b) an officer of corporate applicant; (c) one general partner of partnership applicant; (d) all joint applicants.

*Fees are effective through 9/30/95 and subject to change, usually on October 1.

MAILING INSTRUCTIONS

MAIL COMPLETED FORM TO:

ASSISTANT COMMISSIONER FOR TRADEMARKS

BOX ITU / FEE

2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3515

You can ensure timely filing of this form by following the procedure described in 37 CFR 1.10 as follows: (1) on or before the due date for filing this form, deposit the completed form with the U.S. Post Office using the "Express Mail Post Office to Addressee" Service; (2) include a certificate of "Express Mail" under 37 CFR 1.10. Papers properly mailed under 37 CFR 1.10 are considered received by the PTO on the date that they are deposited with the Post Office.

When placing the certificate directly on the correspondence, use the following language:

Certificate of Express Mail Under 37 CFR 1.10

"Express Mail" mailing number:

Date of Deposit:

I hereby certify that this paper and fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513

(Typed or printed name of person mailing paper & fee) (Signature of person mailing paper & fee)

This form is estimated to take 15 minutes to complete including time required for reading and understanding instructions, gathering necessary information, record keeping and actually providing the information. j Any comments on the amount of time you require to complete this form should be sent to the Office of Management and Organization, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington D.C. 20231, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington D.C. 20503. Do not send forms to either of these addresses.

International schedule of classes of goods and services

Goods

1 Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.

2 Paints, varnished, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.

3 Bleaching preparations and other substances for laundry use; cleaning polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.

4 Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks.

5 Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental was; disinfectants; preparations for destroying vermin; fungicides, herbicides.

6 Common metals and their allows; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.

7 Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles; agricultural implements; incubators for eggs.

8 Hand tools and implements (hand operated); cutlery; side arms; razors.

9 Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus.

10 Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials.

11 Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.

12 Vehicles; apparatus for locomotion by land, air or water.

13 Firearms; ammunition and projectiles; explosives; fireworks.

14 Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewelry, precious stones; horological and chronometric instruments.

15 Musical instruments

16 Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artist's materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); playing cards; printers's type; printing blocks.

17 Rubber, gutta-percha, gum asbestos, mica and goods made from these materials and not included in other classes;; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal.

18 Leather and imitations of leather, and goods made of these materials and not included in other

classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.

19 Building material (non-metallic); non-metallic rigid pipe for building; asphalt, pitch and bitumen; non-metalic transportable buildings; monuments, not of metal.

20 Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.

21 Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushed (except paint brushes); brush-making materials; articles for cleaning purposes; steelwool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.

22 Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.

23 Yarns and threads, for textile use.

24 Textiles and textile goods, not included in other classes; bed and table covers.

25 Clothing, footwear, headgear.

26 Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.

27 Carpets, rugs, mates and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).

28 Games and playthings' gymnastic and sporting articles not included in other classes; decorations for Christmas trees.

29 Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats.

30 Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, honey, treacle; yeast, baking-powder, salt, mustard; vinegar, sauces (condiments); spices; ice.

31 Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals, malt.

32 Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.

33 Alcoholic beverages (except beers).

34 Tobacco; smokers' articles; matches

Services

35 Advertising; business management; business administration; office functions.

36 Insurance; financial affairs; monetary affairs; real estate affairs.

37 Building construction; repair, installation services.

38 Telecommunications.

39 Transport; packaging and storage of goods; travel arrangement.

40 Treatment of materials.

41 Education; providing of training; entertainment; sporting and cultural activities.

42 Providing of food and drink; temporary accommodation; medical, hygienic and beauty, car; veterinary and agricultural services; legal services; scientific and industrial research; computer programming; services that cannot be placed in other classes.

Getting Business Credit

Facts for Business from the Federal Trade Commission

As a business owner, or a person planning to start a business, you may need to borrow money to get started or to help your business develop or expand. If so, you should know about a law that protects you against illegal discrimination in business credit.

The Equal Credit Opportunity Act (ECOA) prohibits creditors from discriminating on the basis of certain factors unrelated to creditworthiness. This law also permits you to find out why your application was denied and to sue creditors who discriminate illegally. Here is a summary of what the law provides:

Credit cannot be denied on the basis of sex, marital status, race, age, national origin, or religion. This applies to you and to the people you deal with. For example, if you request a loan for a store in an ethnic or minority neighborhood, creditors cannot deny your application based on your race or the race of your customers.

If your application for business credit is rejected, you can find out why by making a written request for the reasons within 30 days after you are denied credit. The creditor must give you the specific reasons in writing within 30 days after you ask. If you do not agree with the reasons, discuss your concerns with the lender. Complaints frequently can be resolved at this level.

If your business is small (less than $1 million in gross revenues), the lender must keep records of your credit application for a year after telling you of the credit decision.

If your business is larger, the lender must keep your records for only 60 days after a credit denial, and if you do not request reasons within 60 days, the creditor may destroy your records. However, if you request that records be kept longer, or ask for a written statement of the reasons for denial, the lender will maintain records relating to your application for one year. These records are important for any future legal action you may consider against a lender.

If you believe your rights have been violated, you may wish to seek legal advice. You have the right to sue a creditor who violates the ECOA. If your complaint is about a governmental lender, public utility company, small loan and finance company, travel and expense credit card company, or other non-bank creditor, you may also wish to contact the Federal Trade Commission. Although the FTC cannot help you resolve your individual dispute, it may be able to provide you with some useful information and to take enforcement action against the company if it is warranted. Write to: Correspondence Branch, Federal Trade Commission, Washington, DC 20580.

Credit Reports: What Employers Should Know About Using Them

Facts for Business from the Federal Trade Commission

Credit Reports: What Employers Should Know About Using Them

Credit reports are gaining popularity with employers faced with the task of recruiting honest, reliable employees. Some employers use credit reports to screen applicants for sensitive positions, such as cashiers or couriers. Other employers use credit reports to give them a general indication of an applicant's financial honesty and personal integrity. But many employers may not know that a federal law, the Fair Credit Reporting Act (FCRA), governs their use of credit reports.

This brochure briefly explains the FCRA and then describes how you, as an employer, can use credit reports. It also discusses your legal responsibility under the FCRA to notify applicants if information in their credit reports influenced your decision not to hire them.

The Act

The FCRA, which has been in effect since 1971, is designed to protect the privacy of information in credit reports and to ensure that information supplied by credit bureaus about consumers is as accurate as possible. The law specifically permits credit bureaus to release to employers credit reports for employment purposes. While the FCRA does not supersede fair employment laws, it allows employers to review credit records for the purpose of evaluating anyone they may hire, promote, reassign, or retain, consistent with other laws.

The Disclosure Notice

When a decision to deny employment is based on information in a credit report, the employer must disclose this fact to the applicant, along with the name and address of the credit bureau making the report. This is important because some credit reports may contain errors. The disclosure notice allows an applicant to obtain a free copy of the credit report and check it for accuracy and completeness.

The disclosure is required even if credit-report information was not the main reason the applicant was turned down. It may have played a small part in the overall decision, but the applicant still must be notified.

The disclosure requirement also pertains to any current employee who applies (and is turned down) for a new position or whose employment is terminated because of information in a credit report.

A written disclosure is not required. However, employers often provide written notices,and keep copies of them for two years,to show compliance with the FCRA. Some Common Situations

The following examples illustrate situations where the notice must be given to job applicants.

A business receives 100 applications for a cashier position. It obtains credit reports on all of them and dismisses 50 from further consideration based on information contained in the credit report. The remaining 50 have good credit histories. All but ten of them are ultimately rejected for other reasons.

The first 50 applicants are entitled to the notice. Their rejections were based solely on their credit reports.

A person with an unfavorable credit history is denied employment. Although the credit history was considered a negative factor, the applicant's lack of relevant experience for the position was even more important.

The applicant is entitled to the notice because the credit report played a part,however minor, in the employer's decision.

An employer is looking for an employee to fill a particularly sensitive position. It rejects one applicant with a good credit repayment history because the report shows a debt load that may be too great for the proposed salary. Another applicant is rejected because the credit report shows only one trade line, and

the employer prefers to hire someone who has demonstrated financial responsibility.

Both applicants are entitled to notices. If any information in the report influences an adverse decision,even though the information may not be otherwise thought of as "negative", the disclosure must be given.

An employer obtains credit reports on applicants. It does not send rejection letters to those not hired. These applications are simply filed and later discarded.

Employers are not excused from their notification responsibilities merely because they had not communicated with the applicants. Once an applicant is no longer under consideration, in part because of something in a credit report, the notice must be given.

Noncompliance with FCRA

Employers who do not provide the disclosure when it is required may face several consequences. Under the FCRA, individuals can sue employers in federal court for actual damages suffered from an FCRA violation that occurs because of negligence. A person who successfully sues under the FCRA is entitled to recover court costs and a reasonable attorney's fee. The law also permits suing for punitive damages if it is established that the employer willfully violated the law.

In addition, the FTC (and other Federal agencies) may sue users of credit reports who do not comply with the FCRA. Most employers (except banks and a few other employers) are subject to the FTC's jurisdiction.

REPRODUCTION OF COPYRIGHTED WORKS BY EDUCATORS AND LIBRARIANS

Many educators and librarians ask about the fair use and photocopying provisions of the copyright law. The Copyright Office cannot give legal advice or offer opinions on what is permitted or prohibited. However, we have published in this circular basic information on some of the most important legislative provisions and other documents dealing with reproduction by librarians and educators.

Also available is the 1983 Report of the Register of Copyrights on Library Reproduction of Copyrighted Works (17 U.S.C. 108). The Report and seven appendixes can be purchased in microfiche or paper copies by written request from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161 or by calling the Sales Desk at (703) 487-4650. The FAX number for placing orders is (703) 321-8547. The TTY number for placing orders is (703) 487-4639. When ordering, please include the following NTIS Accession Numbers: PB83 148239ACY, Entire Set; PB83 148247ACY Report Only; PB83 148254ACY, Appendix I (King Report); PB83 148262ACY,"Appendix II (Chicago Hearing and Written Comments); PB83 148270ACY, Appendix III (Houston Hearing and Written Comments); PB83 148288ACY, Appendix IV (Washington Hearing and Written comments); PB83 148296ACY, Appendix V (Anaheim Hearing and Written Comments); PB83 148304ACY, Appendix VI (New York Hearing and Written Comments); and PB83 148312ACY, Appendix VII (Final Written Comments).

The 1988 5-year Report of the Register of Copyrights on Library Reproduction of Copyrighted Works is also available from NTIS. Use the NTIS Accession Number PB88 212014ACY.

See:

A. INTRODUCTORY NOTE

The Subjects Covered in This Booklet

The documentary materials collected in this booklet deal with reproduction of copyrighted works by educators, librarians, and archivists for a variety of uses, including:

-- Reproduction for teaching in educational institutions at all levels; and

-- Reproduction by libraries and archives for purposes of study, research, interlibrary exchanges, and archival preservation.

The documents reprinted here are limited to materials dealing with reproduction. Under the copyright law, reproduction can take either of two forms:

-- The making of copies: by photocopying, making microform reproductions, videotaping, or any other method of duplicating visually-perceptible material; and

-- The making of phonorecords: by duplicating sound recordings, taping off the air, or any other method of recapturing sounds.

The copyright law also contains various provisions dealing with importations, performances, and displays of copyrighted works for educational and other noncommercial purposes, but they are outside the scope of this booklet. You can obtain a copy of the statute and information about specific provisions by writing to the Publications Section, LM-455, Copyright Office, Library of Congress, Washington, D.C. 20559-6000.

A Note on the Documents Reprinted

The documentary materials in this booklet are reprints or excerpts from six sources:

1. The Copyright Act of October 19, 1976. This is the new copyright law of the United States, effective January 1, 1978 (title 17 of the United States Code, Public Law 94-553, 90 Stat. 2541).

2. The Senate Report. This is the 1975 report of the Senate Judiciary Committee on S. 22, the Senate version of the bill that became the Copyright Act of 1976 (S. Rep. No. 94-473, 94th Cong., 1st Sess., November 20 (legislative day November 18, 1975).

3. The House Report. This is the 1976 report of the House of Representatives Judiciary Committee on the House amendments to the bill that became the Copyright Act of 1976 (H.R. Rep. No. 94-1476, 94th Cong., 2d Sess., September 3,1976).

4. The Conference Report. This is the 1976 report of the "committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 22) for the general revision of the Copyright Law" (H.R. Rep. No. 94-1733, 94th Cong., 2d Sess., September 29,1976).

5. The Congressional Debates. This booklet contains excerpts from the Congressional Record of September 22, 1976, reflecting statements on the floor of Congress at the time the bill was passed by the House of Representatives (122 CONG. REC. H 10874-76 (daily edition, September 22,1976).

6. Copyright Office Regulations. These are regulations issued by the Copyright Office under section 108 dealing with warnings of copyright for use by libraries and archives (37 Code of Federal Regulations section 201.14).

Items 2 and 3 on this list--the 1975 Senate Report and the 1976 House Report--present special problems. On many points the language of these two reports is identical or closely similar. However, the two reports were written at different times, by committees of different Houses of Congress, on somewhat different bills. As a result, the discussions on some provisions of the bills vary widely, and on certain points they disagree.

The disagreements between the Senate and House versions of the bill itself were, of course, resolved when the Act of 1976 was finally passed. However, many of the disagreements as to matters of interpretation between statements in the 1975 Senate Report and in the 1976 House Report were left partly or wholly unresolved. It is therefore difficult, in compiling a booklet such as this, to decide in some

cases what to include and what to leave out.

The House Report was written later than the Senate Report, and in many cases it adopted the language of the Senate Report, updating it and conforming it to the version of the bill that was finally enacted into law. Thus, where the differences between the two Reports are relatively minor, or where the discussion in the House Report appears to have superseded the discussion of the same point in the Senate Report, we have used the House Report as the source of our documentation. In other cases we have included excerpts from both discussions in an effort to present the legislative history as fully and fairly as possible. Anyone making a thorough study of the Act of 1976 as it affects librarians and educators should not, of course, rely exclusively on the excerpts reprinted here, but should go back to the primary documentary sources.

B. EXCLUSIVE RIGHTS IN COPYRIGHTED WORKS

1. Text of Section 106

[The following is a reprint of the entire text of section 106 of title 17, United States Code.]

Section 106. Exclusive rights in copyrighted works

Subject to sections 107 through 120, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.

2. Excerpts From House Report on Section 106

[The following excerpts are reprinted from the House Report on the new copyright law (H.R. Rep. No. 94-1476, pages 61-62). The text of the corresponding Senate Report (S. Rep. No. 94-473, pages 57-58) is substantially the same.]

Section 106. Exclusive Rights in Copyrighted Works

General scope of copyright

The five fundamental rights that the bill gives to copyright owners' the exclusive rights of reproduction, adaptation, publication, performance, and display--are stated generally in section 106. These exclusive rights, which comprise the so-called "bundle of rights" that is a copyright, are cumulative and may overlap in some cases. Each of the five enumerated rights may be subdivided indefinitely and, as discussed below in connection with section 201, each subdivision of an exclusive right may be owned and enforced separately.

The approach of the bill is to set forth the copyright owner"" exclusive rights in broad terms in section 106, and then to provide various limitations, qualifications, or exemptions in the 12 sections that follow. Thus, everything in section 106 is made "subject to sections 107 through 118," and must be read in conjunction with those provisions.

* * *

Rights of reproduction, adaptation, and publication

The first three clauses of section 106, which cover all rights under a copyright except those of performance and display, extend to every kind of copyrighted work. The exclusive rights encompassed by these clauses, though closely related, are independent; they can generally be characterized as rights of copying, recording, adaptation, and publishing. A single act of infringement may violate all of these rights at once, as where a publisher reproduces, adapts, and sells copies of a person's copyrighted work as part of a publishing venture. Infringement takes place when any one of the rights is violated: where, for example, a printer reproduces copies without selling them or a retailer sells copies without having anything to do with their reproduction. The references to "copies or phonorecords," although in the plural, are intended here and throughout the bill to include the singular (1 U.S.C. section 1).

Reproduction.--Read together with the relevant definitions in section 101, the right "to reproduce the copyrighted work in copies or phonorecords" means the right to produce a material object in which the work is duplicated, transcribed, imitated, or simulated in a fixed form from which it can be "perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." As under the present law, a copyrighted work would be infringed by reproducing it in whole or in any substantial part, and by duplicating it exactly or by imitation or simulation. Wide departures or variations from the copyrighted work would still be an infringement as long as the author's "expression" rather than merely the author's "ideas" are taken. An exception to this general principle, applicable to the reproduction of copyrighted sound recordings, is specified in section 114.

"Reproduction" under clause (1) of section 106 is to be distinguished from "display" under clause (5). For a work to be "reproduced," its fixation in tangible form must be "sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration." Thus, the showing of images on a screen or tube would not be a violation of clause (1), although it might come within the scope of clause (5).

C. FAIR USE

1. Text of Section 107

2. EXCERPTS FROM HOUSE REPORT ON SECTION 107

3. Excerpts From Conference Report on Section 107

Fair Use Senate bill

4. Excerpts From Congressional Debates

1. Text of Section 107

The following is a reprint of the entire text of section 107 of title 17, United States Code.

Section 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include--

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such is made upon consideration of all the above factors.

2. EXCERPTS FROM HOUSE REPORT ON SECTION 107

[The following excerpts are reprinted from the House Report on the new copyright law (H.R. Rep. No. 94-1476, pages 65-74). The discussion of section 107 appears at pages 61-67 of the Senate Report (S. Rep. No. 94-473). The text of this section of the Senate Report is not reprinted in this booklet, but similarities and differences between the House and Senate Reports on particular points will be noted below.]

a. House Report: Introductory Discussion on Section 107

[The first two paragraphs in this portion of the House Report are closely similar to the Senate Report. The remainder of the passage differs substantially in the two Reports.]

Section 107. Fair Use

General background of the problem

The judicial doctrine of fair use, one of the most important and well-established limitations on the exclusive right of copyright owners, would be given express statutory recognition for the first time in section 107. The claim that a defendant's acts constituted a fair use rather than an infringement has been raised as a defense in innumerable copyright actions over the years, and there is ample case law recognizing the existence of the doctrine and applying it. The examples enumerated at page 24 of the Register"" 1961 Report, while by no means exhaustive, give some idea of the sort of activities the courts might regard as fair use under the circumstances: "quotation of excerpts in a review or criticism for purposes of illustration or comment; quotation of short passages in a scholarly or technical work, for illustration or clarification of the author's observations; use in a parody of some of the content of the work parodied; summary of an address or article, with brief quotations, in a news report; reproduction by a library of a portion of a work to replace part of a damaged copy; reproduction by a teacher or student of a small part of a work to illustrate a lesson; reproduction of a work in legislative or judicial proceedings or reports; incidental and fortuitous reproduction, in a newsreel or broadcast, of a work located in the scene of an event being reported."

Although the courts have considered and ruled upon the fair use doctrine over and over again, no real definition of the concept has ever emerged. Indeed, since the doctrine is an equitable rule of reason, no generally applicable definition is possible, and each case raising the question must be decided on its own facts. On the other hand, the courts have evolved a set of criteria which, though in no case definitive or determinative, provide some gauge for balancing the equities. These criteria have been stated in various ways, but essentially they can all be reduced to the four standards which have been adopted in section 107: "(1) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work."

These criteria are relevant in determining whether the basic doctrine of fair use, as stated in the first sentence of section 107, applies in a particular case: "Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright."

The specific wording of section 107 as it now stands is the result of a process of accretion, resulting from the long controversy over the related problems of fair use and the reproduction (mostly by photocopying) of copyrighted material for educational and scholarly purposes. For example, the reference to fair use "reproduction in copies or phonorecords or by any other means" is mainly intended to make clear that the doctrine has as much application to photocopying and taping as to older forms of use; it is not intended to give these kinds of reproduction any special status under the fair use provision or to sanction any reproduction beyond the normal and reasonable limits of fair use. Similarly, the newly-added reference to "multiple copies for classroom use" is a recognition that, under the proper circumstances of fairness, the doctrine can be applied to reproductions of multiple copies for the members of a class.

The Committee has amended the first of the criteria to be considered--"the purpose and character of the

use"--to state explicitly that this factor includes a consideration of "whether such use is of a commercial nature or is for non-profit educational purposes." This amendment is not intended to be interpreted as any sort of not-for-profit limitation on educational uses of copyrighted works. It is an express recognition that, as under the present law, the commercial or non-profit character of an activity, while not conclusive with respect to fair use, can and should be weighed along with other factors in fair use decisions.

General intention behind the provision

The statement of the fair use doctrine in section 107 offers some guidance to users in determining when the principles of the doctrine apply. However, the endless variety of situations and combinations of circumstances that can rise in particular cases precludes the formulation of exact rules in the statute. The bill endorses the purpose and general scope of the judicial doctrine of fair use, but there is no disposition to freeze the doctrine in the statute, especially during a period of rapid technological change. Beyond a very broad statutory explanation of what fair use is and some of the criteria applicable to it, the courts must be free to adapt the doctrine to particular situations on a case-by-case basis. Section 107 is intended to restate the present judicial doctrine of fair use, not to change, narrow, or enlarge it in any way.

b. House Report: Statement of Intention as to Classroom reproduction

[The House Report differs substantially from the Senate Report on this point.]

(i) Introductory Statement

Intention as to classroom reproduction

Although the works and uses to which the doctrine of fair use is applicable are as broad as the copyright law itself, most of the discussion of section 107 has centered around questions of classroom reproduction particularly photocopying. The arguments on the question are summarized at pp. 30-31 of this Committee's 1967 report (H.R. Rep. No. 83, 90th Cong., 1st Sess.), and have not changed materially in the intervening years.

The Committee also adheres to its earlier conclusion, that "a specific exemption freeing certain reproductions of copyrighted works for educational and scholarly purposes from copyright control is not justified." At the same time the Committee recognizes, as it did in 1967, that there is a "need for greater certainty and protection for teachers." In an effort to meet this need the Committee has not only adopted further amendments to section 107, but has also amended section 504(c) to provide innocent teachers and other non-profit users of copyrighted material with broad insulation against unwarranted liability for infringement. The latter amendments are discussed below in connection with Chapter 5 of the bill.

In 1967 the Committee also sought to approach this problem by including, in its report, a very thorough discussion of "the considerations lying behind the four criteria listed in the amended section 107, in the context of typical classroom situations arising today." This discussion appeared on pp. 32-35 of the 1967 report, and with some changes has been retained in the Senate report on S. 22 (S. Rep. No. 94-473, pp. 63-65). The Committee has reviewed this discussion, and considers that it still has value as an analysis of various aspects of the problem.

At the Judiciary Subcommittee hearings in June 1975, Chairman Kastenmeier and other members urged the parties to meet together independently in an effort to achieve a meeting of the minds as to permissible educational uses of copyrighted material. The response to these suggestions was positive, and a number of meetings of three groups, dealing respectively with classroom, reproduction of printed material, music, and audio-visual material, were held beginning in September 1975.

(ii) Guidelines With Respect to Books and Periodicals

In a joint letter to Chairman Kastenmeier, dated March 19, 1976, the representatives of the Ad Hoc Committee of Educational Institutions and Organizations on Copyright Law Revision, and of the Authors League of America, Inc., and the Association of American Publishers, Inc., stated:

You may remember that in our letter of March 8, 1976 we told you that the negotiating teams representing authors and publishers and the Ad Hoc Group had reached tentative agreement on guidelines to insert in the Committee Report covering educational copying from books and periodicals under Section 107 of H.R. 2223 and S. 22, and that as part of that tentative agreement each side would accept the

amendments to Sections 107 and 504 which were adopted by your Subcommittee on March 3,1976.

We are now happy to tell you that the agreement has been approved by the principals and we enclose a copy herewith. We had originally intended to translate the agreement into language suitable for inclusion in the legislative report dealing with Section 107, but we have since been advised by committee staff that this will not be necessary.

As stated above, the agreement refers only to copying from books and periodicals, and it is not intended to apply to musical or audiovisual works. The full text of the agreement is as follows:

AGREEMENT ON GUIDELINES FOR CLASSROOM COPYING IN NOT-FOR-PROFIT EDUCATIONAL INSTITUTIONS WITH RESPECT TO BOOKS AND PERIODICALS

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

GUIDELINES

I. Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

A. A chapter from a book; B. An article from a periodical or newspaper; C. A short story, short essay or short poem, whether or not from a collective work; D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper;

II. Multiple Copies for Classroom Use

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; provided that:

A. The copying meets the tests of brevity and spontaneity as defined below; and,

B. Meets the cumulative effect test as defined below; and,

C. Each copy includes a notice of copyright

Definitions Brevity

(i) Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.

(ii) Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

(iii) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

(iv) "Special" works: Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text

thereof, may be reproduced. Spontaneity

(i) The copying is at the instance and inspiration of the individual teacher, and

(ii) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

(i) The copying of the material is for only one course in the school in which the copies are made.

(ii) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

(iii) There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

III. Prohibitions as to I and II Above

Notwithstanding any of the above, the following shall be prohibited:

(A) Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.

(B) There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

(C) Copying shall not:

(a) substitute for the purchase of books, publishers" reprints or periodicals; (b) be directed by higher authority; (c) be repeated with respect to the same item by the same teacher from term to term.

(D) No charge shall be made to the student beyond the actual cost of the photocopying.

Agreed March 19, 1976. Ad Hoc Committee on Copyright Law Revision: By Sheldon Elliott Steinbach. Author-Publisher Group: Authors League of America: By Irwin Karp, Counsel. Association of American Publishers, Inc.: By Alexander C. Hoffman, Chairman, Copyright Committee.

(iii) Guidelines With Respect to Music

In a joint letter dated April 30,1976, representatives of the Music Publishers "Association of the United States, Inc., the National Music Publishers" Association, Inc., the Music Teachers National Association, the Music Educators National Conference, the National Association of Schools of Music, and the Ad Hoc Committee on Copyright Law Revision, wrote to Chairman Kastenmeier as follows:

During the hearings on H.R. 2223 in June 1975, you and several of your subcommittee members suggested that concerned groups should work together in developing guidelines which would be helpful to clarify Section 107 of the bill.

Representatives of music educators and music publishers delayed their meetings until guidelines had been developed relative to books and periodicals. Shortly after that work was completed and those guidelines were forwarded to your subcommittee, representatives of the undersigned music organizations met together with representatives of the Ad Hoc Committee on Copyright Law Revision to draft guidelines relative to music.

We are very pleased to inform you that the discussions thus have been fruitful on the guidelines which have been developed. Since private music teachers are an important factor in music education, due consideration has been given to the concerns of that group.

We trust that this will be helpful in the report on the bill to clarify Fair Use as it applies to music. The text of

the guidelines accompanying this letter is as follows:

GUIDELINES FOR EDUCATIONAL USE OF MUSIC

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of HR 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future, and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

A. Permissible Uses

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.

2. For academic purposes other than performance, single or multiple copies of excerpts of works may be made, provided that, the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section*, *[Corrected from Congressional Record.] movement or aria, but in no case more than 10 percent of the whole work. The number of copies shall not exceed one copy per pupil.** **[Editor's note: As reprinted in the House Report, subsection A.2 of the Music Guidelines had consisted of two separate paragraphs, one dealing with multiple copies and a second dealing with single copies. In his introductory remarks during the House debates on S.22, the Chairman of the House Judiciary Subcommittee, Mr. Kastenmeier, announced that "the report, as printed, does not reflect a subsequent change in the joint guidelines which was described in a subsequent letter to me from a representative of [the signatory organizations]," and provided the revised text of subsection A.2. (122 CONG. REC. H 10875, Sept. 22, 1976). The text reprinted here is the revised text.]

3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.

4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.

5. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

B. Prohibitions

1. Copying to create or replace or substitute for anthologies, compilations or collective works.

2. Copying of or from works intended to he "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.

3. Copying for the purpose of performance, except as in A (1) above.

4. Copying for the purpose of substituting for the purchase of music, except as in A(1) and A(2) above.

5. Copying without inclusion of the copyright notice which appears on the printed copy.

(iv) Discussion of Guidelines

The Committee appreciates and commends the efforts and the cooperative and reasonable spirit of the parties who achieved the agreed guidelines on books and periodicals and on music. Representatives of the American Association of University Professors and of the Association of American Law Schools have written to the Committee strongly criticizing the guidelines, particularly with respect to multiple copying, as

being too restrictive with respect to classroom situations at the university and graduate level. However, the Committee notes that the Ad Hoc group did include representatives of higher education, that the stated "purpose of the . . . guidelines is to state the minimum and not the maximum standards of educational fair use" and that the agreement acknowledges "there may be instances in which copying which does not fall within the guidelines . . . may nonetheless be permitted under the criteria of fair use."

The Committee believes the guidelines are a reasonable interpretation of the minimum standards of fair use. Teachers will know that copying within the guidelines is fair use. Thus, the guidelines serve the purpose of fulfilling the need for greater certainty and protection for teachers. The Committee expresses the hope that if there are areas where standards other than these guidelines may be appropriate, the parties will continue their efforts to provide additional specific guidelines in the same spirit of good will and give and take that has marked the discussion of this subject in recent months.

c. House Report: Additional Excerpts

[Under the heading "Reproduction and uses for other purposes," the House Report, at pages 72-74, parallels much of the material appearing at pages 65-67 of the Senate Report under the same heading, but with some differences.]

The concentrated attention given the fair use provision in the context of classroom teaching activities should not obscure its application in other areas. It must be emphasized again that the same general standards of fair use are applicable to all kinds of uses of copyrighted material, although the relative weight to be given them will differ from case to case.

* * *

A problem of particular urgency is that of preserving for posterity prints of motion pictures made before 1942.Aside from the deplorable fact that in a great many cases the only existing copy of a film has been deliberately destroyed, those that remain are in immediate danger of disintegration; they were printed on film stock with a nitrate base that will inevitably decompose in time. The efforts of the Library of Congress, the American Film Institute, and other organizations to rescue and preserve this irreplaceable contribution to our cultural life are to be applauded, and the making of duplicate copies for purposes of archival preservation certainly falls within the scope of "fair use."

* * *

During the consideration of the revision bill in the 94th Congress it was proposed that independent newsletters, as distinguished from house organs and publicity or advertising publications, be given separate treatment. It is argued that newsletters are particularly vulnerable to mass photocopying, and that most newsletters have fairly modest circulations. Whether the copying of portions of a newsletter is an act of infringement or a fair use will necessarily turn on the facts of the individual case. However, as a general principle, it seems clear that the scope of the fair use doctrine should be considerably narrower in the case of newsletters than in that of either mass-circulation periodicals or scientific journals. The commercial nature of the user is a significant factor in such cases: Copying by a profit-making user of even a small portion of a newsletter may have a significant impact on the commercial market for the work.

The Committee has examined the use of excerpts from copyrighted works in the art work of calligraphers. The committee believes that a single copy reproduction of an excerpt from a copyrighted work by a calligrapher for a single client does not represent an infringement of copyright. Likewise, a single reproduction of excerpts from a copyrighted work by a student calligrapher or teacher in a learning situation would be a fair use of the copyrighted work.

The Register of Copyrights has recommended that the committee report describe the relationship between this section and the provisions of section 108 relating to reproduction by libraries and archives. The doctrine of fair use applies to library photocopying, and nothing contained in section 108 "in any way affects the right of fair use." No provision of section 108 is intended to take away any rights existing under the fair use doctrine. To the contrary, section 108 authorizes certain photocopying practices which may not qualify as a fair use. The criteria of fair use are necessarily set forth in general terms. In the application of the criteria of fair use to specific photocopying practices of libraries, it is the intent of this legislation to provide an appropriate balancing of the rights of creators, and the needs of users.

3. Excerpts From Conference Report on Section 107

The following excerpt is reprinted from the Report of the Conference Committee on the new copyright law (H.R. Rep. No. 94-1733, page 70).

Fair Use Senate bill

The Senate bill, in section 107, embodied express statutory recognition of the judicial doctrine that the fair use of a copyrighted work is not an infringement of copyright. It set forth the fair use doctrine, including four criteria for determining its applicability in particular cases, in general terms.

House bill

The House bill amended section 107 in two respects: in the general statement of the fair use doctrine it added a specific reference to multiple copies for classroom use, and it amplified the statement of the first of the criteria to be used in judging fair use (the purpose and character of the use) by referring to the commercial nature or nonprofit educational purpose of the use.

Conference substitute

The conference substitute adopts the House amendments. The conferees accept as part of their understanding of fair use the Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with respect to books and periodicals appearing at pp. 68-70 of the House Report (H. Rept. No. 94-1476, as corrected at p. H 10727 of the Congressional Record for September 21, 1976), and for educational uses of music appearing at pp. 70- 71 of the House report, as amended in the statement appearing at p. H 10875 of the Congressional Record of September 22, 1976. The conferees also endorse the statement concerning the meaning of the word "teacher" in the guidelines for books and periodicals, and the application of fair use in the case of use of television programs within the confines of a nonprofit educational institution for the deaf and hearing impaired, both of which appear on p. H 10875 of the Congressional Record of September 22, 1976.

4. Excerpts From Congressional Debates

[The following excerpts are reprinted from the Congressional Record of September 22, 1976, including statements by Mr. Kastenmeier (Chairman of the House Judiciary Subcommittee responsible for the bill) on the floor of the House of Representatives.]

MR. KASTENMEIER. * * *

Mr. Chairman, before concluding my remarks I would like to discuss several questions which have been raised concerning the meaning of several provisions of S. 22 as reported by the House Judiciary Committee and of statements in the committee"s report, No. 94-1476.

* * *

Another question involves the reference to "teacher" in the "Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions" reproduced at pages 68-70 of the committee's report No. 94-1476 in connection with section 107. It has been pointed out that, in planning his or her teaching on a day-to-day basis in a variety of educational situations, an individual teacher will commonly consult with instructional specialists on the staff of the school, such as reading specialists, curriculum specialists, audiovisual directors, guidance counselors, and the like. As long as the copying meets all of the other criteria laid out in the guidelines, including the requirements for spontaneity and the prohibition against the copying being directed by higher authority, the committee regards the concept of "teacher" as broad enough to include instructional specialists working in consultation with actual instructors.

Also in consultation with section 107, the committee's attention has been directed to the unique educational needs and problems of the approximately 50,000 deaf and hearing- impaired students in the United States, and the inadequacy of both public and commercial television to serve their educational needs. It has been suggested that, as long as clear- cut constraints are imposed and enforced, the doctrine of fair use is broad enough to permit the making of an off-the-air fixation of a television program within a nonprofit educational institution for the deaf and hearing impaired, the reproduction of a master and a work copy of a captioned version of the original fixation, and the performance of the program from the work copy within the confines of the institution. In identifying the constraints that would have to be imposed within an institution in order for these activities to be considered as fair use, it has been suggested that the purpose of the use would have to be noncommercial in every respect, and educational in the sense that it serves as part of a deaf or hearing-impaired student's learning environment within the institution, and that the institution would have to insure that the master and work copy would remain in the hands of a limited number of authorized personnel within the institution, would be responsible for assuring against its unauthorized reproduction or distribution, or its performance or retention for other than educational purposes within the institution. Work copies of captioned programs could be shared among institutions for the deaf abiding by the constraints specified. Assuming that these constraints are both imposed and enforced, and that no other factors intervene to render the use unfair, the committee believes that the activities described could reasonably be considered fair use under section 107.

* * *

Mr. Chairman, because of the complexity of this bill and the delicate balances which it creates among competing economic interests, the committee will resist extensive amendment of this bill. On behalf of the committee I would urge all of my colleagues to vote favorably on S. 22.

Mr. SKUBITZ. Mr. Chairman, will the gentleman yield? Mr. KASTENMEIER. I am happy to yield to my friend, the gentleman from Kansas. Mr. SKUBITZ. Mr. Chairman, I thank my friend, the gentleman from Wisconsin, for yielding.

Mr. Chairman, I have received a great deal of mail from the schoolteachers in my district who are particularly concerned about section 107 "fair use" the fair use of copyrighted material. Having been a former schoolteacher myself, I believe they make a good point and there is a sincere fear on their part that, because of the vagueness or ambiguity in the bill's treatment of the doctrine of fair use, they may subject themselves to liability for an unintentional infringement of copyright when all they were trying to do was the job for which they were trained.

The vast majority of teachers in this country would not knowingly infringe upon a persons copyright, but,

as any teacher can appreciate, there are times when information is needed and is available, but may be literally impossible to locate the right person to approve the use of that material and the purchase of such would not be feasible and, in the meantime, the teacher may have lost that "teachable moment."

Did the subcommittee take these problems into consideration and did they do anything to try and help the teachers to better understand section 107?

Have the teachers been protected by this section 107?

Mr. KASTENMEIER. Mr. Chairman, in response to the gentleman's question and his observations preceding the question, I would say, indeed they have.

Over the years this has been one of the most difficult questions. It is a problem that I believe has been very successfully resolved.

Section 107 on "Fair Use" has of course, restated four standards, and these standards are, namely: The purpose and character of the use of the material; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market for or value of the copyrighted work. These are the four "Fair Use" criteria.

These alone were not adequate to guide teachers, and I am sure the gentleman from Kansas (Mr. Skubitz) understands that as a schoolteacher himself.

Therefore, the educators, the proprietors, and the publishers of educational materials did, at the committee's long insistence, get together. While there were many fruitless meetings, they did finally get together.

Mr. Chairman, I will draw the gentleman's attention to pages 65 through 74 in the report which contain extensive guidelines for teachers. I am very happy to say that there was an agreement reached between teachers and publishers of educational material, and that today the National Education Association supports the bill, and it has, in fact, sent a telegram which at the appropriate time I will make a part of the Record and which requests support for the bill in its present form, believing that it has satisfied the needs of the teachers:

National Education Association, Washington, D.C., September 10, 1976.

National Education Association urgently requests your support of the Copyright Revision bill, H.R. 2223, as reported by the Judiciary Committee. This compromise effort represents a major breakthrough in establishing equitable legal guidelines for the use of copyright materials for instructional and research purposes. We ask your support of the committee bill without amendments. James W. Green, Assistant Director for Legislation.

Mr. SKUBITZ. Mr. Chairman, if the gentleman will yield further, then the NEA is satisfied with the language in the bill as it now stands; is that correct? Mr. KASTENMEIER. The gentleman is correct. Mr. SKUBITZ. Mr. Chairman, I thank the gentleman.

D. REPRODUCTION BY LIBRARIES AND ARCHIVES

1. Text of Section 108

The following is a reprint of the entire text of section 108 of title 17, United States Code.

Section 108. Limitations on exclusive rights: Reproduction by libraries and archives

(a) Notwithstanding the provisions of section 106, it is not an infringement of copyright fora library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, or to distribute such copy or phonorecord, under the conditions specified by this section, if

(1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

(2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and

(3) the reproduction or distribution of the work includes a notice of copyright.

(b) The rights of reproduction and distribution under this section apply to a copy or phonorecord of an unpublished work duplicated in facsimile form solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if the copy or phonorecord reproduced is currently in the collections of the library or archives.

(c) The right of reproduction under this section applies to a copy or phonorecord of a published work duplicated in facsimile form solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price.

(d) The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(e) The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, if the library or archives. has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price, if-- (1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and (2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(f) Nothing in this section-- (1) shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: Provided, That such equipment displays a notice that the making of a copy may be subject to the copyright law;

(2) excuses a person who uses such reproducing equipment or who requests a copy or phonorecord under subsection (d) from liability for copyright infringement for any such act, or for any later use of such copy or phonorecord, if it exceeds fair use as provided by section 107; (3) shall be construed to limit the reproduction and distribution by lending of a limited number of copies and excerpts by a library or

archives of an audiovisual news program, subject to clauses (1), (2), and (3) of subsection (a); or

(4) in any way affects the right of fair use as provided by section 107, or any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.

(g) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee--

(1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or

(2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d):

Provided, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

(h) The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation shall apply with respect to rights granted by subsections (b) and (c), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e).

2. Excerpts From Senate Report on Section 108

[The following excerpts are reprinted from the 1975 Senate Report on the new copyright law (S. Rep. No. 94- 473, pages 67-71). Where the discussions of particular points are generally similar in the two Reports, the passages from the later House Report are reprinted in this booklet. Where the discussion of particular points is substantially different, passages from both Reports are reprinted.]

a. Senate Report: Discussion of Libraries and Archives in Profit-Making Institutions

The limitation of section 108 to reproduction and distribution by libraries and archives "without any purpose of direct or indirect commercial advantage" is intended to preclude a library or archives in a profit-making organization from providing photocopies of copyrighted materials to employees engaged in furtherance of the organizations commercial enterprise, unless such copying qualifies as a fair use, or the organization has obtained the necessary copyright licenses. A commercial organization should purchase the number of copies of a work that it requires, or obtain the consent of the copyright owner to the making of the photocopies.

b. Senate Report: Discussion of Multiple Copies and Systematic Reproduction

Multiple copies and systematic reproduction

Subsection (g) provides that the rights granted by this section extend only to the "isolated and unrelated reproduction of a single copy", but this section does not authorize the related or concerted reproduction of multiple copies of the same material whether made on one occasion or over a period of time, and whether intended for aggregate use by one individual or for separate use by the individual members of a group. For example, if a college professor instructs his class to read an article from a copyrighted journal, the school library would not be permitted, under subsection (g), to reproduce copies of the article for the members of the class.

Subsection (g) also provides that section 108 does not authorize the systematic reproduction or distribution of copies or phonorecords of articles or other contributions to copyrighted collections or periodicals or of small parts of other copyrighted works whether or not multiple copies are reproduced or distributed. Systematic reproduction or distribution occurs when a library makes copies of such materials available to other libraries or to groups of users under formal or informal arrangements whose purpose or effect is to have the reproducing library serve as their source of such material. Such systematic reproduction and distribution, as distinguished from isolated and unrelated reproduction or distribution, may substitute the copies reproduced by the source library for subscriptions or reprints or other copies which the receiving libraries or users might otherwise have purchased for themselves, from the publisher or the licensed reproducing agencies.

While it is not possible to formulate specific definitions of "systematic copying", the following examples serve to illustrate some of the copying prohibited by subsection (g).

(1) A library with a collection of journals in biology informs other libraries with similar collections that it will maintain and build its own collection and will make copies of articles from these journals available to them and their patrons on request. Accordingly, the other libraries discontinue or refrain from purchasing subscriptions to these journals and fulfill their patrons requests for articles by obtaining photocopies from the source library. (2) A research center employing a number of scientists and technicians subscribes to one or two copies of needed periodicals. By reproducing photocopies of articles the center is able to make the material in these periodicals available to its staff in the same manner which otherwise would have required multiple subscriptions. (3) Several branches of a library system agree that one branch will subscribe to particular journals in lieu of each branch purchasing its own subscriptions, and the one subscribing branch will reproduce copies of articles from the publication for users of the other branches.

The committee believes that section 108 provides an appropriate statutory balancing of the rights of creators, and the needs of users. However, neither a statute nor legislative history can specify precisely which library photocopying practices constitute the making of "single copies" as distinguished from "systematic reproduction". Isolated single spontaneous requests must be distinguished from "systematic reproduction". The photocopying needs of such operations as multi-county regional systems must be met. The committee therefore recommends that representatives of authors, book and periodical publishers and

other owners of copyrighted material meet with the library community to formulate photocopying guidelines to assist library patrons and employees. Concerning library photocopying practices not authorized by this legislation, the committee recommends that workable clearance and licensing procedures be developed.

It is still uncertain how far a library may go under the Copyright Act of 1909 in supplying a photocopy of copyrighted material in its collection. The recent case of The Williams and Wilkins Company v. The United States failed to significantly illuminate the application of the fair use doctrine to library photocopying practices. Indeed, the opinion of the Court of Claims said the Court was engaged in "a 'holding Operation' in the interim period before Congress enacted its preferred solution."

While the several opinions in the Wilkins case have given the Congress little guidance as to the current state of the law on fair use, these opinions provide additional support for the balanced resolution of the photocopying issue adopted by the Senate last year in S. 1361 and preserved in section 108 of this legislation. As the Court of Claims opinion succinctly stated "there is much to be said on all sides."

In adopting these provisions on library photocopying, the committee is aware that through such programs as those of the National Commission on Libraries and Information Science there will be a significant evolution in the functioning and services of libraries. To consider the possible need for changes in copyright law and procedures as a result of new technology, a National Commission on New Technological Uses of Copyrighted Works has been established (Public Law 93-573).

3. Excerpts From House Report on Section 108

[The following excerpts are reprinted from the House Report on the new copyright law (H.R. Rep. No. 94-1476, pages 74-79). All of the House Reports discussion of section 108 is reprinted here; similarities and differences between the House and Senate Reports on particular points will be noted below.]

a. House Report: Introductory Statement

[This paragraph is substantially the same in the Senate and House Reports.]

Notwithstanding the exclusive rights of the owners of copyright, section 108 provides that under certain conditions it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce or distribute not more than one copy or phonorecord of a work, provided (1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage and (2) the collections of the library or archives are open to the public or available not only to researchers affiliated with the library or archives, but also to other persons doing research in a specialized field, and (3) the reproduction or distribution of the work includes a notice of copyright.

b. House Report: Discussion of Libraries and Archives in Profit-Making Institutions

[The Senate and House Reports differ substantially on this point. The Senate Reports discussion is reprinted at page 17, above.]

Under this provision, a purely commercial enterprise could not establish a collection of copyrighted works, call itself a library or archive, and engage in for-profit reproduction and distribution of photocopies. Similarly, it would not be possible for a non-profit institution, by means of contractual arrangements with a commercial copying enterprise, to authorize the enterprise to carry out copying and distribution functions that would be exempt if conducted by the non-profit institution itself.

The reference to "indirect commercial advantage" has raised questions as to the status of photocopying done by or for libraries or archival collections within industrial, profit- making, or proprietary institutions (such as the research and development departments of chemical, pharmaceutical, automobile, and oil corporations, the library of a proprietary hospital, the collections owned by a law or medical partnership, etc.).

There is a direct interrelationship between this problem and the prohibitions against "multiple" and "systematic" photocopying in section 108 (g) (1) and (2). Under section 108, a library in a profit-making organization would not be authorized to:

(a) use a single subscription or copy to supply its employees with multiple copies of material relevant to their work; or

(b) use a single subscription or copy to supply its employees, on request, with single copies of material relevant to their work, where the arrangement is "systematic" in the sense of deliberately substituting photocopying for subscription or purchase; or

(c) use "interlibrary loan" arrangements for obtaining photocopies in such aggregate quantities as to substitute for subscriptions or purchase of material needed by employees in their work.

Moreover, a library in a profit-making organization could not evade these obligations by installing reproducing equipment on its premises for unsupervised use by the organizations staff.

Isolated, spontaneous making of single photocopies by a library in a for-profit organization, without any systematic effort to substitute photocopying for subscriptions or purchases, would be covered by section 108, even though the copies are furnished to the employees of the organization for use in their work. Similarly, for-profit libraries could participate in interlibrary arrangements for exchange of photocopies, as long as the reproduction or distribution was not "systematic." These activities, by themselves, would ordinarily not be considered "for direct or indirect commercial advantage," since the "advantage" referred to in this clause must attach to the immediate commercial motivation behind the reproduction or distribution itself, rather than to the ultimate profit-making motivation behind the enterprise in which the library is located. On the other hand, section 108 would not excuse reproduction or distribution if there were a commercial motive behind the actual making or distributing of the copies, if multiple copies were

made or distributed, or if the photocopying activities were "systematic" in the sense that their aim was to substitute for subscriptions or purchases.

c. House Report: Rights of Reproduction and Distribution Under Section 108

[The following paragraphs are closely similar in the Senate and House Reports.]

The rights of reproduction and distribution under section 108 apply in the following circumstances:

Archival reproductions

Subsection (b) authorizes the reproduction and distribution of a copy or phonorecord of an unpublished work duplicated in facsimile form solely for purposes of preservation and security, or for deposit for research use in another library or archives, if the copy or phonorecord reproduced is currently in the collections of the first library or archives. Only unpublished works could be reproduced under this exemption, but the right would extend to any type of work, including photographs, motion pictures and sound recordings. Under this exemption, for example, a repository could make photocopies of manuscripts by microfilm or electrostatic process, but could not reproduce the work in "machine-readable" language for storage in an information system.

Replacement of damaged copy

Subsection (c) authorizes the reproduction of a published work duplicated in facsimile form solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost or stolen, if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price. The scope and nature of a reasonable investigation to determine that an unused replacement cannot be obtained will vary according to the circumstances of a particular situation. It will always require recourse to commonly-known trade sources in the United States, and in the normal situation also to the publisher or other copyright owner (if such owner can be located at the address listed in the copyright registration), or an authorized reproducing service.

Articles and small excerpts

Subsection (d) authorizes the reproduction and distribution of a copy of not more than one article or other contribution to a copyrighted collection or periodical issue, or of a copy or phonorecord of a small part of any other copyrighted work. The copy or phonorecord may be made by the library where the user makes his request or by another library pursuant to an interlibrary loan. It is further required that the copy become the property of the user, that the library or archives have no notice that the copy would be used for any purposes other than private study, scholarship or research, and that the library or archives display prominently at the place where reproduction requests are accepted, and includes in its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

Out-of-print works

Subsection (e) authorizes the reproduction and distribution of a copy or phonorecord of an entire work under certain circumstances, if it has been established that a copy cannot be obtained at a fair price. The copy may be made by the library where the user makes his request or by another library pursuant to an interlibrary loan. The scope and nature of a reasonable investigation to determine that an unused copy cannot be obtained will vary according to the circumstances of a particular situation. It will always require recourse to commonly-known trade sources in the United States, and in the normal situation also to the publisher or other copyright owner (if the owner can be located at the address listed in the copyright registration), or an authorized reproducing service. It is further required that the copy become the property of the user, that the library or archives have no notice that the copy would be used for any purpose other than private study, scholarship, or research, and that the library or archives display prominently at the place where reproduction requests are accepted, and include on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

d. House Report: General Exemptions for Libraries and Archives

[Parts of the following paragraphs are substantially similar in the Senate and House Reports. Differences in the House Report on certain points reflect certain amendments in section 108(f) and elsewhere in the

Copyright Act.]

General exemptions

Clause (1) of subsection (f) specifically exempts a library or archives or its employees from liability for the unsupervised use of reproducing equipment located on its premises, provided that the reproducing equipment displays a notice that the making of a copy may be subject to the copyright law. Clause (2) of subsection (f) makes clear that this exemption of the library or archives does not extend to the person using such equipment or requesting such copy if the use exceeds fair use. Insofar as such person is concerned the copy or phonorecord made is not considered "lawfully" made for purposes of sections 109, 110 or other provisions of the title.

Clause (3) provides that nothing in section 108 is intended to limit the reproduction and distribution by lending of a limited number of copies and excerpts of an audiovisual news program. This exemption is intended to apply to the daily newscasts of the national television networks, which report the major events of the day. It does not apply to documentary (except documentary programs involving news reporting as that term is used in section 107), magazine-format or other public affairs broadcasts dealing with subjects of general interest to the viewing public.

The clause was first added to the revision bill in 1974 by the adoption of an amendment proposed by Senator Baker. It is intended to permit libraries and archives, subject to the general conditions of this section, to make off-the-air videotape recordings of daily network newscasts for limited distribution to scholars and researchers for use in research purposes. As such, it is an adjunct to the American Television and Radio Archive established in Section 113 of the Act which will be the principal repository for television broadcast material, including news broadcasts. The inclusion of language indicating that such material may only be distributed by lending by the library or archive is intended to preclude performance, copying, or sale, whether or not for profit, by the recipient of a copy of a television broadcast taped off-the-air pursuant to this clause.

Clause (4), in addition to asserting that nothing contained in section 108 "affects the right of fair use as provided by section 107," also provides that the right of re- production granted by this section does not override any contractual arrangements assumed by a library or archives when it obtained a work for its collections. For example, if there is an express contractual prohibition against reproduction for any purpose, this legislation shall not be construed as justifying a violation of the contract. This clause is intended to encompass the situation where an individual makes papers, manuscripts or other works available to a library with the understanding that they will not be reproduced.

It is the intent of this legislation that a subsequent unlawful use by a user of a copy or phonorecord of a work lawfully made by a library, shall not make the library liable for such improper use.

e. House Report: Discussion of Multiple Copies and Systematic Reproduction

The Senate and House Reports differ substantially on this point. The Senate Reports discussion is reprinted at page 17. above.

Multiple copies and systematic reproduction

[Subsection (g) provides that the rights granted by this section extend only to the "isolated and unrelated reproduction of a single copy or phonorecord of the same material on separate occasions." However, this section does not authorize the related or concerted reproduction of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one individual or for separate use by the individual members of a group.]

With respect to material described in subsection (d)" articles or other contributions to periodicals or collections, and small parts of other copyrighted works" subsection (g) (2) provides that the exemptions of section 108 do not apply if the library or archive engages in "systematic reproduction or distribution of single or multiple copies or phonorecords." This provision in S.22 provoked a storm of controversy, centering around the extent to which the restrictions on "systematic" activities would prevent the continuation and development of interlibrary networks and other arrangements involving the exchange of photocopies. After thorough consideration, the Committee amended section 108 (g) (2) to add the following proviso:

Provided, that nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

In addition, the Committee added a new subsection (i) to section 108, requiring the Register of Copyrights, five years from the effective date of the new Act and at five year intervals thereafter, to report to Congress upon "the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users," and to make appropriate legislative or other recommendations. As noted in connection with section 107, the Committee also amended section 504(c) in a way that would insulate librarians from unwarranted liability for copyright infringement; this amendment is discussed below.

The key phrases in the Committees amendment of section 108(g) (2) are "aggregate quantities" and "substitute for a subscription to or purchase of" a work. To be implemented effectively in practice, these provisions will require the development and implementation of more-or-less specific guidelines establishing criteria to govern various situations.

The National Commission on New Technological Uses of Copyrighted Works (CONTU) offered to provide good offices in helping to develop these guidelines. This offer was accepted and, although the final text of guidelines has not yet been achieved, the Committee has reason to hope that, within the next month, some agreement can be reached on an initial set of guidelines covering practices under section 108(g) (2).

f. House Report: Discussion of Works Excluded

[The House Reports discussion of section 108(h) is longer than the corresponding paragraph in the Senate Report, and reflects certain amendments in the subsection.]

Works excluded

Subsection (h) provides that the rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than "an audiovisual work dealing with news." The latter term is intended as the equivalent in meaning of the phrase "audiovisual news program" in section 108 (f) (3). The exclusions under subsection (h) do not apply to archival reproduction under subsection (b), to replacement of damaged or lost copies or phonorecords under subsection (c), or to "pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e)."

Although subsection (h) generally removes musical, graphic, and audiovisual works from the specific exemptions of section 108, it is important to recognize that the doctrine of fair use under section 107 remains fully applicable to the photocopying or other reproduction of such works. In the case of music, for example, it would be fair use for a scholar doing musicological research to have a library supply a copy of a portion of a score or to reproduce portions of a phonorecord of a work. Nothing in section 108 impairs the applicability of the fair use doctrine to a wide variety of situations involving photocopying or other reproduction by a library of copyrighted material in its collections, where the user requests the reproduction for legitimate scholarly or research purposes.

4. Excerpts From Conference Report

[The following excerpt is reprinted from the Report of the Conference Committee on the new copyright law (H.R. Rep. No. 94-1733, pages 70-74).]

a. Conference Report: Introductory Discussion of Section 108

REPRODUCTION BY LIBRARIES AND ARCHIVES

Senate bill

Section 108 of the Senate bill dealt with a variety of situations involving photocopying and other forms of reproduction by libraries and archives. It specified the conditions under which single copies of copyrighted material can be noncommercially reproduced and distributed, but made clear that the privileges of a library or archives under the section do not apply where the reproduction or distribution is of multiple copies or is "systematic." Under subsection (f), the section was not to be construed as limiting the reproduction and distribution, by a library or archive meeting the basic criteria of the section, of a limited number of copies and excerpts of an audiovisual news program.

House bill

The House bill amended section 108 to make clear that, in cases involving interlibrary arrangements for the exchange of photocopies, the activity would not be considered "systematic" as long as the library or archives receiving the reproductions for distribution does not do so in such aggregate quantities as to substitute for a subscription to or purchase of the work. A new subsection (i) directed the Register of Copyrights, by the end of 1982 and at five-year intervals thereafter, to report on the practical success of the section in balancing the various interests, and to make recommendations for any needed changes. With respect to audiovisual news programs, the House bill limited the scope of the distribution privilege confirmed by section 108 (f) (3) to cases where the distribution takes the form of a loan.

b. Conference Report: Conference Committee Discussion of CONTU Guidelines on Photocopying and Interlibrary Arrangements

Conference substitute

The conference substitute adopts the provisions of section 108 as amended by the House bill. In doing so, the conferees have noted two letters dated September 22, 1976, sent respectively to John L. McClellan, Chairman of the Senate Judiciary Subcommittee on Patents, Trademarks, and Copyrights, and to Robert W. Kastenmeier, Chairman of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice. The letters, from the Chairman of the National Commission on New Technological Uses of Copyrighted Works (CONTU), Stanley H. Fuld, transmitted a document consisting of "guidelines interpreting the provision in subsection 108 (g) (2) of S. 22, as approved by the House Committee on the Judiciary." Chairman Fulds letters explain that, following lengthy consultations with the parties concerned, the Commission adopted these guidelines as fair and workable and with the hope that the conferees on S. 22 may find that they merit inclusion in the conference report. The letters add that, although time did not permit securing signatures of the representatives of the principal library organizations or of the organizations representing publishers and authors on these guidelines, the Commission had received oral assurances from these representatives that the guidelines are acceptable to their organizations.

The conference committee understands that the guidelines are not intended as, and cannot be considered, explicit rules or directions governing any and all cases, now or in the future. It is recognized that their purpose is to provide guidance in the most commonly-encountered interlibrary photocopying situations, that they are not intended to be limiting or determinative in themselves or with respect to other situations, and that they deal with an evolving situation that will undoubtedly require their continuous reevaluation and adjustment. With these qualifications, the conference committee agrees that the guidelines are a reasonable interpretation of the proviso of section 108 (g) (2) in the most common situations to which they apply today.

c. Conference Report: Reprint of CONTU Guidelines on Photocopying and Interlibrary Arrangements

The text of the guidelines follows:

Photocopying--Interlibrary Arrangements Introduction

Subsection 108 (g) (2) of the bill deals, among other things, with limits on interlibrary arrangements for photocopying. It prohibits systematic photocopying of copyrighted materials but permits interlibrary arrangements "that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work."

The National Commission on New Technological Uses of Copyrighted Works offered its good offices to the House and Senate subcommittees in bringing the interested parties together to see if agreement could be reached on what a realistic definition would be of "such aggregate quantities." The Commission consulted with the parties and suggested the interpretation which follows, on which there has been substantial agreement by the principal library, publisher, and author organizations. The Commission considers the guidelines which follow to be a workable and fair interpretation of the intent of the proviso portion of subsection 108 (g) (2).

These guidelines are intended to provide guidance in the application of section 108 to the most frequently encountered interlibrary case: a library's obtaining from another library, in lieu of interlibrary loan, copies of articles from relatively recent issues of periodicals--those published within five years prior to the date of the request. The guidelines do not specify what aggregate quantity of copies of an article or articles published in a periodical, the issue date of which is more than five years prior to the date when the request for the copy thereof is made, constitutes a substitute for a subscription to such periodical. The meaning of the proviso to subsection 108 (g) (2) in such case is left to future interpretation.

The point has been made that the present practice on interlibrary loans and use of photocopies in lieu of loans may be supplemented or even largely replaced by a system in which one or more agencies or institutions, public or private, exist for the specific purpose of providing a central source for photocopies. Of course, these guidelines would not apply to such a situation.

GUIDELINE FOR THE PROVISO OF SUBSECTION 108 (G)(2)

1. As used in the proviso of subsection 108 (g) (2), the words ". . . such aggregate quantities as to substitute for a subscription to or purchase of such work" shall mean:

(a) with respect to any given periodical (as opposed to any given issue of a periodical), filled requests of a library or archives (a "requesting entity") within any calendar year for a total of six or more copies of an article or articles published in such periodical within five years prior to the date of the request. These guidelines specifically shall not apply, directly or indirectly, to any request of a requesting entity for a copy or copies of an article or articles published in any issue of a periodical, the publication date of which is more than five years prior to the date when the request is made. These guidelines do not define the meaning, with respect to such a request, of ". . . such aggregate quantities as to substitute for a subscription to [such periodical]".

(b) With respect to any other material described in subsection 108 (d), (including fiction and poetry), filled requests of a requesting entity within any calendar year for a total of six or more copies or phonorecords of or from any given work (including a collective work) during the entire period when such material shall be protected by copyright.

2. In the event that a requesting entity--

(a) shall have in force or shall have entered an order for a subscription to a periodical, or

(b) has within its collection, or shall have entered an order for, a copy or phonorecord of any other copyrighted work, material from either category of which it desires to obtain by copy from another library or archives (the "supplying entity"), because the material to be copied is not reasonably available for use by the requesting entity itself, then the fulfillment of such request shall be treated as though the requesting entity made such copy from its own collection. A library or archives may request a copy or phonorecord from a supplying entity only under those circumstances where the requesting entity would have been able, under the other provisions of section 108, to supply such copy from materials in its own collection.

3. No request for a copy or phonorecord of any material to which these guidelines apply may be fulfilled

by the supplying entity unless such request is accompanied by a representation by the requesting entity that the request was made in conformity with these guidelines.

4. The requesting entity shall maintain records of all requests made by it for copies or phonorecords of any materials to which these guidelines apply and shall maintain records of the fulfillment of such requests, which records shall be retained until the end of the third complete calendar year after the end of the calendar year in which the respective request shall have been made.

5. As part of the review provided for in subsection 108 (i), these guidelines shall be reviewed not later than five years from the effective date of this bill.

d. Conference Report: Discussion of "Audiovisual News Program"

The conference committee is aware that an issue has arisen as to the meaning of the phrase "audiovisual news program" in section 108 (f) (3). The conferees believe that, under the provision as adopted in the conference substitute, a library or archives qualifying under section 108 (a) would be free, without regard to the archival activities of the Library of Congress or any other organization, to reproduce, on videotape or any other medium of fixation or reproduction, local, regional, or network newscasts, interviews concerning current news events, and on-the-spot coverage of news events, and to distribute a limited number of reproductions of such a program on a loan basis.

e. Conference Report: Discussion of Libraries and Archives in Profit-Making Institutions

Another point of interpretation involves the meaning of "indirect commercial advantage," as used in section 108 (a) (1), in the case of libraries or archival collections within industrial, profit-making, or proprietary institutions. As long as the library or archives meets the criteria in section 108 (a) and the other requirements of the section, including the prohibitions against multiple and systematic copying in subsection (g), the conferees consider that the isolated, spontaneous making of single photocopies by a library or archives in a for-profit organization without any commercial motivation, or participation by such a library or archives in interlibrary arrangements, would come within the scope of section 108.

5. Copyright Office Regulations Under Section 108

[The following is the text of regulations adopted by the Copyright Office to implement sections 108 (d) (2) and 108 (e) of the new copyright law (37 Code of Federal Regulations section 201.14).]

Section 201.14 Warnings of copyright for use by certain libraries and archives.

(a) Definitions. (1) A "Display Warning of Copyright"is a notice under paragraphs (d) (2) and (e) (2) of section 108 of Title 17 of the United States Code as amended by Pub. L. 94-553. As required by those sections the "Display Warning of Copyright" is to be displayed at the place where orders for copies or phonorecords are accepted by certain libraries and archives.

(2) An "Order Warning of Copyright" is a notice under paragraphs (d) (2) and (e) (2) of section 108 of Title 17 of the United States Code as amended by Pub. L. 94-553. As required by those sections the "Order Warning of Copyright" is to be included on printed forms supplied by certain libraries and archives and used by their patrons for ordering copies or phonorecords.

(b) Contents. A Display Warning of Copyright and an Order Warning of Copyright shall consist of a verbatim reproduction of the following notice, printed in such size and form and displayed in such manner as to comply with paragraph (c) of this section:

NOTICE WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement. This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

(c) Form and Manner of Use. (1) A Display Warning of Copyright shall be printed on heavy paper or other durable material in type at least 18 points in size, and shall be displayed prominently, in such manner and location as to be clearly visible, legible, and comprehensible to a casual observer within the immediate vicinity of the place where orders are accepted.

(2) An Order Warning of Copyright shall be printed within a box located prominently on the order form itself, either on the front side of the form or immediately adjacent to the space calling for the name or signature of the person using the form. The notice shall be printed in type size no smaller than that used predominantly throughout the form, and in no case shall the type size be smaller than 8 points. The notice shall be printed in such manner as to be clearly legible, comprehensible, and readily apparent to a casual reader of the form.

E. LIABILITY FOR INFRINGEMENT

1. Text of Section 504

The following is a reprint of the entire text of section 504 of title 17, United States Code. The special provisions affecting librarians and educators are in subsection (c) (2).

Section 504. Remedies for infringement: Damages and profits.* *NOTE: Section 504 was amended in subsection (c) by the Act of October 31, 1988, Pub. L. 100-568, 102 Stat. 2853, 2860.3.

(a) In General.-- Except as otherwise provided by this title, an infringer of copyright is liable for either-- (1) The copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or

(2) statutory damages, as provided by subsection (c). (b) Actual Damages and Profits.-- The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringers gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.

(c) Statutory Damages.

(1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than $500 or more than $20,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than , $100,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than $200. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or (ii) a public broadcasting entity which or a person who, as a regular part of the non-profit activities of a public broadcasting entity (as defined in subsection (g) of section 118) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

2. Excerpts From House Report on Section 504

[The following excerpts are reprinted from the House Report on the new copyright law (H.R. Rep. No. 94-1476, pages 161-163). Material not of immediate interest to librarians and educators has been omitted. Much of the corresponding discussion in the Senate Report (S. Rep.No. 94-473, pages 143-145) is substantially the same; the House Reports discussion of statutory damages applicable to librarians and educators is new.]

IN GENERAL

A cornerstone of the remedies sections and of the bill as a whole is section 504, the provision dealing with recovery of actual damages, profits, and statutory damages. The two basic aims of this section are reciprocal and correlative: (1) to give the courts specific unambiguous directions concerning monetary awards, thus avoiding the confusion and uncertainty that have marked the present law on the subject, and, at the same time, (2) to provide the courts with reasonable latitude to adjust recovery to the circumstances of the case, thus avoiding some of the artificial or overly technical awards resulting from the language of the existing statute.

Subsection (a) lays the groundwork for the more detailed provisions of the section by establishing the liability of a copyright infringer for either the copyright owners actual damages and any additional profits of the infringer, or statutory damages. Recovery of actual damages and profits under section 504 (b) or of statutory damages under section 504 (c) is alternative and for the copyright owner to elect; as under the present law, the plaintiff in an infringement suit is not obliged to submit proof of damages and profits and may choose to rely on the provision for minimum statutory damages. However, there is nothing in section 504 to prevent a court from taking account of evidence concerning actual damages and profits in making an award of statutory damages within the range set out in subsection (c).

Actual damages and profits

In allowing the plaintiff to recover the actual damages suffered by him or her as a result of the infringement, plus any of the infringers profits that are attributable to the infringement and are not taken into account in computing the actual damages, section 504 (b) recognizes the different purposes served by awards of damages and profits. Damages are awarded to compensate the copyright owner for losses from the infringement, and profits are awarded to prevent the infringer from unfairly benefiting from a wrongful act.***

Statutory damages

Subsection (c) of section 504 makes clear that the plaintiffs election to recover statutory damages may take place at any time during the trial before the court has rendered its final judgment. The remainder of clause (1) of the subsection represents a statement of the general rates applicable to awards of statutory damages.

Clause (2) of section 504 (c) provides for exceptional cases in which the maximum award of statutory damages could be raised from $10,000 to $50,000, and in which the minimum recovery could be reduced from $250 to $100. The basic principle underlying this provision is that the courts should be given discretion to increase statutory damages in cases of willful infringement and to lower the minimum where the infringer is innocent. The language of the clause makes clear that in these situations the burden of proving willfulness rests on the copyright owner and that of proving innocence rests on the infringer, and that the court must make a finding of either willfulness or innocence in order to award the exceptional amounts.

The innocent infringer provision of section 504 (c) (2) has been the subject of extensive discussion. The exception, which would allow reduction of minimum statutory damages to $100 where the infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, is sufficient to protect against unwarranted liability in cases of occasional or isolated innocent infringement, and it offers adequate insulation to users, such as broadcasters and newspaper publishers, who are particularly vulnerable to this type of infringement suit. On the other hand, by establishing a realistic floor for liability, the provision preserves its intended deterrent effect; and it would not allow an infringer to escape simply because the plaintiff failed to disprove the defendants claim of innocence.

In addition to the general innocent infringer provision clause (2) deals with the special situation of teachers, librarians, archivists, and public broadcasters, and the nonprofit institutions of which they are a part. Section 504 (c) (2) provides that, where such a person or institution infringes copyrighted material in the honest belief that what they were doing constituted fair use, the court is precluded from awarding any statutory damages. It is intended that, in cases involving this provision, the burden of proof with respect to the defendants good faith should rest on the plaintiff.

3. Excerpts From Conference Report on Section 504

The following excerpts are reprinted from the Report of the Conference Committee on the new copyright law (H.R. Rep. No. 94-1733, pages 79-80).

REMEDIES FOR COPYRIGHT INFRINGEMENT

Senate bill

Chapter 5 of the Senate bill dealt with civil and criminal infringement of copyright and the remedies for both. Subsection (c) of section 504 allowed statutory damages within a stated dollar range, and clause (2) of that subsection provided for situations in which the maximum could be exceeded and the minimum lowered; the court was given discretion to reduce or remit statutory damages entirely where a teacher, librarian, or archivist believed that the infringing activity constituted fair use.***

House bill

Section 504 (c) (2) of the House bill required the court to remit statutory damages entirely in cases where a teacher, librarian, archivist, or public broadcaster, or the institution to which they belong, infringed in the honest belief that what they were doing constituted fair use.***

Conference substitute

The conference substitute adopts the House amendments with respect to statutory damages in section 504 (c) (2)***

F. GUIDELINES FOR OFF-AIR RECORDING OF BROADCAST PROGRAMMING FOR EDUCATIONAL PURPOSES

[The following excerpts are reprinted from the House Report on piracy and counterfeiting amendments (H.R. 97-495, pages 8-9).]

In March 1979, Congressman Robert Kastenmeier, Chairman of the House Subcommittee on Courts, Civil Liberties and Administration of Justice, appointed a Negotiating Committee consisting of representatives of educational organizations, copyright proprietors, and creative guilds and unions. The following guidelines reflect the Negotiating Committees consensus as to the application of fair use to the recording, retention, and use of television broadcast programs for educational purposes. They specify periods of retention and use of such off-air recordings in classrooms and similar places devoted to instruction and for homebound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs.

(1) The guidelines were developed to apply only to off-air recording by non-profit educational institutions.

(2) A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable transmission) and retained by a non-profit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. Broadcast programs are television programs transmitted by television stations for reception by the general public without charge.

(3) Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster, or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) day calendar day retention period. School days are school session days not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions within the forty-five (45) calendar day retention period.

(4) Off-air recordings may be made only at the request of, and used by, individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.

(5) A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.

(6) After the first ten (10) consecutive school days, off-air recording may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.

(7) Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

(8) All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

(9) Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

Circular 1- COPYRIGHT BASICS

WHAT COPYRIGHT IS

Copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of "original works of authorship" including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

-- To reproduce the copyrighted work in copies or phonorecords;

-- To prepare derivative works based upon the copyrighted work;

-- To distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

-- To perform the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works; and

-- To display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work.

It is illegal for anyone to violate any of the rights provided by the Act to the owner of copyright. These rights, however, are not unlimited in scope. Sections 107 through 119 of the Copyright Act establish limitations on these rights. In some cases, these limitations are specified exemptions from copyright liability. One major limitation is the doctrine of "fair use," which is given a statutory basis in section 107 of the Act. In other instances, the limitation takes the form of a "compulsory license" under which certain limited uses of copyrighted works are permitted upon payment of specified royalties and compliance with statutory conditions. For further information about the limitations of any of these rights, consult the Copyright Act or write to the Copyright Office.

WHO CAN CLAIM COPYRIGHT Copyright protection subsists from the time the work is created in fixed form; that is, it is an incident of the process of authorship. The copyright in the work of authorship immediately becomes the property of the author who created it. Only the author or those deriving their rights through the author can rightfully claim copyright.

In the case of works made for hire, the employer and not the employee is presumptively considered the author. Section 101 of the copyright statute defines a "work made for hire" as:

(1) a work prepared by an employee within the scope of his or her employment; or

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire....

The authors of a joint work are co-owners of the copyright in the work, unless there is an agreement to the contrary.

Copyright in each separate contribution to a periodical or other collective work is distinct from copyright in the collective work as a whole and vests initially with the author of the contribution.

Two General Principles

-- Mere ownership of a book, manuscript, painting, or any other copy or phonorecord does not give the possessor the copyright. The law provides that transfer of ownership of any material object that embodies a protected work does not of itself convey any rights in the copyright.

-- Minors may claim copyright, but state laws may regulate the business dealings involving copyrights owned by minors. For information on relevant state laws, consult an attorney.

COPYRIGHT AND NATIONAL ORIGIN OF THE WORK

Copyright protection is available for all unpublished works, regardless of the nationality or domicile of the author.

Published works are eligible for copyright protection in the United States if any one of the following conditions is met:

-- On the date of first publication, one or more of the authors is a national or domiciliary of the United States or is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a copyright treaty to which the United States is also a party, or is a stateless person wherever that person may be domiciled; or

-- The work is first published in the United States or in a foreign nation that, on the date of first publication, is a party to the Universal Copyright Convention; or the work comes within the scope of a Presidential proclamation; or

-- The work is first published on or after March 1, 1989, in a foreign nation that on the date of first publication, is a party to the Berne Convention; or, if the work is not first published in a country party to the Berne Convention, it is published (on or after March 1,1989) within 30 days of first publication in a country that is party to the Berne Convention; or the work, first published on or after March 1, 1989, is a pictorial, graphic, or sculptural work that is incorporated in a permanent structure located in the United States; or, if the work, first published on or after March 1, 1989, is a published audiovisual work, all the authors are legal entities with headquarters in the United States.

WHAT WORKS ARE PROTECTED

Copyright protects "original works of authorship" that are fixed in a tangible form of expression. The fixation need not be directly perceptible, so long as it may be communicated with the aid of a machine or device. Copyrightable works include the following categories:

(1) literary works;

(2) musical works, including any accompanying words;

(3) dramatic works, including any accompanying music;

(4) pantomimes and choreographic works;

(5) pictorial, graphic, and sculptural works;

(6) motion pictures and other audiovisual works;

(7) sound recordings; and

(8) architectural works.

These categories should be viewed quite broadly: for example, computer programs and most "compilations" are registrable as "literary works;" maps and architectural plans are registrable as "pictorial, graphic, and sculptural works."

WHAT IS NOT PROTECTED BY COPYRIGHT

Several categories of material are generally not eligible for statutory copyright protection. These include among others:

-- Works that have not been fixed in a tangible form of ex- pression. For example: choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded.

-- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents.

-- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration.

-- Works consisting entirely of information that is common property and containing no original authorship.

For example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources.

HOW TO SECURE A COPYRIGHT

Copyright Secured Automatically Upon Creation

The way in which copyright protection is secured under the present law is frequently misunderstood. No publication or registration or other action in the Copyright Office is required to secure copyright (see following NOTE). There are, however, certain definite advantages to registration.

* * * * NOTE: Before 1978, statutory copyright was generally secured by the act of publication with notice of copyright, assuming compliance with all other relevant statutory conditions. Works in the public domain on January 1, 1978 (for example, works published without satisfying all conditions for securing statutory copyright under the Copyright Act of 1909) remain in the public domain under the current act.

Statutory copyright could also be secured before 1978 by the act of registration in the case of certain unpublished works and works eligible for ad interim copyright. The current Act automatically extends to full term (sectin 304 sets the term) copyright for all works including those subject to ad interim copyright if ad interim registration has been made on or before June 30, 1978. * * * * Copyright is secured automatically when the work is created, and a work is "created" when it is fixed in a copy or phonorecord for the first time. "Copies" are material objects from which a work can be read or visually perceived either directly or with the aid of a machine or device, such as books, manuscripts, sheet music, film, videotape, or microfilm. "Phonorecords" are material objects embodying fixations of sounds (excluding, by statutory definition, motion picture soundtracks), such as cassette tapes, CD's, or LP's. Thus, for example, a song (the "work") can be fixed in sheet music ("copies") or in phonograph disks ("phonorecords"), or both.

If a work is prepared over a period of time, the part of the work that is fixed on a particular date constitutes the created work as of that date.

PUBLICATION

Publication is no longer the key to obtaining statutory copyright as it was under the Copyright Act of 1909. However, publication remains important to copyright owners.

The Copyright Act defines publication as follows:

"Publication" is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display constitutes publication. A public performance or display of a work does not of itself constitute publication.

A further discussion of the definition of "publication" can be found in the legislative history of the Act. The legislative reports define "to the public" as distribution to persons under no explicit or implicit restrictions with respect to disclosure of the contents. The reports state that the definition makes it clear that the sale of phonorecords constitutes publication of the underlying work, for example, the musical, dramatic, or literary work embodied in a phonorecord. The reports also state that it is clear that any form of dissemination in which the material object does not change hands, for example, performances or displays on television, is not a publication no matter how many people are exposed to the work. However, when copies or phonorecords are offered for sale or lease to a group of wholesalers, broadcasters, or motion picture theaters, publication does take place if the purpose is further distribution, public performance, or public display.

Publication is an important concept in the copyright law for several reasons:

-- When a work is published, it may bear a notice of copyright to identify the year of publication and the name of the copyright owner and to inform the public that the work is protected by copyright. Works published before March 1, 1989, must bear the notice or risk loss of copyright protection. (See discussion "notice of copyright" below.)

-- Works that are published in the United States are subject to mandatory deposit with the Library of Congress. (See discussion on "mandatory deposit," below.)

-- Publication of a work can affect the limitations on the exclusive rights of the copyright owner that are set forth in sections 107 through 120 of the law.

-- The year of publication may determine the duration of copyright protection for anonymous and pseudonymous works (when the author's identity is not revealed in the records of the Copyright Office) and for works made for hire.

-- Deposit requirements for registration of published works differ from those for registration of unpublished works. (See discussion on "registration procedures," below.)

NOTICE OF COPYRIGHT

For works first published on and after March 1, 1989, use of the copyright notice is optional, though highly recommended. Before March 1, 1989, the use of the notice was mandatory on all published works, and any work first published before that date must bear a notice or risk loss of copyright protection.

(The Copyright Office does not take a position on whether works first published with notice before March 1, 1989, and reprinted and distributed on and after March 1, 1989, must bear the copyright notice.)

Use of the notice is recommended because it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication. Furthermore, in the event that a work is infringed, if the work carries a proper notice, the court will not allow a defendant to claim "innocent infringement" --that is, that he or she did not realize that the work is protected. (A successful innocent infringement claim may result in a reduction in damages that the copyright owner would otherwise receive.)

The use of the copyright notice is the responsibility of the copyright owner and does not require advance permission from, or registration with, the Copyright Office.

Form of Notice for Visually Perceptible Copies

The notice for visually perceptible copies should contain all of the following three elements:

1. The copyright symbol (the letter "C" in a circle), or the word "Copyright," or the abbreviation "Copr."; and

2. The year of first publication of the work. In the case of compilations or derivative works incorporating previously published material, the year date of first publication of the compilation or derivative work is sufficient. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying textual matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful article; and 3. The name of the owner of copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

The "C in a circle" notice is used only on "visually perceptible copies." Certain kinds of works_for example, musical, dramatic, and literary works_may be fixed not in "copies" but by means of sound in an audio recording. Since audio recordings such as audio tapes and phonograph disks are "phonorecords" and not "copies," the "C in a circle" notice is not used to indicate protection of the underlying musical, dramatic, or literary work that is recorded.

Form of Notice for Phonorecords of Sound Recordings

The copyright notice for phonorecords of sound recordings* has somewhat different requirements. The notice appearing on phonorecords should contain the following three elements:

*Sound recordings are defined as "works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied." 1. The sound recording copyright symbol (the letter "P" in a circle); and

2. The year of first publication of the sound recording; and

3. The name of the owner of copyright in the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner. If the producer of the sound recording is named on the phonorecord labels or containers, and if no other name appears in conjunction

with the notice, the producer's name shall be considered a part of the notice.

NOTE: Since questions may arise from the use of variant forms of the notice, any form of the notice other than those given here should not be used without first seeking legal advice.

Position of Notice

The notice should be affixed to copies or phonorecords of the work in such a manner and location as to "give reasonable notice of the claim of copyright." The notice on phonorecords may appear on the surface of the phonorecord or on the phonorecord label or container, provided the manner of placement and location give reasonable notice of the claim. The three elements of the notice should ordinarily appear together on the copies or phonorecords. The Copyright Office has issued regulations concerning the form and position of the copyright notice in the Code of Federal Regulations (37 CFR Part 201). For more information, request Circular 3.

Publications Incorporating United States Government Works

Works by the U.S. Government are not eligible for copyright protection. For works published on and after March 1, 1989, the previous notice requirement for works consisting primarily of one or more U.S. Government works has been eliminated. However, use of the copyright notice for these works is still strongly recommended. Use of a notice on such a work will defeat a claim of innocent infringement as previously described provided the notice also includes a statement that identifies one of the following: those portions of the work in which copyright is claimed or those portions that constitute U.S. Government material. An example is:

Copyright 1994 Jane Brown. Copyright claimed in Chapters 7-10, exclusive of U.S. Government maps.

Works published before March 1, 1989, that consist primarily of one or more works of the U.S. Government must bear a notice and the identifying statement.

Unpublished Works

To avoid an inadvertent publication without notice, the author or other owner of copyright may wish to place a copyright notice on any copies or phonorecords that leave his or her control. An appropriate notice for an unpublished work is: Unpublished work Copyright 1994 Jane Doe.

Effect of Omission of the Notice or of Error in the Name or Date

The Copyright Act, in sections 405 and 406, provides procedures for correcting errors and omissions of the copyright notice on works published on or after January 1, 1978, and before March 1, 1989.

In general, if a notice was omitted or an error was made on copies distributed on or after January 1, 1978, and before March 1, 1989, the copyright was not automatically lost. Copyright protection may be maintained if registration for the work has been made before or is made within 5 years after the publication without notice, and a reasonable effort is made to add the notice to all copies or phonorecords that are distributed to the public in the United States after the omission has been discovered. For more information request Circular 3.

HOW LONG COPYRIGHT PROTECTION ENDURES

Works Originally Created On or After January 1, 1978

A work that is created (fixed in tangible form for the first time) on or after January 1, 1978, is automatically protected from the moment of its creation, and is ordinarily given a term enduring for the author's life, plus an additional 50 years after the author's death. In the case of "a joint work prepared by two or more authors who did not work for hire," the term lasts for 50 years after the last surviving author's death. For works made for hire, and for anonymous and pseudonymous works (unless the author's identity is revealed in Copyright Office records), the duration of copyright will be 75 years from publication or 100 years from creation, whichever is shorter.

Works Originally Created Before January 1, 1978, But Not Published or Registered by That Date

Works that were created but not published or registered for copyright before January 1, 1978, have been automatically brought under the statute and are now given Federal copyright protection. The duration of

copyright in these works will generally be computed in the same way as for works created on or after January 1, 1978: the life-plus-50 or 75/100-year terms will apply to them as well. The law provides that in no case will the term of copyright for works in this category expire before December 31, 2002, and for works published on or before December 31, 2002, the term of copyright will not expire before December 31, 2027.

Works Originally Created and Published or Registered Before January 1, 1978

Under the law in effect before 1978, copyright was secured either on the date a work was published or on the date of registration if the work was registered in unpublished form. In either case, the copyright endured for a first term of 28 years from the date it was secured. During the last (28th) year of the first term, the copyright was eligible for renewal. The current copyright law has extended the renewal term from 28 to 47 years for copyrights that were subsisting on January 1, 1978, making these works eligible for a total term of protection of 75 years.

Public Law 102-307, enacted on June 26, 1992, amended the Copyright Act of 1976 to extend automatically the term of copyrights secured from January 1, 1964, through December 31, 1977 to the further term of 47 years and increased the filing fee from $12 to $20. This fee increase applies to all renewal applications filed on or after June 29, 1992.

P.L. 102-307 makes renewal registration optional. There is no need to make the renewal filing in order to extend the original 28-year copyright term to the full 75 years. However, some benefits accrue to making a renewal registration during the 28th year of the original term.

For more detailed information on the copyright term, write to the Copyright Office and request Circulars 15, 15a, and 15t. For information on how to search the Copyright Office records concerning the copyright status of a work, request Circular 22.

TRANSFER OF COPYRIGHT

Any or all of the exclusive rights, or any subdivision of those rights, of the copyright owner may be transferred, but the transfer of exclusive rights is not valid unless that transfer is in writing and signed by the owner of the rights conveyed (or such owner's duly authorized agent). Transfer of a right on a nonexclusive basis does not require a written agreement.

A copyright may also be conveyed by operation of law and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

Copyright is a personal property right, and it is subject to the various state laws and regulations that govern the ownership, inheritance, or transfer of personal property as well as terms of contracts or conduct of business. For information about relevant state laws, consult an attorney.

Transfers of copyright are normally made by contract. The Copyright Office does not have or supply any forms for such transfers. However, the law does provide for the recordation in the Copyright Office of transfers of copyright ownership. Although recordation is not required to make a valid transfer between the parties, it does provide certain legal advantages and may be required to validate the transfer as against third parties. For information on recordation of transfers and other documents related to copyright, request Circular 12.

Termination of Transfers

Under the previous law, the copyright in a work reverted to the author, if living, or if the author was not living, to other specified beneficiaries, provided a renewal claim was registered in the 28th year of the original term. [The copyright in works eligible for renewal on or after June 26, 1992, will vest in the name of the renewal claimant on the effective date of any renewal registration made during the 28th year of the original term. Otherwise, the renewal copyright will vest in the party entitled to claim renewal as of December 31st of the 28th year.] The present law drops the renewal feature except for works already in the first term of statutory protection when the present law took effect. Instead, the present law permits termination of a grant of rights after 35 years under certain conditions by serving written notice on the transferee within specified time limits.

For works already under statutory copyright protection before 1978, the present law provides a similar

right of termination covering the newly added years that extended the former maximum term of the copyright from 56 to 75 years. For further information, request Circulars 15a and 15t.

INTERNATIONAL COPYRIGHT PROTECTION

There is no such thing as an "international copyright" that will automatically protect an author's writings throughout the entire world. Protection against unauthorized use in a particular country depends, basically, on the national laws of that country. However, most countries do offer protection to foreign works under certain conditions, and these conditions have been greatly simplified by international copyright treaties and conventions. For a list of countries which maintain copyright relations with the United States, request Circular 38a.

The United States belongs to both global, multilateral copyright treaties_the Universal Copyright Convention (UCC) and the Berne Convention for the Protection of Literary and Artistic Works. The United States was a founding member of the UCC, which came into force on September 16, 1955. Generally, a work by a national or domiciliary of a country that is a member of the UCC or a work first published in a UCC country may claim protection under the UCC. If the work bears the notice of copyright in the form and position specified by the UCC, this notice will satisfy and substitute for any other formalities a UCC member country would otherwise impose as a condition of copyright. A UCC notice should consist of the symbol accompanied by the name of the copyright proprietor and the year of first publication of the work.

By joining the Berne Convention on March 1, 1989, the United States gained protection for its authors in all member nations of the Berne Union with which the United States formerly had either no copyright relations or had bilateral treaty arrangements. Members of the Berne Union agree to a certain minimum level of copyright protection and agree to treat nationals of other member countries like their own nationals for purposes of copyright. A work first published in the United States or another Berne Union country (or first published in a non-Berne country, followed by publication within 30 days in a Berne Union country) is eligible for protection in all Berne member countries. There are no special requirements. For information on the legislation implementing the Berne Convention, request Circular 93 from the Copyright Office.

An author who wishes protection for his or her work in a particular country should first find out the extent of protection of foreign works in that country. If possible, this should be done before the work is published anywhere, since protection may often depend on the facts existing at the time of first publication.

If the country in which protection is sought is a party to one of the international copyright conventions, the work may generally be protected by complying with the conditions of the convention. Even if the work cannot be brought under an international convention, protection under the specific provisions of the country's national laws may still be possible. Some countries, however, offer little or no copyright protection for foreign works.

COPYRIGHT REGISTRATION

In general, copyright registration is a legal formality intended to make a public record of the basic facts of a particular copyright. However, except in one specific situation,* registration is not a condition of copyright protection. [*Under sections 405 and 406 of the Copyright Act, copyright registration may be required to preserve a copyright on a work first published before March 1, 1989, that would otherwise be invalidated because the copyright notice was omitted from the published copies or phonorecords, or the name or year was omitted, or certain errors were made in the year date.] Even though registration is not generally a requirement for protection, the copyright law provides several inducements or advantages to encourage copyright owners to make registration. Among these advantages are the following:

-- Registration establishes a public record of the copyright claim;

-- Before an infringement suit may be filed in court, registration is necessary for works of U.S. origin and for foreign works not originating in a Berne Union country. (For

more information on when a work is of U.S. origin, request Circular 93.);

-- If made before or within 5 years of publication, registration will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate; and

-- If registration is made within 3 months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner.

-- Copyright registration allows the owner of the copyright to record the registration with the U.S. Customs Service for protection against the importation of infringing copies. For additional information, request Publication No. 563 from:

Commissioner of Customs
ATTN: IPR Branch, Room 2104
U.S. Customs Service
1301 Constitution Avenue, N.W.
Washington, D.C. 20229.

Registration may be made at any time within the life of the copyright. Unlike the law before 1978, when a work has been registered in unpublished form, it is not necessary to make another registration when the work becomes published (although the copyright owner may register the published edition, if desired).

REGISTRATION PROCEDURES

In General

A. To register a work, send the following three elements in the same envelope or package to the Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C. 20559: (see "Incomplete Submissions," below, for what happens if the elements are sent separately).

1. A properly completed application form; 2. A nonrefundable filing fee of $20* for each application [*For the fee structure for application Form SE/GROUP amd Form G/DN, see the instructions for these forms]; 3. A nonreturnable deposit of the work being registered. The deposit requirements vary in particular situations. The general requirements follow. Also note the information under "Special Deposit Requirements" immediately following this section.

-- If the work is unpublished, one complete copy or phonorecord.

-- If the work was first published in the United States on or after January 1, 1978, two complete copies or phonorecords of the best edition.

-- If the work was first published in the United States before January 1, 1978, two complete copies or phonorecords of the work as first published.

-- If the work was first published outside the United States, one complete copy or phonorecord of the work as first published.

B. To register a renewal, send:

1. A properly completed RE application form; and 2. A nonrefundable filing fee of $20 for each work.

NOTE: COMPLETE THE APPLICATION FORM USING BLACK INK PEN OR TYPEWRITER. You may photocopy blank application forms: however, photocopied forms submitted to the Copyright Office must be clear, legible, on a good grade of 8-1/2 inch by 11 inch white paper suitable for automatic feeding through a photocopier. The forms should be printed preferably in black ink, head-to-head (so that when you turn the sheet over, the top of page 2 is directly behind the top of page 1). Forms not meeting these requirements will be returned.

Special Deposit Requirements

Special deposit requirements exist for many types of work. In some instances, only one copy is required for published works, in other instances only identifying material is required, and in still other instances, the deposit requirement may be unique. The following are prominent examples of exceptions to the general deposit requirements:

-- If the work is a motion picture, the deposit requirement is one complete copy of the unpublished or published motion picture and a separate written description of its contents, such as a continuity, press book, or synopsis.

-- If the work is a literary, dramatic or musical work pub- lished only on phonorecord, the deposit requirement is one complete copy of the phonorecord.

-- If the work is an unpublished or published computer program, the deposit requirement is one visually perceptible copy in source code of thefirst and last 25 pages of the program. For a program of fewer than 50 pages, the deposit is a copy of the entire program. (For more information on computer program registration, including deposits for revised programs and provisions for trade secrets, request Circular 61.)

-- If the work is in a CD-ROM format, the deposit requirement is one complete copy of the material, that is, the CD-ROM, the operating software, and any manual(s) accompanying it. If the identical work is also available in print or hard copy form, send one complete copy of the print version and one complete copy of the CD-ROM version.

-- For information about group registration of serials, request Circular 62.

In the case of works reproduced in three-dimensional copies, identifying material such as photographs or drawings is ordinarily required. Other examples of special deposit requirements (but by no means an exhaustive list) include many works of the visual arts, such as greeting cards, toys, fabric, oversized material (request Circular 40a); video games and other machine-readable audiovisual works (request Circular 61 and ML-387); automated databases (request Circular 65); and contributions to collective works.

If you are unsure of the deposit requirement for your work, write or call the Copyright Office and describe the work you wish to register.

Unpublished Collections

A work may be registered in unpublished form as a "collection," with one application and one fee, under the following conditions:

-- The elements of the collection are assembled in an orderly form;

-- The combined elements bear a single title identifying the collection as a whole; -- The copyright claimant in all the elements and in the collection as a whole is the same; and -- All of the elements are by the same author, or, if they are by different authors, at least one of the authors has contributed copyrightable authorship to each element.

An unpublished collection is indexed in the _Catalog of Copyright Entries_ only under the collection title.

CORRECTIONS AND AMPLIFICATIONS OF EXISTING REGISTRATIONS

To correct an error in a copyright registration or to amplify the information given in a registration, file a supplementary registration form_Form CA_with the Copyright Office. The information in a supplementary registration augments but does not supersede that contained in the earlier registration. Note also that a supplementary registration is not a substitute for an original registration, for a renewal registration, or for recording a transfer of ownership. For further information about supplementary registration, request Circular 8.

MANDATORY DEPOSIT FOR WORKS PUBLISHED IN THE UNITED STATES

Although a copyright registration is not required, the Copyright Act establishes a mandatory deposit requirement for works published in the United States (see definition of "publication," above). In general, the owner of copyright or the owner of the exclusive right of publication in the work has a legal obligation to deposit in the Copyright Office, within 3 months of publication in the United States, 2 copies (or in the case of sound recordings, 2 phonorecords) for the use of the Library of Congress. Failure to make the deposit can result in fines and other penalties but does not affect copyright protection.

Certain categories of works are exempt entirely from the mandatory deposit requirements, and the obligation is reduced for certain other categories. For further information about mandatory deposit, request Circular 7d.

USE OF MANDATORY DEPOSIT TO SATISFY REGISTRATION REQUIREMENTS

For works published in the United States the Copyright Act contains a provision under which a single

deposit can be made to satisfy both the deposit requirements for the Library and the registration requirements. In order to have this dual effect, the copies or phonorecords must be accompanied by the prescribed application and filing fee.

WHO MAY FILE AN APPLICATION FORM

The following persons are legally entitled to submit an application form:

-- The author. This is either the person who actually created the work, or, if the work was made for hire, the employer or other person for whom the work was prepared.

-- The copyright claimant. The copyright claimant is defined in Copyright Office regulations as either the author of the work or a person or organization that has obtained ownership of all the rights under the copyright initially belonging to the author. This category includes a person or organization who has obtained by contract the right to claim legal title to the copyright in an application for copyright registration.

-- The owner of exclusive right(s). Under the law, any of the exclusive rights that go to make up a copyright and any subdivision of them can be transferred and owned separately, even though the transfer may be limited in time or place of effect. The term "copyright owner" with respect to any one of the exclusive rights contained in a copyright refers to the owner of that particular right. Any owner of an exclusive right may apply for registration of a claim in the work.

-- The duly authorized agent of such author, other copyright claimant, or owner of exclusive right(s). Any person authorized to act on behalf of the author, other copyright claimant, or owner of exclusive rights may apply for registration.

There is no requirement that applications be prepared or filed by an attorney.

APPLICATION FORMS

For Original Registration

Form TX: for published and unpublished nondramatic literary works

Form SE: for serials, works issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely (periodicals, newspapers, magazines, newsletters, annuals, journals, etc.)

Short Form/SE and Form SE/GROUP: specialized SE forms for use when certain requirements are met

Form G/DN: a specialized form to register a complete month's issues of a daily newspaper when certain conditions are met

Form PA: for published and unpublished works of the performing arts (musical and dramatic works, pantomimes and choreographic works, motion pictures and other audiovisual works)

Form VA: for published and unpublished works of the visual arts (pictorial, graphic, and sculptural works, including architectural works)

Form SR: for published and unpublished sound recordings

For Renewal Registration

Form RE: for claims to renewal copyright in works copyrighted under the law in effect through December 31, 1977 (1909 Copyright Act)

For Corrections and Amplifications

Form CA: for supplementary registration to correct or amplify information given in the Copyright Office record of an earlier registration

For a Group of Contributions to Periodicals

Form GR/CP: an adjunct application to be used for registration of a group of contributions to periodicals in addition to an application Form TX, PA, or VA

Free application forms are supplied by the Copyright Office.

COPYRIGHT OFFICE FORMS HOTLINE

NOTE: Requestors may order application forms and circulars at any time by telephoning (202) 707-9100. Orders will be recorded automatically and filled as quickly as possible. Please specify the kind and number of forms you are requesting.

MAILING INSTRUCTIONS

All applications and materials related to copyright registration should be addressed to the Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C. 20559-6000.

The application, nonreturnable deposit (copies, phonorecords, or identifying material), and nonrefundable filing fee should be mailed in the same package.

We suggest that you contact your local post office for information about mailing these materials at lower-cost fourth class postage rates.

INCOMPLETE SUBMISSIONS: WHAT HAPPENS IF THE THREE ELEMENTS ARE NOT RECEIVED TOGETHER

Applications and fees received without appropriate copies, phonorecords, or identifying material will not be processed and ordinarily will be returned. Unpublished deposits without applications or fees ordinarily will be returned, also. In most cases, published deposits received without applications and fees can be immediately transferred to the collections of the Library of Congress. This practice is in accordance with section 408 of the law, which provides that the published deposit required for the collections of the Library of Congress may be used for registration only if the deposit is "accompanied by the prescribed application and fee...."

After the deposit is received and transferred to another service unit of the Library for its collections or other disposition, it is no longer available to the Copyright Office. If you wish to register the work, you must deposit additional copies or phonorecords with your application and fee.

FEES

All remittances should be in the form of drafts (that is, checks, money orders, or bank drafts) payable to: Register of Copyrights. Do not send cash. Drafts must be redeemable without service or exchange fee through a U. S. institution, must be payable in U.S. dollars, and must be imprinted with American Banking Association routing numbers.

If a check received in payment of the filing fee is returned to the Copyright Office as uncollectible, the Copyright Office will cancel the registration and will notify the remitter.

The fee for processing an original, supplementary, or renewal claim is nonrefundable, whether or not copyright registration is ultimately made.

Do not send cash. The Copyright Office cannot assume any responsibility for the loss of currency sent in payment of copyright fees.

EFFECTIVE DATE OF REGISTRATION

A copyright registration is effective on the date the Copyright Office receives all of the required elements in acceptable form, regardless of how long it then takes to process the application and mail the certificate of registration. The time the Copyright Office requires to process an application varies, depending on the amount of material the Office is receiving and the personnel available. Keep in mind that it may take a number of days for mailed material to reach the Copyright Office and for the certificate of registration to reach the recipient after being mailed by the Copyright Office.

If you are filing an application for copyright registration in the Copyright Office, you will not receive an acknowledgement that your application has been received, but you can expect:

-- A letter or telephone call from a Copyright Office staff member if further information is needed;

-- A certificate of registration to indicate the work has been registered; or

-- If registration cannot be made, a letter explaining why it has been refused.

Please allow 120 days to receive a letter or certificate of registration.

If you want to know when the Copyright Office receives your material, you should send it by registered or certified mail and request a return receipt from the post office. Allow at least 3 weeks for the return of your receipt.

SEARCH OF COPYRIGHT OFFICE RECORDS

The records of the Copyright Office are open for inspection and searching by the public. Moreover, on request, the Copyright Office will search its records at the statutory rate of $20 for each hour or fraction of an hour. For information on searching the Office records concerning the copyright status or ownership of a work, request Circulars 22 and 23. Records from 1978 may be searched via the Internet. For access, see below.

AVAILABLE INFORMATION

This circular attempts to answer some of the questions that are frequently asked about copyright. For a list of other material published by the Copyright Office, request Circular 2, "Publications on Copyright." Any requests for Copyright Office publications or special questions relating to copyright problems not mentioned in this circular should be addressed to the Copyright Office, LM 455, Library of Congress, Washington, D.C. 20559-6000. To speak to a Copyright Information Specialist, call (202) 707-3000 between 8:30 a.m.-5:00 p.m., Eastern Time, Monday-Friday, except Federal Holidays.

Copyright information, including many of the other circulars mentioned in Circular 1, as well as the latest Copyright Office regulations and announcements, is available via the Internet. Internet site addresses are:

World Wide Web URL: http://lcweb.loc.gov/copyright Gopher: marvel.loc.gov Telnet: marvel.loc.gov and login as marvel

Copyright Office records of registrations and other related documents from 1978 forward are also available over the Internet via the above addresses or telnet directly to LOCIS (Library of Congress Information System) at:

Telnet: Locis.loc.gov

The Copyright Public Information Office is also open to the public Monday-Friday, 8:30 a.m. to 5:00 p.m., Eastern Time, except Federal holidays. The office is located in the Library of Congress, Madison Building, Room 401, at 101 Independence Ave., S.E., Washington, D.C., near the Capitol South Metro stop. Information Specialists are available to answer questions, provide circulars, and accept applications for registration. Access for disabled individuals is at the front door on Independence Avenue, S.E. The Copyright Office is not permitted to give legal advice. If you need information or guidance on matters such as disputes over the ownership of a copyright, suits against possible infringers, the procedure for getting a work published, or the method of obtaining royalty payments, it may be necessary to consult an attorney.

Small Business Handbook: Laws, Regulations and Technical Assistance Services

Acknowledgement

This publication was prepared in the Office of the Assistant Secretary for Policy (OASP) under the direction of Roland Droitsch. The material was developed by various DOL agencies, and compiled and organized by Mario DiStasio and Judson MacLaury of OASP.

Read This First

This Handbook on the basic regulations and related services administered by the Department of Labor (DOL) is designed primarily for small businesses in general industry. It begins with a general overview of DOL requirements. This is followed by ten sections containing information on the specific laws and regulations. Read the overview first to find out which requirements apply to your business. For each requirement the overview refers to specific sections or to a DOL office. Employers in certain industries (such as agriculture and mining) or employers working on government contracts should contact the referenced DOL offices for further information and assistance.

Each section discusses: covered employers; basic provisions and requirements; how to obtain information and assistance from DOL; penalties for non-compliance; and relation to state, local and other federal laws. The section subtitles identify the applicable laws and the associated regulations, which can be found in the Code of Federal Regulations (CFR). Many sections refer to an appendix which provides additional addresses and phone numbers for obtaining DOL assistance.

You should be aware that other federal agencies besides DOL enforce laws and regulations that affect employers. For example, statutes designed to ensure non-discrimination in employment are generally enforced by the Equal Employment Opportunity Commission. Also, the Taft-Hartley Act regulating employer conduct with regard to employees in a wide range of areas is administered by the National Labor Relations Board. Please consult these agencies for further information on their requirements.

The information contained in this publication is not to be considered a substitute for any provisions of the laws enforced by the Department of Labor or for any regulations issued by the Department.

See:

OVERVIEW: Major Statutes and Regulations Administered by the Department of Labor

I. Requirements Applicable to Most Employers

Wages and Hours

The Fair Labor Standards Act (FLSA) prescribes minimum wage and overtime pay (and record-keeping) standards affecting most private and public employment, including homework. This is administered by the Wage and Hour Division of DOL's Employment Standards Administration (ESA).

1. The Minimum Wage and Overtime provisions of the FLSA require the following from employers ofcovered employees who are not otherwise exempt:

Pay covered employees a minimum wage of not less than $4.25 an hour effective April 1, 1991. (Employers may pay employees on a piece-rate basis and under some circumstances consider the tips of employees as part of their wages.)

Until March 31, 1993, employers may pay a training wage, under certa in conditions, of at least 85 percent of the minimum wage (but not less than $3.35 an hour) for up to 90 days to employees under age 20.

While not placing a limit on the total hours which may be worked, the Act requires that covered employees, unless otherwise exempt, be paid not less than one and one-half times their regular rates of pay for all hours worked in excess of 40 in a workweek.

2. Homework requirements of the FLSA generally prohibit the performance of certain types of work in an employee's home unless the employer has obtained prior certification from the Department of Labor.

See Section 1, page 11, for more detail on wages and hours.

Who May Work, and When (administered by the Wage and Hour Division)

1. Child Labor provisions of the FLSA (Non-agriculture) include restrictions on the hours of work and occupations for youths under age 16, and these provisions set forth 17 hazardous occupations orders for jobs declared by the Secretary of Labor to be too dangerous for minors under age 18 to perform.

See Section 2, page 17, for more detail.

2. Immigrant Labor is regulated by the Immigration and Nationality Act (INA). Under the INA, employers may legally hire workers only if they are citizens of the U.S. or aliens authorized to work in the United States. The INA requires that employers verify the employment eligibility of all individuals hired after November 6, 1986.

See Section 3, page 20, for more detail.

The Immigration Nursing Relief Act of 1989 (INRA) was enacted to provide relief for the shortage of registered nurses by legalizing current nonimmigrant registered nurses and ensuring employer efforts to attract and dact your local ESA Wage and Hour Division office for more details (see page 54).

Workplace Safety and Health

The Occupational Safety and Health Act (OSH Act), which is administered by DOL's Occupational Safety and Health Administration (OSHA) regulates safety and health conditions in most private industries (except those regulated under other federal statutes, e.g., transportation). Many private employers are regulated through states operating under OSHA-approved plans.

It is the responsibility of employers to become familiar with standards applicable to their establishments, to eliminate hazardous conditions to the extent possible, and to comply with the standards. Compliance may include assuring that employees have and use personal protective equipment when required for safety or health. Employees must comply with all rules and regulations that are applicable to their own actions and conduct.

Covered employers are required to maintain workplaces that are safe and healthful, including meeting

many regulatory requirements. OSHA promulgates safety and health standards, and makes distinctions by type of industry.

Safety standards include regulations covering hazards such as falls, explosions, electricity, fires, and cave-ins, as well as machine and vehicle operation and maintenance, etc. Health standards regulate exposures to a variety of health hazards through engineering controls, the use of personal protective equipment (e.g., respirators, ear protection etc.), and work practices.

Where OSHA has not promulgated a specific standard, employers are responsible for complying with the OSH Act's "general duty" clause [Section 5(a)(1)], which states that each employer "shall furnish . . . a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

When OSHA develops effective safety and health regulations, safety and health regulations originally issued under the following laws administered by the Department of Labor are superseded: the Walsh-Healey Act, the Service Contract Act, the Contract Work Hours and Safety Standards Act, the Arts and Humanities Act, and the Longshore and Harbor Workers' Compensation Act.

See Section 4, page 22, for more detail.

Pensions and Welfare Benefits

The Employee Retirement Income Security Act (ERISA) regulates employers who have pension or welfare benefit plans. This statute preempts many state laws in this area and is administered by DOL's Pension and Welfare Benefits Administration (PWBA). The statute also provides an insurance mechanism to protect retirement benefits with employers required to pay annual pension benefit insurance premiums to the Pension Benefits Guarantee Corporation (PBGC), which is associated with the Department.

1. Pension Plans must meet a wide range of fiduciary and reporting and disclosure requirements, with regulations defining such concepts as the value of plan assets, what is adequate consideration for the sale of assets, the effects of participants having control over the assets in their plans, etc.

2. Welfare Benefit Plans also must meet a wide range of fiduciary, reporting, and disclosure requirements. In addition, PWBA administers the disclosure and notification requirements for the continuation of health care provisions that were enacted as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). These provisions cover group health plans of employers with 20 or more employees on a typical business day in the previous calendar year. COBRA gives participants and beneficiaries an election to maintain, at their own expense, coverage under the employer's health plan.

See Section 5, page 36, for more detail.

3. Pension Insurance information can be obtained from the Pension Benefits Guarantee Corporation by writing PBGC, Coverage and Inquiries Branch (25440), 2020 K Street, N.W., Washington, D.C. 20006-1860, or by calling (202) 778-8800.

Miscellaneous Requirements for Most Employers

1. The Labor-Management Reporting and Disclosure Act (also known as the Landrum-Griffin Act, LMRDA) deals with the relationship between a union and its members. It provides for safeguarding of union funds, reporting and disclosure of financial transactions, and administrative practices of union officials, labor consultants, etc. This is administered by DOL's Office of Labor-Management Standards (OLMS). Call your local OLMS office for more detail (see page 65).

2. Employee Protection provisions are built into most labor and public safety statutes, e.g., the FLSA, the OSH Act, ERISA, many environmental protection (remedies can include back wages and reinstatement.) They are normally enforced by the DOL agency most concerned, e.g., OSHA enforces those arising under the OSH Act. For more information on employee protection under a statute administered by DOL, see the relevant section. For information on employee protection in the environmental context, see Section 6, page 42, for more detail.

3. Veteran's Reemployment Rights ensures that those who serve in the armed forces have a right to reemployment with the employer they were with when they went in service, including protection for those called up from the reserves or National Guard. These are administered by DOL's Office of the Assistant

Secretary for Veterans' Employment and Training. See Section 7, page 44, for more detail.

4. Plant Closings and Layoffs by employers may be subject to the Worker Adjustment and Retraining Notification Act (WARN) which provides for early warning to employees of the proposed layoffs or plant closings. Questions on WARN may be addressed to DOL's Employment and Training Administration (ETA).

See Section 8, page 46, for more detail.

5. The Employee Polygraph Protection Act (EPPA) prohibits most use of lie detectors by employers on their employees. This is administered by the Wage and Hour Division of ESA.

See Section 9, page 48, for more detail.

6. Garnishment of Wages by employers is subject to regulation under the Consumer Credit Protection Act. This is administered by the Wage and Hour Division of ESA.

See Section 10, page 50, for more detail.

II. Requirements Applicable to Employers Because of the Receipt of Government Contracts, Grants, or Financial Assistance

1. Wage, Hour, and Fringe Benefit Standards are determined for these contracts under: the Davis-Bacon and related Acts (for construction); the Contract Work, Hours, and Safety Standards Act; the McNamara-O'Hara Service Contract Act (for services); and the Walsh-Healey Public Contracts Act (for manufacturing). The Wage and Hour Division of ESA both makes the determination of wages and benefits and enforces them. Contact your local ESA Wage and Hour Division Office for more detail (see page 54).

2. Safety and Health Standards are also issued under these Acts and are specifically applicable to covered contracts. Contact your local ESA Wage and Hour Division Office for more detail (see page 54).

3. Non-discrimination and Affirmative Action Requirements are set under Executive Order 11246, Section 503 of the Rehabilitation Act, and the Vietnam Veteran's Readjustment Assistance Act (38 U.S.C. 4212). These programs prohibit discrimination and require affirmative action with regard to race, sex, ethnicity, religion, disability and veterans' status. They are administered by ESA's Office of Federal Contract Compliance Programs (OFCCP). OFCCP works closely with EEOC to coordinate these efforts. Contact your local ESA Office of Federal Contract Compliance Programs for more detail (see page 57).

III. Industry-Specific Requirements in Addition to the Above

Agriculture

Several safety and health standards issued and enforced by OSHA (e.g., field sanitation) and the Environmental Protection Agency (e.g., pesticides) apply to this industry. In addition, several agriculture-specific programs are administered by ETA and ESA's Wage and Hour Division. For more information on these programs, contact your local ESA office (see page 54).

1. The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) requires that covered farm labor contractors, agricultural employers and agricultural associations comply with worker protection applicable to migrant and seasonal agricultural workers whom they recruit, solicit, hire, employ, furnish or transport or, in the case of migrant agricultural workers, to whom they provide housing.

2. The Immigration and Nationality Act (INA) requires that employers wishing to use nonimmigrant workers for temporary agricultural employment apply with the Employment and Training Administration for a labor certificate showing that there are not sufficient workers in the U.S. able, willing, qualified and available to do the work and that employment of such nonimmigrant workers will not adversely affect the wages and working conditions of workers in the U.S.

3. INA as Amended by the Immigration Reform and Control Act requires all employers of special and replenishment agricultural workers (SAWs and RAWs) to provide certain information on the use of such workers to the federal government.

4. The Fair Labor Standards Act (FLSA) contains specia and enforced by the DOL agencies apply only to those establishments with employees (e.g., they do not apply to family-run and family-operated farms that

do not hire outside workers).

Additionally, in some cases there are minimum employment standards which must be met before an establishment is covered by a regulation (e.g., OSHA's field sanitation standard is not enforced at establishments that employ fewer than 11 workers in the field).

Mining Safety and Health

The goal of the Federal Mine Safety and Health Act of 1977 is to improve working conditions in the nation's mines. Its provisions cover all miners and other persons employed to work on mine property, and it is administered by the Labor Department's Mine Safety and Health Administration (MSHA). This law strengthened an earlier coal mining law and brought metal and nonmetal (non-coal) miners under the same general protections as those afforded coal miners.

Under the Act, the operators of mines, with the assistance of their employees, have the primary responsibility for ensuring the health and safety of the miners. MSHA is responsible for fully inspecting every underground mine at least four times a year and every surface mine at least twice a year to ensure that these responsibilities are met.

This law also established mandatory miners' training requirements and strengthened health protection measures and gassy mine safety programs. It also included tougher civil dollar penalties for safety or health violations by mine operators. The Act also provided for closure of mines in cases of imminent danger to workers or failure to correct violations within the time allowed, and it called for greater involvement of miners and their representatives in processes affecting workers' health than previously had been possible.

Each mine must be legally registered with MSHA. Many mine operators are required to submit plans to MSHA for approval before beginning operations. Such plans must be followed during mining. Required plans cover operational aspects such as ventilation, roof control, and miner training. Mine operators are required to report each individual mine accident or injury to MSHA.

MSHA's Coal Mine Safety and Health Division enforces law and regulations at more than 4,600 underground and surface coal mines. MSHA's Metal and Nonmetal Mine Safety and Health Division enforces federal requirements, conducts training, and assists the mining industry in reducing deaths, serious injuries and illnesses at more than 11,000 non-coal mines (including open pit mines, stone quarries, and sand and gravel operations).

Health and safety regulations cover numerous hazards, including those associated with the following:

exposure to respirable dust, airborne contaminants and noise design, operation and maintenance requirements for mechanical equipment, including mobile equipment roof falls, and rib and face rolls flammable, explosive and noxious gases, dust and smoke electrical circuits and equipment fires storage, transportation, and use of explosives hoisting access and egress

Contact your local MSHA office for more detail (see page 74).

Construction

Several DOL agencies are involved in administering programs solely related to the construction industry.

1. Safety and Health:

OSHA has separate occupational safety and health standards which apply only to the construction industry. See Section 4, page 22, for more detail.

2. Wage and Fringe Benefits: The Davis-Bacon Act and related Acts require most contractors and subcontractors on federally assisted contracts in excess of $2,000 to pay the prevailing wage rates and fringe benefits as determined by the Secretary of Labor. Contact your local ESA Wage and Hour Division Office for more detail (see page 54).

3. Non-discrimination:

OFCCP has special regulations on non-discrimination and affirmative action which apply only to the construction industry.

Contact your local ESA/OFCCP office for more detail (see page 57).

4. Anti-Kickback:

The "Anti-Kickback" section of the Copeland Act applies to all contractors and subcontractors performing he/she is entitled under his/her contract of employment.

Contact your local ESA Wage and Hour Division office for more detail (see page 54).

Transportation

Many laws with labor provisions in them that affect the transportation industry are administered by agencies outside of the Department. For example, the Railway Labor Act is administered primarily by the Department of Transportation and the Railway Retirement Board. Special DOL programs for this industry are:

1. Safety and Health:

Special longshoring and maritime industry standards issued and enforced by OSHA.

See Section 4, page 22, for more detail.

2. Longshoring and Harbor Work:

Workers' compensation coverage provided under the Longshore and Harbor Workers' Compensation Act, which is administered by ESA. Employers must meet the coverage, funding, and other requirements needed to provide these benefits.

Contact your local ESA/OWCP office for more detail (see page 77).

1. MINIMUM WAGE AND OVERTIME PAY

Fair Labor Standards Act of 1938, as Amended (Title 29, U.S. Code, Sections 201 et seq.; 29 CFR 510-800).

Who is Covered

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, record-keeping and child labor standards that affect more than 80 million full- and part-time workers in the private sector and in federal, state and local governments.

The Act applies to enterprises that have employees who are engaged in interstate commerce, producing goods for interstate commerce, or handling, selling or working on goods or materials that have been moved in or produced for interstate commerce. For most firms, an annual dollar volume of business test of not less than $500,000 applies. The following are covered by the Act regardless of their dollar volume of business: hospitals, institutions primarily engaged in the care of the sick, aged, mentally ill or disabled who reside on the premises; schools for children who are mentally or physically disabled or gifted; preschools, elementary and secondary schools and institutions of higher education; and federal, state and local government agencies.

Employees of firms that do not meet the $500,000 annual dollar volume test may be individually covered in any workweek in which they are individually engaged in interstate commerce, the production of goods for interstate commerce, or an activity which is closely related and directly essential to the production of such goods. Domestic service workers, such as day workers, housekeepers, chauffeurs, cooks or full-time babysitters, are also covered if they receive at least $50 in cash wages in a calendar quarter from their employers or work a total of more than 8 hours a week for one or more employers.

An enterprise that was covered by the Act on March 31, 1990, and that ceased to be covered because of the increase in the annual dollar volume test to $500,000, as required under the 1989 amendments to the Act, must continue to pay its employees not less than $3.35 an hour (the statutory minimum wage prior to 4/1/90) and continues to be subject to the overtime pay, child labor and record-keeping requirements of the Act.

Some employees are excluded from the Act's minimum wage and/or overtime pay provisions under specific exemptions provided in the law. Because these exemptions are generally narrowly defined, employers should carefully check the exact terms and conditions for each by contacting the Wage and Hour Division of the Employment Standards Administration (ESA) at the offices referenced below.

The following are examples of employees exempt from both the minimum wage and overtime pay requirements:

Executive, administrative and professional employees (including teachers and academic administrative personnel in elementary and secondary schools and also including certain skilled computer professionals as provided in P.L. 101-583, November 15, 1990) and outside sales persons

Employees of seasonal amusement or recreational establishments

Employees of certain small newspapers and switchboard operators of small telephone companies

Seamen employed on foreign vessels

Employees engaged in fishing operations

Farm workers employed on small farms (i.e., those that used no more than 500 "man-days" of farm labor in any calendar quarter of the preceding calendar year)

Casual babysitters and persons employed as companions to the elderly or infirm

The following are examples of employees exempt from the Act's overtime pay requirements only:

Certain commissioned employees of retail or service establishments Auto, truck, trailer, farm implement, boat or aircraft salesworkers, or parts-clerks and mechanics servicing autos, trucks or farm implements, and who are employed by non- carrier employees, taxi drivers, certain employees of motor carriers,

seamen on American vessels and local delivery employees paid on approved trip rate plans

Announcers, news editors and chief engineers of certain non-metropolitan broadcasting stations

Domestic service workers who reside in their employer's residence

Employees of motion picture theaters

Farmworkers

Certain employees may be partially exempted from the Act's overtime pay requirements. These include:

Employees engaged in certain operations on agricultural commodities and employees of certain bulk petroleum distributors Employees of hospitals and residential care establishments which have agreements with the employees to work a 14-day work period in lieu of a 7-day workweek if the employees are paid overtime premium pay within the requirements of the Act for all hours worked over 8 in a day or 80 in the 14-day work period, whichever is the greater number of overtime hours

Employees who lack a high school diploma or who have not completed the eighth grade may be required by their employer to spend up to 10 hours in a workweek in remedial reading or training in other basic skills that is not job-specific, as long as they are paid their normal wages for the hours spent in training. Such employees need not be paid overtime premium pay for their training hours.

Basic Provisions/Requirements

The Act requires employers of covered employees who are not otherwise exempt to pay these employees a minimum wage of not less than $4.25 an hour. The increases in the minimum wage mandated by the 1989 amendments to the Act will be phased in on an industry-by-industry basis in Puerto Rico. All Puerto Rican industries must reach the mainland minimum wage by April 1, 1996. Employers may pay employees on a piece-rate basis, as long as they receive at least the equivalent of the required minimum hourly wage rate. Employers of tipped employees, i.e., employees who customarily and regularly receive more than $30 a month in tips, may consider the tips of these employees as part of their wages. This tip credit may not, however, exceed 50 percent of the required minimum wage.

Employers may pay a training wage, under certain conditions, of at least 85 percent of the minimum wage (but not less than $3.35 an hour) for up to 90 days to employees under age 20, except for migrant or seasonal agricultural workers and H-2A nonimmigrant agricultural workers performing work of a temporary or seasonal nature. An employee who has been paid at the training wage for 90 days can be employed for 90 additional days at the training wage by a different employer if that employer provides on-the-job training in accordance with rules of the Department of Labor. Employers may not displace employees (or reduce their wages or benefits) in order to hire employees at the training wage. These training wage provisions expire on March 31, 1993.

The Act also permits the employment of the following individuals at wage rates below the statutory minimum wage under certificates issued by the Department:

Student learners

Full-time students in retail or service establishments, agriculture, or institutions of higher education

Individuals whose earning or productive capacity is impaired by a physical or mental disability, including those related to age or injury, for the work to be performed

While not placing a limit on the total hours which may be worked, the Act requires that covered employees, unless otherwise exempt, be paid not less than one and one-half times their regular rates of pay for all hours worked in excess of 40 in a workweek. Employers are required to keep records on wages, hours and other items as set out in the Department of Labor's regulations. Most of this information is of the type generally maintained by employers in ordinary business practice.

Performance of certain types of work in an employee's home is prohibited under the Act unless the employer has obtained prior certification from the Department of Labor. Restrictions apply in the manufacture of knitted outerwear, gloves and mittens, buttons and buckles, handkerchiefs, embroideries and jewelry (where safety and health hazards are not involved). Employers wishing to employ homeworkers in these industries are required to, among other things, provide written assurances to the

Department that they will comply with the Act's monetary and other requirements. The manufacture of women's apparel (and jewelry under hazardous conditions) is generally prohibited, except under special certificates that allow homework in these industries when the homeworker is unable to adjust to factory work because of age or physical or mental disability, or is caring for an invalid in the home.

Special provisions. It is a violation of the Act to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under the Act. The Act also prohibits the shipment of goods in interstate commerce which were produced in violation of the minimum wage, overtime pay, child labor, or special minimum wage provisions.

Assistance Available

More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting the offices listed beginning on page 53 in the appendix.

Penalties

Enforcement of the Act is carried out by Wage and Hour Division compliance officers stationed throughout the country. A variety of remedies are available to the Department to enforce compliance with the Act's requirements. When compliance officers encounter violations, they recommend changes in employment practices in order to bring the employer into compliance. Willful violations may be prosecuted criminally and the violators fined up to $10,000. A second conviction may result in imprisonment. Employers who willfully and repeatedly violate the minimum wage or overtime pay requirements are subject to civil money penalties of up to $1,000 per violation. Employers are subject to a civil money penalty of up to $10,000 for each employee employed in violation of the child labor provisions. When a civil money penalty is assessed, employers have the right, within 15 days of receipt of the notice of such penalty, to file an exception to the determination. When an exception is filed, it is referred to an administrative law judge for a hearing and determination as to the appropriateness of the penalty. If an exception is not filed, the penalty becomes final.

The Secretary of Labor may also bring suit for back pay and an equal amount in liquidated damages and obtain injunctions to restrain persons from violating the Act. Employees may also bring suit, where the Department has not done so, for back pay and liquidated damages, as well as attorney's fees and court costs.

Relation to State, Local and Other Federal Laws

State laws also apply to employment subject to this Act. When both this Act and a state law apply, the law setting the higher standards must be observed.

2. CHILD LABOR (Nonagriculture)

Fair Labor Standards Act of 1938, as Amended (Title 29, U.S. Code, Section 201 et seq.; 29 CFR 570-580).

Who is Covered

The child labor provisions of the Fair Labor Standards Act (the Act) are designed to protect the educational opportunities of youths and prohibit their employment in jobs and under conditions detrimental to their health and well-being.

In nonagriculture, the child labor provisions apply to enterprises that have employees who are engaged in interstate commerce, producing goods for interstate commerce, or handling, selling or working on goods or materials that have been moved in or produced for interstate commerce. For most firms, an annual dollar volume of business test of not less than $500,000 applies. The following are covered by the Act regardless of their dollar volume of business: hospitals; institutions primarily engaged in the care of the sick, aged, mentally ill or disabled who reside on the premises; schools for children who are mentally or physically disabled or gifted; preschools, elementary and secondary schools and institutions of higher education; and federal, state and local government agencies. Employees of firms that do not meet the $500,000 annual dollar volume test may be individually covered in any workweek in which they are individually engaged in interstate commerce, the production of goods for interstate commerce or an activity which is closely related and directly essential to the production of such goods. Domestic service workers, such as day workers, housekeepers, chauffeurs, cooks or full-time babysitters, are also covered if they receive at least $50 in cash wages in a calendar quarter from their employers or work a total of more than 8 hours a week for one or more employers.

An enterprise that was covered by the Act on March 31, 1990, and ceased to be covered because of the increase in the annual dollar volume test to $500,000 as required under the 1989 amendments to the Act, remains subject to the Act's child labor provisions. Sixteen is the minimum age for most nonfarm work. However, youths may, at any age: deliver newspapers; perform in radio, television, movies, or theatrical productions; work for their parents in their solely owned nonfarm businesses (except in mining, manufacturing, or in any other occupation declared hazardous by the Secretary of Labor); or gather evergreens and make evergreen wreaths.

Basic Provisions/Requirements

The Act's child labor provisions in. These provisions set forth 17 hazardous occupations orders for jobs declared by the Secretary of Labor to be too dangerous for minors under age 18 to perform. The Act prohibits the shipment of goods in interstate commerce which were produced in violation of the child labor provisions. It is also a violation of the Act to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under the Act. The permissible jobs and hours of work, by age, in nonfarm work are as follows:

Youths 18 years or older may perform any job for unlimited hours Youths age 16 and 17 may perform any job not declared hazardous by the Secretary of Labor, for unlimited hours Youths age 14 and 15 may work outside school hours in various nonmanufacturing, nonmining, nonhazardous jobs under the following conditions: no more than 3 hours on a school day, 18 hours in a school week, 8 hours on a nonschool day, or 40 hours in a nonschool week. In addition, they may not begin work before 7 a.m. nor work after 7 p.m., except from June 1 through Labor Day, when evening hours are extended until 9 p.m. Youths aged 14 and 15 who are enrolled in an approved Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks and 3 hours on school days (including during school hours). Detailed information on the occupations determined to be hazardous by the Secretary is available by contacting the Wage and Hour Division at the offices listed below.

Department of Labor regulations require employers to keep records of the date of birth of employees under age 19, including daily starting and quitting times, daily and weekly hours worked, and the employee's occupation.

Employers may protect themselves from unintentional violation of the child labor provisions by keeping on

file an employment or age certificate for each youth employed to show that the youth is the minimum age for the job. Certificates issued under most state laws are acceptable for this purpose.

Assistance Available

More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting the offices listed beginning on page 53 in the appendix.

Penalties

Employers are subject to a civil money penalty of up to $10,000 for each employee employed in violation of the child labor provisions. When a civil money penalty is assessed, employers have the right, within 15 days of receipt of the notice of such penalty, to file an exception to the determination. When an exception is filed, it is referred to an administrative law judge for a hearing and determination as to the appropriateness of the penalty. Either party may appeal the decision of the administrative law judge to the Secretary of Labor. If an exception is not timely filed, the penalty becomes final. The Act also provides, in the case of a conviction for a willful violation, for a fine of up to $10,000; or, for a second offense committed after the conviction of such person for a similar offense, for a fine of not more than $10,000 and imprisonment for up to six months, or both. The Secretary of Labor may also bring suit to obtain injunctions to restrain persons from violating the Act.

Relation to State, Local and Other Federal Laws Many states have child labor laws. When both this Act and a state law apply, the law setting the higher standards must be observed.

3. EMPLOYMENT ELIGIBILITY OF ALIEN WORKERS

Immigration and Nationality Act (INA) (8 U.S. Code, Section 1186).

Who is Covered

The Immigration and Nationality Act (INA) employment eligibility verification and related nondiscrimination provisions apply to all employers.

Basic Provisions/Requirements

Under the INA, employers may legally hire workers only if they are citizens of the U.S. or aliens authorized to work in the United States. For some aliens (students, nurses, "specialty occupations," fashion models) employers must comply with attestation procedures through the Department of Labor. The INA requires that employers verify the employment eligibility of all individuals hired after November 6, 1986. To do so, employers must require applicants to show proof of their employment eligibility, by requiring completion of the I-9 form. Employers must keep I-9s on file for at least 3 years (or one year after employment ends, whichever is greater). The INA also protects U.S. citizens, and aliens authorized to accept employment in the U.S., from discrimination in hiring or discharge on the basis of national origin and citizenship status.

Assistance Available

More detailed information, including copiloyers who fail to complete and/or retain the I-9 forms are subject to civil fines of up to $1,000 per applicant. Enforcement of the INA requirements on employment eligibility verification comes under the jurisdiction of the Immigration and Naturalization Service (INS). The Justice Department is responsible for enforcing the anti-discrimination provisions. In conjunction with their ongoing enforcement efforts, the Employment Standards Administration's Wage and Hour Division and Office of Federal Contract Compliance Programs conduct inspections of the I-9 forms. Their findings are reported to the INS and to the Department of Justice where there is apparent disparate treatment in the verification process.

Relation to State, Local and Other Federal Laws Not Applicable.

4. OCCUPATIONAL SAFETY AND HEALTH

The Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. 651 et seq.; Title 29 Code of Federal Regulations, Parts 1900 to end.

Who is Covered

In general, coverage of the Act extends to all employers and their employees in the 50 states, the District of Columbia, Puerto Rico, and all other territories under federal government jurisdiction. Coverage is provided either directly by the Federal Occupational Safety and Health Administration (OSHA) or through an OSHA-approved state job safety and health program.

As defined by the Act, an employer is any "person engaged in a business affecting commerce who has employees, but does not include the United States or any state or political subdivision of a State." Therefore, the Act applies to employers and employees in such varied fields as manufacturing, construction, longshoring, agriculture, law and medicine, charity and disaster relief, organized labor and private education. Such coverage includes religious groups to the extent that they employ workers for secular purposes.

The following are not covered by the Act: Self-employed persons

Farms at which only immediate members of the farmer's family are employed

Working conditions regulated by other federal agencies under other federal statutes. This category includes most employment in mining, nuclear energy and nuclear weapons manufacture, and many segments of the transportation industries.

When another federal agency is authorized to regulate safety and health working conditions in a particular industry, if it does not do so in specific areas, then OSHA requirements apply.

As OSHA develops effective safety and health regulations of its own, safety and health regulations originally issued under the following laws administered by the Department of Labor are superseded: the Walsh-Healey Act, the Service Contract Act, the Contract Work Hours and Safety Standards Act, the Arts and Humanities Act, and the Longshore and Harbor Workers' Compensation Act.

Basic Provisions/Requirements

The Act assigns to OSHA two principal functions: setting standards and conducting workplace inspections to assure employers are complying with the standards and providing a safe and healthful workplace. OSHA standards may require conditions, or the adoption or use of one or more practices, means, methods or processes reasonably necessary and appropriate to protect workers on the job. It is the responsibility of employers to become familiar with standards applicable to their establishments, to eliminate hazardous conditions to the extent possible, and to comply with the standards. Compliance may include assuring that employees have and use personal protective equipment when required for safety or health. Employees must comply with all rules and regulations that are applicable to their own actions and conduct.

Where OSHA has not promulgated a specific standard, employers are responsible for complying with the OSH Act's "general duty" clause. The general duty clause of the Act [Section 5(a)(1)] states that each employer "shall furnish . . . a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

States with OSHA-approved job safety and health programs must set standards that are at least as effective as the equivalent federal standard. Many state-plan states adopt standards idare, in some cases, identical for each category of employers; in others, they are either absent or vary somewhat.

Among the standards that impose similar requirements on all industry sectors are those for access to medical and exposure records, personal protective equipment, and hazard communication. Access to Medical and Exposure Records: This standard requires that employers grant employees access to any of their medical records maintained by the employer and to any records the employer maintains on the employees' exposure to toxic substances.

Personal Protective Equipment: This standard, included separately in the standards for each industry segment (except agriculture) requires that employers provide employees, at no cost to employees, with personal protective equipment designed to protect them against certain hazards. This can range from protective helmets in construction and cargo handling work to prevent head injuries, to eye protection, hearing protection, hard-toed shoes, special goggles (for welders, for example) and gauntlets for iron workers.

Hazard Communication: This standard requires that manufacturers and importers of hazardous materials conduct a hazard evaluation of the products they manufacture or import. If the product is found to be hazardous under the terms of the standard, containers of the material must be appropriately labeled and the first shipment of the material to a new customer must be accompanied by a material safety data sheet (MSDS). Receiving employers must train their employees, using the MSDSs they receive, to recognize and avoid the hazards the materials present.

In general, however, all employers should be aware that any hazard not covered by an industry-specific standard may be covered by a general industry standard or by the general duty clause. This coverage becomes important in the enforcement aspects of OSHA's work.

Other types of requirements are imposed by regulation rather than by a standard. OSHA regulations cover such items as record-keeping, reporting and posting.

Record-keeping: Every employer covered by OSHA who has more than 10 employees must maintain OSHA-specified records of job-related injuries and illnesses. There are two such records, the OSHA Form 200 and the OSHA Form 101.

The OSHA Form 200 is an injury/illness log, with a separate line entry for each recordable injury or illness (essentially those work-related deaths, injuries and illnesses other than minor injuries that require only first aid treatment and that do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job). A summary section of the OSHA Form 200, which includes the total of the previous year's injury and illness experience, must be posted in the workplace for the entire month of February each year.

The OSHA Form 101 is an individual incident report that provides added detail about each individual recordable injury or illness. A suitable insurance or worker compensation form that provides the same details may be substituted for the OSHA Form 101.

Unless an employer has been selected in a particular year to be part of a national survey of workplace injuries and illnesses conducted by the Department of Labor's Bureau of Labor Statistics (BLS), employers with ten or fewer employees or employers in traditionally low-hazard industries are exempt from maintaining these records; all employers selected for the BLS survey must maintain the records. Employers so selected will be notified before the end of the year to begin keeping records during the coming year, and technical assistance on completing these forms is available from the state offices which select these employers for the survey.

Industries designated as traditionally low hazard include: automobile dealers; apparel and accessory stores; furniture and home furnishing stores; eating and drinking places; finance, insurance, and real estate industries; and service industries, such as personal and business services, legal, educational, social and cultural services and membership organizations.

Reporting: In addition to selected employers each year being required to report their injury and illness experience, each employer, regardless of number of employees or industry category, must report to the nearest OSHA office within 48 hours any accident that results in one or more fatalities or hospitalization of five or more employees. Such accidents are often investigated by OSHA to determine whether violations of standards contributed to the event.

Workplace Inspections

To enforce its stan and health field. CSHOs are thoroughly trained in OSHA standards and in the recognition of safety and health hazards. Similarly, states with their own occupational safety and health programs conduct inspections using qualified state CSHOs.

Employee Rights

Employees are granted several important rights by the Act. Among them are the right to: complain to OSHA about safety and health conditions in their workplace and have their identity kept confidential from the employer, contest the time period OSHA allows for correcting standards violations, and participate in OSHA workplace inspections.

Anti-Discrimination Provisions

Private sector employees who exercise their rights under OSHA can be protected against employer reprisal. Employees must notify OSHA within 30 days of the time they learned of the alleged discriminatory action. This notification is followed by an OSHA investigation. If OSHA agrees that discrimination has occurred, the employer will be asked to restore any lost benefits to the affected employee. If necessary, OSHA can take the employer to court. In such cases, the worker pays no legal fees.

Assistance Available

Copies of Standards

The Federal Register is one of the best sources of information on standards, since all OSHA standards are published there when adopted, as are all amendments, corrections, insertions or deletions. The Federal Register, published five days a week, is available in many public libraries. Annual subscriptions are available from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402. For the current price, contact GPO at (202) 783-3238.

Each year the Office of the Federal Register publishes all current regulations and standards in the Code of Federal Regulations (CFR), available at many public libraries and from GPO. OSHA's regulations and standards are collected in several volumes in Title 29 CFR, Parts 1900-1999.

Since states with OSHA-approved job safety and health programs adopt and enforce their own standards under state law, copies of these standards can be obtained from the individual states. Addresses and phone numbers are found beginning on page 60 in the appendix.

Training and Education OSHA's field offices (more than 70) are full-service centers offering a variety of informational services such as publications, technical advice, audio-visual aids on workplace hazards, and lecturers for speaking engagements.

The OSHA Training Institute in Des Plaines, IL, provides basic and advanced training and education in safety and health for federal and state CSHOs; state consultants; other federal agency personnel; and private sector employers, employees and their representatives. Institute courses cover topics such as electrical hazards, machine guarding, ventilation and ergonomics. The Institute facility includes classrooms, laboratories, a library and an audio-visual unit. The laboratories contain various demonstrations and equipment, such as power presses, woodworking and welding shops, a complete industrial ventilation unit, and a noise demonstration laboratory. Sixty-three courses are available for students from the private sector dealing with subjects such as safety and health in the construction industry and methods of voluntary compliance with OSHA standards.

OSHA also provides funds to nonprofit organizations to conduct workplace training and education in subjects where OSHA believes there is a current lack of workplace training. OSHA identifies areas of unmet needs for safety and health education in the workplace annually and invites grant applications to address these needs. The Training Institute is OSHA's point of contact for learning about the many valuable training products and materials developed under such grants.

Organizations awarded grants use funds to develop training and educational programs, reach out to workers and employers for whom their program is appropriate, and provide these programs to employers and employees.

Grants are awarded annually, with a one-year renewal possible. Grant recipients are expected to contribute 20 percent of the total grant cost.

While OSHA does not provide grant materials directly, it will provide addresses and phone numbers of contact persons from whom the public can order such materials for its use. Contact the OSHA Training Institute at (708) 297-4810.

Consultation Assistance

Consultation assistance is available to employers who want help in establishing and maintaining a safe and healthful workplace. Largely funded by OSHA, the service is provided at no cost to the employer.

No penalties are proposed or citations issued for hazards identified by the consultant.

The service is pr to OSHA inspection staff.

Besides helping employers identify and correct specific hazards, consultation can include assistance in developing and implementing effective workplace safety and health programs with emphasis on the prevention of worker injuries and illnesses. Limited assistance such as training and education services, is also provided away from the worksite.

Primarily targeted for smaller employers with more hazardous operations, the consultation service is delivered by state government agencies or universities employing professional safety consultants and health consultants. When delivered at the worksite, consultation assistance includes an opening conference with the employer to explain the ground rules for consultation, a walk through the workplace to identify any specific hazards and to examine those aspects of the employer's safety and health program which relate to the scope of the visit, and a closing conference followed by a written report to the employer of the consultant's findings and recommendations.

This process begins with the employer's request for consultation and the commitment to correct any serious job safety and health hazards identified by the consultant. Possible violations of OSHA standards will not be reported to OSHA enforcement staff unless the employer fails or refuses to eliminate or control worker exposure to any identified serious hazard or imminent danger situation. In such unusual circumstances, OSHA may investigate and begin enforcement action.

Employers who receive a comprehensive consultation visit, correct all identified hazards, and demonstrate that an effective safety and health program is in operation may be exempted from OSHA general schedule enforcement inspections (not complaint or accident investigations) for a period of one year. Comprehensive consultation assistance includes an appraisal of all work practices; mechanical, physical, and environmental hazards in the workplace; and, all aspects of the employer's present job safety and health program.

Additional information concerning consultation assistance, including a directory of OSHA-funded consultation projects, can be obtained by requesting OSHA publication No. 3047, Consultation Services for the Employer.

Voluntary Protection Programs

The Voluntary Protection Programs (VPPs) represent one part of OSHA's effort to extend worker protection beyond the minimum required by OSHA standards. These programs, along with others such as expanded on-site consultation services and full-service area offices, are cooperative approaches which, when coupled with an effective enforcement program, expand worker protection to help meet the goals of the Occupational Safety and Health Act of 1970.

The VPPs are designed to:

Recognize outstanding achievement of those who have successfully incorporated comprehensive safety and health programs into their total management system

Motivate others to achieve excellent safety and health results in the same outstanding way

Establish a relationship between employers, employees, and OSHA that is based on cooperation rather than coercion OSHA reviews an employer's VPP application and conducts an on-site review to verify that the safety and health program described is in operation at the site. Evaluations are conducted on a regular basis, annually for Merit and Demonstration programs, and triennially for Star. All participants must send their injury information annually to their OSHA regional office. Sites participating in the VPP are not scheduled for programmed inspections; however, any employee complaints, serious accidents or significant chemical releases that may occur are handled according to routine enforcement procedures.

An employer may make application for any VPP at the nearest OSHA regional office. Once OSHA is

satisfied that, on paper, the employer qualifies for the program, an onsite review will be scheduled. The review team presents its findings in a written report for the company's review prior to submission to the Assistant Secretary of Labor, who heads OSHA. If approved, the employer receives a letter from the Assistant Secretary informing the site of its participation in the VPP. A certificate of approval and flag are presented at a ceremony held at or near the approved worksite. Star sites receiving reapproval after each triennial evaluation receive plaques at similar ceremonies.

The VPPs described are available in states under federal jurisdiction. Some states with their own safety and health programs have similar programs. Interested companies in these states should contact the appropriate state agency for more information (see list beginning on page 59).

Information Sources

Information about state programs, VPP, consultation programse 10 regional OSHA offices listed, beginning on page 63 in the appendix. The listing indicates the states and territories under the jurisdiction of each regional office. Area offices under regional office jurisdiction are listed in local phone directories under U.S. Government listings for the U.S Department of Labor.

Other Sources

A single free copy of an OSHA catalog, OSHA 2019, "OSHA Publications and Audiovisual Programs," may be obtained by mailing a self-addressed mailing label to the OSHA Publications Office, Room N3101, US Department of Labor, Washington, DC 20210; telephone (202) 219-9667. Descriptions of and ordering information for all OSHA publications and audiovisual programs are contained in this catalog.

Questions about OSHA programs, the status of ongoing standards-setting activities, and general inquiries about OSHA may be addressed to the OSHA Office of Information & Consumer Affairs, Room N3637, U.S. Department of Labor, Washington, DC 20210; telephone (202) 219-8151.

Those who are interested in following OSHA activities more closely may be interested in subscribing to OSHA's official magazine, Job Safety & Health Quarterly. Subscription orders may be placed with the Superintendent of Documents, Government Printing Office, Washington, DC 20402; telephone (202) 783-3238. Orders by phone may be charged to VISA or MASTERCARD. Written orders should be accompanied by a check or money order made payable to "Superintendent of Documents" in the amount of $5.50 (international orders add 25%).

Penalties

These are the types of violations that may be cited and the penalties that may be proposed:

Other-Than-Serious Violation: A violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm. A proposed penalty of up to $7,000 for each violation is discretionary. A penalty for an other-than-serious violation may be adjusted downward by as much as 95 percent, depending on the employer's good faith (demonstrated efforts to comply with the Act), history of previous violations, and size of business. When the adjusted penalty amounts to less than $50, no penalty is proposed.

Serious Violation: A violation where there is substantial probability that death or serious physical harm could result and that the employer knew, or should have known, of the hazard. A mandatory penalty of up to $7,000 for each violation is proposed.

A penalty for a serious violation may be adjusted downward, based on the employer's good faith, history of previous violations, the gravity of the alleged violation, and size of business. Willful Violation: A violation that the employer intentionally and knowingly commits. The employer either knows that what he or she is doing constitutes a violation, or is aware that a hazardous condition existed and has made no reasonable effort to eliminate it.

The Act provides that an employer who willfully violates the Act may be assessed a civil penalty of not more than $70,000 but not less than $5,000 for each violation. A proposed penalty for a willful violation may be adjusted downward, depending on the size of the business and its history of previous violations. Usually no credit is given for good faith.

If an employer is convicted of a willful violation of a standard that has resulted in the death of an

employee, the offense is punishable by a court-imposed fine or by imprisonment for up to six months, or both. A fine of up to $250,000 for an individual, or $500,000 for a corporation [authorized under the Comprehensive Crime Control Act of 1984 (1984 CCA), not the OSH Act], may be imposed for a criminal conviction.

Repeated Violation: A violation of any standard, regulation, rule or order where, upon reinspection, a substantially similar violation is found. Repeated violations can bring a fine of up to $70,000 for each such violation. To be the basis of a repeat citation, the original citation must be final; a citation under contest may not serve as the basis for a subsequent repeat citation.

Failure to Correct Prior Violation: Failure to correct a prior violation may bring a civil penalty of up to $7,000 for each day the violation continues beyond the prescribed abatement date. Additional violations for which citations and proposed penalties may be issued are as follows:

Falsifying records, reports or applications upon conviction can bring a fine of $10,000 or up to six months in jail, or both Violations of posting requirements can bring a civil penalty of up to $7,000

Assaulting a compliance officer, or otherwise resisting, opposing, intimidating, or inn three years

Citation and penalty procedures may differ somewhat in states with their own occupational safety and health programs.

Appeals Process

Appeals by Employees: If an inspection was initiated due to an employee complaint, the employee or authorized employee representative may request an informal review of any decision not to issue a citation.

Employees may not contest citations, amendments to citations, penalties or lack of penalties. They may contest the time in the citation for abatement of a hazardous condition. They also may contest an employer's Petition for Modification of Abatement (PMA) which requests an extension of the abatement period. Employees must contest the PMA within 10 working days of its posting or within 10 working days after an authorized employee representative has received a copy.

Within 15 working days of the employer's receipt of the citation, the employee may submit a written objection to OSHA. The OSHA area director forwards the objection to the Occupational Safety and Health Review Commission, which operates independently of OSHA. Employees may request an informal conference with OSHA to discuss any issues raised by an inspection, citation, notice of proposed penalty or employer's notice of intention to contest.

Appeals by Employers: When issued a citation or notice of a proposed penalty, an employer may request an informal meeting with OSHA's area director to discuss the case. Employee representatives may be invited to attend the meeting. The area director is authorized to enter into settlement agreements that revise citations and penalties to avoid prolonged legal disputes.

Petition for Modification of Abatement (PMA): Upon receiving a citation, the employer must correct the cited hazard by the prescribed date unless he or she contests the citation or abatement date. If factors beyond the employer's reasonable control prevent the completion of corrections by that date, the employer who has made a good faith effort to comply may file a PMA for an extended date.

The written petition should specify all steps taken to achieve compliance, the additional time needed to achieve complete compliance, the reasons this additional time is needed, and all temporary steps being taken to safeguard employees against the cited hazard during the intervening period. It should also indicate that a copy of the PMA was posted in a conspicuous place at or near each place where a violation occurred, and that the employee representative (if there is one) received a copy of the petition. Notice of Contest: If the employer decides to contest either the citation, the time set for abatement, or the proposed penalty, he or she has 15 working days from the time the citation and proposed penalty are received in which to notify the OSHA area director in writing. An orally expressed disagreement will not suffice. This written notification is called a "Notice of Contest."

There is no specific format for the Notice of Contest; however, it must clearly identify the employer's basis for contesting the citation, notice of proposed penalty, abatement period, or notification of failure to correct

violations.

A copy of the Notice of Contest must be given to the employees' authorized representative. If any affected employees are not represented by a recognized bargaining agent, a copy of the notice must be posted in a prominent location in the workplace, or else served personally upon each unrepresented employee.

Appeal Review Procedure

If the written Notice of Contest has been filed within the required 15 working days, the OSHA area director forwards the case to the Occupational Safety and Health Review Commission (OSHRC). The Commission is an independent agency not associated with OSHA or the Department of Labor. The Commission assigns the case to an administrative law judge.

The judge may disallow the contest if it is found to be legally invalid, or a hearing may be scheduled for a public place near the employer's workplace. The employer and the employees have the right to participate in the hearing; the OSHRC does not require that they be represented by atstate system for review and appeal of citations, penalties, and abatement periods. The procedures are generally similar to Federal OSHA's, but cases are heard by a state review board or equivalent authority.

Relation to State, Local and Other Federal Laws

As discussed above in the section titled "Who is Covered," Federal OSHA has jurisdiction over workplace safety and health issues in all states that do not operate their own OSHA-approved programs. In fact, any occupational safety and health issues regulated by a state that does not have an OSHA-approved program are preempted by OSHA jurisdiction.

The agency also covers all working conditions that are not covered by safety and health regulations of some other federal agency under other legislation. Industries where such regulations frequently apply include most transportation industries (rail, air and highway safety are under the Department of Transportation), nuclear industries (covered either by the Department of Energy or the Nuclear Regulatory commission) and mining (covered by the Department of Labor's Mine Safety and Health Administration, and discussed elsewhere in this publication). OSHA also has the authority to monitor the safety and health of federal employees.

5. EMPLOYEE BENEFIT PLANS

Employee Retirement Income Security Act (ERISA), 29 USC §1001 et seq., 29 CFR §2509 et seq.

Who is Covered

The provisions of Title I of ERISA are intended to require compliance from most private sector employee benefit plans. Employee benefit plans are voluntarily established and maintained by an employer, an employee organization, or jointly by one or more such employers and the employee organization. Employee benefit plans which are pension plans are established and maintained to provide retirement income or to defer income to termination of covered employment or beyond. Employee benefit plans which are welfare plans are established and maintained to provide, through insurance or otherwise, health benefits, disability benefits, death benefits, prepaid legal services, vacation benefits, day care centers, scholarship funds, apprenticeship and training benefits, or other similar benefits.

In general, ERISA does not cover plans established or maintained by governmental entities or churches for their employees, or plans which are maintained solely to comply with applicable workers compensation, unemployment or disability laws. ERISA also does not cover plans maintained outside the United States primarily for the benefit of nonresident aliens or unfunded excess benefit plans.

Basic Provisions/Requirements

ERISA sets uniform minimum standards to assure the equitable character of employee benefit plans and their financial soundness to provide workers with benefits promised by their employers. In addition, employers have an obligation to provide promised benefits and satisfy ERISA's requirements on managing and administering private pension and welfare plans. The Department's Pension and Welfare Benefits Administration (PWBA), together with the Internal Revenue Service (IRS), carries out its statutory and regulatory authority to assure that workers receive the promised benefits. The Department has principal jurisdiction over Title I of ERISA, which requires persons and entities who manage and control plan funds to: Carry out their duties in a prudent manner and refrain from conflict-of-interest transactions expressly prohibited by law, for the exclusive benefit of participants and beneficiaries Comply with limitations on certain plans' investments in employer securities and properties

Fund benefits in accordance with the law and plan rules Report and disclose information on the operations and financial condition of plans to the government and participants Provide documents required in the conduct of investigations to assure compliance with the law

The IRS administers Title II of ERISA, which includes vesting participation, discrimination and funding standards.

Reporting and Disclosure

Part 1 of Title I requires the administrator of an employee benefit plan to furnish participants and beneficiaries with a summary plan description (SPD), describing in understandable terms, their rights, benefits and responsibilities under the plan. Plan administrators are also required to furnish participants with a summary of any material changes to the plan or changes to the information contained in the summary plan description. Generally, copies of these documents must be filed with the Department. In addition, the administrator must file an annual report (Form 5500 Series) each year containing financial and other information concerning the operation of the plan. Plans with 100 or more participants must file the Form 5500. Plans with fewer than 100 participants fid report, in the two intervening years. The forms are filed with the Internal Revenue Service, which furnishes the information to the Department of Labor. Welfare benefit plans with fewer than 100 participants that are fully insured or unfunded (i.e., benefits are provided exclusively through insurance contracts where the premiums are paid directly from the general assets of the employer or the benefits are paid from the general assets of the employer) are not required to file an annual report under regulations issued by the Department. Plan administrators must furnish participants and beneficiaries with a summary of the information in the annual report.

The Department's regulations governing reporting and disclosure requirements are set forth at 29 CFR §2520.101-1 et seq.

Fiduciary Standards

Part 4 sets forth standards and rules governing the conduct of plan fiduciaries. In general, persons who exercise discretionary authority or control regarding management of a plan or disposition of its assets are "fiduciaries" for purposes of Title I of ERISA. Fiduciaries are required, among other things, to discharge their duties solely in the interest of plan participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan. In discharging their duties, fiduciaries must act prudently and in accordance with documents governing the plan, to the extent such documents are consistent with ERISA. Certain transactions between an employee benefit plan and "parties in interest," which include the employer and others who may be in a position to exercise improper influence over the plan, are prohibited by ERISA. Most of these transactions are also prohibited by the Internal Revenue Code ("Code"). The Code imposes an excise tax on "disqualified persons" -- whose definition generally parallels that of parties in interest -- who participate in such transactions.

Exemptions

Both ERISA and the Code contain various statutory exemptions from the prohibited transaction rules and give the Departments of Labor and Treasury, respectively, authority to grant administrative exemptions and establish exemption procedures. Reorganization Plan No. 4 of 1978 transferred the authority of the Treasury Department over prohibited transaction exemptions, with certain exceptions, to the Labor Department.

The statutory exemptions generally include loans to participants, the provision of services necessary for operation of a plan for reasonable compensation, loans to employee stock ownership plans, and investment with certain financial institutions regulated by other State or Federal agencies. (See ERISA section 408 for the conditions of the exemptions.) Administrative exemptions may be granted by the Department on a class or individual basis for a wide variety of proposed transactions with a plan. Applications for individual exemptions must include, among other information:

Percentage of assets involved in the exemption transaction

The names of persons with investment discretion

Extent of plan assets already invested in loans to, property leased by, and securities issued by parties in interest involved in the transaction

Copies of all contracts, agreements, instruments and relevant portions of plan documents and trust agreements bearing on the exemption transaction

Information regarding plan participation in pooled funds when the exemption transaction involves such funds

Declaration, under penalty of perjury by the applicant, attesting to the truth of representations made in such exemption submissions Statement of consent by third-party experts acknowledging that their statement is being submitted to the Department as part of an exemption application

The Department's exemption procedures are set forth at 29 CFR §2570.30 through 2570.51.

Enforcement

ERISA imposes substantial law enforcement responsibilities on the Department. Part 5 of ERISA Title I gives the Department authority to bring a civil action to correct violations of the law, gives investigative authority to determine whether any person has violated Title I, and imposes criminal penalties on any person who willfully violates any provision of Part 1 of Title V.

Continuation Health Coverage

Continuation health care provisions were enacted as part of the Consolidated Omnibus Budgewith respect to election, notification and type of coverage options. (See 29 USC §§1161 through 1168). Plans must give covered individuals an initial general notice informing them of their rights under COBRA and describing the law. Plan administrators are required to provide specific notices when certain events occur. In most instances of employee death, termination, reduced hours of employment, entitlement to Medicare, or bankruptcy, it becomes the employer's responsibility to provide a specific notice to the plan

administrator.

The Department has limited regulatory and interpretative jurisdiction over COBRA provisions. Its responsibility includes the COBRA notification and disclosure provisions.

Jurisdiction of the Internal Revenue Service

The IRS has regulatory and interpretative responsibility for all provisions of COBRA not under DOL's jurisdiction. (See IRS proposed regulations in the Federal Register of June 14, 1987 (52 FR 22716).) In addition, ERISA provisions relating to participation, vesting, funding and benefit accrual, contained in parts 2 and 3 of Title I, are generally administered and interpreted by the Internal Revenue Service.

Assistance Available

PWBA has numerous general publications designed to assist employers and employees in understanding their obligations and rights under ERISA. Publications -- a listing of PWBA booklets and pamphlets -- is available by writing to: Publications Desk, PWBA, Division of Public Affairs, Room N-5511, 200 Constitution Ave., NW, Washington, DC 20210.

In addition, employee benefit plan documents and other materials are available from the PWBA Public Disclosure Room. This facility may be used to view and to obtain copies of materials on file. Materials include: summary plan descriptions, Form 5500 Series reports, Master Trust reports, 103-12 Investment Entity Reports, Common or Collective Trust or Pooled Separate Account direct filings, Apprentice and Other Training Plans notices, "Top Hat" plan statements, advisory opinions, announcements and transcripts of public hearings and proceedings.

The PWBA Public Disclosure Room is open to the public Monday through Friday, from 8:30 a.m. to 4:30 p.m. Copies of materials are available at a cost of 15 cents per page by ordering in person or writing to: PWBA Public Disclosure Room, U.S. Department of Labor, Room N-5507, 200 Constitution Ave., NW, Washington, DC 20210. Given the complexity of ERISA requirements, employers may seek the assistance of an attorney, CPA firm, investment or brokerage firm, and other employee benefit consultants in complying with the law.

Penalties

PWBA has authority to assess civil penalties for reporting violations and prohibited transactions involving a plan under ERISA Section 502(c). A penalty of up to $1,000 per day may be assessed against plan administrators who fail to or refuse to comply with annual reporting requirements. Section 502(i) gives the agency authority to assess civil penalties against parties in interest who engage in prohibited transactions with welfare and nonqualified pension plans. The penalty can range from five percent to 100 percent of the amount involved in a transaction. A parallel provision of the Code directly imposes an excise tax against disqualified persons, including employee benefit plan sponsors and service providers, who engage in prohibited transactions with tax-qualified pension and profit sharing plans. Finally, the Department is required under Section 502(l) to assess mandatory civil penalties equal to 20 percent of any amount recovered with respect to fiduciary breaches resulting from either a settlement agreement with the Department or a court order as the result of a lawsuit by the Department.

Relation to State, Local and Other Federal Laws

Part 5 of Title I provides that the provisions of ERISA Titles I and IV supersede state and local laws which "relate to" an employee benefit plan. ERISA, however, saves certain state and local laws from ERISA preemption, including certain exceptions for state insurance regulation of multiple employer welfare arrangements (MEWAs). MEWAs generally constitute employee welfare benefit plans or other arrangements providing welfare benefits to employees of more than one employer, not pursuant to a collective bargaining agreement.

In addition, ERISA's general prohibitions against assignment or alienation of pension benefits does not apply to qualified domestic relations orders. These orders must be made pursuant to state domestic relations law and award all or part of a participant's benefit in the form of child support, alimony, or marital property rights to an alternative payee (spouse, former spouse, children).

6. ENVIRONMENTAL ACTS

Comprehensive Environmental Response, Compensation and Liability Act (Title 42 U.S. Code, Section 9610); Energy Reorganization Act of 1974 (Title 42 U.S. Code, Section 5851); Safe Drinking Water Act (Title 42 U.S. Code, Section 300j-9(i)); Solid Waste Disposal Act (Title 42 U.S. Code, Section 6971); Toxic Substances Control Act (Title 15 U.S. Code, Section 2622); Federal Water Pollution Control Act (Title 33 U.S. Code, Section 1367); 29 CFR 24).

Who is covered

These environmental Acts provide protection from discharge or other discriminatory actions by employers in retaliation for employees' good faith complaints about safety and health hazards in the workplace. The Acts cover all private sector employers.

Basic Provisions/Requirements

The employee protection provisions of these Acts prohibit employers from discharging or otherwise discriminating against employees in retaliation for their disclosure of safety and health hazards to the employer or to the appropriate federal agency. They also protect employee participation in formal government proceedings in connection with safety and health hazards. The Acts specifically exclude from protection the disclosure of hazards deliberately caused by an employee. Additionally, the statutes do not protect "frivolous" complaints. Employees have the right under the Acts to refuse to work in hazardous or unsafe situations.

Employees who believe they have been discriminated against in violation of these protective provisions may file a complaint, within 30 days of the alleged violation, with the Employment Standards Administration's Wage and Hour Division.

Assistance Available More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting the offices listed beginning on page 53 in the appendix.

Penalties

Upon receipt of a complaint, the Wage and Hour Division conducts an investigation to determine whether a violation has occurred. When a violation has occurred, the employer is notified of the violation determination and efforts are made to conciliate the situation. The employer may appeal a violation determination to an administrative law judge, if done within 5 calendar days of the notification of the determination. The administrative law judge's decision is referred to the Secretary of Labor for a final order. The Secretary may affirm or set aside the administrative law judge's decision. Where the Secretary concludes that a violation has occurred, his/her final order may instruct the employer to take affirmative action to abate the violation and provide for appropriate relief, which may include restoration of back pay, employment status and benefits. The Secretary may also order the employer to provide compensatory damages to the employee. If dissatisfied with the Secretary's decision, the employer may appeal in federal court. Final determinations on violations are enforceable through the courts. The employee is entitled to similar appeal rights under the Acts.

Relation to State, Local and Other Federal Laws The current whistleblower programs do not preempt existing state statutes and common law claims. All provisions contained in the programs are in addition to protection provided by state laws.

7. VETERANS

Veterans' Reemployment Rights Act (VRR).

Who is Covered

VRR applies to persons who are inducted into the Armed Forces, to persons who volunteer directly for active duty and to Reservists and members of the National Guard who are called to active duty either voluntarily or involuntarily. In addition, VRR covers members of the Reserves and National Guard during initial active duty training, active duty for training and inactive duty training.

Basic Provisions/Requirements

Veterans returning from active duty must meet the following five eligibility requirements to be covered by VRR: Held an "other than temporary" (not necessarily "permanent") civilian job

Left the civilian job for the purpose of going on active duty Did not remain on active duty longer than 4 years, unless the period beyond 4 years (up to an additional year) was "at the request and for convenience of the Federal Government" Was discharged or released from active duty "under honorable conditions"

Applied for reemployment with the pre-service employer or successor in interest within 90 days after separation from active duty Eligible veterans are entitled to reinstatement within a reasonable time to a position of like seniority, status and pay. In addition, the returning veterans do not step back on the seniority escalator at the point they stepped off. Rather the veterans step back on at the st or member of the National Guard shall upon request be granted a leave of absence by such person's employer to perform active duty training or inactive duty training and that the employee shall not be denied retention in employment or any promotion or other incident or advantage of employment because of any obligation as a member of a Reserve component of the Armed Forces. In addition, while the employer is not required to pay the Reservist or National Guard member for the hours or days not worked because of military training obligations, it is unlawful to require the employee to use earned vacation time for military training.

A person who leaves a civilian job in order to perform active duty is not required to request a leave of absence or even to notify the employer that military service is the reason for leaving the job, although such a person is encouraged to provide the employer with as much information as possible. However, a Reservist or member of the National Guard must request a leave of absence when leaving the civilian job to perform active duty training or inactive duty training.

VRR is enforced by DOL's Veterans' Employment and Training Service (VETS).

Assistance Available

VETS has published two fact sheets covering the veteran reemployment and job rights. These are OASVET 90-09 entitled "Job Rights for Reservists and Members of the National Guard" and OAVET 90-10 entitled "Reemployment Rights for Returning Veterans." Copies of these and other VETS' publications or answers to questions on VRR may be obtained from the nearest VETS office, as listed beginning on page 67 in the appendix.

Penalties Not Applicable.

Relation to State, Local and Other Federal Laws The VRR does not preempt state laws providing greater or additional rights, but it does preempt state laws providing lesser rights or imposing additional eligibility criteria.

8. PLANT CLOSINGS AND MASS LAYOFFS

Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. 2101 et seq.; 20 CFR Part 639.

Who is Covered

In general, employers are covered by WARN if they have 100 or more employees, not counting employees who have worked less than 6 months in the last 12 months and not counting employees who work an average of less than 20 hours a week. Regular federal, state and local government entities which provide public services are not covered. Employees entitled to notice under WARN include hourly and salaried workers, as well as managerial and supervisory employees.

Basic Provisions/Requirements

WARN requires employers to provide notice 60 days in advance of covered plant closings and covered mass layoffs. This notice must be provided to affected workers or their representatives (e.g., a labor union), to the state dislocated worker unit, and to the appropriate local government.

A covered plant closing occurs when a facility or operating unit is shut down for more than 6 months, and 50 or more workers lose their jobs as a result during a 30-day period. A covered mass layoff occurs when a layoff of 6 months or longer affects 500 or more workers, or 33 percent or more of the employer's workforce when the layoffs affect between 50 and 499 workers. The number of affected workers is the total number laid off during a 30-, or in some cases 90-, day period.

WARN does not apply to the closing of temporary facilities, or the completion of an activity when the workers were hired only for the duration of that activity. WARN also provides for less than 60 days notice when the layoffs were the result of the closing a faltering company, unforeseeable business circumstances, or a natural disaster.

Assistance Available

The Department of Labor has published a pamphlet entitled "A Guide to Advance Notice of Closings and Layoffs," which describes the Worker Adjustment and Retraining Notification Act. Requests for copies of the pamphlet, or general questions on the regulations, may be addressed to:

U.S. Department of Labor Employment and Training Administration Office of Work-Based Learning Room N-4469 200 Constitution Avenue, N.W. Washington, DC 20210 (202) 219-5577 (not a toll-free number)

The Department, sinnotice that was given, and any voluntary payments made by the employer to the employee.

An employer who fails to provide the required notice to the unit of local government is subject to a civil penalty not to exceed $500 for each day of violation. This may be avoided if the employer satisfies the liability to each employee within 3 weeks after the closing or layoff.

Enforcement of WARN requirements is through the United States district courts. Workers, or their representatives, and units of local government may bring individual or class action suits. The Court may allow reasonable attorney's fees as part of any final judgement.

Relation to State, Local and Other Federal Laws

WARN is in addition to, and does not preempt any other federal, state or local law, or any employer/employee agreement which requires other notification or benefit.

9. LIE DETECTOR TESTS

Employee Polygraph Protection Act of 1988 (29 U.S. Code, Section 2001 et seq.; 29 CFR Part 801).

Who is Covered

The Employee Polygraph Protection Act (EPPA) applies to most private employers. Federal, state and local governments are not covered by the law.

Basic Provisions/Requirements

The EPPA prohibits most private employers from using lie detector tests either for pre-employment screening or during the course of employment.

Employers are generally prohibited from requiring or requesting any employee or job applicant to take a lie detector test, and from discharging, disciplining, or discriminating against an employee or prospective employee for refusing to take a test or for exercising other rights under the Act. Employers may not use or inquire about the results of a lie detector test or discharge or discriminate against an employee, a prospective employee, or a former employee for refusal to take a test, on the basis of the results of a test, or for filing a complaint, or participating in a proceeding under the Act.

The Act permits polygraph (a type of lie detector) tests to be administered, subject to restrictions, to certain prospective employees of security service firms (armored car, alarm, and guard), and of pharmaceutical manufacturers, distributors and dispensers.

The Act also permits polygraph testing, subject to restrictions, of certain employees of private firms who are reasonably suspected of involvement in a workplace incident (theft, embezzlement, etc.) that resulted in specific economic loss or injury to the employer. Where polygraph examinations are permitted, they are subject to strict standards concerning the conduct of the test, including the pretest, testing and post-testing phases. An examiner must also be licensed and bonded or have professional liability coverage. The Act strictly limits the disclosure of information obtained during a polygraph test.

Assistance Available

The Act is administered and enforced by the Employment Standards Administration's Wage and Hour Division. More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting the offices listed beginning on page 53 in the appendix.

Penalties

The Secretary of Labor can bring court action to restrain violators and assess civil money penalties up to $10,000 per violation against violators. Employers who violate the law may be liable to the employee or prospective employee for legal and equitable relief, including employment, reinstatement, promotion and payment of lost wages and benefits. Any person against whom a civil money penalty is assessed may, within 30 days of the notice of assessment, request a hearing before an administrative law judge. If dissatisfied with the administrative law judge's decision, such person may request a review of the decision by the Secretary of Labor. Final determinations on violations are enforceable through the courts.

Relation to State, Local and Other Federal Laws

The law does not preempt any provision of any state or local law or any collective bargaining agreement which is more restrictive with respect to lie detector tests.

10. WAGE GARNISHMENT

Title III, Consumer Credit Protection Act (15 U.S. Code, Sections 1671 et seq; 29 CFR 870).

Who is Covered

Title III of the Consumer Credit Protection Act (CCPA) protects employees from being discharged by their employers because of garnishment for any one indebtedness and limits the amount of employees' earnings which may be garnished in any one week. Title III applies to all individuals who receive personal earnings and to their employers. Personal earnings include wages, salaries, commissions, bonuses and income from a pension or retirement program but does notments

Wage garnishment is a legal procedure through which the earnings of an individual are required by court order to be withheld by an employer for the payment of a debt. Title III prohibits an employer from discharging an employee whose earnings have been subject to garnishment for any one debt, regardless of the number of levies made or proceedings brought to collect it. It does not, however, protect an employee from discharge if the employee's earnings have been subject to garnishment for a second or subsequent debts.

Title III also protects employees by limiting the amount of their earnings that may be garnished in any workweek or pay period to the lesser of 25 percent of disposable earnings or the amount by which disposable earnings are greater than 30 times the federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938. This limit applies regardless of the number of garnishment orders received by an employer. The federal minimum wage is $4.25 per hour.

In court orders for child support or alimony, Title III allows up to 50 percent of an employee's disposable earnings to be garnished if the employee is supporting another spouse or child, and up to 60 percent for an employee who is not. An additional 5 percent may be garnished for support payments which are more than 12 weeks in arrears.

"Disposable earnings" is the amount of employee earnings left after legally required deductions have been made for federal, state and local taxes, Social Security, unemployment insurance and state employee retirement systems. Other deductions which are not required by law, e.g., union dues, health and life insurance, and charitable contributions, are not subtracted from gross earnings when calculating the amount of disposable earnings for garnishment purposes.

Title III specifies that garnishment restrictions do not apply to bankruptcy court orders and debts due for federal and state taxes. Nor does it affect voluntary wage assignments, i.e., situations in which workers voluntarily agree that their employers may turn over some specified amount of their earnings to a creditor or creditors.

Assistance Available

Title III is administered and enforced by the Employment Standards Administration's Wage and Hour Division. More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting the offices listed beginning on page 53 in the appendix.

Penalties

Violations of Title III may result in the reinstatement of a discharged employee, with back pay, and the correction of improper garnishment amounts. Where violations cannot be resolved through informal means, court action may be initiated to restrain and remedy violations. Employers who willfully violate the discharge provisions of the law may be prosecuted criminally and fined up to $1,000, or imprisoned for not more than one year, or both.

Relation to State, Local and Other Federal Laws

If a state wage garnishment law differs from Title III, the law resulting in the smaller garnishment, or prohibiting the discharge of any employee because his or her earnings have been subject to garnishment for more than one indebtedness must be observed.

APPENDIX

Wage and Hour Division

National Office

Office of Program Operations Wage and Hour Division Employment Standards Administration U.S. Department of Labor, Room S-3028 200 Constitution Ave., N.W. Washington, D.C. 20210 (202) 219-8353

Division of Farm Labor, Child Labor, and Polygraph Standards Wage and Hour Division Employment Standards Administration U.S. Department of Labor, Room S-3510 200 Constitution Ave., N.W. Washington, D.C. 20210 (202) 219-4670

Division of Contract Standards Operations Wage and Hour Division Employment Standards Administration U.S. Department of Labor, Room S-3018 200 Constitution Ave., N.W. Washington, D.C. 20210 (202) 219-7541

Division of Fair Labor Standards Act Operations Wage and Hour Division Employment Standards Administration U.S. Department of Labor, Room S-3516 200 Constitution Ave., N.W. Washington, D.C. 20210 (202) 219-1407

Division of Wage Determinations Wage and Hour Division Employment Standards Administration U.S. Department of Labor, Room S-3014 200 Constitution Ave., N.W. Washington, D.C. 20210 (202) 219-7531

Regional Administrators

Wage and Hour Division Employment Standards Administration U.S. Department of Labor, Room 750 201 Varick St. New York, New York 10014 (212) 337-2000

Wage and Hour Division Employment Standards Administration U.S. Department of Labor, Room 662 1375 Peachtree St., N.E. Atlanta, Georgia 30367 (404) 347-4801

Wage and Hour Dxas 75202 (214) 767-6894

Wage and Hour Division Employment Standards Administration U.S. Department of Labor Federal Office Building 1801 California St., S. 930 Denver, Colorado 80202-2614 (303) 391-6780

Wage and Hour Division Employment Standards Administration U.S. Department of Labor 1111 Third Ave., S. 600 Seattle, Washington 98101 (206) 553-1914

Wage and Hour Division Employment Standards Administration U.S. Department of Labor One Congress St., 11th Fl. Boston, Massachusetts 02114 (617) 565-2066

Wage and Hour Division Employment Standards Administration U.S. Department of Labor, Room 15230 Gateway Building 3535 Market St. Philadelphia, Pennsylvania 19104 (215) 596-1185

Wage and Hour Division Employment Standards Administration U.S. Department of Labor, Room 820 230 South Dearborn St. Chicago, Illinois 60604 (312) 353-7280

Wage and Hour Division Employment Standards Administration U.S. Department of Labor Federal Office Building, Room 2000 911 Walnut St. Kansas City, Missouri 64106 (816) 426-5381

Wage and Hour Division Employment Standards Administration U.S. Department of Labor, S. 930 71 Stevenson St. San Francisco, California 94105 (415) 744-6645

Office of Federal Contract Compliance Programs

OFCCP/ESA U.S. Department of Labor 200 Constitution Ave., N.W. Washington, DC 20210 (202) 219-9475

OFCCP/ESA U.S. Department of Labor One Congress St., 11th Fl. Boston, MA 02114 (617) 565-2055

OFCCP/ESA U.S. Department of Labor 201 Varick St., Room 750 New York, NY 10014 (212) 337-2006

OFCCP/ESA U.S. Department of Labor Gateway Building, Room 15340 3535 Market St. Philadelphia, PA 19104 (215) 596-6168

OFCCP/ESA U.S. Department of Labor, S. 678 1375 Peachtree St., N.E. Atlanta, GA 30367 (404) 347-3200

OFCCP/ESA U.S. Department of Labor New Federal Building, Room 570 230 South Dearborn St. Chicago, IL 60604 (312) 353-0335

OFCCP/ESA U.S. Department of Labor Federal Building, Room 840 525 South Griffin St. Dallas, TX 75202 (214) 767-4771

OFCCP/ESA U.S. Department of Labor 911 Walnut St., Room 2011 Kansas City, MO 64106 (816) 426-5384

OFCCP/ESA U.S. Department of Labor Federal Office Building, S. 935 1801 California St. Denver, CO 80202 (303) 844-5011

OFCCP/ESA U.S. Department of Labor 71 Stevenson St., S. 910 San Francisco, CA 94105 (415) 744-6640

OFCCP/ESA U.S. Department of Labor, S. 610 1111 Third Ave. Seattle, WA 98101 (206) 553-4508

Occupational Safety and Health Administration

State Program Offices

Alaska Department of Labor 1111 West 8th St., Room 306 Juneau, AK 99802 (907) 465-2700

Industrial Comm. of Arizona 800 W. Washington Phoenix, AZ 85007 (602) 542-5795

California Dept. of Industrial Relations 455 Golden Gate Ave., 4th Fl. San Francisco, CA 94102 (415) 703-4590

Connecticut Dept. of Labor 200 Folly Brook Blvd. Wethersfield, CT 06109 (203) 566-5123

Hawaii Dept. of Labor and Industrial Relations 830 Punchbowl St. Honolulu, HI 96813 (808) 586-8844

Indiana Dept. of Labor State Office Bldg., Room W-195 402 West Washington St. Indianapolis, IN 46204 (317) 232-2378

Iowa Div. of Labor Services 1000 E. Grand Ave. Des Moines, IA 50319 (515) 281-3447

Kentucky Labor Cabinet 1049 US Highway 127 South Frankfort, KY 40601 (502) 564-3070

Maryland Div. of Labor and Industry Dept of Licensing and Regs 501 St. Paul Pl., 2nd Fl. Baltimore, MD 21202 (301) 333-4179

Michigan Dept. of Labor P.O. Box 30015 Victor Office Center 201 N. Washington Square Lansing, MI 48933 (517) 373-9600

Michigan Dept. of Public Health P.O. Box 30195 3423 N. Logan St. Lansing, MI 48909 (517) 335-8022

Minnesota Dept. of Labor and Industry 443 Lafayette Rd. St. Paul, MN 55155 (612) 296-2342

Nevada Department of Industrial Relations Division of Occupational Safety and Health Capitol Complex 1370 S. Curry St. Carson City, NV 89710 (702) 687-3032

New Mexico Environment Dept. Occupational Health and Safety Bureau P.O. Box 26110 1190 St. Francis Dr. Santa Fe, NM 87502 (505) 827-2850

New York Dept. of Labor State Office Building Campus 12, Room 457 Albany, NY 12240 (518) 457-2741

North Carolina Dept. of Labor 4 W. Edenton St. Raleigh, NC 27601 (919) 733-0360

Oregon Occupational Safety and Health Div. Dept. of Insurance and Finance, Room 160 21 Labor and Industry Bldg. Summer and Chemekita Sts., N.E. Salem, OR 97310 (503) 378-3272

Puerto Rico Dept. of Labor and Human Resources 505 Munoz Rivera Ave. Hato Rey, PR 00918 (809) 754-2119

South Carolina Dept. of Labor P.O. Box 11329 3600 Forest Dr. Columbia, SC 29211 (803) 734-9594

Tennessee Dept. of Labor 501 Union Bldg, 2nd Fl., S. "A" Nashville, TN 37243 (615) 741-2582

Utah Occupational Safety and Health 160 E. 300 South P.O. Box 5800 Salt Lake City, UT 84110 (801) 530-6900

Vermont Dept. of Labor and Industry 120 State St. Montpelier, VT 05620 (802) 828-2288

Virgin Islands Dept. of Labor 2131 Hospital St. Christiansted, St Croix VI 00840 (809) 773-1994

Virginia Dept. of Labor and Industry Powers-Taylor Bldg. 13 S. 13th St. Richmond, VA 23219 (804) 786-2376

Washington Dept. of Labor and Industries P.O. Box 44001 Olympia, WA 98504 (206) 956-4200

Wyoming Dept. of Employment Occupational Health and Safety Administration Herschler Bldg, 2nd Fl. East 12(215) 596-1201

Region IV (AL, FL, GA, KY*, MS, NC*, SC*, TN*) 1375 Peachtree St., N.E., Room 587 Atlanta, GA 30367 (404) 347-3573

Region V (IL, IN*, MI*, MN*, OH, WI) 230 S. Dearborn St., Room 3244 Chicago, IL 60604 (312) 353-2220

Region VI (AR, LA, NM*, OK, TX) 525 Griffin St, Room 602 Dallas, TX 75202 (214) 767-4731

Region VII (IA*, KS, MO, NE) 911 Walnut St., Room 406 Kansas City, MO 64106 (816) 426-5861

Region VIII (CO, MT, ND, SD, UT*, WY*) 1961 Stout St., Room 1576 Denver, CO 80294 (303) 844-3061

Region IX (American Samoa, AZ*, CA*, Guam, HI*, NV*, Pacific Trust Territories) 71 Stevenson St., 4th Flr. San Francisco, CA 94105 (415) 744-6670

Region X (AK*, ID, OR*, WA*) 1111 Third Ave., Room 715 Seattle, WA 98101-3212 (206) 553-5930

*State operates an OSHA-approved program in both the public and private sectors.

**State operates a public employee-only program (NY & CT).

Office of Labor-Management Standards

OLMS S. 600 1365 Peachtree St., NE Atlanta, GA 30367 (404) 347-4237

OLMS S. 302 121 High St. Boston, MA 02110 (617) 565-8130

OLMS S. 774 Federal Office Building 230 S. Dearborn St. Chicago, IL 60604 (312) 353-7264

OLMS S. 831 Federal Office Building 1240 East 9th St. Cleveland, OH 44199 (216) 522-3855

OLMS S. 300 525 Griffin Square Bldg. Griffin and Young Streets Dallas, TX 75202 (214) 767-6834

OLMS S. 1606 Federal Office Building Kansas City, MO 64106 (816) 426-2547

OLMS S. 878 201 Varick St. New York, NY 10014 (212) 337-2580

OLMS S. 9452 William Green Federal Building 600 Arch St. Philadelphia, PA 19106 (215) 597-4960

OLMS S. 725 71 Stevenson St. San Francisco, CA 94105 (415) 744-6669

OLMS S. 558 Ridell Building 1730 K St., N.W. Washington, DC 20006 (202) 254-6510

Veterans Employment and Training Service

MONTGOMERY, ALABAMA 36130 649 Monroe St. (205) 223-7677

JUNEAU, ALASKA 99802 1111 West 8th St. (907) 465-2723

PHOENIX, ARIZONA 85005 1300 West Washington (602) 261-4961

LITTLE ROCK, ARKANSAS 72201 Employment Security Bldg. State Capitol Mall, Rm. G-12 (501) 682-3786

SACRAMENTO, CALIFORNIA 94280 P. O. Box 942880 800 Capitol Mall, Room W1142 (916) 654-8178

SAN FRANCISCO, CALIFORNIA 94105 71 Stevenson St., S. 705 (415) 744-6677

DENVER, COLORADO 80203 600 Grant St., S. 900 (303) 866-1114

WETHERSFIELD, CONNECTICUT 06109 CT Department of Labor Building 200 Folly Brook Boulevard (203) 566-3326

NEWARK, DELAWARE 19702 Stockton Building, Room 104 100 Chapman Rd. (302) 368-6898

WASHINGTON, D.C. 20001 500 C St., N.W., Room 108 (202) 727-3342

TALLAHASSEE, FLORIDA 32399 S. 102, Atkins Building 1320 Executive Center Dr. (904) 488-2967

ATLANTA, GEORGIA 30303 Sussex Place, S. 504 148 International Blvd, N.E. (404) 656-3127

HONOLULU, HAWAII 96813 830 Punchbowl St. Room 232A (808) 541-1780

BOISE, IDAHO 83735 317 Main St., Room 303 (208) 334-6164 or 6163

CHICAGO, ILLINOIS 60605 401 South State St., 2 North (312) 793-3433

INDIANAPOLIS, INDIANA 46204 10 North Senate Ave., Room 203 (317) 232-6804

DES MOINES, IOWA 50319 1000 East Grand Ave. (515) 281-5106

TOPEKA, KANSAS 66612 1309 Topeka Boulevard (913) 296-5032

FRANKFORT, KENTUCKY 40621 c/o Department for Employment Services 275 East Main St. (502) 564-7062

BATON ROUGE, LOUISIANA 70804 Louisiana DOL Employment Security Bldg. Room 174, 1001 N. 23rd St. (504) 342-5691

LEWISTON, MAINE 04243 522 Lisbon St. (207) 783-5352

BALTIMORE, MARYLAND 21201 1100 North Eutaw St. Room 205 (410) 333-5194

BOSTON, MASSACHUSETTS 02203 Room 506, JFK Federal Building (617) 565-2081

DETROIT, MICHIGAN 48202 7310 Woodward Ave. S. 407 (313) 876-5613, 5614, or 5615

ST. PAUL, MINNESOTA 55101 390 North Robert, 1st Fl. (612) 296-3665

JACKSON, MISSISSIPPI 39215 1520 West Capitol St. (601) 961-7588 JEFFERSON CITY, MISSOURI 65104 421 East Dunklin St. (314) 751-9231

HELENA, MONTANA 59624 515 North Sanders (406) 449-5431

LINCOLN, NEBRASKA 68509 550 South 16th St. (402) 437-5289

CARSON CITY, NEVADA 89710 500 East Third St. (702) 885-4632

CONCORD, NEW HAMPSHIRE 03301 55 Pleasant St., Room 325 (603) 225-1424 or 235-1425

TRENTON, NEW JERSEY 08609 28 Yard Ave., Room 200 (609) 292-2930

ALBUQUERQUE, NEW MEXICO 87108 1st National Bank Building, East 5301 Central, N.E., Roo700 Wade Ave. (919) 733-7402

BISMARCK, NORTH DAKOTA 58501 1000 Divide Ave. (701) 224-2865

CLEVELAND, OHIO 44115 2728 Euclid Ave., 2nd Fl. (216) 622-3084

COLUMBUS, OHIO 43216 OBES Building 145 South Front St. (614) 466-2768

OKLAHOMA CITY, OKLAHOMA 73105 Will Rogers Memorial Office Building, Room 301 (405) 557-7189

SALEM, OREGON 97311 312 Employment Division Building 875 Union St., N.E. (503) 378-3338

HARRISBURG, PENNSYLVANIA 17121 Labor and Industry Building Room 625 Seventh and Forster Streets (717) 787-5834

HATO REY, PUERTO RICO 00918 Puerto Rico Department of Labor and Human Resources Building 505 Munoz Rivera Ave. 15th Fl. (809) 754-5391

PROVIDENCE, RHODE ISLAND 02903 507 Federal Building and Courthouse (401) 528-5134

COLUMBIA, SOUTH CAROLINA 29201 914 Richland St., S. 101 (803) 253-7649

ABERDEEN, SOUTH DAKOTA 57402 420 South Roosevelt P. O. Box 4730 (605) 226-7289

NASHVILLE, TENNESSEE 37201 301 James Robertson Parkway Room 317 (615) 741-2135

AUSTIN, TEXAS 78701 TEC Building, Room 516-B Trinity and 12th St. (512) 463-2207

SALT LAKE CITY, UTAH 84111 140 E. 300 South (801) 524-5703 or 524-5704

MONTPELIER, VERMONT 05602 Post Office Building 87 State St., Room 303 (802) 828-4441 or 828-4437

RICHMOND, VIRGINIA 23219 701 East Franklin St., S. 1409 (804) 786-7269

LACEY, WASHINGTON 98503 605 Woodview Dr., S.E. (206) 438-4600

CHARLESTON, WEST VIRGINIA 25305 112 California Ave., Room 212 Capitol Complex (304) 348-4001 or 347-5290

MADISON, WISCONSIN 53701 GEF I, 201 E. Washington Ave. Room 250 (608) 266-3110

CASPER, WYOMING 82602 100 West Midwest Ave. (307) 235-3281 or 235-3282

Mine Safety and Health Administration

Coal Mining

MSHA District 1 Office Penn Place 20 N. Pennsylvania Ave. Wilkes-Barre, PA 18701. (717) 826-6321

MSHA District 2 Office R.R. 1, Box 736 Hunker, PA 15639 (412) 925-5150

MSHA District 5 Office P.O. Box 560 Norton, VA 24273 (703) 679-0230

MSHA District 8 Office 501 Busseron St. Vincennes, IN 47591 (812) 882-7617

MSHA District 3 Office 5012 Mountaineer Mall Morgantown, WV 26505 (304) 291-4277

MSHA District 4 Office 100 Bluestone Rd. Mt. Hope, WV 25880 (304) 877-3900

MSHA District 6 Office 219 Ratliff Creek Rd. Pikeville, KY 41501 (606) 432-0943

MSHA District 7 Office HC 66, Box 1762 Barbourville, KY 40906 (606) 546-5123

MSHA District 10 Office 100 YMCA Dr. Madisonville, KY 42431 (502) 821-4180

MSHA District 9 Office P.O. Box 25367 Denver, CO 80225 (303) 231-5468

Metal and Nonmetal Mining

MSHA Northeastern District Office 230 Executive Dr. Mars, PA 16046 (412) 772-2333

MSHA Southeastern District Office 35 Gemini Circle, S. 212 Birmingham, AL 35209 (205) 290-7294

MSHA North Central District Office 515 W. First St. No. 228 Duluth, MN 55802 (218) 720-5448

MSHA South Central District Office 1100 Commerce St., Room 4650 Dallas, TX 75242 (214) 767-8401

MSHA Rocky Mountain District Office P.O. Box 25367 Denver, CO 80225 (303) 231-5465

MSHA Western District Office 3333 Vaca Valley Parkway, S. 600 Vacaville, CA 95688 (707) 447-9844

Longshore and Harbor Workers

OWCP/DLHWC U.S. Department of Labor, ESA Room C-4315 200 Constitution Ave., N.W. Washington, D.C. 20210 (202) 219-8572

District NO. 1 (MA, ME, NH, VT, RI, and CT)

OWCP/DLHWC U.S. Department of Labor, ESA One Congress St., 11th Fl. Boston, MA 02114 (617) 565-2103

District NO. 2 (NY, NJ, and Puerto Rico)

OWCP/DLHWC U.S. Department of Labor, ESA P.O. Box 249 201 Varick St., Room 750 New York, NY 10014 (212) 337-2033

District NO. 3 (PA, DE, and WV)

OWCP,DLHWC U.S. Department of Labor, ESA P.O. Box 7336 Gateway Building, Room 13180 3535 Market St. Philadelphia, PA 19104 (215) 596-5570

District NO. 7 (LA and AR)

OWCP/DLHWC U.S. Department of Labor, ESA Room 13032 701 Loyola Ave. New Orleans, LA 70113 (504) 589-3664

District NO. 8 (TX, OK, and NM)

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OWCP/DLHWC U.S. Department of Labor, ESA Room 800 230 South Dearborn St. Chicago, IL 60604 (312) 353-8883

District NO. 18 (That part of the State of California south of the northern boundaries of the counties of San Luis Obispo, Kern, and San Bernardino)

OWCP/DLHWC U.S. Department of Labor, ESA S. 720 401 E. Ocean Boulevard Long Beach, CA 90802 (213) 514-6226

District NO. 40 (Processes cases under the District of Columbia Workmen's Compensation Act of 1928)

Labor Standards D.C. Department of Employment Services 1200 Upshur St., N.W. Washington, DC 20011 (202) 576-6265

District NO. 4 (MD and DC)

OWCP/DLHWC U.S. Department of Labor, ESA Federal Building, Room 1026 31 Hopkins Plaza Baltimore, MD 21201 (410) 962-3677

District NO. 5 (VA) OWCP/DLHWC U.S. Department of Labor, ESA Federal Building, Room 212 200 Granby Mall Norfolk, VA 23510 (804) 441-3071

District NO. 6 (FL, NC, KY, TN, SC, GA, AL, and MS)

OWCP/DLHWC U.S. Department of Labor, ESA Edward Ball Building, Fl. 10 214 Hogan St. Jacksonville, FL 32202 (904) 791-2881

District No. 13 (AZ NV, and that part of the State of California north of the northern bou2-4471

Dallas Office

OWCP U.S. Department of Labor, ESA Griffin Square Building, Room 407 525 Griffin Square Dallas, TX 75202 (214) 767-4712

District NO. 15 (Hawaii)

OWCP/DLHWC U.S. Department of Labor, ESA P.O. Box 50209, Room 5108 300 Ala Moana Boulevard Honolulu, HI 96850 (808) 551-1983 . . Ave., S. 620 Seattle, WA 98101 (206) 44

Home Financing Primer

Facts for Consumers from the Federal Trade Commission

Prepared in cooperation with the Mortgage Bankers Association of America

If you are thinking about buying a house, especially your first one, you may have some basic questions about the home-financing process. The following answers may help. You also may want to obtain some of the free or low-cost information listed at the end of this brochure.

How large a mortgage will you be able to get?

A general rule is that you usually can qualify for a mortgage loan of two to two and one-half times your household's income. For example, if your family has an income of $30,000 a year, you can usually qualify for a mortgage of $60,000 to $75,000. Lenders use many other factors to determine how large a mortgage they will give you. For example, lenders generally prefer that your housing expenses (including mortgage payments, insurance, taxes, and special assessments) not exceed 25 to 28 percent of your gross monthly income. Other long-term debt (monthly payments extending more than 10 months) added to your housing expenses should not exceed 33 to 36 percent of your gross monthly income. Federal Housing Administration (FHA) and Department of Veteran Affairs (VA) mortgage loan percentages may vary.

In addition, lenders want to know about your employment and credit history. This includes finding out about your job and income and how well you handled and repaid loans in the past. Legal safeguards exist to ensure this information is used fairly. For example, the Fair Credit Reporting Act states that lenders must certify to the credit bureau the purpose for which this information is sought and that it will be used for no other purpose. The Equal Credit Opportunity Act prohibits discrimination in lending based on sex, marital status, race, national origin, religion, age, or because someone receives public assistance.

How much money will you need for a downpayment and closing costs? Lenders usually expect you to be able to make a downpayment of between 10 and 20 percent of the house's price and to pay closing costs, often three to six percent of the loan amount. If you make a downpayment of as little as five percent but less than 20 percent, the lender will require you to pay for private mortgage insurance. (Requirements for VA or FHA loans may differ.) Under the federal Real Estate Settlement Procedures Act, the lender must provide you with information on known and estimated closing costs.

How do you shop for mortgage loans?

Mortgage packages vary widely, and it is important to investigate several options to find the one best for you. If, for example, you are using a real estate agent or broker to shop for a home, you may want to consider their suggestions about lenders and mortgage packages. Check real estate or business newspaper sections, which may include brief tables on mortgage availability. Look in the Yellow Pages under "Mortgages" for a list of mortgage lenders in your area. Call several lenders for rates and terms on the type of mortgage you want. In addition, consider trying a commercial "computerized mortgage shopping service," although such a list may reflect only a selection of lenders and you may be charged a fee.

Compare the mortgages offered by several lenders before you apply for a loan. Most lenders require you to pay a fee when you file your loan application. The amount of this fee varies, but it can be $100 to $300. Some lenders do not refund this fee if you are not approved for the loan, or if you decide not to accept the loan terms offered. Before you apply, ask the lender whether they charge an application fee, how much it is, and under what circumstances and to what extent it is refundable.

What kind of mortgage should you select?

There are two major types of mortgage loans _ those with fixed interest rates and monthly payments and those with changing rates and payments. However, there are many variations of these plans on the market, and you should shop carefully for the mortgage that best suits your needs.

Common fixed-rate mortgages include 30-year, 15-year, and bi-weekly mortgages. The 30-year

mortgage usually offers the lowest monthly payments of fixed-rate loans, with a fixed monthly payment schedule.

The 15-year fixed-rate mortgage enables you to own your home in half the time and for less than half the total interest costs of a 30-year loan. These loans, however, often require higher monthly payments.

The bi-weekly mortgage shortens the loan term from 30 years to 18 to 19 years by requiring a payment for half the monthly amount every two weeks. While you pay about 8 percent more a year towards the loan's principal than you would with the 30-year, one-payment-per-month loan, you pay substantially less interest over the life of the loan. Keep in mind, however, that with shorter-term loans, you trade lower total costs for smaller mortgage interest deductions on your income tax. Mortgages with changing interest rates and/or monthly payments exist in many forms. The adjustable rate mortgage (ARM) is probably the most common, and there are many types of ARM loans available. The ARM usually offers interest rates and monthly payments that are initially lower than fixed-rate mortgages. But these rates and payments can fluctuate, often annually, according to changes in a pre-determined "index" _ commonly the rate of return on U.S. Government Treasury bills.

Some adjustable loans, for a fee, contain a provision permitting you to convert later to a fixed-rate loan. Another type of mortgage loan carries a fixed-interest rate for a number of years, often seven, before adjusting to a new interest rate for the remainder of the loan. A "buydown" or "discounted mortgage" is another type of loan with an initially reduced interest rate which increases to a higher fixed rate or to an adjustable rate usually within one to three years. For example, in a "lender buydown," the lender offers lower monthly payments during the first few years of the loan.

What features should you compare with different mortgage loan packages?

Probably the single most important factor to look for when shopping for a home mortgage is the annual percentage rate, or the "APR." The APR includes all the costs of credit, including such items as interest, "points" (fees often charged when a mortgage is closed), and mortgage insurance (when included in the loan). Lenders must disclose the APR under the Truth in Lending Act. The lower the APR, generally the lower the cost of your loan. Advertisements that state other rates such as "simple" interest rates, do not include all the costs of the loan. If you shop for a mortgage loan with interest rates or payments that change, be sure to compare:

initial interest rates;

the "cap" -- or how much the interest rate can increase/decrease over the life of the loan, and how much the rate can change at each adjustment;

how often the interest rate can change;

how much and how often the monthly payments and term of the loan can change;

what index is used to determine the rate changes;

what "margin" is used- or how much additional a lender can add to the adjusted interest rate;

the limits, if any, on "negative amortization"-- the loss of equity in your home when low monthly payments do not cover fully the interest rate charges agreed upon in the mortgage contract; and

any "balloon" payments -- a large payment at the end of your loan term, often after a series of low monthly payments.

Consumer Handbook on Adjustable Rate Mortgages

Federal Reserve Board- Office of Thrift supervision

EQUAL HOUSING OPPORTUNITY

This booklet was prepared in consultation with the following organizations:
American Bankers Association; Comptroller of the Currency; Consumer Federation of America; Credit Union National Association, Inc.; Federal Deposit Insurance Corporation; Federal Reserve Board's Consumer Advisory Council; Federal Trade Commission; Independent Bankers Association of America; Mortgage Bankers Association of America; Mortgage Insurance Companies of America; National Association of Federal Credit Unions; National Association of Home Builders; National Association of Realtors; National Council of Savings Institutions; National Credit Union Administration; Office of Special Advisor to the President for Consumer Affairs; The Consumer Bankers Association U.S. Department of Housing and Urban Development; U.S. League of Savings Institutions
With special thanks to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation

The Federal Reserve Board and the Office of Thrift Supervision prepared this booklet on adjustable rate mortgages (ARMs) in response to a request from the House Committee on Banking, Finance and Urban Affairs and in consultation with many other agencies and trade and consumer groups. It is designed to help consumers understand an important and complex mortgage option available to home buyers.

We believe a fully informed consumer is in the best position to make a sound economic choice. If you are buying a home, and looking for a home loan, this booklet will provide useful basic information about ARMs. It cannot provide all the answers you will need, but we believe it is a good starting point.

PEOPLE ARE ASKING

"Some newspaper ads for home loans show surprisingly low rates. Are these loans for real, or is there a catch?"

Some of the ads you see are for adjustable rate mortgages (ARMs). These loans may have low rates for a short time--maybe only for the first year. After that, the rates can be adjusted on a regular basis. This means that the interest rate and the amount of the monthly payment can go up or down.

"Will I know in advance how much my payment may go up?"

With an adjustable-rate mortgage, your future monthly payment is uncertain. Some types of ARMs put a ceiling on your payment increase or rate increase from one period to the next. Virtually all must put a ceiling on interest-rate increases over the life of the loan.

"Is an ARM the right type of loan for me?"

That depends on your financial situation and the terms of the ARM. ARMs carry risks in periods of rising interest rates, but can be cheaper over a longer term if interest rates decline. You will be able to answer the question better once you understand more about adjustable-rate mortgages. This booklet should help.

Mortgages have changed, and so have the questions that need to be asked and answered.

Shopping for a mortgage used to be a relatively simple process. Most home mortgage loans had interest rates that did not change over the life of the loan. Choosing among these fixed-rate mortgage loans meant comparing interest rates, monthly payments, fees, prepayment penalties, and due-on-sale clauses.

Today, many loans have interest rates (and monthly payments) that can change from time to time. To compare one ARM with another or with a fixed-rate mortgage, you need to know about indexes, margins, discounts, caps, negative amortization, and convertibility. You need to consider the maximum amount your monthly payment could increase. Most important, you need to compare what might happen to your mortgage costs with your future ability to pay.

This booklet explains how ARMs work and some of the risks and advantages to borrowers that ARMs introduce. It discusses features that can help reduce the risks and gives some pointers about advertising and other ways you can get information from lenders. Important ARM terms are defined in a glossary on page 19. And a checklist at the end of the booklet should help you ask lenders the right questions and figure out whether an ARM is right for you. Asking lenders to fill out the checklist is a good way to get the information you need to compare mortgages.

WHAT IS AN ARM?

With a fixed-rate mortgage, the interest rate stays the same during the life of the loan. But with an ARM, the interest rate changes periodically, usually in relation to an index, and payments may go up or down

accordingly.
Lenders generally charge lower initial interest rates for ARMs than for fixed-rate mortgages. This makes the ARM easier on your pocketbook at first than a fixed-rate mortgage for the same amount. It also means that you might qualify for a larger loan because lenders sometimes make this decision on the basis of your current income and the first year's payments. Moreover, your ARM could be less expensive over a long period than a fixed-rate mortgage--for example, if interest rates remain steady or move lower.
Against these advantages, you have to weigh the risk that an increase in interest rates would lead to higher monthly payments in the future. It's a trade-off--you get a lower rate with an ARM in exchange for assuming more risk.
Here are some questions you need to consider:
* Is my income likely to rise enough to cover higher mortgage payments if interest rates go up?
* Will I be taking on other sizable debts, such as a loan for a car or school tuition, in the near future?
* How long do I plan to own this home? (If you plan to sell soon, rising interest rates may not pose the problem they do if you plan to own the house for a long time.)
* Can my payments increase even if interest rates generally do not increase?

HOW ARMS WORK: THE BASIC FEATURES

The Adjustment Period

With most ARMs, the interest rate and monthly payment change every year, every three years, or every five years. However, some ARMs have more frequent interest and payment changes. The period between one rate change and the next is called the adjustment period. So, a loan with an adjustment period of one year is called a one-year ARM, and the interest rate can change once every year.

The Index

Most lenders tie ARM interest rate changes to changes in an "index rate." These indexes usually go up and down with the general movement of interest rates. If the index rate moves up, so does your mortgage rate in most circumstances, and you will probably have to make higher monthly payments. On the other hand, if the index rate goes down your monthly payment may go down.
Lenders base ARM rates on a variety of indexes. Among the most common are the rates on one-, three-, or five-year Treasury securities. Another common index is the national or regional average cost of funds to savings and loan associations. A few lenders use their own cost of funds, over which--unlike other indexes--they have some control. You should ask what index will be used and how often it changes. Also ask how it has behaved in the past and where it is published.

The Margin

To determine the interest rate on an ARM, lenders add to the index rate a few percentage points called the "margin." The amount of the margin can differ from one lender to another, but it is usually constant over the life of the loan.
Let's say, for example, that you are comparing ARMs offered by two different lenders. Both ARMs are for 30 years and an amount of $65,000. (All the examples used in this booklet are based on this amount for a 30-year term. Note that the payment amounts shown here do not include items like taxes or insurance.) Both lenders use the one-year Treasury index. But the first lender uses a 2% margin, and the second lender uses a 3% margin. Here is how that difference in margin would affect your initial monthly payment.
In comparing ARMs, look at both the index and margin for each plan. Some indexes have higher average values, but they are usually used with lower margins. Be sure to discuss the margin with your lender.

CONSUMER CAUTIONS

Discounts

Some lenders offer initial ARM rates that are lower than the sum of the index and the margin. Such rates, called discounted rates, are often combined with large initial loan fees ("points") and with much higher interest rates after the discount expires.
Very large discounts are often arranged by the seller. The seller pays an amount to the lender so the lender can give you a lower rate and lower payments early in the mortgage term. This arrangement is referred to as a "seller buydown." The seller may increase the sales price of the home to cover the cost of the buydown.
A lender may use a low initial rate to decide whether to approve your loan, based on your ability to afford it. You should be careful to consider whether you will be able to afford payments in later years when the discount expires and the rate is adjusted.
Here is how a discount might work. Let's assume the one-year ARM rate (index rate plus margin) is at 10%. But your lender is offering an 8% rate for the first year. With the 8% rate, your first year monthly

payment would be $476.95.
But don't forget that with a discounted ARM, your low initial payment will probably not remain low for long, and that any savings during the discount period may be made up during the life of the mortgage or be included in the price of the house. In fact, if you buy a home using this kind of loan, you run the risk of...
Payment Shock
Payment shock may occur if your mortgage payment rises very sharply at the first adjustment. Let's see what happens in the second year with your discounted 8% ARM.
As the example shows, even if the index rate stays the same, your monthly payment would go up from $476.95 to $568.82 in the second year.
Suppose that the index rate increases 2% in one year and the ARM rate rises to a level of 12%.
That's an increase of almost $200 in your monthly payment. You can see what might happen if you choose an ARM impulsively because of a low initial rate. You can protect yourself from increases this big by looking for a mortgage with features, described next, which may reduce this risk.
HOW CAN I REDUCE MY RISK?
Besides an overall rate ceiling, most ARMs also have "caps" that protect borrowers from extreme increases in monthly payments. Others allow borrowers to convert an ARM to a fixed-rate mortgage. While these may offer real benefits, they may also cost more, or add special features, such as negative amortization.
Interest-Rate Caps
An interest-rate cap places a limit on the amount your interest rate can increase. Interest caps come in two versions:
* Periodic caps, which limit the interest rate increase from one adjustment period to the next; and
* Overall caps, which limit the interest-rate increase over the life of the loan.
By law, virtually all ARMs must have an overall cap. Many have a periodic interest rate cap.
Let's suppose you have an ARM with a periodic interest rate cap of 2%. At the first adjustment, the index rate goes up 3%. The example shows what happens.
A drop in interest rates does not always lead to a drop in monthly payments. In fact, with some ARMs that have interest rate caps, your payment amount may increase even though the index rate has stayed the same or declined. This may happen after an interest rate cap has been holding your interest rate down below the sum of the index plus margin.
Look below at the example where there was a periodic cap of 2% on the ARM, and the index went up 3% at the first adjustment. If the index stays the same in the third year, your rate would go up to 13%.
In general, the rate on your loan can go up at any scheduled adjustment date when the index plus the margin is higher than the rate you are paying before that adjustment. The next example shows how a 5% overall rate cap would affect your loan.
Let's say that the index rate increases 1% in each of the first ten years. With a 5% overall cap, your payment would never exceed $813.00--compared to the $1,008.64 that it would have reached in the tenth year based on a 19% indexed rate.
Payment Caps
Some ARMs include payment caps, which limit your monthly payment increase at the time of each adjustment, usually to a percentage of the previous payment. In other words, with a 7«% payment cap, a payment of $100 could increase to no more than $107.50 in the first adjustment period, and to no more than $115.56 in the second.
Many ARMs with payment caps do not have periodic interest rate caps.
Negative Amortization
If your ARM contains a payment cap, be sure to find out about "negative amortization." Negative amortization means the mortgage balance is increasing. This occurs whenever your monthly mortgage payments are not large enough to pay all of the interest due on your mortgage.
Because payment caps limit only the amount of payment increases, and not interest-rate increases, payments sometimes do not cover all of the interest due on your loan. This means that the interest shortage in your payment is automatically added to your debt, and interest may be charged on that amount. You might therefore owe the lender more later in the loan term than you did at the start. However, an increase in the value of your home may make up for the increase in what you owe.
The next illustration uses the figures from the preceding example to show how negative amortization works during one year. Your first 12 payments of $570.42, based on a 10% interest rate, paid the balance down to $64,638.72 at the end of the first year. The rate goes up to 12% in the second year. But because

of the 7«% payment cap, payments are not high enough to cover all the interest. The interest shortage is added to your debt (with interest on it), which produces negative amortization of $420.90 during the second year.

To sum up, the payment cap limits increases in your monthly payment by deferring some of the increase in interest. Eventually, you will have to repay the higher remaining loan balance at the ARM rate then in effect. When this happens, there may be a substantial increase in your monthly payment.

Some mortgages contain a cap on negative amortization. The cap typically limits the total amount you can owe to 125% of the original loan amount. When that point is reached, monthly payments may be set to fully repay the loan over the remaining term, and your payment cap may not apply. You may limit negative amortization by voluntarily increasing your monthly payment.

Be sure to discuss negative amortization with the lender to understand how it will apply to your loan.

Prepayment and Conversion

If you get an ARM and your financial circumstances change, you may decide that you don't want to risk any further changes in the interest rate and payment amount. When you are considering an ARM, ask for information about prepayment and conversion.

Prepayment. Some agreements may require you to pay special fees or penalties if you pay off the ARM early. Many ARMs allow you to pay the loan in full or in part without penalty whenever the rate is adjusted. Prepayment details are sometimes negotiable. If so, you may want to negotiate for no penalty, or for as low a penalty as possible.

Conversion. Your agreement with the lender can have a clause that lets you convert the ARM to a fixed-rate mortgage at designated times. When you convert, the new rate is generally set at the current market rate for fixed-rate mortgages.

The interest rate or up-front fees may be somewhat higher for a convertible ARM. Also, a convertible ARM may require a special fee at the time of conversion.

WHERE TO GET INFORMATION

Before you actually apply for a loan and pay a fee, ask for all the information the lender has on the loan you are considering. It is important that you understand index rates, margins, caps, and other ARM features like negative amortization. You can get helpful information from advertisements and disclosures, which are subject to certain federal standards.

Advertising

Your first information about mortgages probably will come from newspaper advertisements placed by builders, real estate brokers, and lenders. While this information can be helpful, keep in mind that the ads are designed to make the mortgage look as attractive as possible. These ads may play up low initial interest rates and monthly payments, without emphasizing that those rates and payments later could increase substantially. Get all the facts.

A federal law, the Truth in Lending Act, requires mortgage advertisers, once they begin advertising specific terms, to give further information on the loan. For example, if they want to show the interest rate or payment amount on the loan, they must also tell you the annual percentage rate (APR) and whether that rate may go up. The annual percentage rate, the cost of your credit as a yearly rate, reflects more than just a low initial rate. It takes into account interest, points paid on the loan, any loan origination fee, and any mortgage insurance premiums you may have to pay.

Disclosures From Lenders

Federal law requires the lender to give you information about adjustable-rate mortgages, in most cases before you apply for a loan. The lender also is required to give you information when you get a mortgage. You should get a written summary of important terms and costs of the loan. Some of these are the finance charge, the annual percentage rate, and the payment terms.

Selecting a mortgage may be the most important financial decision you will make, and you are entitled to all the information you need to make the right decision. Don't hesitate to ask questions about ARM features when you talk to lenders, real estate brokers, sellers, and your attorney, and keep asking until you get clear and complete answers. The checklist at the back of this pamphlet is intended to help you compare terms on different loans.

GLOSSARY

Annual Percentage Rate (APR)

A measure of the cost of credit, expressed as a yearly rate. It includes interest as well as other charges. Because all lenders follow the same rules to ensure the accuracy of the annual percentage rate, it provides consumers with a good basis for comparing the cost of loans, including mortgage plans.

Adjustable-Rate Mortgage (ARM)
A mortgage where the interest rate is not fixed, but changes during the life of the loan in line with movements in an index rate. You may also see ARMs referred to as AMLs (adjustable mortgage loans) or VRMs (variable-rate mortgages).
Assumability
When a home is sold, the seller may be able to transfer the mortgage to the new buyer. This means the mortgage is assumable. Lenders generally require a credit review of the new borrower and may charge a fee for the assumption. Some mortgages contain a due-on-sale clause, which means that the mortgage may not be transferable to a new buyer. Instead, the lender may make you pay the entire balance that is due when you sell the home. Assumability can help you attract buyers if you sell your home.
Buydown
With a buydown, the seller pays an amount to the lender so that the lender can give you a lower rate and lower payments, usually for an early period in an ARM. The seller may increase the sales price to cover the cost of the buydown. Buydowns can occur in all types of mortgages, not just ARMs.
Cap
A limit on how much the interest rate or the monthly payment can change, either at each adjustment or during the life of the mortgage. Payment caps don't limit the amount of interest the lender is earning, so they may cause negative amortization.
Conversion Clause
A provision in some ARMs that allows you to change the ARM to a fixed-rate loan at some point during the term. Usually conversion is allowed at the end of the first adjustment period. At the time of the conversion, the new fixed rate is generally set at one of the rates then prevailing for fixed rate mortgages. The conversion feature may be available at extra cost.
Discount
In an ARM with an initial rate discount, the lender gives up a number of percentage points in interest to give you a lower rate and lower payments for part of the mortgage term (usually for one year or less). After the discount period, the ARM rate will probably go up depending on the index rate.
Index
The index is the measure of interest rate changes that the lender uses to decide how much the interest rate on an ARM will change over time. No one can be sure when an index rate will go up or down. To help you get an idea of how to compare different indexes, the following chart shows a few common indexes over a ten-year period (1977-87). As you can see, some index rates tend to be higher than others, and some more volatile. (But if a lender bases interest rate adjustments on the average value of an index over time, your interest rate would not be as volatile.) You should ask your lender how the index for any ARM you are considering has changed in recent years, and where it is reported.
Margin
The number of percentage points the lender adds to the index rate to calculate the ARM interest rate at each adjustment.
Negative Amortization
Amortization means that monthly payments are large enough to pay the interest and reduce the principal on your mortgage. Negative amortization occurs when the monthly payments do not cover all of the interest cost. The interest cost that isn't covered is added to the unpaid principal balance. This means that even after making many payments, you could owe more than you did at the beginning of the loan. Negative amortization can occur when an ARM has a payment cap that results in monthly payments not high enough to cover the interest due.
Points
A point is equal to one percent of the principal amount of your mortgage. For example, if you get a mortgage for $65,000, one point means you pay $650 to the lender. Lenders frequently charge points in both fixed-rate and adjustable-rate mortgages in order to increase the yield on the mortgage and to cover loan closing costs. These points usually are collected at closing and may be paid by the borrower or the home seller, or may be split between them.

MORTGAGE CHECKLIST

Ask your lender to help fill out this checklist.	Mortgage A	Mortgage B
Mortgage amount		
Basic Features for Comparison		

Fixed-rate annual percentage rate (the cost of your credit as a yearly rate which includes both interest and other charges)	_____	_____
ARM annual percentage rate	_____	_____
Adjustment period	_____	_____
Index used and current rate	_____	_____
Margin	_____	_____
Initial payment without discount	_____	_____
Initial payment with discount (if any)	_____	_____
How long will discount last?	_____	_____
Interest rate caps: periodic	_____	_____
overall	_____	_____
Payment caps	_____	_____
Negative amortization	_____	_____
Convertibility or prepayment privilege	_____	_____
Initial fees and charges	_____	_____
Monthly Payment Amounts		
What will my monthly payment be after twelve months if the index rate:		
stays the same	_____	_____
goes up 2%	_____	_____
goes down 2%	_____	_____
What will my monthly payments be after three years if the index rate:		
stays the same	_____	_____
goes up 2% per year	_____	_____
goes down 2% per year	_____	_____

Take into account any caps on your mortgage and remember it may run 30 years.

Home Equity Credit LInes

Facts for Consumers from the Federal Trade Commission

Using a credit line to borrow against the equity in your home has become a popular source of consumer credit. And lenders are offering these home equity credit lines in a variety of ways. You will find most loans come with variable interest rates, some come with attractive low introductory rates, and a few come with fixed rates. You also may find most loans have large one-time upfront fees, others have closing costs, and some have continuing costs, such as annual fees. You can find loans with large balloon payments at the end of the loan, and others with no balloons but with higher monthly payments.

No one loan is right for every homeowner. The challenge, then, is to contact different lenders, compare options, and select the home equity credit line best tailored to your needs.

Be sure to review the home equity contract carefully before you sign it. Do not hesitate to ask questions about the terms and conditions of your financing. To help you do this, you may want to consider the following questions and to use the checklist at the end of this brochure. (We apologize that the checklist is not available on-line. To obtain a copy of the checklist, please request a free copy of the brochure by contacting: Public Reference, Federal Trade Commission, Washington, D.C. 20580; (202) 326-2222. TDD call (202) 326-2502.)

Is a Home Equity Credit Line for You? If you need to borrow money, home equity lines may be one useful source of credit. Initially at least, they may provide you with large amounts of cash at relatively low interest rates. And they may provide you with certain tax advantages unavailable with other kinds of loans. (Check with your tax adviser for details.) At the same time, home equity lines of credit require you to use your home as collateral for the loan. This may put your home at risk if you are late or cannot make your monthly payments. Those loans with a large final (balloon) payment may lead you to borrow more money to pay off this debt, or they may put your home in jeopardy if you cannot qualify for refinancing. And, if you sell your home, most plans require you to pay off your credit line at that time. In addition, because home equity loans give you relatively easy access to cash, you might find you borrow money more freely.

Remember too, there are other ways to borrow money from a lending institution. For example, you may want to explore second mortgage installment loans. Although these plans also place an additional mortgage on your home, second mortgage money usually is loaned in a lump sum, rather than in a series of advances made available by writing checks on an account. Also, second mortgages usually have fixed interest rates and fixed payment amounts.

You also may want to explore borrowing from credit lines that do not use your home as collateral. These are available with your credit cards or with unsecured credit lines that let you write checks as you need the money. In addition, you may want to ask about loans for specific items, such as cars or tuition.

How Much Money Can You Borrow on a Home Equity Credit Line?

Depending on your creditworthiness (your income, credit rating, etc.) and the amount of your outstanding debt, home equity lenders may let you borrow up to 85% of the appraised value of your home minus the amount you still owe on your first mortgage. Ask the lender about the length of the home equity loan, whether there is a minimum withdrawal requirement when you open your account, and whether there are minimum or maximum withdrawal requirements after your account is opened. Inquire how you gain access to your credit line _ with checks, credit cards, or both. Also, find out if your home equity plan sets a fixed time _ a draw period _ when you can make withdrawals from your account. Once the draw period expires, you may be able to renew your credit line. If you cannot, you will not be permitted to borrow additional funds. Also, in some plans, you may have to pay your full outstanding balance. In others, you may be able to repay the balance over a fixed time.

What is the Interest Rate on the Home Equity Loan?

Interest rates for loans differ, so it pays to check with several lenders for the lowest rate. Compare the annual percentage rate (APR), which indicates the cost of credit on a yearly basis. Be aware that the

advertised APR for home equity credit lines is based on interest alone. For a true comparison of credit costs, compare other charges, such as points and closing costs, which will add to the cost of your home equity loan. This is especially important if you are comparing a home equity credit line with a traditional installment (or second) mortgage, where the APR includes the total credit costs for the loan. In addition, ask about the type of interest rates available for the home equity plan. Most home equity credit lines have variable interest rates. These variable rates may offer lower monthly payments at first, but during the rest of the repayment period the payments may change and may be higher. Fixed interest rates, if available, may be slightly higher initially than variable rates, but fixed rates offer stable monthly payments over the life of the credit line.

If you are considering a variable rate, check and compare the terms. Check the periodic cap, which is the limit on interest rate changes at one time. Also, check the lifetime cap, which is the limit on interest rate changes throughout the loan term. Ask the lender which index is used and how much and how often it can change. An index (such as the prime rate) is used by lenders to determine how much to raise or lower interest rates. Also, check the margin, which is an amount added to the index that determines the interest you are charged. In addition, inquire whether you can convert your variable rate loan to a fixed rate at some future time.

Sometimes, lenders offer a temporarily discounted interest rate _ a rate that is unusually low and lasts only for an introductory period, such as six months. During this time, your monthly payments are lower too. After the introductory period ends, however, your rate (and payments) increase to the true market level (the index plus the margin). So, ask if the rate you are offered is "discounted," and if so, find out how the rate will be determined at the end of the discount period and how much larger your payments could be at that time.

What Are the Upfront Closing Costs?

When you take out a home equity line of credit, you pay for many of the same expenses as when you financed your original mortgage. These include items such as an application fee, title search, appraisal, attorneys' fees, and points (a percentage of the amount you borrow). These expenses can add substantially to the cost of your loan, especially if you ultimately borrow little from your credit line. You may want to negotiate with lenders to see if they will pay for some of these expenses.

What Are the Continuing Costs?

In addition to upfront closing costs, some lenders require you to pay continuing fees throughout the life of the loan. These may include an annual membership or participation fee, which is due whether or not you use the account, and/or a transaction fee, which is charged each time you borrow money. These fees add to the overall cost of the loan.

What Are the Repayment Terms During the Loan?

As you pay back the loan, your payments may change if your credit line has a variable interest rate, even if you do not borrow more money from your account. Find out how often and how much your payments can change. You also will want to know whether you are paying back both principal and interest, or interest only. Even if you are paying back some principal, ask whether your monthly payments will cover the full amount borrowed or whether you will owe an additional payment of principal at the end of the loan. In addition, you may want to ask about penalties for late payments and under what conditions the lender can consider you in default and demand immediate full payment.

What Are the Repayment Terms at the End of the Loan?

Ask whether you might owe a large payment at the end of your loan term. If so, and you are not sure you will be able to afford the balloon payment, you may want to renegotiate your repayment terms. When you take out the loan, ask about the conditions for renewal of the plan or for refinancing the unpaid balance. Consider asking the lender to agree ahead of time and in writing to refinance any end-of-loan balance or extend your repayment time, if necessary.

What Safeguards Are Built Into the Loan?

One of the best protections you have is the Federal Truth in Lending Act, which requires lenders to inform you about the terms and costs of the plan at the time you are given an application. Lenders must disclose

the APR and payment terms and must inform you of charges to open or use the account, such as an appraisal, a credit report, or attorneys' fees. Lenders also must tell you about any variable-rate feature and give you a brochure describing the general features of home equity plans. The Truth in Lending Act also protects you from changes in the terms of the account (other than a variable-rate feature) before the plan is opened. If you decide not to enter into the plan because of a change in terms, all fees you paid earlier must be returned to you. Because your home is at risk when you open a home equity credit account, you have three days to cancel the transaction, for any reason. To cancel, you must inform the lender in writing. Following that, your credit line must be cancelled and all fees you have paid must be returned.

Once your home equity plan is opened, if you pay as agreed, the lender, in most cases, may not terminate your plan, accelerate payment of your outstanding balance, or change the terms of your account. The lender may halt credit advances on your account during any period in which interest rates exceed the maximum rate cap in your agreement, if your contract permits this practice.

For More Information

If you have questions about home equity credit lines, write to: Correspondence Branch, Federal Trade Commission, Washington, D.C. 20580. Although the FTC generally does not intervene in individual disputes, the information you provide may indicate a pattern or practice that requires action by the Commission.

THE HOME INSPECTION & YOU

The Consumer Law Page: Brochures:

Q. WHAT IS A "HOME INSPECTION"? A home inspection is an objective visual examination of the physical structure and systems of a home, from the roof to the foundation. The standard home inspector's report will include an evaluation of the condition of the home's heating system, central air conditioning system (temperature permitting), interior plumbing and electrical systems; the roof, attic, and visible insulation; walls, ceilings, floors, windows and doors; the foundation, basement, and visible structure. Having a home inspected is like giving it a physical check-up. If problems or symptoms are found, the inspector will refer you to the appropriate specialist or tradesperson for further evaluation.

Q. Why do I need a home inspection? The purchase of a home is probably the largest single investment you will ever make. You should learn as much as you can about the condition of the property and the need for any major repairs before you buy, so that you can minimize unpleasant surprises and difficulties afterwards. Of course, a home inspection will also point out the positive aspects of a home, as well as the maintenance that will be necessary to keep it in good shape. After the inspection, you will have a much clearer understanding of the property you are about to purchase, and will be able to make a confident buying decision. If you have owned your home for a long time, a home inspection can identify problems in the making and recommend preventive measures which might avoid costly future repairs. In addition, home sellers may opt for having an inspection prior to placing the home on the market to gain a better understanding of conditions which the buyer's inspector may point out. This provides an opportunity to make repairs that will put the house in better selling condition.

Q. What will it cost? The inspection fee for a typical one-family house varies geographically, as does the cost of housing. Similarly, within a given area, the inspection fee may vary depending upon the size of the house, particular features of the house, its age, and possible additional services, such as septic, well, or radon testing. It is a good idea to check local prices on your own. However, do not let cost be a factor in deciding whether or not to have a home inspection, or in the selection of your home inspector. The knowledge gained from an inspection is well worth the cost, and the lowest-priced inspector is not necessarily a bargain. The inspector's qualifications, including his experience, training, and professional affiliations, should be the most important consideration.

Q. Can't I do it myself? Even the most experienced home owner lacks the knowledge and expertise of a professional home inspector who has inspected hundreds, perhaps thousands, of homes in his or her career. An inspector is familiar with all the elements of home construction, their proper installation, and maintenance. He or she understands how the home's systems and components are intended to function together, as well as how and why they fail. Above all, most buyers find it very difficult to remain completely objective and unemotional about the house they really want, and this may affect their judgement. For the most accurate picture, it is best to obtain an impartial third-party opinion by an expert in the field of home inspection.

Q. Can a house fail inspection? No. A professional home inspection is an examination of the current condition of your prospective home. It is not an appraisal, which determines market value, or a municipal inspection, which verities local code compliance. A home inspector, therefore, will not pass or fail a house, but rather describe its physical condition and indicate what may need repair or replacement.

Q. How do I find a home inspector? The best source is a friend, or perhaps a business acquaintance, who has been satisfied with, and can recommend, a home inspector they have used. In addition, the names of local inspectors can be found in the Yellow Pages where many advertise under "Building Inspection Service" or "Home Inspection Service". Real estate agents are also generally familiar with the service, and should be able to provide you with a list of names from which to choose. Whatever your referral source, be sure to ascertain the home inspector's professional qualifications, experience, and business ethics before you make your selection. You can do this by checking with the local consumer affairs office or Better Business Bureau, as well as by verifying the inspector's membership in a reputable professional association. Since there are no licensing requirements for home inspectors [except in Texas], you will want to make certain that such an association has a set of nationally recognized practice standards and a

code of ethics. This provides members with professional inspection guidelines, and prohibits them from engaging in any conflict of interest activities which might compromise their objectivity, such as using the inspection as a means to obtain home repair contracts. The association should also have rigorous membership and continuing education requirements to assure consumers of an inspector's experience and technical qualifications.

Q. When do I call in the home inspector? A home inspector is typically called right after the contract or purchase agreement has been signed, and is often available within a few days. However, before you sign, be sure that there is an inspection clause in the contract, making your purchase obligation contingent upon the findings of a professional home inspection. This clause should specify the terms to which both the buyer and seller are obligated.

Q. Do I have to be there? It's not necessary for you to be present for the inspection, but it is recommended. By following the home inspector around the house, by observing and asking questions, you will learn a great deal about the condition of the home, how its systems work, and how to maintain it. You will also find the written report easier to understand if you've seen the property first-hand through the inspector's eyes.

Q. What if the report reveals problems? No house is perfect. If the inspector finds problems, it doesn't necessarily mean you shouldn't buy the house, only that you will know in advance what to expect. A seller may be flexible with the purchase price or contract terms if major problems are found. If your budget is very tight, or if you don't wish to become involved in future repair work, this information will be extremely important to you.

Q. What if I find problems after I move into my new home? A home inspection is not a guarantee that problems won't develop after you move in. However if you believe that a problem was already visible at the time of the inspection and should have been mentioned in the report, your first step should be to call and meet with the inspector to clarify the situation. Misunderstandings are often resolved in this manner. If necessary, you might wish to consult with a local mediation service to help you settle your disagreement. Though many home inspectors today carry Errors & Omissions liability insurance, litigation should be considered a last resort. It is difficult, expensive, and by no means a sure method of recovery.

Q. If the house proves to be in good condition, did I really need an inspection? Definitely. Now you can complete your home purchase with peace of mind about the condition of the property and all its equipment and systems. You will also have learned a few things about your new home from the inspector's report, and will want to keep that information for future reference. Above all, you can feel assured that you are making a well©informed purchase decision, and that you will be able to enjoy your new home the way you want to.

Getting a Loan: Your Home as Security -- February 1992

Facts for Consumers from the Federal Trade Commission

Getting a Loan: Your Home as Security

If you need a personal loan and are thinking about using your home as security, you should know about a credit law that gives you extra time to reconsider the loan agreement. When you use your home as collateral for a loan, you generally have the right to cancel the credit transaction within three business days. This is called your "right of rescission," and it is guaranteed by the Federal Truth in Lending Act.

The right of rescission gives you three extra days to reconsider whether you want to use your home to guarantee repayment for a personal loan. The right applies even if your home is a condominium, mobile home, or house boat, as long as it is your principal residence. The right applies to certain installment loans where you borrow a fixed amount and repay the debt on an agreed payment schedule as well as to home equity credit lines -- a form of revolving credit in which your home serves as collateral.

What Rescinding a Credit Transaction Means

Rescinding a credit transaction means you are canceling the deal. In other words, you decide that you do not want the loan or the service being financed.

You can rescind the credit transaction within three days for any reason. For example, you may find better credit terms, such as a loan that offers a lower interest rate or does not require the use of your home as collateral.

How to Rescind a Credit Transaction

Unless you waive your right of rescission, you have until midnight of the third business day after the transaction to cancel the contract. The first day after all three of the following events occurs counts as Day One:

1. You sign the credit contract.

2. You receive a Truth in Lending disclosure form containing certain important disclosures about the credit contract. These disclosures explain the key terms of the credit being offered: the annual percentage rate; the finance charge; the amount financed; the total of payments; and the payment schedule.

3. You receive two copies of a notice explaining your right to rescind. You should be aware that for rescission purposes, business days include Saturdays, but not Sundays or legal public holidays. For example, if the last of the above three events occurs on a Friday, you have until midnight on the following Tuesday to rescind.

During this waiting period, your creditor should not take any action on your transaction. For example, the creditor should not give you the money from the loan or, if your are dealing with a home improvement loan, the contractor should not deliver any materials or start work.

If you decide to exercise your right of rescission, you must notify the creditor in writing that you are canceling the contract. You may use the form provided to you by the creditor, a letter, or a telegram. Whatever form of written notice you use, make sure it is delivered, mailed, or filed for telegraphic transmission before midnight of the third business day. Remember: You cannot rescind just by telephoning or visiting the creditor. If you never receive the disclosures or the notice of rescission from the creditor (see numbers 2 and 3 above), you can cancel at any time during the first three years after you sign the credit contract, or before you sell your home -- whichever occurs first.

What Happens When You Rescind

Within 20 days after a creditor receives your notice of rescission, all money or property you paid as part of the credit transaction must be returned to you. The creditor also must release any security interest in

your home. If you have received money or property (such as building materials) from the creditor, keep it until the creditor proves that your home is no longer being held as collateral and returns any money you already have paid. For example, the creditor may show you a release of a lien previously filed with your city or county clerk's office to prove your house is no longer collateral. You must then offer to return the creditor's money or property. If the creditor does not claim the money or property within 20 days, you may keep it.

Waiving Your Right to Rescind

Sometimes you may have a financial emergency and not be able to wait for the creditor to slow the loan process by suspending action for three business days. For example, you may need to borrow money quickly to have a damaged roof or house foundation repaired.

The law allows you to waive your right of rescission if you have a "bona fide personal financial emergency." This enables you to have the loan process speeded up to meet the emergency situation. To avail yourself of this right, you must give the creditor your own written statement (pre-printed forms are not allowed) describing the emergency and clearly stating that you are waiving your right to rescind. The statement must be dated and signed by you and anyone else who shares in the ownership of the home. Consider your decisions carefully: If you waive your right to rescind, you must go ahead with the credit transaction.

Typical Situations With No Right of Rescission

The right of rescission does not apply in all cases where your home is used as collateral for the loan. You do not have the right of rescission when:

you apply for a loan to purchase or build your principal home;

you consolidate or refinance with the same creditor a loan that is already secured by your home, and no additional funds are borrowed; or a state agency is the creditor for the loan.

Even in these cases, however, you may have cancellation or "cooling-off" rights under state or local law.

Home Buyer's Vocabulary

U.S. Department of Housing and Urban Development
Washington, D.C. 20410
March 1987
HUD- 383- H(8)
(Previous Edition Current)

"Home Buyer's Vocabulary"

Preface

The potential home buyer will find this Vocabulary helpful for understanding words and terms used in real estate transactions.

There are, however, some factors that may affect these definitions:

Terms are defined as they are commonly understood in the mortgage and real estate industry. The same terms may have different meanings in another context.

The definitions are intentionally general, non- technical and short. They do not encompass all possible meanings or nuances that a term may acquire in legal use.

State laws, as well as custom and use in various States or regions of the country, may modify or completely change the meanings of certain terms defined.

Before signing any documents or depositing any money preparatory to entering into a real estate contract, the purchaser should consult with an attorney of his choice to ensure that his rights are properly protected.

See:

A

Abstract (Of Title)

A summary of the public records relating to the title to a particular piece of land. An attorney or title insurance company reviews an abstract of title to determine whether there are any title defects which must be cleared before a buyer can purchase clear, marketable, and insurable title.

Acceleration Clause

Condition in a mortgage that may require the balance of the loan to become due immediately, if regular mortgage payments are not made or for breach of other conditions of the mortgage.

Agreement of Sale

Known by various names, such as contract of purchase, purchase agreement, or sales agreement according to location or jurisdiction. A contract in which a seller agrees to sell and a buyer agrees to buy, under certain specific terms and conditions spelled out in writing and signed by both parties.

Amortization

A payment plan which enables the borrower to reduce his debt gradually through monthly payments of principal.

Appraisal

An expert judgment or estimate of the quality or value of real estate as of a given date.

Assumption of Mortgage

An obligation undertaken by the purchaser of property to be personally liable for payment of an existing mortgage. In an assumption, the purchaser is substituted for the original mortgagor in the mortgage instrument and the original mortgagor is to be released from further liability in the assumption, the mortgagee's consent is usually required.The original mortgagor should always obtain a written release from further liability if he desires to be fully released under the assumption. Failure to obtain such a release renders the original mortgagor liable if the person assuming the mortgage fails to make the monthly payments.

An "Assumption of Mortgage" is often confused with "purchasing subject to a mortgage." When one purchases subject to a mortgage, the purchaser agrees to make the monthly mortgage payments on an existing mortgage, but the original mortgagor remains personally liable if the purchaser fails to make the monthly payments. Since the original mortgagor remains liable in the event of default, the mortgagee's consent is not required to a sale subject to a mortgage. Both "Assumption of Mortgage" and "Purchasing Subject to a Mortgage" are used to finance the sale of property. They may also be used when a mortgagor is in financial difficulty and desires to sell the property to avoid foreclosure.

B

Binder or "Offer to Purchase"

A preliminary agreement, secured by the payment of earnest money, between a buyer and seller as an offer to purchase real estate. A binder secures the right to purchase real estate upon agreed terms for a limited period of time. If the buyer changes his mind or is unable to purchase, the earnest money is forfeited unless the binder expressly provides that it is to be refunded.

Broker (See real estate broker)

Building Line or Setback

Distances from the ends and/or sides of the lot beyond which construction may not extend. The building line may be established by a filed plat of subdivision, by restrictive covenants in deeds or leases, by building codes, or by zoning ordinances.

C

Certificate of Title

A certificate issued by a title company or a written opinion rendered by an attorney that the seller has good marketable and insurable title to the property which he is offering for sale. A certificate of title offers no protection against any hidden defects in the title which an examination of the records could not reveal. The issuer of a certificate of title is liable only for damages due to negligence. The protection offered a homeowner under a certificate of title is not as great as that offered in a title insurance policy.

Closing Costs

The numerous expenses which buyers and sellers normally incur to complete a transaction in the transfer of ownership of real estate. These costs are in addition to price of the property and are items prepaid at the closing day. This is a typical list:

BUYER'S EXPENSES	SELLER'S EXPENSES
Documentary Stamps on Notes	Cost of Abstract
Recording Deed and Mortgage	Documentary Stamps on Deed
Escrow Fees	Real Estate Commission
Attorney's Fee	Recording Mortgage
Title Insurance	Survey Charge
Appraisal and Inspection	Escrow Fees
Survey Charge	Attorney's Fee

The agreement of sale negotiated previously between the buyer and the seller may state in writing who will pay each of the above costs.

Closing Day

The day on which the formalities of a real estate sale are concluded. The certificate of title, abstract, and deed are generally prepared for the closing by an attorney and this cost charged to the buyer. The buyer signs the mortgage, and closing costs are paid. The final closing merely confirms the original agreement reached in the agreement of sale.

Cloud (On Title)

An outstanding claim or encumbrance which adversely affects the marketability of title.

Commission

Money paid to a real estate agent or broker by the seller as compensation for finding a buyer and completing the sale. Usually it is a percentage of the sale price- - 6 to 7 percent on houses, 10 percent on land.

Condemnation

The taking of private property for public use by a government unit, against the will of the owner, but with payment of just compensation under the government's power of eminent domain. Condemnation may also be a determination by a governmental agency that a particular building is unsafe or unfit for use.

Condominium

Individual ownership of a dwelling unit and an individual interest in the common areas and facilities which serve the multi- unit project.

Contract of Purchase

(See agreement of sale)

Contractor

In the construction industry, a contractor is one who contracts to erect buildings or portions of them. There are also contractors for each phase of construction: heating, electrical, plumbing, air conditioning, road building, bridge and dam erection, and others.

Conventional Mortgage

A mortgage loan not insured by HUD or guaranteed by the Veterans' Administration. It is subject to conditions established by the lending institution and State statutes. The mortgage rates may vary with different institutions and between States. (States have various interest limits.)

Cooperative Housing

An apartment building or a group of dwellings owned by a corporation, the stockholders of which are the residents of the dwellings. It is operated for their benefit by their elected board of directors. In a cooperative, the corporation or association owns title to the real estate. A resident purchases stock in the corporation which entitles him to occupy a unit in the building or property owned by the cooperative. While the resident does not own his unit, he has an absolute right to occupy his unit for as long as he owns the stock.

D

Deed

A formal written instrument by which title to real property is transferred from one owner to another. The deed should contain an accurate description of the property being conveyed, should be signed and witnessed according to the laws of the State where the property is located, and should be delivered to the purchaser at closing day. There are two parties to a deed: the grantor and the grantee. (See also deed of trust, general warranty deed, quitclaim deed, and special warranty deed.)

Deed of Trust

Like a mortgage, a security instrument whereby real property is given as security for a debt. However, in a deed of trust there are three parties to the instrument: the borrower, the trustee, and the lender, (or beneficiary). In such a transaction, the borrower transfers the legal title for the property to the trustee who holds the property in trust as security for the payment of the debt to the lender or beneficiary. If the borrower pays the debt as agreed, the deed of trust becomes void.

If, however, he defaults in the payment of the debt, the trustee may sell the property at a public sale, under the terms of the deed of trust. In most jurisdictions where the deed of trust is in force, the borrower is subject to having his property sold without benefit of legal proceedings. A few States have begun in recent years to treat the deed of trust like a mortgage.

Default

Failure to make mortgage payments as agreed to in a commitment based on the terms and at the designated time set forth in the mortgage or deed of trust. It is the mortgagor's responsibility to remember the due date and send the payment prior to the due date, not after. Generally, thirty days after the due date if payment is not received, the mortgage is in default. In the event of default, the mortgage may give the lender the right to accelerate payments, take possession and receive rents, and start foreclosure. Defaults may also come about by the failure to observe other conditions in the mortgage or deed of trust.

Depreciation

Decline in value of a house due to wear and tear, adverse changes in the neighborhood, or any other reason.

Documentary Stamps

A State tax, in the forms of stamps, required on deeds and mortgages when real estate title passes from one owner to another. The amount of stamps required varies with each State.

Downpayment

The amount of money to be paid by the purchaser to the seller upon the signing of the agreement of sale. The agreement of sale will refer to the downpayment amount and will acknowledge receipt of the downpayment. Downpayment is the difference between the sales price and maximum mortgage amount. The downpayment may not be refundable if the purchaser fails to buy the property without good cause. If the purchaser wants the downpayment to be refundable, he should insert a clause in the agreement of sale specifying the conditions under which the deposit will be refunded, if the agreement does not already contain such clause. If the seller cannot deliver good title, the agreement of sale usually requires the seller to return the downpayment and to pay interest and expenses incurred by the purchaser.

E

Earnest Money

The deposit money given to the seller or his agent by the potential buyer upon the signing of the agreement of sale to show that he is serious about buying the house. If the sale goes through, the earnest money is applied against the downpayment. If the sale does not go through, the earnest money will be forfeited or lost unless the binder or offer to purchase expressly provides that it is refundable.

Easement Rights

A right- of- way granted to a person or company authorizing access to or over the owner's land. An electric company obtaining a right- of- way across private property is a common example.

Encroachment

An obstruction, building, or part of a building that intrudes beyond a legal boundary onto neighboring private or public land, or a building extending beyond the building line.

Encumbrance

A legal right or interest in land that affects a good or clear title, and diminishes the land's value. It can take numerous forms, such as zoning ordinances, easement rights, claims, mortgages, liens, charges, a pending legal action, unpaid taxes, or restrictive convenants. An encumbrance does not legally prevent transfer of the property to another. A title search is all that is usually done to reveal the existence of such encumbrances, and it is up to the buyer to determine whether he wants to purchase with the encumbrance, or what can be done to remove it.

Equity

The value of a homeowner's unencumbered interest in real estate. Equity is computed by subtracting from the property's fair market value the total of the unpaid mortgage balance and any outstanding liens or other debts against the property. A homeowner's equity increases as he pays off his mortgage or as the property appreciates in value. When the mortgage and all other debts against the property are paid in full the homeowner has 100% equity in his property.

Escrow

Funds paid by one party to another (the escrow agent) to hold until the occurrence of a specified event, after which the funds are released to a designated individual. In FHA mortgage transactions an escrow account usually refers to the funds a mortgagor pays the lender at the time of the periodic mortgage payments. The money is held in a trust fund, provided by the lender for the buyer. Such funds should be adequate to cover yearly anticipated expenditures for mortgage insurance premiums, taxes, hazard insurance premiums, and special assessments.

F

Foreclosure

A legal term applied to any of the various methods of enforcing payment of the debt secured by a mortgage, or deed of trust, by taking and selling the mortgaged property, and depriving the mortgagor of possession.

G

General Warranty Deed

A deed which conveys not only all the grantor's interests in and title to the property to the grantee, but also warrants that if the title is defective or has a "cloud" on it (such as mortgage claims, tax liens, title claims, judgments, or mechanic's liens against it) the grantee may hold the grantor liable.

Grantee

That party in the deed who is the buyer or recipient.

Grantor

That party in the deed who is the seller or giver.

H

Hazard Insurance

Protects against damages caused to property by fire, windstorms, and other common hazards.

HUD

U.S. Department of Housing and Urban Development. Office of Housing/Federal Housing Administration within HUD insures home mortgage loans made by lenders and sets minimum standards for such homes.

I

Interest

A charge paid for borrowing money. (See mortgage note)

L

Lien

A claim by one person on the property of another as security for money owed. Such claims may include obligations not met or satisfied, judgments, unpaid taxes, materials, or labor. (See also special lien.)

M

Marketable Title

A title that is free and clear of objectionable liens, clouds, or other title defects. A title which enables an owner to sell his property freely to others and which others will accept without objection.

Mortgage

A lien or claim against real property given by the buyer to the lender as security for money borrowed. Under government- insured or loan- guarantee provisions, the payments may include escrow amounts covering taxes, hazard insurance, water charges, and special assessments. Mortgages generally run from 10 to 30 years, during which the loan is to be paid off.

Mortgage Commitment

A written notice from the bank or other lending institution saying it will advance mortgage funds in a specified amount to enable a buyer to purchase a house.

Mortage Insurance Premium

The payment made by a borrower to the lender for transmittal to HUD to help defray the cost of the FHA mortgage insurance program and to provide a reserve fund to protect lenders against loss in insured mortgage transactions. In FHA insured mortgages this represents an annual rate of one- half of one percent paid by the mortgagor on a monthly basis.

Mortgage Note

A written agreement to repay a loan. The agreement is secured by a mortgage, serves as proof of an indebtedness, and states the manner in which it shall be paid. The note states the actual amount of the debt that the mortgage secures and renders the mortgagor personally responsible for repayment.

Mortgage (Open- End)

A mortgage with a provision that permits borrowing additional money in the future without refinancing the loan or paying additional financing charges. Open- end provisions often limit such borrowing to no more than would raise the balance to the original loan figure.

Mortgagee

The lender in a mortgage agreement.

Mortgagor

The borrower in a mortgage agreement.

P

Plat

A map or chart of a lot, subdivision or community drawn by a surveyor showing boundary lines, buildings, improvements on the land, and easements.

Points

Sometimes called "discount points." A point is one percent of the amount of the mortgage loan. For example, if a loan is for $25,000, one point is $250. Points are charged by a lender to raise the yield on his loan at a time when money is tight, interest rates are high, and there is a legal limit to the interest rate that can be charged on a mortgage. Buyers are prohibited from paying points on HUD or Veterans' Administration guaranteed loans (sellers can pay, however). On a conventional mortgage, points may be paid by either buyer or seller or split between them.

Prepayment

Payment of mortgage loan, or part of it, before due date. Mortgage agreements often restrict the right of prepayment either by limiting the amount that can be prepaid in any one year or charging a penalty for prepayment. The Federal Housing Administration does not permit such restrictions in FHA insured mortgages.

Principal

The basic element of the loan as distinguished from interest and mortgage insurance premium. In other words, principal is the amount upon which interest is paid.

Purchase Agreement

See agreement of sale.

Q

Quitclaim Deed

A deed which transfers whatever interest the maker of the deed may have in the particular parcel of land. A quitclaim deed is often given to clear the title when the grantor's interest in a property is questionable. By accepting such a deed the buyer assumes all the risks. Such a deed makes no warranties as to the title, but simply transfers to the buyer whatever interest the grantor has. (See deed.)

R

Real Estate Broker

A middle man or agent who buys and sells real estate for a company, firm, or individual on a commission basis. The broker does not have title to the property, but generally represents the owner.

Refinancing

The process of the same mortgagor paying off one loan with the proceeds from another loan.

Restrictive Covenants

Private restrictions limiting the use of real property. Restrictive covenants are created by deed and may "run with the land," binding all subsequent purchasers of the land, or may be "personal" and binding only between the original seller and buyer. The determination whether a covenant runs with the land or is personal is governed by the language of the covenant, the intent of the parties, and the law in the State where the land is situated. Restrictive covenants that run with the land are encumbrances and may affect the value and marketability of title. Restrictive covenants may limit the density of buildings per acre, regulate size, style or price range of buildings to be erected, or prevent particular businesses from operating or minority groups from owning or occupying homes in a given area. (This latter discriminatory covenant is unconstitutional and has been declared unenforceable by the U.S. Supreme Court.)

S

Sales Agreement

See agreement of sale. Special Assessments

A special tax imposed on property, individual lots or all property in the immediate area, for road construction, sidewalks, sewers, street lights, etc.

Special Lien

A lien that binds a specified piece of property, unlike a general lien, which is levied against all one's assets. It creates a right to retain something of value belonging to another person as compensation for labor, material, or money expended in that person's behalf. In some localities it is called "particular" lien or "specific" lien. (See lien.)

Special Warranty Deed

A deed in which the grantor conveys title to the grantee and agrees to protect the grantee against title defects or claims asserted by the grantor and those persons whose right to assert a claim against the title arose during the period the grantor held title to the property. In a special warranty deed the grantor guarantees to the grantee that he has done nothing during the time he held title to the property which has, or which might in the future, impair the grantee's title.

State Stamps

See documentary stamps

Survey

A map or plat made by a licensed surveyor showing the results of measuring the land with its elevations, improvements, boundaries, and its relationship to surrounding tracts of land. A survey is often required by the lender to assure him that a building is actually sited on the land according to its legal description.

T

Tax

As applied to real estate, an enforced charge imposed on persons, property or income, to be used to support the State.

The governing body in turn utilizes the funds in the best interest of the general public.

Title

As generally used, the rights of ownership and possession of particular property. In real estate usage, title may refer to the instruments or documents by which a right of ownership is established (title documents), or it may refer to the ownership interest one has in the real estate.

Title Insurance

Protects lenders or homeowners against loss of their interest in property due to legal defects in title. Title insurance may be issued to a "mortgagee's title policy." Insurance benefits will be paid only to the "named insured" in the title policy, so it is important that an owner purchase an "owner's title policy", if he desires the protection of title insurance.

Title Search or Examination

A check of the title records, generally at the local courthouse, to make sure the buyer is purchasing a house from the legal owner and there are no liens, overdue special assessments, or other claims or outstanding restrictive convenants filed in the record, which would adversely affect the marketability or value of title.

Trustee

A party who is given legal responsibility to hold property in the best interest of or "for the benefit of" another. The trustee is one placed in a position of responsibility for another, a responsibility enforceable in a court of law. (See deed of trust.)

Z

Zoning Ordinances

The acts of an authorized local government establishing building codes, and setting forth regulations for property land usage.

Reverse Mortgages

Facts for Consumers from the Federal Trade Commission

Produced in cooperation with the American Association of Retired Persons

If you are age 62 or older and are "house-rich, cash-poor," a reverse mortgage (RM) may be an option to help increase your income. However, because your home is such a valuable asset, you may want to consult with your family, attorney, or financial advisor before applying for an RM. Knowing your rights and responsibilities as a borrower may help to minimize your financial risks and avoid any threat of foreclosure or loss of your home.

This brochure explains how RMs work. It describes similarities and differences among the three RM plans available today: FHA-insured; lender-insured; and uninsured. It also discusses the benefits and drawbacks of each plan. Each plan differs slightly, so be careful to choose the plan that best meets your financial needs. Organizations and government agencies that offer additional information about RMs are listed at the end of this brochure.

How Reverse Mortgages Work

A reverse mortgage is a type of home equity loan that allows you to convert some of the equity in your home into cash while you retain home ownership. RMs works much like traditional mortgages, only in reverse. Rather than making a payment to your lender each month, the lender pays you. Unlike conventional home equity loans, most RMs do not require any repayment of principal, interest, or servicing fees for as long as you live in your home. Funds obtained from an RM may be used for any purpose, including meeting housing expenses such as taxes, insurance, fuel, and maintenance costs.

Requirements and Responsibilities of the Borrower

To qualify for an RM, you must own your home. The RM funds may be paid to you in a lump sum, in monthly advances, through a line-of-credit, or in a combination of the three, depending on the type of RM and the lender. The amount you are eligible to borrow generally is based on your age, the equity in your home, and the interest rate the lender is charging.

Because you retain title to your home with an RM, you also remain responsible for taxes, repairs, and maintenance. Depending on the plan you select, your RM becomes due with interest either when you permanently move, sell your home, die, or reach the end of the pre-selected loan term. The lender does not take title to your home when you die, but your heirs must pay off the loan. The debt is usually repaid by refinancing the loan into a forward mortgage (if the heirs are eligible) or by using the proceeds from the sale of your home.

Common Features of Reverse Mortgages

Listed below are some points to consider about RMs.

RMs are rising-debt loans. This means that the interest is added to the principal loan balance each month, because it is not paid on a current basis. Therefore, the total amount of interest you owe increases significantly with time as the interest compounds.

All three plans (FHA-insured, lender-insured, and uninsured) charge origination fees and closing costs. Insured plans also charge insurance premiums, and some impose mortgage servicing charges. Your lender may permit you to finance these costs so you will not have to pay for them in cash. But remember these costs will be added to your loan amount.

RMs use up some or all of the equity in your home, leaving fewer assets for you and your heirs in the future.

You generally can request a loan advance at closing that is substantially larger than the rest of your payments.

Your legal obligation to pay back the loan is limited by the value of your home at the time the loan is repaid. This could include increases in the value (appreciation) of your home after your loan begins.

RM loan advances are nontaxable. Further, they do not affect your Social Security or Medicare benefits. If you receive Supplemental Security Income, RM advances do not affect your benefits as long as you spend them within the month you receive them. This is true in most states for Medicaid benefits also. When in doubt, check with a benefits specialist at your local area agency on aging or legal services office.

Some plans provide for fixed rate interest. Others involve adjustable rates that change over the loan term based upon market conditions.

Interest on RMs is not deductible for income tax purposes until you pay off all or part of your total RM debt. How Reverse Mortgages Differ

This section describes how the three types of RMs _ FHA-insured, lender-insured, and uninsured _ vary according to their costs and terms. Although the FHA and lender-insured plans appear similar, important differences exist. This section also discusses advantages and drawbacks of each loan type.

FHA-insured. This plan offers several RM payment options. You may receive monthly loan advances for a fixed term or for as long as you live in the home, a line of credit, or monthly loan advances plus a line of credit. This RM is not due as long as you live in your home. With the line of credit option, you may draw amounts as you need them over time. Closing costs, a mortgage insurance premium and sometimes a monthly servicing fee is required. Interest is charged at an adjustable rate on your loan balance; any interest rate changes do not affect the monthly payment, but rather how quickly the loan balance grows over time.

The FHA-insured RM permits changes in payment options at little cost. This plan also protects you by guaranteeing that loan advances will continue to be made to you if a lender defaults. However, FHA-insured RMs may provide smaller loan advances than lender-insured plans. Also, FHA loan costs may be greater than uninsured plans.

Lender-insured. These RMs offer monthly loan advances or monthly loan advances plus a line of credit for as long as you live in your home. Interest may be assessed at a fixed rate or an adjustable rate, and additional loan costs can include a mortgage insurance premium (which may be fixed or variable) and other loan fees.

Loan advances from a lender-insured plan may be larger than those provided by FHA-insured plans. Lender-insured RMs also may allow you to mortgage less than the full value of your home, thus preserving home equity for later use by you or your heirs. However, these loans may involve greater loan costs than FHA-insured, or uninsured loans. Higher costs mean that your loan balance grows faster, leaving you with less equity over time. Some lender-insured plans include an annuity that continues making monthly payments to you even if you sell your home and move. The security of these payments depends on the financial strength of the company providing them, so be sure to check the financial ratings of that company. Annuity payments may be taxable and affect your eligibility for Supplemental Security

Income and Medicaid. These "reverse annuity mortgages" may also include additional charges based on increases in the value of your home during the term of your loan.

Uninsured. This RM is dramatically different from FHA and lender-insured RMs. An uninsured plan provides monthly loan advances for a fixed term only _ a definite number of years that you select when you first take out the loan. Your loan balance becomes due and payable when the loan advances stop. Interest is usually set at a fixed interest rate and no mortgage insurance premium is required.

If you consider an uninsured RM, carefully think about the amount of money you need monthly; how many years you may need the money; how you will repay the loan when it comes due; and how much remaining equity you will need after paying off the loan.

If you have short-term but substantial cash needs, the uninsured RM can provide a greater monthly advance than the other plans. However, because you must pay back the loan by a specific date, it is important for you to have a source of repayment. If you are unable to repay the loan, you may have to sell your home and move.

Reverse Mortgage Safeguards

One of the best protections you have with RMs is the Federal Truth in Lending Act, which requires lenders

to inform you about the plan's terms and costs. Be sure you understand them before signing. Among other information, lenders must disclose the Annual Percentage Rate (APR) and payment terms. On plans with adjustable rates, lenders must provide specific information about the variable rate feature. On plans with credit lines, lenders also must inform you of any charges to open and use the account, such as an appraisal, a credit report, or attorney's fees.

For More Information

If you are interested in obtaining a current list of lenders participating in the FHA-insured program, sponsored by the Department of Housing and Urban Development (HUD), or additional information on reverse mortgages and other home equity conversion plans, write to:

AARP Home Equity Information Center
American Association of Retired Persons
601 E Street, N.W.
Washington, D.C. 20049

For additional information, you also may contact the:

National Center for Home Equity Conversion
7373 - 147 St. West, Suite 115
Apple Valley, MN 55124

This organization requests that you send a self-addressed stamped envelope.

If you have a question or complaint concerning reverse mortgages, you also may write: Correspondence Branch, Federal Trade Commission, Washington, D.C. 20580. Although the FTC generally does not intervene in individual disputes, the information you provide may indicate a pattern or practice that requires action by the Commission.

Second Mortgage Financing

Facts for Consumers from the Federal Trade Commission

If you are like most homeowners, you probably have a first mortgage loan on your home. Typically, such loans are for 25 to 30 years, with the monthly payments adjusted so that the loan is paid in full at the end of the term.

As you make monthly mortgage payments and the value of the home increases, your interest in the property (called "equity") grows. After a while, some homeowners may wish to borrow against the equity in their home to get cash, to make home improvements, to educate their children, or to consolidate personal debts. Because such loans are in addition to the first mortgage on the home, they are commonly called "second mortgage" loans. Second mortgage loans are different from first mortgages in several ways. They often carry a higher interest rate, and they usually are for a shorter time, 15 years or less. In addition, they may require a large single payment at the end of the term, commonly known as a balloon payment.

Traditionally, second mortgage loans are offered with a fixed loan amount and a predetermined repayment schedule. Some lenders now offer lines of credit that allow you to obtain cash advances with a credit card or to write checks up to a certain credit limit. These often are called "home equity lines" because the equity in your home is collateral for the amount of credit you request. As you pay off the outstanding balance, you can reuse the line of credit during the loan period.

This brochure provides answers to some common questions people ask when they begin shopping for a second mortgage or home equity loan. It discusses choosing a lender, the meaning of some mortgage terms, costs, disclosure documents, and contacts for resolving problems.

How do I Choose a Lender?

When you are looking for a lender, shop around and make comparisons. Interest rates, repayment terms, and origination fees may vary substantially. Ask your local banks, savings and loans, credit unions, or finance companies about their loan terms. Although you will want to select the lender who offers you terms most suited to your needs, be sure to ask and compare the annual percentage rates (APR) because they will give you the total cost of the loan, including financing charges.

If you have not done business with the lender before, or if the lender is unfamiliar to you, you may wish to ask your local Better Business Bureau or consumer protection office if they have any complaints against the lender.

How Long Will I Have to Repay the Loan?

Some second mortgage loans may extend for as long as 15 or 20 years; others may require repayment in one year. You will need to discuss the repayment terms with the lenders and select one who offers terms that best suit your needs. For example, if you need to borrow $20,000 to make repairs on your home, you may not want a loan that requires you to repay the entire amount in one or two years because the monthly payments may be too high.

Will My Interest Rate Change?

If you have a fixed-rate loan, the interest rate is set for the life of the loan. However, many lenders offer variable rate mortgages, also known as adjustable rate mortgages or ARMs. These provide for periodic interest-rate adjustments. If your loan contract allows the lender to adjust or change the interest rate, be sure you understand when the lender has the right to change the interest rate, whether there are any limits on how much the interest or payments can change, and how often the lender can change the rate. You also should know what basis the lender will use to determine a new rate of interest.

How Much Will My Monthly Payments Be and Will They Pay Off the Loan?

Be sure you understand how much your monthly payments will be and what they cover. Your lender should be able to give you this information in advance. With some loans, you will be required to make monthly payments on the principal and interest. With other loans, you may be required to pay interest

only on the borrowed amount; in these loans, your monthly payments will not reduce the principal amount of the loan. With such a loan, you will be required to pay back the entire borrowed amount at the end of the loan period. These loans are popularly known as "balloon loans."

If your loan has a balloon payment, you should consider how you will arrange to repay the entire amount when it becomes due. On "home equity lines," the lender does not have to give you the exact amount of the monthly payment, but must explain how it is figured. This is because the borrowed amount will vary and your outstanding balance will change if you use the line of credit. However, if your monthly payment term is 5% of the outstanding balance and your outstanding balance is $5,000, your minimum monthly payments would be $250.

Will I Have to Pay Any Fees to Get This Loan?

Many companies will charge a fee for lending you money. The fee is usually a percentage of the loan and is sometimes referred to as "points." One point is equal to one percent of the amount you borrow. For example, if you were to borrow $10,000 with a fee of eight points, you would pay $800 in "points." The number of points lenders charge varies, so it may be worthwhile to shop around. If the fee seems too high, you may be able to bargain for or find a lower fee. Be sure to get the amount of the fee in writing before you take the loan. Many states limit the amount of fees a lender may charge on a second mortgage loan. You may want to check with your state's consumer protection office or banking commissioner to determine whether there is a limit in your state.

What Should I Get in Writing?

If your loan is primarily for personal, family, or household purposes, the lender is required to give you a federal Truth in Lending disclosure form before you sign the customary loan documents, such as a note or deed of trust. This Truth in Lending form will tell you the actual cost of the loan. It includes the annual percentage rate, the finance charge, and the fees included in the loan. For "home equity lines," your lender also is required to send you a periodic statement, usually monthly. The lender also is required to give you a notice of your right of rescission. The right of rescission gives you three business days after signing for the loan and receiving the Truth in Lending Act disclosures to reconsider whether you want to take the loan. For additional information about the right of rescission, ask for the free FTC brochure, Getting a Loan: Your Home as Security, at the address listed at the end of this brochure.

If your lender makes any promises, such as saying you can "automatically" get the loan refinanced at the end of the term, be sure your lender puts these promises in writing. In this way, you may avoid any future disputes.

What Should I Do if I Have a Problem?

If you ever have a problem making your loan payments, talk to your lender as soon as possible. Some lenders will work with you to arrange a temporary payment plan. Also, call the lender if you have any questions about your loan.

However, if you have problems with your lender, you may want to contact your state, county, or local consumer protection office. If they cannot help you, they can refer you to the office that can.

The Federal Trade Commission is responsible for enforcing laws such as the Truth in Lending Act, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, and the Fair Debt Collection Practices Act. It also provides free brochures explaining these laws. For these or credit-related publications, such as: Home Equity Credit Lines, Using Ads to Shop for Home Financing, and Refinancing Your Home, write to: Public Reference, Federal Trade Commission, Washington, D.C. 20580.

If you believe your lender may be violating a law that the FTC administers, you can send complaints or questions to: Correspondence Branch, Federal Trade Commission, Washington, D.C. 20580. Although the FTC cannot resolve individual consumer disputes, it can take action if there is evidence of a pattern of deceptive or unfair practices.

Timeshare Resales Facts for Consumers from the Federal Trade Commission

Timeshare Resales

If you own a vacation timeshare, be cautious about people who offer to help you resell your timeshare for a fee. Some sales programs of this type may be bogus. Be careful to deal only with legitimate sales companies. A vacation timeshare gives you the right to use a vacation home for a limited, pre-planned period over a number of years. Consumers own about 1.5 million timeshares. One survey estimates that about 870,000 of these timeshares currently are available for resale. Some of these owners could get taken in by timeshare resale scams.

How Bogus Timeshare Resale Companies Operate

Companies that use questionable practices operate like many other telemarketing scams. You might be contacted by a telephone salesperson or through a postcard asking you to call a particular telephone number about your timeshare. The salespeople are likely to tell you that the market for resales of timeshares is "hot" and that their company has a high success rate in reselling these units. They may claim they have extensive lists of sales agents and potential buyers for timeshares. For an advance "listing" fee, often around $300 to $500, these salespeople promise to sell your timeshare for a price equal to or greater than the amount you originally paid. To entice you, these companies may offer a money-back guarantee or a $1,000 government bond if they cannot sell your timeshare within a year.

The market for resales is poor because there is no secondary market for timeshares. In fact, a survey found that only 3.3% of owners reported reselling their timeshares during the last 20 years. Also, the market for resales may vary considerably, depending on the location and season of the year for the unit. The lists of sales agents and buyers may consist of people who have never heard of the company or have no interest in buying a timeshare. It may be unlikely that the company can sell the timeshare at all, let alone at a price equal to or greater than the consumer's original purchase price. In addition, many consumers whose timeshares are not resold after a year may find that either their fee is not returned or they are presented with a bond worth as little as $60 or $70.

What to Do If Your are Interested in Reselling Your Timeshare

If you want to resell your timeshare and are approached by a company offering to help, you may want to take the following precautions:

Do not agree to anything over the telephone until you have had a chance to check out the company.

Ask the person to send you written materials to study.

Ask for company references, such as the names, addresses, and telephone numbers of several consumers who have used their services.

Ask where the company is located and in what states it does business.

Ask if the company's salespeople are licensed to sell real estate by the state where your timeshare is located, and check with the state licensing board if this is so.

Be cautious of any company charging an advance "listing" fee for its services. Consider opting for a company that offers to sell for a fee only after the timeshare is sold.

Ask the Better Business Bureau, state Attorney General's office, and local consumer protection agencies in the vicinity of the sales company whether any complaints have been lodged against the company.

If you are interested in reselling your timeshare, you have several other options. You may want to try selling it yourself, by placing an advertisement in a newspaper or magazine read by potential timeshare buyers. Or, you may want to contact a real estate agent familiar with the area where your timeshare is located. As an alternative, you may want to contact an organization that will try to exchange your timeshare with someone who has a unit you might find more useful or attractive.

Where to Complain

If you have complaints about a company that offers to resell timeshares, write to: Correspondence Branch, Federal Trade Commission, Washington, D.C. 20580. Although the FTC usually does not resolve individual complaints, the agency can take action against a company if there is evidence of a pattern of deceptive or unfair practices.

Timeshare Tips

Facts for Consumers from the Federal Trade Commission

Planning your next vacation? You may have considered "vacation timesharing," the use of a vacation home for a limited, pre-planned time. It has become a popular way to take vacations. Sales in 1985 exceeded $1.5 billion. Many timeshare programs are highly regarded, but problems occasionally occur. You should consider the risks as well as the benefits before signing a contract or a check.

There are two main types of timesharing plans: deeded and non-deeded. With the deeded type, you buy an ownership interest in a piece of real estate. In the non-deeded plan, you buy a lease, license, or club membership that lets you use the property for a specific amount of time each year for a stated number of years. With both types, the cost of your unit is proportionate to the season and the length of time you want to buy. Obviously, a winter week in a warm climate is worth more than a summer week. As with any purchase that costs thousands of dollars, you should understand what you are getting before you sign any papers or pay any fees. The general information here should be accompanied by careful analysis and possibly professional advice concerning all aspects of a particular timeshare purchase.

The Federal Trade Commission suggests that you consider the following points before you purchase any type of timeshare.

Practical Factors

A major reason people buy timeshares is for the convenience of having pre-arranged vacation facilities. You might consider whether you will be able to use a timeshare facility regularly. For example, are your vacation plans sometimes subject to last-minute changes, or do they vary in length and season from year to year? Check to see if the properties have flexible use plans that you may consider. If you are evaluating a timeshare plan with units in several locations, also consider whether the club has sufficient units at the sites you prefer to give you the opportunity to use them.

Investment Potential

Question any investment claims made by the seller. The future value of a timeshare depends on many factors. Resales of the timeshare may be difficult. You may face competition from the firm that sold you the timeshare, or from local real estate brokers who may not want to include the timeshare unit in their listings. Closing costs, broker commissions, and financing charges also should be considered as part of your investment costs.

Total Costs

The total cost of your timeshare includes mortgage payments and expenses, such as travel costs and annual maintenance fees. The maintenance fees may rise at rates that equal or exceed inflation. Annual maintenance and exchange fees can add $300 to $500 to the purchase price. You may want to ask if limits exist on maintenance increases at the project. To help evaluate the purchase, compare your total timeshare costs with rental costs for similar accommodations and amenities for the same time and in the same location.

Document Review

Do not act on impulse or under pressure. Review all documents or have someone familiar with timesharing review them before you make a purchase. Find out if the contract provides a "cooling-off" period during which you can cancel the contract and get a refund. The majority of states where timeshares are located require such a cooling-off period. If there is such a provision, you can use that time to reconsider your decision. If there is no cooling-off period, be sure you understand all aspects of the purchase and review all materials before you sign.

Oral Promises

Be sure everything the salesperson promised orally is written into the contract. Be especially cautious and question any verbal claims that contradict the contract.

Exchange Programs

Remember that exchange programs, which offer the opportunity to arrange trades with other resort units in different locations, usually cannot be guaranteed. There also may be some limits on exchange opportunities. You may need to request the use of another facility far in advance. Or, even at additional cost, you may not be able to "trade up" to a larger, better unit at a popular time of the year in an exotic location. When you trade your vacation unit for another, expect one of approximately the same value.

Gift Giveaways

Many sellers offer gifts to potential buyers who will listen to a timeshare sales presentation. Consider the value of these "gifts" and "prizes." If the only reason you are going to a sales presentation is to receive a gift, then be aware that common promotional giveaways include gems with little or no value as jewels; "gold" ingots, with minimal gold content and worth no more than a few dollars; or "vacation awards" which do not cover major costs such as travel and food. It may be to your advantage to attend a sales presentation only if your are interested in the program.

Reputation Research

Your resort will be a good place to vacation only if it runs properly. Therefore, you should consider researching the track record of the seller, developer, and management company before you make your purchase. Visit the facilities and, if possible, talk to other owners. Ask for a copy of the current maintenance budget. Learn what will be done to manage and repair the property, replace furnishings as needed, and give you the promised services. Will these arrangements be adequate? If so, will these arrangements extend over a long period of time, or just for the near future? Local real estate agents, Better Business Bureaus, and consumer protection offices are often good sources of additional information.

Unfinished Facilities

If you are considering buying a timeshare on property where the facilities have not been completed, get a written commitment from the sellers that the facilities will be finished as promised. One way to protect your financial investment during this waiting period is to require that a certain amount of your money be held in escrow. This may provide some protection for your funds if the developer defaults. Default protection Find out what your rights are if the builder or management company has financial problems or in some way defaults. See if your contract includes two clauses concerning "non-disturbance" and "non-performance." A non-disturbance provision should ensure that you will continue to have the use of your timeshare unit in the event of default and subsequent third party claims against the developer or management firm. A non-performance protection clause should allow you to keep all your ownership rights, even if a third party, such as a bank, is required to buy out your contract. An attorney can provide you with more information about these provisions.

State Protection

Most states now regulate timesharing, either under existing state land sale laws or under laws that were specifically enacted for timesharing. The regulating authority is usually the Real Estate Commission in the state where your timeshare property is located. Contact that office if you have questions. If you have questions or complaints about vacation timesharing, write to: Correspondence Branch, Federal Trade Commission, Washington, D.C. 20580. While the FTC cannot resolve individual complaints, the agency can take action against a company if it finds evidence of a pattern of deceptive or unfair practices. To learn about reselling timeshares, send for a free copy of Timeshare Resales. Write to: Public Reference, Federal Trade Commission, Washington, D.C. 20580.