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COMPETING STATE AND FEDERAL ROLES IN CONSUMER CREDIT LAW

CARL FELSENFELD*

An important problem confronting those in the consumer credit industry is the absence of a cohesive body of law. This impairs creditors of all types and also results in unequal treatment of consumers. In a comprehensive study Mr. Felsenfeld analyzes the evolution from purely state regulation of consumer credit to a combination of state and federal control. The author suggests that, despite certain merits of local regulation, the consumer credit area may well be preempted by future federal legislation.

I

INTRODUCTION

The first function of this article is reportorial: legal control of consumer credit has to a significant extent passed from the states to the Federal Government.1 Its second function is one of prediction: that the process is continuing and will accelerate. Finally, there will be some modest commentary about this shift: it may not be too bad.

II

STATE-FEDERAL RELATION

The explosion in consumer credit volume in recent years is too well-known to require elaboration here. In the last ten years alone, the outstanding volume has more than doubled, from $56 billion in 1960 to over $120 billion in 1969.2 In general, despite the existence of consumer finance companies of national and even international scope, the process of extending money or credit to individuals has traditionally been considered a local operation. Without major discontent, this economic activity has

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1 See Dole, Consumer Class Actions Under Recent Consumer Credit Legislation, 44 N.Y.U.L. Rev. 80 (1969); Harper, The Uniform Consumer Credit Code: A Critical Analysis, id. at 53; Kripke, Gesture and Reality in Consumer Credit Reform, id. at 1; Littlefield, Preserving Consumer Defenses: Plugging the Loophole in the New UCCC, id. at 272; Murphy, Lawyers for the Poor View the UCCC, id. at 298; Schrag, Bleak House 1963: A Report on Consumer Test Litigation, id. at 115.

operated subject to the laws of the several states with federal intrusions only in certain restricted areas.

Moreover, consumer credit is a highly regulated field. Few businesses operate under the complex minutiae of legal supervision to which consumer credit is subject. The fundamental laws controlling the extension of credit are, of course, the usury laws which exist in some form in every state. There is no federal law of usury,\(^3\) nor is there any semblance of uniformity among the states on this subject.\(^4\)

The numerous qualifications of and exceptions to the usury laws which have facilitated widespread expansion of consumer credit have likewise been creatures of state law. Since the relatively low rate ceilings of the usury laws were designed for purposes other than mass consumer credit and have proven insufficient for that purpose, new legal devices have been created within which this operation could function.\(^5\) In the area of credit selling, the fundamental legal tool has been the "time-price doctrine," which essentially deems that time sales are not the sort of debt forbearance to which the usury laws apply. The landmark decision in this area is *Hogg v. Rufner*\(^6\) which, while a United States Supreme Court opinion, is an interpretation of the usury law of the State of Indiana. There the Court held that the time sale on a piece of land was not subject to the interest rate ceilings of the usury laws. However, the wide latitude in setting rates permitted sellers under the time price doctrine has been considerably restricted by the various statutes regulating instalment selling presently in effect in most states.\(^7\)

Loan laws similarly have been revised to permit the lending of money at liberalized rates beyond the basic usury law restrictions. Research by the Russell Sage Foundation led to the enactment of small loan laws or their equivalent in almost all states.\(^8\) Such legislation enabled consumer loans to be made subject to

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\(^3\) See text accompanying note 56 infra. Federal interest laws do exist in specialized areas, such as the freedom of preferred ship mortgages from any rate ceiling. 46 U.S.C. § 926 (1964).

\(^4\) B. Curran, *Trends in Consumer Credit Legislation* 15 (1965) describes a range of state usury rates from as low as 4% to a high of 30% per annum.


\(^7\) See notes 102-03 infra for the applicable New York statutes.

state administrative supervision under particularized rate ceilings.9

Stemming from these two basic building blocks of credit, the states have enacted a variegated umbrella covering virtually all aspects of consumer credit. A partial list includes: the licensing and examination of lenders and other credit grantees,10 the control of debt collection practices,11 the regulation of credit unions,12 bank consumer loan departments13 and, of course, the perfection and enforcement of security devices.14 Related statutes in such areas as consumer credit insurance,15 credit cards16 and civil remedies17 round out the picture.

This emphasis on state law is not intended to mean that the impact of the Federal Government has been completely absent in consumer credit. Its presence has, however, been clearly secondary to the role of state law. In evaluating the position of the Federal Government, it should be noted at the outset that the general overlay of federal law represented by such statutes of general application as the Federal Trade Commission Act18 and the Sherman Act19 apply to the consumer credit industry as well as to other forms of interstate commerce.20

Other federal laws, although not designed specifically for the regulation of consumer credit, affect that industry somewhat more directly. Among these are statutes creating and regulating such credit-granting institutions as national banks21 and federal

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9 Curran, supra note 4, at 16. Miss Curran indicates that such legislation exists in every state except Arkansas.
11 New York forbids the practice of arranging debtors' obligations for a fee (known as debt-pooling or debt pro-rating). N.Y. Gen. Bus. Law §§ 455-57 (McKinney 1968). Other states generally either forbid this practice or subject it to regulation.
12 See N.Y. Banking Law §§ 450-50 (McKinney 1950).
14 These are contained principally in Art. 9 of the Uniform Commercial Code. Some specialized statutes regulating consumer credit also cut across this area, as does the Maryland Retail Installment Sales Act, Md. Ann. Code art. 83, §§ 141-44 (1969).
credit unions.\textsuperscript{22} Even here, however, there is the presence of state law and a recognition of the dominant role it plays in creating the structure of the credit system. Significant is the tying of the national banks' interest rates to the rates authorized by state law\textsuperscript{23} as well as relating other national bank powers to the permitted operations of state banks.\textsuperscript{24}

Two important areas where the Federal Government has assumed major responsibility deserve special mention because of their effect upon consumer credit as well as related financial operations. The first of these involves the power of the Federal Reserve Board (FRB), through its various fiscal activities, to affect the supply of money. Although not the only factor in the economy influencing the money supply, the operation of the FRB is probably the most significant. For present purposes, it serves as one prime example of the constitutional power of the Federal Government to reach and affect the laws dealing with credit.\textsuperscript{25} In evaluating the function of the Government in this area, one of our first concerns must be with the Constitution and its grants of power. The power of Congress over money is a matter that will be pursued further.

The second major federal presence in consumer credit as an adjunct to a more generalized federal function is in the field of bankruptcy. Here again a broad grant of constitutional power will be found to supply the specific basis for federal entry into the field of consumer credit. As with the powers of the FRB, federal presence in bankruptcy has become a traditional and accepted federal role. Undoubtedly this is primarily because the Congress was quick to exercise the bankruptcy power granted it in the Constitution\textsuperscript{26} by enacting implementing legislation. Without this, it may be assumed that the states would have had the same freedom to enact laws governing insolvency as they now have to control consumer credit.\textsuperscript{27}

It is paradoxical that the major laws permitting and regulating the creation of debt are state products while the body of law authorizing the release from debt is of federal origin.

\begin{thebibliography}{99}
\bibitem{26} U.S. Const. art. I, § 8, cl. 4.
\bibitem{27} See, e.g., In re Wisconsin Builders Supply Co., 136 F. Supp. 439 (D. Wis. 1955), rev'd on other grounds, 239 F.2d 649 (7th Cir. 1956), cert. denied, 353 U.S. 985 (1957).
\end{thebibliography}
Since uniformity in the latter is generally deemed a desirable if not necessary legal element, one may fairly ask why uniformity should not be equally appropriate to the former. Perhaps at least one benefit of uniformity can be observed at this point by comparing the national Bankruptcy Act to the multitude of inconsistent state laws governing insolvency distributions or assignments for the benefit of creditors. The Bankruptcy Act is a generally well understood statute and a reasonable number of practitioners rightly consider themselves expert in its operation. Conversely, it is a courageous lawyer indeed who suggests that he has any real overall understanding of state insolvency laws, or even of their operating principles. To the extent that a broad understanding of law is a desirable objective, uniformity clearly serves this end.

It is also possible that the separation of federal bankruptcy laws from state credit laws may have some influence on the apparent lack of guiding policy principles. For example, the factors causing a consumer to get into debt have not yet been rationalized with those enabling his release from debt. Issues concerning the propriety of debt creation (including such matters as the proper level of interest rates as determinative of who shall be granted credit) have not really been examined as correlatives of the problems of bankruptcy discharges. Concern with rising bankruptcy and efforts to control the easy availability of bankruptcy exist simultaneously with efforts, such as the drafting of the Uniform Consumer Credit Code (UCCC), to increase the availability of credit. Certainly a uniform set of laws would have some beneficial effect in diminishing the number of such inconsistent programs.

Up to now the discussion has centered on the tangential effect upon consumer credit of broad federal legislation directed toward other economic problems. Until recent months, direct intervention by the Federal Government into the control and regulation of consumer credit activities as such has been rela-

28 It may be noted that the Constitution itself requires bankruptcy laws to be "uniform . . . throughout the United States," U.S. Const. art. I, § 8, cl. 4.


30 See, e.g., Stellwagen v. Clum, 245 U.S. 605 (1918).

31 The author has suggested elsewhere that a major argument for uniformity is that laws will be better understood. Felsenfeld, Uniform, Uniformed and Unitary Laws Regulating Consumer Credit, 37 Fordham L. Rev. 209, 223 (1968).

tively rare. (However, recent events have radically altered this.) One such entry was the President's Executive Order during World War II directing the Board of Governors of the Federal Reserve System to take action to restrict overextensions of consumer credit.\(^\text{33}\) Issued pursuant to general executive powers contained in the Trading with the Enemy Act,\(^\text{34}\) the Order was designed both to protect the availability of goods for war production and to guard against inflation. The FRB issued its regulation \(\text{W}\) pursuant to this Order and thereby controlled down-payments and lengths of term in designated consumer credit transactions. However, regulation \(\text{W}\) was suspended after the Korean War.\(^\text{35}\)

In 1951, the Federal Trade Commission (FTC) promulgated a set of trade practice rules applicable to retail instalment sales of motor vehicles.\(^\text{36}\) These rules bear some resemblance to many state statutes regulating such sales by requiring certain specified elements of the instalment sale (such as the cash price, the finance charge and other related charges—but not the annual percentage rate of charge) to be disclosed to the buyer.\(^\text{37}\) In addition, the rules contain certain controls on the writing of insurance in connection with motor vehicle sales.\(^\text{38}\) As far as it can be determined, these rules have never been enforced and, although they are still in effect, they probably are preempted by the more detailed and comprehensive requirements of the Truth in Lending Law discussed below.\(^\text{39}\)

Other FTC action in the area of consumer credit includes the promulgation, in 1967, of a set of guides to deter deception in debt collections.\(^\text{40}\) The essence of these rules is that one engaged in debt collection must make his purpose known and not use concealment, misrepresentation or any other form of deception in his efforts to collect an obligation. While the enforcement of these rules has been primarily against collection agencies in the past, the FTC announced in January 1970 that four firms actually in the business of extending consumer credit were engaged in questionable practices under these guides. Undoubtedly

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\(^\text{35}\) Pursuant to a joint resolution, Congress has forbidden the Federal Reserve System to exercise consumer credit controls pursuant to the Executive Order except during a war or a national emergency declared by the President. 61 Stat. 921 (1947) (now 12 U.S.C. § 249 (1964)).
\(^\text{37}\) Id. § 197.2.
\(^\text{38}\) Id. § 197.5.
\(^\text{39}\) See Part III infra.
this action is a part of the growing federal interest in the problems of the consumer generally and consumer credit in particular. The next section will analyze this new interest.

III

The Consumer Credit Protection Act

Clearly the most significant and important incursion by the Federal Government into the state province of consumer credit was the passage in 1968 of the Consumer Credit Protection Act (CCPA).\(^{41}\) While best known for its provisions relating to truth-in-lending, the CCPA actually contains considerably more that is of significance to the consumer credit industry.

The CCPA consists of four titles. Title I deals principally with disclosure and, itself, is called the Truth in Lending Act.\(^{42}\) An outgrowth of the work of Senator Paul H. Douglas, who introduced the first bill on this subject in 1960, the keystone of the statute is its requirement that the cost of credit be disclosed to the debtor in terms of simple annual interest. Despite its title, the Truth in Lending Act also covers instalment sales and revolving credit transactions in addition to pure loans.\(^{43}\) It is applicable to consumer and agricultural transactions but not business or commercial credit.\(^{44}\) Except for transactions secured by real estate, it excludes extensions of credit in excess of the sum of $25,000.\(^{45}\) In addition to the required disclosure of simple annual interest, the Act forces creditors to disclose, in prescribed form, the other significant details of the credit extension. There are provisions regulating consumer credit advertising as well as authorization for consumer debtors to rescind certain nonpurchase money real estate transactions within three days after the transaction has been consummated.\(^{46}\)

Title II of the CCPA, Extorticate Credit Transactions, is a form of federal criminal usury law. However, rather than outlawing loans above a specified rate, its penalties are applicable to loans made with the "understanding . . . that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person,


\(^{42}\) CCPA § 101.


reputation, or property of any person."  Unlike the typical state usury law, which is tied to a specific rate or series of rates, Title II makes a loan illegal, regardless of rate, if tied to a threat of illegal collection methods. In a prosecution under this Title, a finding that more than 45 per cent simple interest was charged is one element of several that may result in prima facie evidence that the credit extension was extortionate, but an excessive rate is not a necessary element of the crime.

Title III restricts an individual's earnings subject to garnishment to 25 per cent of his weekly earnings or the amount by which such earnings exceed thirty times the federal minimum hourly wage, whichever is less. However, Title III will not become effective until July 1, 1970.

The last section, Title IV, provides for the establishment of a Commission on Consumer Finance to be composed of three senators, three representatives and three members of the public. The Commission is directed to "study and appraise the functioning and structure of the consumer finance industry, as well as consumer credit transactions generally" and report to the President and Congress by January 1, 1971.

A striking feature of the first three Titles of the CCPA is that the areas they cover have previously been left almost entirely to state law. The requirement of disclosure of credit transaction terms appears in some form in almost every state, either in its laws regulating consumer loans, instalment selling, or general lending. Similarly, criminal usury laws as well as garnishment laws have traditionally existed on the state rather than federal level. Naturally, the CCPA contains appropriate provisions to the effect that it will essentially annul any conflicting state law.

The version of the CCPA that first passed the House of

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49 Id. § 504.
50 Id. § 404. At this time the Commission consists of Senators Sparkman (D., Ala.), Proxmire (D., Wis.) and Tower (R., Tex.); Representatives Patman (D., Tex.), Sullivan (D., Mo.) and Halpern (R., N.Y.); Messrs. Robert Braucher of the Harvard Law School, Robert W. Johnson, Professor of Finance, Purdue University, and Ira M. Milstein of the New York Bar.
51 See, e.g., N.Y. Banking Law § 353 (McKinney 1950).
54 See, e.g., N.Y. Penal Law § 190.40 (McKinney 1967).
55 See N.Y. CPLR § 6201 (McKinney 1963).
Representatives went even further in invading the state domain. Among the provisions deleted before final passage was a proposed national usury law limiting the interest rate that may be charged in any extension of credit to a natural person to 18 per cent per annum. It is part of the thesis of this article that this abortive effort to establish a national usury law is more a harbinger of things to come than a mere legal curiosity of historical interest.

It is not inconceivable that the most significant part of the CCPA will turn out to be the National Commission on Consumer Finance established under Title IV. The Commission is funded and is now developing a professional staff. In view of the magnitude of its task, it seems probable that the January 1, 1971 report date will be deferred. One can only speculate on the eventual contents of that report. A significant factor that must affect its conclusions will be the actual national experience with the CCPA, particularly Title I, the Truth in Lending Act. This has been effective only since July 1, 1969, and there is little evidence of any substantial impact on the consumer credit structure. However, the presence of the CCPA has not been unduly displeasing to either creditor or debtor and, barring presently unexpected developments, it seems unlikely that there will be a recommendation that the Federal Government retreat from its advance into the consumer credit field. A report recommending increased federal presence, which on balance seems more likely than not, will have an important effect on the state-federal balance in this area.

IV

CONSTITUTIONALITY OF CONSUMER CREDIT PROTECTION ACT

Allied with the tradition that consumer credit is an activity properly subject to state control is a generally prevailing atti-

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68 Id.
69 See note 50 supra.
71 See Johnson, Economic Rationale of the Uniform Consumer Credit Code, 23 J. of Fin. 303 (1968). However, it is interesting to note that 2 of the 3 public members of the Commission have strong ties to the Uniform Consumer Credit Code which is a document committed to the dominance of state law. Professor Braucher served on the Special Committee of the National Conference of Commissioners on Uniform State Laws that drafted the Code, and Professor Johnson, who served as Reporter-Economist to that Committee, was largely responsible for the economic rationale that underlies it.
tude that it is essentially a local or intrastate activity not subject to federal legislation. Thus, the constitutional basis for the CCPA must be examined.

Two recent cases have sustained the constitutionality of Title II, Extortioneer Credit Transactions. In United States \( v. \) De Lutro\(^{62} \) and United States \( v. \) Biancofiori,\(^{63} \) Title II was upheld against the challenge that it did not affect interstate commerce. In De Lutro the attack on the statute was accompanied by an allegation that, even if some interstate commerce was affected, the statute was unconstitutional because it did not require a showing of an effect on interstate commerce as an element of the crime. Similarly, in Biancofiori, it was asserted that the alleged acts of the actual defendants did not affect interstate commerce.

In finding that interstate commerce was sufficiently affected to sustain Title II, the attitude of both courts is well illustrated by the majority opinion in De Lutro:

In this age of the jet plane, superhighway and wide-area phone call, when our daily newspapers and periodicals over the past few years have repeatedly publicized large-scale "loan-sharking" activities on the part of organized criminal elements, the effect on interstate commerce would appear to be too obvious to require any comment. Indeed, it is not even necessary to rely upon such widespread general knowledge. The record before Congress contains specific references to such interstate impact.\(^{64} \)

Additional support for the courts' findings that defendants acts affected interstate commerce is found in Heart of Atlanta Motel, Inc. \( v. \) United States,\(^{65} \) a case that gives great breadth to the commerce clause. The Biancofiori court, quoting Heart of Atlanta, stated that "the power of Congress to promote interstate commerce also includes the power to regulate the local incidents . . . which might have a substantial and harmful effect upon that commerce.\(^{66} \)

Both courts utilized Congress' general bankruptcy power as a second basis for validating Title II. De Lutro followed the sensible reasoning of the conference report on the CCPA that criminal lending will result in obligations not susceptible to being discharged in bankruptcy.\(^{67} \) Thus, the court concluded that the

\(^{63} \) Id. \( \S \) 99,796, at 89,771 (7th Cir. Feb. 2, 1970).
\(^{64} \) Id. \( \S \) 99,806, at 89,778.
\(^{65} \) 379 U.S. 241 (1964).
\(^{66} \) Id. at 258, quoted in CCH Cons. Cred. Guide \( \S \) 99,796, at 89,772.
Federal Government is within its constitutional bankruptcy powers in protecting the bankruptcy laws by making such extortionate loans a federal crime. It is interesting to note that the purpose clause of Title II contains specific references to interstate commerce and bankruptcy.68 This was, of course, utilized in the opinions approving Title II.69 Title III, on garnishment, contains similar specific constitutional bases in its purpose clause.70 The purpose clause of Title I, however, contains no direct reference to any constitutional authorization:

The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this title to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.71

Whether this is sufficient to support federal legislation controlling a $250 loan by a small local finance company to a consumer in downtown Boondocks is a question open to speculation. Obviously, the absence of a specific reference in the statute to interstate commerce or bankruptcy does not foreclose a court from drawing upon these as sources of congressional authority.72 It would seem that the same rationale supporting the application of these two sources of congressional power to Titles II and III would have similar application to Title I. The opportunities for wide-ranging consumer credit are continually growing and receiving public attention. It would be surprising if even a single, isolated consumer credit transaction were found free of all reasonable connection with interstate commerce.

Another source of congressional power, as yet judicially untested, may also support Title I. The power of Congress to "coin Money, [and] regulate the Value thereof"73 has been construed to permit Congress to take appropriate steps to protect the banking system.74 Since developments in consumer credit and the

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68 CCPA § 201.
72 White v. United States, 399 F.2d 813 (8th Cir. 1968).
73 U.S. Const., art. I, § 8, cl. 5.
banking system often affect each other, the relationship between the two fields is probably substantial enough for an exercise of congressional power in the consumer credit area based upon the monetary regulation power.

Justice Marshall once commented that "we must never forget that it is a constitution we are expounding" and "that a government, intrusted with such ample powers, on the due execution of which the happiness and prosperity of the nation so vitally depends, must also be intrusted with ample means for their execution." This concept has been a traditional basis for expansion of congressional power through judicial construction. Therefore, in a difficult case one may expect the "necessary and proper" clause to support congressional action in the consumer credit field. Of course, it will still be necessary to show that the congressional act was "necessary and proper," in the constitutional sense, to some specifically authorized congressional function.

If the constitutionality of the Truth in Lending Act should be tested, we cannot predict the context of the proceeding. However, anyone seeking to invalidate the Act must be careful to avoid jumping from the frying pan into the fire. It should be pointed out that the Act invalidates inconsistent state statutes. Although the FRB has authorized a method for creditors to make "inconsistent" state disclosures in a prescribed way if they wish, this is generally cumbersome and pointless, and most creditors have elected to give only the CCPA disclosures, relying on the supremacy of federal law to eliminate inconsistent state material. Should the Truth in Lending Act be found unconstitutional, its power to supplant inconsistent state law presumably also falls, and creditors may then find themselves in automatic violation of the then revivified state requirements.

V

CCPA OBEISANCE TO STATE LAW

To appreciate the CCPA today, one must recall the atmosphere of 1967 and 1968 when its final versions were being drafted. For years the creditor community had opposed a federal disclosure law. Of course, the requirement of exposing the simple annual interest rate in the same manner for all consumer credit

74 U.S. Const., art. I, § 8, cl. 18.

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transactions, which was the essence of Senator Douglas' and, later, Senator Proxmire's proposals, was anathema to many traditional lenders. This was not based on the lenders' belief that their rates were too high, but rather on the concern that a generally uninformed public might think they were. Almost as disturbing as this, however, was the concept of passing control from the states to the Federal Government. The traditions of state dominance described in the opening pages of this article were deep-seated, and opposition existed almost as much to the specter of federal presence as to the substantive provisions of any law that might be enacted.

As a result of this attitude, the CCPA developed the underlying philosophy that if a state's law satisfactorily performed CCPA functions, the state would be exempted from the federal requirements and would be left under its own law. The FRB was given the power to make this determination as follows:

The Board shall by regulation exempt from the requirements of this part any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this part, and that there is adequate provision for enforcement. 70

It seemed clear in the months after the Truth in Lending Act became effective that the FRB was satisfied that power under the Act was properly delegated to it and the other federal agencies empowered to administer and enforce the CCPA. Informal expressions of opinion from the FRB and its staff led one to believe that state exemptions would be granted very sparingly, if at all. State laws and enforcement mechanisms were obviously going to be scrutinized with microscopic intensity, and it appeared unlikely that an exemption would be granted absent some forceful political pressure on the FRB to return authority to the states. 80

The first application for exemption was made by Maine in September 1969. This was followed by applications from Connecticut, Massachusetts, Oklahoma, Virginia and Utah. To the surprise of the credit industry, Maine was awarded an exemp-


80 It should be noted that CCPA § 123, 15 U.S.C. 1633 (Supp. IV, 1965-1968)
tion on March 12, 1970. Whether political pressure was in fact applied to the FRB must remain a secret reserved to the Board and its staff. Maine's exemption, however, was not greeted with the enthusiasm that might have been expected from many of the original supporters of the exemption concept. In the months between July 1969 and March 1970 operations under the Truth in Lending Act, while not without problems, had been found curiously palatable. Getting a grasp of the new statute plus its supporting regulations and FRB interpretations, as well as changing forms and procedures for the July deadline had been just as onerous a task as one had anticipated. Once accomplished, however, the experience of abiding by one federal law of disclosure rather than fifty state laws with fifty different sets of requirements was a refreshing change for the consumer credit lawyer. The desire that control return to state law had lost its urgency. Some felt that creditor opinion had shifted to full support for federal control. While this is probably an overstatement, and a significant group of credit industry representatives continued to press for state preemption, the benefits of working under federal law were apparent. Hence the reversion to state law was not deemed an unmixed blessing.

With Maine's grant of an exemption, we now have a situation in which to test the effects of this procedure. One finds the following with regard to Maine:

1. All disclosure requirements for consumer credit transactions are governed by Maine law which is almost, but not precisely, identical to the Truth in Lending Law. Thus the concept of individual state variation has been reintroduced.

2. Advertising requirements applicable to consumer credit transactions continue to be governed by federal law, although the disclosures to be given in an actual transaction are subject to Maine law. Through what is possibly a drafting oversight, the federal exemption provision (CCPA Section 123) provides exemption only from the requirements of "this part," which means part 2 of the Truth in Lending Act. Since advertising is covered by part 3, no state exemption for this activity is possible. Arguments have been made to the FRB that as part of its rulemaking

gives no discretion to the FRB. If the elements required by § 123 are found to exist, the Board is required to grant the exemption.


82 For example, in calculating a 3 "business day" period upon which a right of rescission for certain real estate transactions is based, Maine adds Patriot's Day; see text accompanying note 79 supra.
power under the Act, Congress specifically gave it the right to "provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter." This, the argument runs, gives the FRB the power to exempt advertising in part 3 as well as the disclosure requirements of part 2. The FRB has not, however, been persuaded. Having exempted Maine, therefore, it has necessarily retained control over advertising, leaving the remainder of the Truth in Lending Act to the state. At best, the exemption results in dual, rather than single, control.

3. The Maine exemption is conditional as any exemption granted to a state must be. Its continuation depends upon:85

   a. continuing amendment or revision of Maine law, including regulations and interpretations thereof, as may be necessary to "preserve substantial similarity with the Truth in Lending Act and regulation Z as they may be amended, and with interpretations thereof"86 which may be issued from time to time by the Board;87
   b. continuing adequacy of the Maine provisions for enforcement, and
   c. cooperation and appropriate liaison with the FRB to assure that the purposes of the Truth in Lending Act are carried out uniformly.88

It is certain that there will be changes in regulation Z and the interpretations thereof. What steps will be called for to ensure Maine's continuing compliance and what steps will be required should compliance cease (is independent FRB action required, or does the exemption automatically end when the conditions are no longer satisfied?) are questions yet to be answered. It is therefore clear that the federal exemption has not resolved all the issues relating to the control of consumer credit disclosure regulations.

4. Actions based upon violations of the Truth in Lending Act may be brought in any United States district court.88a

86 Interpreted are issued and revised on a fairly regular basis. See Fed. Res. Doc. No. 70-4112 (filed Apr. 3, 1970), an interpretation issued by the FRB 21 days after the Maine exemption became effective. On Apr. 13, the Board proposed certain amendments to its regulations under the Act, relating to the disclosure of default charges.
tions of Maine law alone would not normally support federal jurisdiction. However, to retain federal jurisdiction in the manner Congress apparently intended, the Board has ruled that a state exemption will not apply to the civil liability provisions of the CCPA. This means that a violation of Maine disclosure law may be asserted in federal court as tantamount to a violation of federal law. However, since Maine law may, and does, contain disclosure requirements in excess of the CCPA requirements, violation of that excess area alone will not support a federal action.

As previously noted, the applications of five more states await FRB decision. We have no idea at this time what their determination will be. In view of the Maine experience, the likelihood of further state exemptions seems much stronger than it did in July 1969. The four complications created with respect to the Maine exemption are, of course, all arguments against further state exemptions. To those four must be added the numerous complications arising in our federal system from differing laws in the various states. Since the states that have submitted applications do not have identical laws, undoubtedly the variations—and the attendant conflicts problems—will increase in ratio, possibly geometric ratio, to the exempted states.

The countervailing position is that state law provides a better vehicle for consumer credit than federal law. Before pursuing this approach, some comment about the Uniform Consumer Credit Code (UCCC) is in order.

VI
THE UNIFORM CONSUMER CREDIT CODE AND THE STATE POSITION

The most significant state attempt to counter entry by the Federal Government into the field of consumer credit was the drafting and approval by the National Conference of Commissioners on Uniform State Laws of the UCC. Begun as a formal project in 1963 through the appointment by the National Conference of a Special Committee on Retail Installment Sales, Consumer Credit, Small Loans and Usury, the UCCC is designed as a sweeping and detailed statute governing virtually all aspects of consumer credit. It replaces state usury laws insofar as those

laws relate to loans or other forms of credit91 and establishes a comprehensive system regulating consumer credit sales, loans, revolving credit including the various credit card plans and the related areas of administration, licensing, insurance, remedies and penalties.

Despite widespread opposition to the UCCC, it is, in this writer's judgment, a careful and balanced document reflecting the needs of both the creditor and debtor communities. It is the only document of its size and scope that has received the best that all interested parties could offer. The final result is the product of years of careful research and diligent effort. While no one is in entire agreement with the end product, some dissatisfaction is almost a necessary function of the diversity of interests that pooled their thoughts and compromised their views to reach ultimate agreement. As a result, at least part of the current opposition to the UCCC stems from the very process by which it was drafted.

The UCCC was drafted in recognition of the fact that the state laws governing the broad field of consumer credit were an unduly complex, inconsistent and inadequate body of law. A fundamental purpose of the UCCC is "to simplify, clarify and modernize the law governing retail instalment sales, consumer credit, small loans and usury."92 Whether or not uniformity is an important objective in consumer credit law, a point on which reasonable men differ, there is little argument over the need for modernization, simplification and clarification.

At the time work on the UCCC began, it was taken entirely for granted that consumer credit law was state law. No conflict with the Federal Government existed, and none was anticipated. The objective of the Commissioners was to create the best possible body of law for uniform enactment at the state level. Toward the end of the drafting process, however, the CCPA was becoming a reality, and the new concept of federal preemption became an added consideration.

The National Conference of Commissioners is composed of lawyers appointed by the governors of the several states.93 The National Conference is, therefore, a body whose primary purpose and function is state rather than federal law. While there is

91 In addition to credit transactions, state usury laws also apply to unpaid judgements, notes, other obligations and to cases where there is no agreed rate or no agreement is possible. See UCC § 9.103, Explanatory Note.

92 UCC § 1.102(2)(a).

nothing in the charter of the National Conference or in the nature of the appointment of individual commissioners to favor state over federal law, it is natural that there should be an emphasis on state law. One would expect that, offered a choice between state or federal law on a given subject, the general inclination of the National Conference would be toward legislation at the state level. This would clearly be more pronounced in an area such as consumer credit where federal law will necessarily displace an already existing state dominance.

When it became apparent that exemption from a new body of federal law could be obtained through a substantially comparable body of state law, the reaction of the National Conference was predictable. The disclosure requirements of the UCCC were drafted to conform as closely as possible to the disclosure provisions of the Truth in Lending Act in order to achieve the maximum likelihood of obtaining state exemptions pursuant to CCPA Section 123 and action thereunder by the FRB. Even the approval given by the full National Conference to the final draft of the UCC in 1968 contained an authorization to amend it in order to retain comparability with the regulations and interpretations under the Truth in Lending Act.94 This process of amendment has, in fact, continued since that original 1968 approval.

The UCC is, of course, much broader in scope than the CCPA. Enactment by the states was expected not only to obtain exemption from federal law but also to introduce an improved body of consumer credit law. The controversial nature of the UCC was well known to its draftsmen, and their expectation of controversy has been more than fulfilled. In one area, however, developments have been surprising. It was expected that the natural desire of the states to obtain exemption from federal law would offer a powerful impetus to adoption of the UCC in full. As states under the UCC obtained FRB exemption, it was anticipated that others would desire the same beneficial freedom from federal law. Nevertheless, as mentioned above, the consumer credit industry achieved an unexpected satisfaction under the unified federal requirements of the Truth in Lending Act.95 Suddenly, achieving state exemption from this simplified pattern and returning to the variegated pattern of state regulation did not appear the great benefit it had, not too long previously, been considered. There are even those who would now characterize this return to the state law system as movement in the wrong direc-

94 UCC, Prefatory Notes, at 9.
95 See Part V supra.
tion. Of course, official polls on this issue have not been taken. Whether or not the majority of the consumer credit industry prefers the return to state law is a question that cannot be answered at this time. What is clear is that the benefits of federal exemption no longer constitute a compelling reason to adopt the UCCC. Supporting evidence may be found in the fact that only Oklahoma, Utah and the territory of Guam have enacted the UCCC.

In the period since the National Conference of Commissioners approved the UCCC, one cannot observe any momentum developing in favor of the Code’s adoption. At the same time, those opposed to the UCCC on policy grounds have not altered their position. The most vocal opposition groups are those who purport to speak for the consumer. By dint of the growing interest among the bar and the law schools in representing the consumer, this group has grown in size. Opposition to the UCCC has correspondingly increased. In 1968, a relatively new consumer voice, the National Consumer Law Center, affiliated with Boston College Law School, drafted a “competing” code, titled the National Consumer Act. This has not yet been adopted in any state, but its very presence stands as an impediment to enactment of the UCCC. The National Consumer Act, in adopting the disclosure provisions of the Truth in Lending Act by reference, seems also to have afforded itself the opportunity to obtain the CCPA federal exemption. One is, however, struck by use of the word “National” in the title and cannot help but speculate whether its draftsmen had in mind something other than state legislation.

It is now doubtful that the UCCC will have any real success at the state level. Certainly there will be no immediate ground-swell of state adoption. It is worthy of note, however, that two significant commissions have now been established to study the UCCC, one in the District of Columbia and the other in New York. Any legislative action in the District must, of course, be taken by Congress and will have a substantial effect upon the rest of the country. Those acquainted with the history of the Uniform Commercial Code will also appreciate the significant role the New York Law Revision Commission (the body delegated to conduct the New York study) has played in the passage of uniform legislation. It was the three-year study by this Commission of the Uniform Commercial Code that broke the log jam stalling that legislation. After the Commission’s report, most of its recommendations were accepted by the National Conference of Commissioners through amendments to the Code. The Uniform
Commercial Code soon thereafter became the law of 49 states.\textsuperscript{96} It seems clear that in evaluating the UCCC, the Law Revision Commission and the District of Columbia Commission will consider the proposals of the National Consumer Act and those of other interested groups. The ultimate result may well be an amalgam of a number of source materials.

VII

**Consumer Credit Law Alternative**

The foregoing analysis invites a prediction as to which of several legislative paths future consumer credit legislation will take. Given the manifest importance of the field, there will be considerable legislative action. Essentially, there appear to be three alternatives:

1. Consumer credit could continue in its present form and remain basically a creature of individual state creation. As has been pointed out, consumer credit law is still largely state law despite the new federal presence.

2. The states could retain their dominance in consumer credit but institute a more harmonious pattern for the existing tangle of laws. That is, we could have uniform state legislation.

3. Uniformity could be established at the federal level with one body of consumer credit law as the law of the land.

The existing pattern of state law is almost certainly unsatisfactory. For many years, state credit laws have grown hazily in response to the pressures of particular times, and, today, they present a complexity and obscurity that is hardly warranted by the field itself. As an illustration, credit in New York State is now granted largely under the following:

1. The General Usury Law.\textsuperscript{97} To the extent not specifically covered by other laws, interest on extensions of credit in New York are limited by this law to 7.5 per cent simple interest.

2. The Small Loan Law.\textsuperscript{98} This law authorizes consumer loans to be made by licensed lenders in amounts up to $800 at rates which go as high as 30 per cent for low balance loans.

3. New York Banks and Trust Companies. A special law permits state banks and trust companies, when certificated by the Banking Department, to make loans at "discount" rates of 6

\textsuperscript{96} Only Louisiana has yet to adopt the Code. The work of the Law Revision Commission is described in Report of Commission on Uniform State Laws to Legislature of the State of New York. N.Y. UCC XVII (McKinney 1964).

\textsuperscript{97} N.Y. Gen. Obligations Law §§ 5-501 to -531 (McKinney 1964).

\textsuperscript{98} N.Y. Banking Law §§ 340-65 (McKinney 1950).
per cent, which can translate into over 13 per cent simple interest.  

4. New York State Credit Unions. These institutions may lend to their members at a rate of 1 per cent per month (approximately 12 per cent per year actuarially or, alternatively, at a 6 per cent discount computed in the manner allowed state banks. Federal credit unions are restricted to a 1 per cent per month rate.

5. Retail Instalment Sales Act. Sellers of most goods except automobiles and those who sell services on time, in both cases for non-commercial purposes, are subject to the specific rates and other controlling provisions of this Act.

6. Motor Vehicle Retail Instalment Sales Act. Sales of motor vehicles, again limited to non-commercial purposes, are governed by this Act which has many provisions analogous to the Retail Instalment Sales Act mentioned above.

7. Loans to Corporations. Under a special amendment to the general usury laws, loans to corporations, except in certain limited cases, are exempt from rate ceilings.

8. The Time-Price Doctrine. But for this doctrine, which essentially holds that the cost of buying on time is not the sort of loan or forbearance to which the usury laws apply, many sales not otherwise specifically authorized by the sort of statutes described above in items 5 and 6 might be subject to the rate control contained in the general usury laws, laws which are economically unsuited for widespread credit.

These New York examples are typical of the national picture. Each state has its own set of laws available to control the granting of credit. Special laws exist in other states applicable to the home repair business, the second mortgage loan business,

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90 N.Y. Banking Law § 108(4) (McKinney Supp. 1969). As noted in text accompanying note 24 supra, national banks are accorded the same authorization through the incorporation of state rates, by reference, into the powers of national banks.


103 Id. §§ 301-12 (McKinney 1962); id. § 313 (McKinney Supp. 1969).


commercial (as contrasted with consumer) instalment selling and numerous other related fields.\textsuperscript{107}

Stemming largely from the fact that these laws were generally designed for special circumstances, they have often become outdated and inadequate to achieve their purpose despite their number. For example, the usury law in New York remained at 6 per cent for years after that rate was clearly unsatisfactory, and devices had to be invented to circumvent its artificial ceiling.\textsuperscript{108} Additionally, the relatively new credit card devices are suffering because of legal confusion as to which body of state credit law is controlling (does a credit card reflect a deferred payment sale or a loan?).\textsuperscript{109} Some states, including New York, have relatively sophisticated statutes for this purpose\textsuperscript{110} but many do not. Judging from the existing state practice of enacting legislation to deal with problems as they arise, one may expect additional difficulty as new forms of credit continue to create legal issues to which the existing statutes have questionable application.

It is also apparent that as certain types of credit tend to become concentrated under a few national systems and consumer mobility continues to expand, the conflict of laws issues that necessarily attend variations in state law will become more difficult.\textsuperscript{111} State lines have a clearly diminishing relationship to marketing habits. Selecting the law applicable to such a transaction is more than a perplexing legal problem. The mere existence of several bodies of law inhibits the lay consumer's understanding of the legal system to which he is subject.\textsuperscript{112} These conflicting state legal systems, in their tendency to confuse the


\textsuperscript{108} "Points" in real estate loans is one example. Under the Truth in Lending Act, points must be considered as a finance charge and included in computing the interest charge. CCPA § 106 (a)(1), 15 U.S.C. § 1605(a)(1) (Supp. IV, 1965-1968).

\textsuperscript{109} See Dennis v. Sears, Roebuck & Co., 446 S.W.2d 260 (Tenn. 1969); State v. J.C. Penney Co., No. 125-287 (Dane County Ct., Wis. 1969).


\textsuperscript{112} A primary purpose of the Truth in Lending Act is to encourage the "informed use of credit." CCPA § 102, 15 U.S.C. § 1601 (Supp. IV, 1965-1968).
public and the bar, must be considered to have a inhibiting effect on the consumer's understanding of the credit market.

Obviously, the problems that result when consumer credit is controlled by local law are only part of the picture. The credit system would not have grown with its obvious vitality had there not been a real utility to the existence of these laws at the state level. Several policy reasons are usually given to justify state rather than federal legislation.

The first is the ability of local laws to meet the particular needs of local problems. Law students are taught early that the law of riparian rights in dry Arizona requires a different set of legal standards from those applicable to the Louisiana bayous. Whether this is applicable to the credit market is a controversial issue. This writer has never been convinced that the needs of the consumer credit economy showed regional variation. It is incontestable that the poor and the ignorant need legal protections that differ from those available to the affluent and the informed. Rate structures or default practices applicable to low balance transactions are subject to considerations that may not apply to high balance credits. Much contemporary legislation, including the UCCC113 has acknowledged this principle. Indeed, the approach of the entire Truth in Lending Act, whose coverage (exclusive of real estate transactions) does not apply to credit transactions in excess of $25,000,114 recognizes the difference in law between the small transaction and the large.

This is a far different assertion from one that the middle class borrower in Phoenix needs a different sort of legal structure from his income counterpart in New Orleans. There has been ample opportunity under existing state law to observe whether there is any particular correlation between locale and legal structure. Clearly there are different credit patterns in different states. However, these would seem to be the result, rather than the cause, of existing legal patterns; there is no convincing evidence that the patterns result from particular need. Individual state need does not now serve as a powerful argument for preserving individual state law in the field of consumer credit.

The opposite is true, however, for a second traditional defense of laws at the state level. Legislation always represents something of a trial-and-error approach to problem solving. The

113 See UCC § 5.103 restricting the right of a creditor to claim a deficiency against a retail buyer only in cases where the cash price of the goods sold was $1000 or less.
individual state is a more appropriate subdivision than the country at large for this process. Therefore, as legal devices are proven improper or inadequate, the state legislatures offer a much more convenient instrument for correction than the ponderous legislative machinery of Congress. Flexibility to make easy adjustments in the law has considerable appeal in relation to consumer credit legal controls. Furthermore the passage of controversial legislation is more likely at the state level. This is important in the consumer credit field where there is comparatively little agreement on the course legislation should take. The current intense controversy over the UCCC is a dramatic illustration of this lack of consensus. While a difference of opinion, even a violent difference, is not a conclusive reason for legislation at the state rather than the federal level, it does serve to illustrate this particular advantage of the state system.

This process of change and experimentation at the state level in consumer credit regulation is readily observable. While the Federal Government was arguing the merits of simple annual interest disclosure over a period of years,\textsuperscript{116} several states enacted this type of law with a minimum of difficulty. Changes in state rate structures\textsuperscript{118} as well as passage of sweeping credit reforms\textsuperscript{117} are considerably more feasible on the state rather than the national level. Furthermore, this state process of adjustment is clearly a continuous one.\textsuperscript{115}

Another argument supporting state rather than federal legislation is that, for a field involving a multitude of small transactions, administration and examination on the local level can be conducted more effectively through state than through federal officers. This is not, it should be noted, an issue of judicial enforcement so much as administrative supervision. Concurrent jurisdiction for violations of federal law can exist in state and

\textsuperscript{115} On Senator Douglas' efforts to have a truth in lending law enacted, see his testimony included in Hearings on S. 5 Before the Subcomm. on Financial Institutions of the Senate Comm. on Banking and Currency, 90th Cong., 1st Sess. (1967). The first bill may have been S. 1740, introduced in 1961.

\textsuperscript{116} The New York general interest rate contained in Gen. Obligations Law § 5-501 (McKinney 1964) was increased from 6% to a rate to be prescribed by the banking board not to exceed 7.5% in 1968.

\textsuperscript{117} Perhaps the most significant of which were the recent enactments by Oklahoma and Utah of the UCCC. Okla. Stat. tit. 14A, § 1-101 (Supp. 1969); Utah Code Ann. tit. 70B, § 1-101 (Supp. 1969).

\textsuperscript{118} The New York legislature has numerous bills before it regulating various aspects of consumer credit including garnishment (A. 5972), the "holder in due course doctrine" (A. 5966), creation of a Consumer Protection Board (A. 6301), prohibition against wage assignments (A. 5971), unsolicited credit card controls (S. 8402) and class actions (S. 6147, A. 1084). 193d Reg. Sess. (1970).
federal courts. But whether administrative machinery for daily control of the credit business rests better in state or federal hands is another question.

Regarding this point, administrators have probably offered a better device for control over illegal consumer credit practices than courts. Given the small dollar amounts involved in most of these credit transactions, there is usually little incentive for the consumer debtor to discover violations or to pursue his remedy in the courts. Administrators, however, charged with the responsibility of constantly reviewing local credit practices can and do exhibit concern over small as well as large violations.\(^\text{110}\) Corrective administrative action has served more effectively as both a deterrent force and a remedial instrument than judicial action in consumer credit transactions. At the present time, however, we are witnessing some shift of emphasis toward the courts. As more lawyers are devoting themselves to "poverty law," a term newly coined in the past few years for a separate field of law which had not theretofore existed, the small consumer is receiving more and better representation. In addition, as lawyers learn the potency of the class action in consumer credit litigation, lawsuits even take on an unexpected financial appeal.

If it results that federal credit legislation is better than that of the states and that state administration is more effective than that of the Federal Government, it may be that state administrators should be empowered to administer federal credit law at the state level. This approach is constructive, but its complexities are beyond the scope of this article. It is necessary only to mention in passing the obvious problem of financing the operation at the state level and the state constitutional problem of incorporating by reference another (federal) law, including its future amendments and interpretations into state law.

However, one can observe an increasing cooperation between federal groups empowered to administer the Truth in Lending Act and state administrators already involved with the local operations of the consumer credit industry. Questionnaires have been prepared for use at the state level to determine the degree of compliance with the new federal laws, and numerous informal liaisons have been established between representatives of federal agencies, particularly the FTC, and state loan administrators.

\(^{110}\) Beneficial Fin. Co. v. State Adm'r of Loan Laws, No. 9-082369 (Baltimore City Ct., Md. Jan. 8, 1970) illustrates an excess of administrative zeal in the small loan area. A §418 loan was held entirely void because of an inadvertent error of 38¢ in computing interest.
Nevertheless, such joint activity emphasizes the underlying weakness that is an inherent part of the state legal system.

VIII

Federal Presence

Whether one approves or not, federal consumer credit law is a reality, and there is every indication that its scope will increase. Experience under the major foray into state dominance of consumer credit, the Truth in Lending Act, has been limited but, as indicated earlier, far from disastrous. There has been little if any change in consumer behavior because of the Act, but time has been too short to permit any substantial feedback. Approximately ten class actions have been brought against creditors who allegedly violated the disclosure requirements of the Act. Two indictments have been obtained charging criminal violations, each stemming from an employer's failure to give the required information to his employees. The Truth in Lending Act must be seen, however, as part of a pattern of increasing federal presence.

A recent statute that has not received the public attention it deserves is the Federal Credit Control Act. This empowers the President, after his determination that such action is necessary or appropriate for the purpose of preventing or controlling inflation, to direct the FRB to regulate and control any extension of credit. The Board's regulatory authority is virtually without limit. The Act specifically authorizes the setting of maximum interest rates, the control of maturities, down payments and repayment schedules, the establishment of loan ratios for both debtors and creditors, the licensing of credit grantors and contains a general conclusory power authorizing the Board to "prohibit or limit any extensions of credit under any circumstances the Board deems appropriate." Theoretically, it seems entirely possible to enact the UCCC (or the National Consumer Act) under these Presidential and FRB powers. However, present indications are that these powers will probably remain unexercised.

Other significant items of legislation affecting consumer

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120 Felsenfeld, supra note 31, at 234.
123 Id. § 206, 83 Stat. 378.
credit directly or indirectly are pending before Congress in varying stages of consideration:

1. The Consumer Representation Act\(^{124}\) is designed to establish an Office of Consumer Affairs in the Executive Office of the President, with a head of cabinet rank, and to establish a separate Consumer Advisory Council.

2. The Consumer Protection Act\(^{125}\) is designed to increase the powers of the FTC and the Department of Justice to combat unfair or deceptive practices and to permit consumer suits based upon prior successful governmental actions.

3. The Community Credit Expansion Act\(^{126}\) is a lengthy and complex piece of legislation whose major purpose is to arrange for low cost credit to residents of poverty areas. Among its features is the establishment of nationally chartered National Development Banks with functions tied to the needs of poverty areas. Certain classes of consumer credit would be 80 per cent guaranteed by the Federal Government.

4. Two major proposals for expanded class action jurisdiction in the federal courts based upon consumer complaints without regard to the amount in controversy are receiving serious consideration. An administration bill provides jurisdiction only after a prior successful governmental action; another bill simply contains a grant of jurisdiction for certain specified actions.\(^{127}\)

5. The Fair Credit Reporting Act,\(^{128}\) which has passed the Senate, provides controls over the operation of credit reporting agencies. Based upon a human concern over both the fallibility and the infinite memory of computers, the bill provides in part for the expunging of certain types of adverse information after specified time periods.

6. Various other bills are designed in one way or another to prevent the uncontrolled spread of credit cards.\(^{129}\) Simultaneously, the FTC has issued regulations curbing the mailing of unsolicited cards.\(^{130}\)

7. Considerable congressional attention is being given to

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\(^{129}\) See H.R. 15103, H.R. 15160, H.R. 16542 (which has been approved by the House Post Office and Civil Service Committee) and S. 721, 91st Cong., 1st Sess. (1969). The last gives the FRB regulatory control over the problem.

possible abuse in certain insurance fields that relate to consumer credit. In particular, there is movement for a national ceiling on the charge that may be imposed in consumer credit transactions for credit life insurance.\textsuperscript{131}

There is as yet no proposal for anything as sweeping on the national scene as the UCCC. One has no doubt at this time, however, that federal lawmakers have not found this to be forbidden ground. Statutes and bills of the type now before Congress must be considered indicative of things to come.\textsuperscript{132}

\section*{IX
Conclusion}

Presently, we are at a crucial stage in the development of state-federal relations in the law of consumer credit. Initiative is moving from the states to the Federal Government. The Truth in Lending Act is the first major move into this hitherto state-dominated field. The presence of the National Commission on Consumer Finance and the introduction of numerous consumer bills in Congress indicate further impetus in the federal direction.

In contrast, the UCCC is an influence for the retention of state supremacy. Added to this is the possibility of state exemption from direct regulation by the Truth in Lending Act when comparable state legislation exists. This state oriented influence was given unexpected vitality with the actual exemption of Maine.

However, the momentum seems to favor increased federal presence. This has been assisted to no small degree by the unexpected general satisfaction experienced by the creditor community in being able to substitute the disclosure requirements of one national jurisdiction for those of fifty states.\textsuperscript{133} It seems probable that the expanding group of consumer representatives finds the public awareness of a national consumer law more beneficial to consumer understanding and a greater stimulus to consumer action than the scores of unrelated laws that had governed the area in the past.

The growing acceptance of federal consumer law is seen in the expressions of diverse groups with interests in the development of this field of law. A resolution of the AFL-CIO Executive


\textsuperscript{132} Consumer Trends, Apr. 1, 1970, at 14, reports that 122 consumer bills have been introduced in this session of Congress.

\textsuperscript{133} Note may also be made of a growing state movement to incorporate the federal truth-in-lending requirements by reference and make compliance with federal law an automatic compliance with state law.
Council at its 1969 annual meeting provided, in part: "We believe that Congress should undertake certain key reforms [in consumer credit] as a matter of federal law." In addition the following resolution was adopted by the Tennessee Legislature:

Be it resolved by the House of Representatives of the eighty-sixth General Assembly of the State of Tennessee, the Senate concurring, That the United States Congress is urged to give serious consideration to enacting uniform, nationwide maximum interest rates for different classifications of loans or lenders or both.

The concept of a national usury law, a national credit code, the federal licensing of consumer lenders and finance companies and the general federal administration of the consumer credit laws is not entirely unexplored. The idea is still revolutionary, but it does not appear as extraordinary as it did a year ago.

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