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Uniform, Uniformed and Unitary Laws Regulating Consumer Credit

Carl Felsenfeld

Fordham University School of Law

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UNIFORM, UNIFORMED AND UNITARY LAWS
REGULATING CONSUMER CREDIT

CARL FEISENFELD*

I. THE UNIFORM CONSUMER CREDIT CODE AND THE FEDERAL
CONSUMER CREDIT PROTECTION ACT

The spring and summer of 1968 witnessed two major statutory events affecting consumer credit. In June, Congress and the President enacted the Federal Consumer Credit Protection Act¹ (CCPA), generally referred to throughout its gestation in terms of its major subject, “Truth in Lending.” Following this, the National Conference of Commissioners on Uniform State Laws and the House of Delegates of the American Bar Association, at their respective annual meetings in Philadelphia, approved as a “uniform” law the Uniform Consumer Credit Code (UCCC).² These two legislative works may have an eventual impact on consumer credit to rival the invention of the time price doctrine and the drafting of the first Uniform Small Loan Law.³ It will not be our object to cover all the substantive details of the two statutes.⁴ Rather, we shall examine the major ideas underlying their construction, their significant interdependencies and, most important, their place in our federal system.

The UCCC and the CCPA were each drafted in full knowledge of the other. Of the two, the UCCC is far more comprehensive. Begun as a

* Member of the New York Bar; Consultant to the Special Committee of the National Conference of Commissioners on Uniform State Laws which drafted the Uniform Consumer Credit Code.


2. Actually, Article 1 of the CCPA which deals with disclosure requirements is itself titled “The Truth in Lending Act.” The designation nevertheless is generally used for the entire CCPA.

3. Approval by the Commissioners was on July 30, 1968 and by the ABA on August 7, 1968.

4. It was essentially the combination of these two devices that permitted the creation and growth of widespread consumer credit. This would not have been possible if this type of credit had been subject to the limitations of the traditional usury laws. The Uniform Small Loan Law developed in 1916 from the discovery of the Russell Sage Foundation that unduly low rate ceilings hurt the consumer by restricting legitimate credit and forcing the consumer into the hands of the loan-sharks. See W. Mors, Consumer Credit Finance Charges 9-19 (1965). The time price doctrine served a like purpose for instalment selling. See note 44 infra.

5. Details of the UCCC may be found in a number of other articles, including Jordan & Warren, The Uniform Consumer Credit Code, 68 Colum. L. Rev. 387 (1968); Moo, The Final Tentative Draft of a Uniform Consumer Credit Code, 34 Ind. Banker 8 (June, 1968; Robinson, The Uniform Consumer Credit Code, A New Way of Life for the Consumer Loan Industry, 22 Pers. Fin. L.Q. Rep. 118 (1968).
formal project in 1963\textsuperscript{6} through the appointment of a special committee by the Commissioners on Uniform State Laws, 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 credit\textsuperscript{7} and establishes a comprehensive system regulating consumer credit sales, loans, revolving credit, including the various credit card plans as well as traditional vendor charge accounts and revolving bank credit, and the related areas of administration, licensing, insurance, remedies and penalties. Plans and preliminary drafts have also been formulated to add major articles dealing with the conduct of credit counseling and debt pro-rating activities as well as a possible state wage earner receivership to supplement Chapter XIII of the Bankruptcy Act.\textsuperscript{8} While the major emphasis of the UCCC is clearly on consumer credit, certain low-balance business or commercial credit transactions, principally in the area of under-$25,000 credits extended to individuals, are also treated. It was the position of many consumer interests that the small proprietorship required as much protection as the individual consumer.

The CCPA is much narrower in scope. It will soon, however, be the law of the land\textsuperscript{9} while the UCCC has yet to be submitted to a state legislature. The CCPA is in four titles. The first and most significant contains the highly publicized requirement that the cost of credit be disclosed in terms of simple annual interest.\textsuperscript{10} However, only consumer and agricultural\textsuperscript{11} credit transactions, not credit for commercial purposes, are covered and even these are excluded, for other than real estate transactions, if the amount of credit exceeds $25,000.\textsuperscript{12} The form of the transaction is not material; loans, sales and the various forms of re-


\textsuperscript{7} In addition to credit transactions, state usury laws also apply to unpaid judgments, notes and other cases where there is no agreed rate or no agreement is possible. Where the UCCC occasions the repeal of such statutes, a specific replacement must be made for these purposes. See Note to UCCC § 9.103.

\textsuperscript{8} I was official consultant to the Special Committee on these subjects and suffered the indignity of seeing Articles 7 and 8 of the UCCC "Reserved for Future Use." The fact was that these two subjects proved surprisingly controversial and a decision, the correct one, was made not to risk losing the entire UCCC due to battles over two articles that were not, after all, absolutely essential to its purpose.

\textsuperscript{9} All of the CCPA except Chapters 2 and 3 of Title I (disclosure) and Title III (garnishment) took effect upon enactment. The disclosure requirements became effective July 1, 1969 and Title III becomes effective July 1, 1970. CCPA § 504.

\textsuperscript{10} See CCPA §§ 127, 128, 129.

\textsuperscript{11} See CCPA § 103(h).

\textsuperscript{12} CCPA § 104(3).
volving credit are all subject to the CCPA. In addition to rate, other significant financial aspects of the transactions such as the total dollar cost of the credit, the schedule of payments, the charges for delinquency and prepayment penalties must be disclosed. Advertising of credit transactions is also made subject to provisions of the CCPA. Most significantly, an advertisement for credit may not state any one significant aspect of a credit transaction, such as downpayment or amount of charge, without also disclosing a prescribed additional series of items, including the simple annual interest rate.\(^4\)

Title II of the CCPA makes extortionate credit transactions, whether consumer or commercial, a federal crime. As the Act was designed principally to combat "organized crime,"\(^4\) usury as such, *i.e.*, merely charging an illegal rate of interest, is not criminal.\(^5\) The criminal act is the understanding between the creditor and the debtor that failure to make repayment "could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person."\(^6\) Title III restricts the garnishment of earnings withheld for payment of a debt (any debt, not necessarily one for consumer credit) to 25 percent of disposable (after tax) earnings or 30 times the amount by which disposable earnings for a week exceed the federal minimum hourly wage, whichever is less. Title IV creates a National Commission on Consumer Finance to "study and appraise the functioning and structure of the consumer finance industry, as well as consumer credit transactions generally."\(^7\)

In two areas the CCPA recognizes the particular adaptability and traditional role of state rather than federal supervision over certain subjects and specifically defers to adequate state legislation when present. The Board of Governors of the Federal Reserve System, which generally administers Title I ("Truth in Lending") of the CCPA, may by regulation exempt from this Title transactions which are subject to state law with "requirements substantially similar" to the federal requirements.\(^8\) Similarly, the Secretary of Labor, who has primary responsibility for Title III (Garnishment) may exempt from the CCPA garnishments under "substantially similar" state laws.\(^9\) The Special Committee of the Commissioners on Uniform State Laws, a state-

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13. See CCPA § 144.
14. See CCPA § 201.
15. The charging of more than 45 percent per annum may, however, assist in the establishment of a prima facie case. See CCPA § 892.
16. CCPA § 891(6).
17. CCPA § 404.
18. CCPA § 123.
19. CCPA § 305.
oriented group appointed by state governors,\textsuperscript{20} and vitally interested in retaining maximum state dominion over credit transactions, reacted predictably to both these Federal invitations. The UCCC contains provisions drafted with careful regard for the CCPA\textsuperscript{21} that the Federal Reserve Board and the Secretary of Labor will be hard put to find substantially dissimilar to the analogous disclosure and garnishment sections of the CCPA, at least in the absence of regulations interpreting those sections. As of this writing, regulations under the CCPA have not been written. The Board of Governors of the Federal Reserve System has been accorded extremely broad regulatory powers to interpret, and even grant exceptions from, the CCPA.\textsuperscript{22} In its final resolution approving the UCCC, the Commissioners on Uniform State Laws gave to its Special Committee on the UCCC authority to revise the Act after the regulations appear, in order to retain its "substantial similarity" to the CCPA. It is anticipated that state legislatures, in jealous regard for maximum state sovereignty, will find this ability to supplant federal law a significant stimulant to passage of the UCCC.

The patterns of the CCPA and the UCCC suggest three different legislative approaches to a problem: (1) The uniform law is designed for passage by all states. Through separate and independent state action, one law will become the law of the land. (2) The federal law accomplishes the same result through central, unitary action. (3) The federal law also is designed to influence the states to pass comparable legislation that will, pursuant to the terms of the federal law, displace that law. Therefore, state law is, through a kind of gentle central coercion, being "uniformed." We shall explore later some similarities of these three devices.

II. THE CLIMATE THAT FORCED LEGISLATION

The laws and judicial doctrines that now govern the field of consumer credit are in obvious need of overhauling. Created at various times in response to various problems, there exists a confusing and often inconsistent tangle of laws to bedevil the lawyer and, in all probability, completely elude the consumer. A national consumer finance company lending in all states probably will deal with over 70 statutes controlling loans, the applicable one at any time depending upon such factors as the amount of the loan, the rate, the purpose of the transaction, the class of collateral and the type of borrower. If this company also wishes to

\textsuperscript{20} N.Y. Exec. Law § 165 (Supp. 1968).

\textsuperscript{21} Part 3 of both Articles 2 and 3 of the UCCC contain a provision actually tying the UCCC disclosures of the CCPA.

\textsuperscript{22} See CCPA § 105.
engage in the allied business of financing retail sales through acquiring ("discounting") instalment sale contracts from dealers in goods and services, it will probably have to contend in addition with about 50 sales finance statutes. If it wishes to engage in financing through the medium of the credit card, it will find, not a plethora, but a dearth of guiding law.

Take New York State as an example. Credit is now available principally under the following laws and doctrines:

1. The General Usury Law. Recently raised from the hallowed six percent per annum to a rate set by the New York Banking Board at between five and 7.5 percent, this is the foundation for all credit transactions. To the best of the author's knowledge, no consumer credit of any commercial significance is granted under the six percent ceiling. Even real estate mortgages at rates nominally six percent or lower were boosted to higher yields through use of the "point" system. It was, indeed, the problems inherent in using points, particularly the danger that they might be considered as illegal interest, that really resulted in New York's new usury law.

2. The Small Loan Law. Under licenses extremely difficult to obtain and sparingly issued by the Department of Banking, loans may be made in the maximum amount of $800 at rates which vary from the equivalent of about 30 percent per annum for loans of $100 and less to about 19 percent per annum for the maximum loan of $800, assuming that they are repayable in equal monthly instalments.

3. New York State Banks and Trust Companies. When specially certificated, New York State banks and trust companies may make instalment repayment loans at a maximum "discount" rate of six percent. This, when applied to the face amount of a note repayable in consecutive monthly instalments, a practice sanctioned by the statute, translates into actuarial rates which depend upon the term of the loan: for ex-

24. N.Y. Banking Law, as amended by addition of § 14-a, ch. 349, § 3 [1968] N.Y. Acts 599. By regulation No. 37, dated June 21, 1968, the Banking Board set a 7.25 percent rate to be effective until the earlier of (a) a new maximum set by the Board or (b) September 21, 1971.
25. Frank Wille, New York State Superintendent of Banks, was quoted in The New York Times, Nov. 10, 1967, at 71, col. 1, as saying: "[T]he point is neither higher interest rates nor lower interest rates, but a realistic flexibility. . . ." Va. Code Ann. § 6.1-319 (Supp. 1968) specifically includes points as interest. The CCPA, § 106(a)(1), also includes points as part of the finance charge to be disclosed.
26. N.Y. Banking Law art. 9.
ample, 11.5 percent for a 12 month loan and 13.4 percent for a 36 month loan. National Banks are accorded authority under the National Banking Act to lend at the same rate authorized for state banks under applicable state law, thus indirectly tying national banking associations located in New York to the limitations of the New York Banking Law.

4. New York State Credit Unions. These institutions are specially authorized to lend to their members at a rate of one percent per month (approximately 12 percent per year actuarially) or, alternatively, at a six percent discount computed in the manner accorded to state banks. Federal credit unions are restricted to a one percent per month rate. As there are more than 23,000 credit unions in the United States with close to 20 million members, this is not an inconsiderable segment of the potential credit market.

5. Retail Installment Sales Act. Sellers of most goods except automobiles and those who provide services on time for non-commercial purposes are subject to the Retail Installment Sales Act. This statute restricts finance charge rates, on an "add-on" basis, to $10 per $100 per annum for balances up to $500 and $8 per $100 per annum on the excess. This translates into actuarial rates of about 18 percent for a $500 sale payable in 12 equal monthly installments and rates on higher balances that approach 15 percent as the balances rise. In New York, the Retail Installment Sales Act also controls the charges that may be imposed upon an ordinary department store charge account. This is not a typical provision; the legal classification to be given charge accounts in many states (are they really time sales or loans made by the stores to their customers?) is in considerable doubt. Much turns on this classification.


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30. N.Y. Banking Law § 453(5)(a).
34. This means that the charge, if a contract is payable in equal monthly instalments, is computed on, and added to, the opening balance without regard to the constantly diminishing balance. A one year $500 credit at a $10 add-on rate would bear a charge of $50 ($10 per $100 per year) and be repayable in 12 instalments of about $45.84 each. If the payment schedule is irregular a more complex computation is required to obtain an equivalent yield.
but by the separate Motor Vehicle Retail Instalment Sales Act. As with the former Act, the latter also excludes sales for commercial purposes. Maximum rates of finance charges in the Motor Vehicle Act are based upon the age of the vehicle and vary from $7 to $13 "add-on," or simple interest equivalents of from 12.8 percent to 22.8 percent for the relatively typical three year automobile sale contract.

7. **Banking Law.** Those business organizations which finance consumer instalment sales by buying or "discounting" obligations from the original sellers of goods and services, thereby indirectly making consumer credit available, must be specially licensed under the Banking Law. Rates are not controlled by this statute.

8. **Loans to Corporations.** Loans to corporations are not subject to any interest ceiling under a special amendment to the general usury laws. Some variation on the general interest limitation permitting corporations to borrow without a rate ceiling or subject to higher ceilings than individuals exists in over 40 states. The theory behind this is directly related to the commercial exceptions from the Retail Instalment Sales Acts already noted: commercial entities are presumably able to take better care of themselves than ordinary individuals and, therefore, need less statutory protection.

9. **The Time Price Doctrine.** Credit charges on sales for commercial or business purposes, excluded from the two Instalment Sales Acts, made to individuals or partnerships, might be considered subject to usury law ceiling but for the "time price doctrine." The rationale of this doctrine is that a seller of goods or services, subject to anti-trust law, may sell at whatever price he wishes. He may have one price for buyers who wish to pay cash and another, higher price, to those who wish to pay over a period of time. The differential between the two is not interest; the transaction is not a loan at all and is therefore not subject to any usury

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40. N.Y. Banking Law art. 11-B (Supp. 1968). Original sellers of motor vehicles who regularly hold instalment sale contracts aggregating $25,000 or more must also be so licensed.
42. This theory is part of the CCPA which exempts commercial transactions. To a lesser degree it is also part of the UCCC which does include commercial transactions, mainly if with individuals and below $25,000. See UCCC §§ 2.602, 3.602.
43. The development of this pricing system, a combination of religious and economic policies, is described in R. Tawney, Religion and the Rise of Capitalism (2d ed. 1937).
law or other form of rate ceiling in New York.\textsuperscript{1} The “time price doctrine,” once the vehicle for financing almost all credit sales, has diminished in importance as consumer sales became increasingly subject to various specialized statutes like the two New York Instalment Sales Acts and, for commercial transactions, corporations became exempt from state usury laws. It nevertheless continues vital to the existence of many areas of financing in many states. It has also, as we shall see, played a significant role in the structure of the UCCC.\textsuperscript{2}

New York is chosen for these illustrations not because it is unique, but because it is representative. Some other states have even more complex patterns. Just in the states bordering New York we find such additional examples as: no usury law at all for many consumer as well as business loans;\textsuperscript{3} laws governing the credit sale of goods, but not services;\textsuperscript{4} laws specially governing loans secured by second mortgages on land;\textsuperscript{5} laws specially governing the time sale of improvements upon real property;\textsuperscript{6} and overlapping statutes providing special rates for licensed lenders.\textsuperscript{7} If we took the space to wander farther geographically, the various statutory devices would increase equivalently.\textsuperscript{8} This little comparative survey is also made without regard to a relatively specialized group of recently enacted state statutes which relate particularly to disclosure in credit transactions and about which we shall have more to say. One result of this statutory proliferation is a continuing question about which statute controls any given transaction. Many of the regulatory statutes contain sizable “exemption” sections listing the transactions they are intended not to cover and which fall under some related supervisory provision.\textsuperscript{9} Transactions identical in form, \textit{i.e.}, a loan by a bank,


\textsuperscript{45} See notes 135-39 infra.

\textsuperscript{46} In Massachusetts, loans above $3000 have no interest cap except if secured by a home mortgage. Mass. Ann. Laws ch. 140, § 90A (1965).


a credit union or licensed lender, now fall within entirely separate statutes and appropriate statutory fencings must be provided to sustain the distinctions. In addition, as new forms of consumer credit develop, significant questions regularly arise concerning whether or not they fit within any existing statutory control. One example of this is the traditional department store revolving credit plan: the "charge account." Another is the credit card in its many forms. If these two transactional forms basically represent sales on time and the "discounting" or financing of those sales with some form of credit agency, a series of results follow. Most significantly, if they are "sales" they are not "loans" and, therefore, the usury laws do not apply. Almost as important, for reasons more historic than economic, lender credit has generally been much more highly regulated than seller credit. Those who sell goods or services on time are very rarely required to obtain licenses as financing agencies. Lenders also more generally require licenses than finance agencies which discount the accounts created by sellers and thereby actually fund seller credit; even when seller credit is subject to licensing requirements, the licenses are invariably easier to get than those required for lenders. Specific statutes can be, and have been, drafted for these special purposes. The UCCC and the CCPA also give specific treatment to these devices, the UCCC classifying them, depending upon their use, within either loan or sale categories. Without such detailed controlling legislation, however, much turns on the legal classification the transactions will receive and as yet there is no general agreement.

An obvious variation on these problems is the issue of interstate transactions. Lenders and other grantors of consumer credit regularly do

55. In Massachusetts, credit cards have been held sales and not loans. Uni-Serv Corp. v. Commissioner of Banks, 349 Mass. 283, 207 N.E.2d 906 (1965). The problem remains, however, in the remaining states. See South, supra note 53.
56. As one from among the many examples available, a seller finance company in New York licenses under art. IX of the Banking Law which essentially contains no specific prerequisites to the granting of a license. Small loan companies, on the other hand, cannot obtain a license until, under N.Y. Banking Law § 343, they can prove that it "will promote the convenience and advantage of the community in which the business of the applicant is to be conducted." This is extremely difficult to do.
58. UCCC § 1.301(8)(15). Since the UCCC treats these specifically, the label "sale" or "loan" is of considerably diminished importance.
business in more than one state. Similarly, the mobility of the debtor class constantly increases. It is not unusual for a resident of state X to borrow from a lender in state Y, either by physically going to Y, by corresponding through the mails or by appearing for the first loan and corresponding for subsequent loans. A lender operating under a favorable statute in Y might find borrowers utilizing its services through the mails not only from X, but from states B, F and W. Similarly, a store in Y may sell to X residents on time. A single credit card might be used in all states.60

The efforts of states to protect themselves and their residents from the laws of other states, inconsistent with their own, are burgeoning. Probably the most significant recent case, People v. Fairfax Family Fund60 prevented a Kentucky lender from continuing a broadside solicitation of loans in California without licensing under the latter's laws. The case raised a major issue of whether California’s requirement that the lender be licensed in California did not create an unconstitutional burden upon interstate commerce—an issue decided against the lender.60 A number of states have enacted statutes regulating loans made to their residents, even if those loans are made entirely in other states,62 or affecting the enforceability of any loan, wherever made.63 This type of statute raises a number of significant issues concerning due process and a state’s degree of power to burden interstate commerce, and federal full faith and credit requirements—issues that are generally resolved to sustain the state legislation.64

59. The issues of conflicts of laws applied to credit transactions are extremely complex and generally beyond the scope of this article. Controlling law could be based upon: the location of goods sold in a credit transaction, H. Goodrich, Conflict of Laws § 153 (3d ed. 1949); the place of contracting, 1956 U. Ill. L.F. 633; the place of performance, Restatement (Second) of Conflict of Laws, Proposed Official Draft, Part 2 § 195 (1968); or a more modern policy type of approach could be established. Cheatham & Reese, Choice of the Applicable Law, 52 Colum. L. Rev. 959 (1952). Another doctrine generally applied in the area of loans is that the law of the jurisdiction which sustains rather than one which invalidates a transaction will be applied. Note, Conflict of Laws: “Party Autonomy” in Contracts, 57 Colum. L. Rev. 553 (1957).


Rate disclosure, the core of the CCPA, has had a particularly variegated treatment at the state legislative level. Virtually all statutes that do more in the way of regulating consumer credit practices than the typical general interest or usury laws contain some form of disclosure requirement. Usually, such a requirement will appear in the local retail installment sales act, the small loan law and other comparable statutes. Almost all of these require that the dollar cost of the credit be separately stated. That is, the debtor under these statutes will know the actual dollar cost of the credit (usually assuming he pays his obligations when they are due), but not necessarily its rate in percentage terms. Most statutes regulating seller credit, the retail installment sales acts, as contrasted with laws regulating loan credit, contain only this requirement in disclosing credit charges.

Many statutes do, however, also require a statement of the interest rate. Often a state's small loan law, as contrasted with its installment sales act, will contain such a provision. However, these statutes do not begin to achieve uniformity even among themselves since, either by specific language or the general context in which the requirement falls, the rate disclosure may be satisfied by disclosing the interest rate in any one of several ways. Add-on, discount and percent-per-month are the three major forms of rate disclosure in addition to the generally accepted simple annual interest. A consumer attempting to comparison-shop among alternative financing vehicles might, under these statutes, be forced to select among the $8 add-on offered by an appliance dealer, 1 percent per month from the credit union, $6 discount from the bank and a revolving charge account based upon 1 percent of outstanding balances on the last day of a month.

The movement that has culminated in the simple interest disclosure requirements of the UCCC and the CCPA does have several existing counterparts on the state level. Stemming largely from the publicity given to the work of Senator Douglas, succeeded in his work by Senator Proxmire, to require this form of disclosure in all credit transactions, some states were successful in enacting interest disclosure legislation while the federal government wallowed in hearings and investigations.
To some degree these statutes all have individual idiosyncrasies but all, in some way, require the disclosure of simple annual interest. Washington and Pennsylvania related their requirements only to retail consumer (not commercial) sales. Pennsylvania only requires a statement that the rate not exceed 15 percent simple interest; Washington requires a rate to be stated by the creditor above which the actual rate charged will not rise. Neither Pennsylvania nor Washington require this form of disclosure for loans made in their states. Eight other states have enacted statutes requiring simple interest disclosures for loan credit and, to varying degrees, sale credit. Most of these statutes are patterned in general after the CCPA, despite the fact that all of them become effective on or before the effective date of the CCPA and some before drafting of the CCPA was even completed. Unfortunately, and of course a typical product of non-uniform state legislation, all of these statutes vary to greater or lesser degrees among themselves. Some, Connecticut, Maine, New York, Rhode Island and Virginia, regulate only consumer and not business transactions; some, Kentucky and Vermont, cover only loans and not sales; some, Connecticut, Kentucky and Maine, require that simple interest be shown under the “constant ratio” method and the remainder under the “actuarial” method, unless, in Kentucky the administrator decides otherwise. There are many other variations among these statutes.

To sum up, as of the approval of the UCCC by the National Conference of Commissioners and the passage of the CCPA, there was little uniformity in the national pattern of laws affecting consumer credit. If uniformity was desirable, the federal system allowed for it either through voluntary, individual state effort or through passage of federal legislation.

74. Both are methods of showing simple annual interest. The “interest ratio” method, however, assumes that the ratio of each individual payment which is interest and principal is constant. The “actuarial” method assumes that each payment is applied first to unearned interest accrued to the time of payment and the remainder to the reduction of principal. The actuarial method is sometimes called the U.S. rule because of Story v. Livingston, 38 U.S. (12 Pet.) 359 (1839), and is the method adopted by the UCCC and the CCPA.
Eventually, the CCPA will almost certainly end most variations in interest rate disclosure. This will not, however, be because the CCPA, as the law of the land, will prescribe that disclosure. As we have pointed out, the CCPA does not affect the existing scope of state law. Thus, to the extent that a state statute does vary from the CCPA, it remains effective. There will be two forces, however, stemming from the CCPA that will result in the reduction, if not elimination, of these differences.

First, while compliance with most state disclosure statutes will not necessarily be compliance with the CCPA, since, for example, a state may now permit only the dollar amount of interest charge to be shown or may permit the rate to be expressed as add-on, discount or percent-per-month, compliance with the CCPA will automatically result in satisfying the requirements of many state disclosure laws. We may, therefore, anticipate that creditors, simply for reasons of convenience, will select the form of disclosure that effects the maximum degree of federal and state compliance. This logical business decision must of itself result in a diminished amount of state-by-state variation.

The second force is, of course, the specific provision in the CCPA that the Federal Reserve Board shall exempt from the CCPA disclosure requirements any class of transactions subject to "substantially similar" state requirements. One may confidently expect that this invitation to the states to supplant federal law with their own will not be taken lightly. One may also confidently expect that the UCCC in its final form will be held equivalent by the Federal Reserve Board to the CCPA. To the extent that the states are impelled by this and other reasons to adopt the UCCC, the benefits of uniformity will be visited upon us and the actual uniforming implement will be state legislation.

Precisely what these benefits are is a subject to which insufficient attention has been directed. Particularly in the more recent treatments of unification of law, the concept seems to be accepted almost as a self-evident good. A recent symposium on the subject devoted over 200 pages to uniformity without a serious suggestion that the value of uniformity

75. CCPA § 111, assuming the state statute is not inconsistent.
76. Notes 66-68 supra.
77. CCPA §§ 128 and 129 in particular cover the disclosure requirements of many state laws. Those sections require statement of the significant items of the credit transaction in addition to simple interest disclosure.
78. CCPA § 123.
79. See UCCC §§ 2.301 and 3.301. The Federal Reserve Board has already, by letter of the Commissioners on Uniform State Laws, been requested to find the UCCC substantially similar to the CCPA. As yet, the Board has not acted.
may be open to discussion. Earlier works explored this idea more carefully; more recent ostensible quarrels with the concept of uniformity turn out, upon inspection, to be really attacks upon the UCCC with arguments against uniformity used merely as a make-weight.

The Executive Director of the National Conference of Commissioners on Uniform State Laws has suggested five major reasons for uniformity:

1. "The most commonly advanced argument for uniformity is 'necessity' in the economic or social sense" that law be uniform.
2. Of interest more in the British Commonwealth than the United States "is the 'necessity' of maintaining symmetry or uniformity of concept or theory of law."
3. A more "abstract variant" of the second argument is that there is a proper solution, a theoretical "oughtness," to a problem; if it has been found, like Durante's joke about the lost chord, why play all those other notes?
4. Uniform laws, through the educative function of law, will tend to promote uniformity in attitude and ethical conduct.
5. The United States federal system will be strengthened if states adopt uniform legislation and inhibit entry of the federal government into state affairs.

Executive Director Dunham's "necessity" point is not, of course, a real argument supporting uniformity as a generally desirable objective. The real issue exists on a case-by-case basis: is it necessary that this area of law be uniform? As a sub-question one may also ask whether it is necessary, or merely desirable, that uniformity exist? In consumer credit legislation, it would be difficult to justify the necessity of uniformity since consumer credit exists now, with only relatively minor abuses, and without uniformity. Certain statutes permit the perpetration of practices that some might consider abusive. It is not, however, the fault of these statutes that they vary from those of other states, but that

81. See 19 Mont. L. Rev. 149 (1958), which listed three objections to uniformity: (1) It conjures up vistas of drabness and regimentation; (2) local situations may differ; and (3) local legislation may already exist in the particular field. See also Greene, The Uniform Acts and Their New York Statutory Counterparts, 7 Syracuse L. Rev. 38 (1955).
83. Dunham, supra note 80.
some are deficient. Many state statutes differing widely among themselves support excellent state credit systems.  

Nevertheless, if uniformity in consumer credit is desirable—and in balance I believe it is—the fact that it is not necessary is insufficient reason to avoid it. “Desirability” rather than “necessity” does, however, compel one to examine the factors opposing as well as those supporting uniformity. What are the advantages of consumer credit operating under a uniform code?

In this writer’s judgment probably the single most significant advantage in uniformity relates to Executive Director Dunham’s fourth point: the increased likelihood that the nation will understand and comply with the law. This factor obviously played an important part in the drafting of the UCCC. Largely because of the existing varieties in state law, not only among, but also within most individual states, there is no valid consumer folklore, or instinctive understanding, of what one’s rights, benefits and problems are in obtaining credit. In large measure, this is also true of the small businessman. Whatever general understanding exists is largely inaccurate.

The “right” rate is an obvious example. There is almost no general understanding of what is a proper price (or interest rate) to pay for credit, as there is of a proper price for an automobile or a suit of clothes. That rates of 20 or 30 percent per annum may legitimately be too low to support various types of consumer credit, and that legitimate creditors must charge these rates in order to enter certain areas of the credit market, or possibly leave the potential consumer debtor to illegal lenders, is to most consumers a startling revelation. Probably the credit industry itself is principally responsible for this. The very process of writing the UCCC has educated a wide group of consumer-oriented interests to the real issues of interest rates.

As uniformity develops, we may reasonably expect both the ordinary consumer and his legal representatives to increase their understanding of this area of law. The importance of the latter group is not to be minimized. Increasing attention is regularly being devoted to proper legal representation of ordinary consumers in ordinary consumer transactions. The major movement is now in the law schools and, to a somewhat lesser

85. The New York Small Loan Law, found in N.Y. Banking Law art. IX and the Cal. Pers. Prop. Brokers Law (under which most consumer lending in California is conducted), found in Cal. Fin. Code §§ 22000-653 (West 1968) differ markedly in principle. Entry to the credit market is highly restricted by the former and is quite open under the latter. Both states nevertheless have commendable credit systems.

degree, in government. Yet the bar itself is less expert in the ramifications of consumer finance than in far less widespread areas of activity. One obvious reason for this is that fees for representing consumer debtors are likely to be small. This latter cause is in the process of correction through state, federal, foundation, insurance and other means.\textsuperscript{87}

To the extent that lawyers' inadequacy is the result of a totally unnecessary tangle of laws, uniformity must be advantageous.\textsuperscript{88}

In addition to this relatively specialized assistance to the bar, important uniform legislation is likely to stimulate journals of national circulation, commentators and politicians of national scope, as well as the fashions of national thought, to attend to the real issues of consumer credit. Furthermore, as a result of uniformity, a debtor moving from area to area will obviously be much better able than at present to utilize his existing knowledge in his new circumstances.

It should be added that consumer mobility is not, in and of itself, a compelling reason for uniformity. There is no essential necessity that a New Jersey consumer be accorded the same treatment as a New Yorker. Even if they are shoppers in the same New York store, it remains a question whether, and not a truism that, there should be uniform treatment. A local purchase or small loan by a consumer would appear on its face to be a transaction peculiarly local in nature and subject to individual state regulation with its inherent regard for local problems and needs. Easy mobility does, however, tend to shift the burden of persuasion in testing the desirability of uniformity. Unless there is good reason for differences, the peripatetic nature of the consuming public would seem to recommend generally like treatment. Common sense, as distinguished from legal sophistication, dictates that the same person be accorded the same legal treatment for the same transaction, regardless of the state within which it "legally" falls. This approach finds receptivity with the lay public who may not have thought deeply into the issues of the federal system and the needs of the separate states. State variations in law are often derided by the public who, lacking the lawyer's insight, are unable to see why usurious interest should be higher than 8 percent in Maryland, 7\(\frac{1}{2}\) percent in New York and 12 percent


\textsuperscript{88} Legal decisions in one state will also be of assistance in deciding related questions in other states with the same uniform law. In re Halferty, 136 F.2d 640 (7th Cir. 1943); Hutchinson v. Renner, 28 Ohio App. 22, 162 N.E. 451 (1928). See also Merrill, Uniformly Correct Construction of Uniform Laws, 25 Mont. L. Rev. 97 (1963).
in Connecticut. Put differently, it seems entirely probable that uniformity will increase the general respect for, and consequent observance of the law.

An adjunct of consumer understanding of the law as a result of uniform legislation is that not only debtors but also creditors and public officials will be more clearly able to apply the appropriate law to a given transaction. We need not elaborate on the numerous and often subtle conflicts-of-laws issues related to consumer credit. In many cases, creditors simply do not know which jurisdiction to select from the two or more affecting their transactions.\textsuperscript{89} Administrators entrusted with the duty of overseeing the credit transactions and creditors subject to local credit law face similar problems. Loans are often made by mail across state lines; a debtor living in state $X$ may obtain a loan in state $Y$ secured by real estate in state $Z$; credit cards operated through data processing equipment in state $Z$ may be issued nationally. The problems multiply as the use of credit increases. In commercial—as distinguished from consumer—credit, the Uniform Commercial Code, adopted in 49 states,\textsuperscript{90} has already significantly reduced the conflicts-of-laws problems.

Although the CCPA will eventually solve many of these problems in the area of credit cost disclosure,\textsuperscript{91} its immediate effect is likely to complicate the issues. Prior to the CCPA, there was at most the problem of observing state law. Until state law becomes uniform, however, state variations will coexist with the CCPA, as an added factor. Since no state disclosure statute is identical to the CCPA, this aspect of the problem will exist in all states with disclosure laws continuing in variance with the CCPA as of July 1, 1969.\textsuperscript{92} As examples of the kind of confusion we can foresee: Apparently in California one will have to express interest rates both in terms of the state requirement of percent-per-month and as simple annual interest under the CCPA.\textsuperscript{93} In Vermont, all consumer transactions up to $25,000 will be subject to the Vermont disclosure laws and the CCPA; business transactions within that limit will be subject only to Vermont law.\textsuperscript{94} Presumably, if obtaining life insurance is required of the debtor, it would be considered the equivalent of a finance

\begin{footnotesize}
\begin{enumerate}
\item Louisiana has not adopted the UCC.
\item Notes 76-79 supra.
\item See Ky. Acts 1968, ch. 188, § 14(2), to the effect that it is Kentucky's intention to comply with the CCPA in disclosure requirements.
\end{enumerate}
\end{footnotesize}
charge under the CCPA, but not under the Kentucky or Rhode Island disclosure statutes.

Hopefully the potentiality of this kind of problem will cause the states to become “uniformed” by the influence of the CCPA before its effective date either through independently drafted legislation or adoption of the UCCC. It seems possible that even total adoption of the UCCC will not entirely end the problem. Under the UCCC’s administrative provisions, the state administrator has rule-making power. To the extent that rules of individual states vary from the CCPA and the regulations under that statute, this sort of state-federal inconsistency will continue. However, the UCCC contains an admonition to the state administration to try to conform to federal law.

A second major reason for uniformity in consumer credit legislation is creditor convenience and simplicity of operation. This reason has also strongly influenced the drafting of the UCCC. The provisions of the UCCC dealing with territorial application—the conflicts of laws problems—clearly permit selection of a jurisdiction by the creditor in such problem areas as the mail loan and the credit card which will greatly reduce the conflicts problems. We have noted the variety of statutes that complicate the operations today of any large credit institution. Clearly the number of pieces of paper that must be shuffled, and the number of laws, regulations, interpretations and cases that must be learned and kept current diminish markedly under federal or uniform legislation. Simplicity of operation may also have an effect in reducing the cost of credit, a cost that must ultimately be borne by the consumer. An educated guess, however, is that this cost saving would be relatively low when considered in relation to the total cost of credit. Another guess is that this general creditor benefit from uniformity is not a sufficiently attractive argument to be of significant influence to anyone but a large creditor or his lawyer.

Executive Director Dunham gives as his third general reason for uniformity the policy that if the best legal solution to a problem is found it, rather than solutions of lesser merit, should be adopted. Reasonable men do differ on whether the UCCC is truly the best solution to the various consumer and business credit problems it treats. This writer believes

95. CCPA § 106.
97. CCPA § 105.
98. UCCC § 6.104.
99. UCCC § 1.201.
that the UCCC represents a substantial improvement over the present system.

That this is so is not surprising. A project as significant as the drafting of the UCCC, particularly during a period when the plight of the consumer is a celebrated political issue, receives much attention from many interested sources. The best available opinions from representatives of the credit and merchandising industries as well as the views of numerous consumer, governmental, labor and academic authorities were tendered and carefully considered. Through a prolonged process of argument, sifting, elimination and adoption, the Commissioners developed a Code that embodies the most enlightened views as yet synthesized into this form of statute.

It is unlikely that any consumer credit problem of real moment was missed by the Special Committee, its staff and advisers. It is more probable that scores of useless and unnecessary issues were presented and worried. In the protection of the poor and the downtrodden as well as the wealthy and established field of commerce, banners, slogans, shibboleths and rhetoric often become sacred or odious far beyond their true social or economic importance. Such displays as the creditors' impassioned support of the waiver of defense clause, the banks' fight against sellers of goods being permitted to lend money and the consumers' fight against deficiency judgments are much more an honoring of sacred cows than an attention to real issues.

Nevertheless, the ultimate result of this kind of attention is generally intelligent and comprehensive legislation. This is in marked contrast to much of the consumer legislation that has been written through the years as a result of individual state action. Obviously, legislation proposed for any given state will receive less widespread attention than legislation slated for national enactment. It is, therefore, inherent in state legislation that the views of influential local groups or individuals will infect legislative efforts. The chorus of voices in a major uniform laws project minimizes the impact of any particular interest. While such

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101. In addition to a distinguished group of Commissioners drawn from the bench, the bar and the universities, the drafting was assisted by Consultants, 20 General Advisors and about 25 more Advisors who served on particular issues. Comments and suggestions were also constantly received from any quarters affected by the UCCC.

102. A point on which no agreement could be reached. Alternatives appear at UCCC § 2.404.

103. UCCC § 3.513.

104. UCCC § 5.103.


106. E.g., R.I. Gen. Laws Ann. §§ 19 to 25-3-27 exempts loans of over $25,000 by insurance companies from licensing requirements; R.I. Gen. Laws Ann. § 6-27-10 exempts loans for educational purposes from disclosure requirements.
a group effort may tend to lower the peaks of the draftsmen's aspirations, it also raises the valleys.

One unfortunate disadvantage of this widespread participation is the development of many pockets of dissatisfaction from those whose views were considered and rejected. There is no prominent interest in the field of consumer credit whose toes have not been bruised in the UCCC project. One major body has made its opposition official.\textsuperscript{107} Others have let their views be known informally. This will unquestionably have an adverse effect upon the UCCC's ultimate treatment in the state legislatures, but the potency of the disgruntled remains to be seen.

If the uniform law is the best law, its general adoption in a federal system such as ours not only affords each individual enacting state its benefits, but also eliminates the danger that the state system will be used to undercut the law's effects. It is now relatively simple for a company of means to select a base, or "haven," with laws that it finds congenial. From this base, doctrines of interstate commerce, full faith and credit and comity enable it to conduct credit operations with effect upon residents of many other jurisdictions. The widespread use of credit cards whose legal situs may be far from the points of actual use and direct loans made through the mails are two obvious examples. This is not necessarily an undesirable or a pernicious practice. It can result in a healthy stimulus to competition for a consumer credit source to extend beyond the reach of its immediate shopping area. It can also result in a continuous testing of a state's legal system against those of its neighbors. While credit extended by financial institutions to business or commercial entities has become, as a result of increased communications, a competitive market area of national scope, low balance consumer loans have traditionally been restricted to potential borrowers within a few miles of the loan source. This tradition is now weakening and national systems of credit are increasingly made applicable to consumer as well as commercial credit. The laws of one jurisdiction thus stand a growing risk of being diluted by other, better or worse, laws elsewhere. Our point here is that if one law is a "best" law, it is desirable that "worse" laws do not invade its area or reduce its scope. Uniformity serves this end.

All the advantages of uniformity discussed thus far are equally applicable to a traditional uniform law, a federal law and state laws made uniform by national stimulation. Executive Director Dunham's fifth point, that uniformity can strengthen the states vis-à-vis Washington is obviously directed solely at state legislation.

To the extent that the states have enacted constructive and uniform, or relatively uniform, legislation on a topic of national interest, the

\textsuperscript{107} See articles cited note 100 supra.
stimulus to federal entry into the field is obviously reduced. The major substantive effect of a federal statute—one law throughout the land—has simply been accomplished through state action. For those to whom the continuing vitality of the states as against centralized federal authority is significant, this is a worthwhile objective. To others it is not a matter of importance so long as good laws are in force. As state appointed officials, the Commissioners on Uniform State Laws accept the tenet of states’ rights as a matter of true concern;108 thus the UCCC was drafted with the objective of state dominance much in mind.

We have noted the invitation in the CCPA that the states adopt comparable legislation and the acceptance of that invitation by the Commissioners. In addition, Title IV of the CCPA provides for a nine man National Commission on Consumer Finance. Three will be Senators, three Representatives and three from outside the federal government.109 This Commission is directed to “study and appraise the functioning and structure of the consumer finance industry, as well as consumer credit transactions generally.”110 It is to make interim reports and a final report to the President and to the Congress by January 1, 1971.

One can fairly assume that whatever legislative gaps or deficiencies in consumer credit continue to exist on the state level will motivate this Commission to recommend federal legislation expanding the scope of the CCPA. Indeed, the very creation of this Commission has generally been accepted as a warning that further federal legislation on consumer credit is in the offing. To meet this threat, the Commissioners have been further impelled to prepare a code that will do more than merely complement the existing CCPA with “substantially similar” provisions. To some measure the comprehensiveness of the UCCC is a direct effort to reduce the threat of increased federal intervention by making it unnecessary. Note should be taken of the fact that Congress’ power to enact consumer credit legislation is based upon its power to affect the economic health of the country under the “general welfare” clause.111 The local nature of a consumer credit transaction cannot be relied upon to prevent federal preemption as it might if interstate commerce were the constitutional base.

Whether effective consumer credit control and regulation is truly more effective at the state than the federal level is itself a fair question. Since, almost exclusively, state control is the tradition, most representatives of

108. See President’s Address to the Conference, Handbook of the National Conference of Commissioners on Uniform State Laws 48 (1967).
109. Senators Sparkman, Proxmire and Brooke and Representatives Patman, Sullivan and Dwyer have already been appointed.
110. CCPA § 404.
the credit industry are committed to retaining state dominance. The existing pattern of licensing and examination, in which literally millions of small individual transactions are surveyed by local officials, also suggests an appropriate climate for local, rather than centralized, control. Even within the general scheme of uniform legislation, there may be reasons for varying practices within local areas when consumer transactions are concerned. The plight of the consumer and the imagination of the creditor are subject to sudden and unexpected turns which state action is presumably better geared to meet than is the cumbersome machinery of the federal government. Pockets of economic hardship, fashions in creditor pressure or greed, vagaries of local procedural or enforcement devices all tend toward some measure of decentralized consumer debt supervision.

These arguments lack support in fact and tend to be the result of dissatisfaction more with other policies of the UCCC than with its appeal for uniformity. Indeed, despite industry's professions of admiration for state control, the growing complexity of variegated state regulation is also taking its toll. Perhaps not surprisingly, a small, almost embarrassed, feeling seems to be developing among creditor groups that the federal-unitary rather than the state-uniform (or uniformed) approach to credit regulation may actually be the better one. Among the "realists," there is grudging acceptance of the fact that even those states adopting the UCCC cannot be depended upon to receive it without alteration. Given the broad authority to draft regulations contained in both the CCPA and the UCCC, it also seems probable that differences will exist at least at the regulatory level. Ultimately it is not unreasonable to expect that state distinctions will continue to exist, and, in any given state, some varying state and federal requirements will control credit transactions. The alternative, total federal supremacy, gradually appears less frightening by comparison. It is still treasonous to suggest this in industry circles, but a drift in that direction is discernible.

As one becomes involved in this issue of federal versus uniform state law, some interesting similarities between them appear. Essentially, both effect multi-state conformity to the same law. Oregon transactions may be governed by the same laws as those occurring in Maryland either by the states' voluntarily enacting those laws or falling subject to them

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113. Cf. note 82 supra.
114. See notes 92-96 supra, which illustrate the type of inherent problem.
under the umbrella of a federal statute. When the state laws are “uniformed” by the invitation or hortatory effect of the federal law, the similarities are even greater.

To what extent has the state really retained its essential stateness when the law it adopts is a mirror of a federal statute that would become operative if the state has not taken action? If liberty has been voluntarily relinquished, or relinquished under pressure, it would seem to be just as gone as if it were forcefully taken. However, each strong uniform law, the UCCC being only one among many, to some degree strengthens the state and diminishes the likelihood of federal intervention, not only in the area of that law, but in all other areas constitutionally open to federal power. Uniformity, to this extent, stimulates the type of federal system the United States was designed to be: a central government of limited powers binding a group of states of broad residual powers.

Finally, under a uniform law the states do retain the power to depart from uniformity. The benefits of the multi-state system are retained. If the UCCC is found to be a disaster, it is not essential that the federal government with its ponderous legislative machinery take action. The relatively light-footed avenue of state action does continue to be available. While the Commissioners on Uniform State Laws will strongly oppose individual state action (presumably until convinced of its necessity), such action does remain as an advantage of state law, even uniform state law, over federal enactments.

IV. A CASE AGAINST UNIFORMITY

We have already indicated that uniformity is not an unmixed blessing. While this observer firmly believes that the UCCC is a major advance in the law of consumer credit and deserves to be uniformly adopted, he also recognizes certain innate disadvantages in uniformity. Obviously these should be appreciated by the advocates as well as the opponents of uniform laws.

One disadvantage that exists more on a theoretical than an actual level in the field of consumer credit is the possibility that different states, or different areas of the country, require different credit laws because of their intrinsic regional differences. The UCCC has been criticized on this ground most frequently by those state officials presently empowered to administer existing laws regulating consumer credit. Intimately concerned with the problems of their own states and loyal to their states’ existing statutes, which they occasionally authored, they often contest

the premise that what is good for state $X$ necessarily applies to state $Y$. Indeed, the suggestion has been made that the UCCC prescribe only general outlines and leave such details as rate structures to individual state legislatures. This argument has, of course, been parroted by those opposed to the UCCC on other grounds as well.

The argument has not been found convincing. While it is perfectly clear that a low income, marginal borrower may require different rates and different protections than his affluent neighbor, and, similarly, a loan secured by real estate may require different considerations from a loan secured by household furniture (the type of distinction recognized by the UCCC), no convincing case has been made that a debtor in the Northwest is different from one in the Southeast, consumer-creditwise. Patterns of geography or industry that may dictate differing treatment of riparian rights or zoning in Colorado and New York have not been proven applicable to consumer debt.\textsuperscript{8} In fact, to the best of my knowledge, not enough evidence has even been introduced to support a prima facie case.

On the contrary, creditors have found the rates, type of security and standards of credit-worthiness to be essentially the same throughout the country. Vagaries of local law do require some refinement in credit practices from state to state. These are relatively minor, however, and the differences among states are much more difficult to identify than are the similarities. Moreover, credit practices now vary because of variations in state law; it is not the law that varies because of factors indigenous to local economy, climate or custom. Present credit patterns throughout the state system are also affected by laws which themselves do not specifically deal with credit. The ease with which confessions of judgment (and resulting liens on real estate) may be obtained and the effectiveness of wage assignments in a state affect the judgment of the credit grantor operating in that state.\textsuperscript{9} Laws permitting extensive ability to reach a debtor's wages may tend to stimulate granting of credit in the first instance. Simplified methods of garnishing wages either before or after a judgment in a lawsuit also seem to stimulate the availability of credit since collection is made easier. Over a longer term, however, greater direct availability of wages to debt obligations has been found to have a direct correlation with a state's bankruptcy rate. Apparently this is an area of acute sensitivity, stimulating resort to the extreme

\textsuperscript{8} FTC Commissioner Nicholson specifically argues that in the type of disclosure required by the CCPA the individual states have no particular degree of expertise. Nicholson, supra note 116.

\textsuperscript{9} In Pennsylvania, for example, judgment may immediately be entered against an obligor for an instrument containing an appropriate provision to this effect. Pa. Stat. Ann. tit. 12, § 739 (Supp. 1967).
bankruptcy remedy. This may have the effect of restricting credit. Unfortunately, the importance of these factors is extremely difficult to measure. At best, one gets a credit "climate" in a state that is the result of many interacting elements.

Regional differences in consumer credit laws will be eliminated largely by the UCCC, and the CCPA will tend to eliminate variations in credit disclosure requirements. Nevertheless, the above-mentioned factors which touch on consumer credit indirectly exert an influence. If an objective of uniformity is to treat all consumers alike, variations in these related factors would seem to require a compensating variation in the uniform law. Legal variations outside the uniform law should, ideally, be minimized by adaptations in the uniform law to offset these effects. In other words, any complex legal system is really, to some degree, an argument against uniformity.

As it happens, many of these secondary factors (confessions of judgment, wage assignments and garnishments, for example) will actually be covered by the CCPA and the UCCC and thereby made uniform. Other local variations, among them procedural devices available to serve process, prove a case and obtain and enforce judgment, calendar backlogs, foreclosure devices and practices of collection agencies, will continue to present local variations that, ideally, should be compensated for in the UCCC. The practicality of such compensation must, however, be dismissed as too subtle and ephemeral for effective legal treatment; differences do exist but they are not measurable and they do not really represent a compelling argument against uniformity.

Probably the only telling contention against uniformity is that its practical effect is loss of one desirable element of state as distinguished from federal law. It is a relatively simple matter to change an undesirable state statute. Federal law takes on a more permanent quality. The number of people who attend the formulation of federal law are enough to slow its change. Furthermore, the number of people it affects is usually sufficient reason to justify that pace. The enormity of the problems that center around the federal government as well as the sensitive political issues surrounding significant legislation and the general hooplah inherent in federal activity all act as a drag on federal, as distinguished from state, legislation. There are exceptions both on the state and federal


121. CCPA tit. III; UCCC §§ 2.410, 2.415, 3.403, 3.407, 5.103 and 5.104.

levels, but as a generalization it is fair. Unless a state statute has a particular public appeal, or is a favorite of special interest groups, a state legislature can usually act with a fair degree of ease and promptness to correct, amend, patch, prune or repeal it entirely. If, however, the state law is a "uniform" law, this may not be the case.

Enough people are concerned with each uniform law to make change a matter of some moment. The National Conference of Commissioners, dedicated to the concept of uniformity and primarily responsible for the continuing protection of the uniform laws, keeps careful watch lest the benefits of uniformity be lost through diverse state action. Those devoted to the concept of uniformity frankly espouse the advantages of uniformity over scattered perfection. It should be noted that changes on a piecemeal basis will not only destroy the basic advantages of uniformity, but can have unexpected effects: A verbal clarification in one state can well create a negative implication that a reverse meaning was intended in another when in fact no such inference is warranted. The traditional lawyer's rule, that the same words should be used when the same meaning is intended and different words should be construed to have different meanings, may well be inaccurate when a uniform law is varied in an individual state.

We see this tendency toward stability at work in the current efforts to revise the Uniform Commercial Code. Drafting lapses in the Code have been admitted by its draftsmen. In addition, areas of ambiguity have been found (or perhaps created) that might well be the subject of clarification. The care and deliberation that produced the initial UCC, however, is equally present in the consideration of amendments. To those acquainted with the state legislative processes, this is not unknown, but neither is it typical.

The effect is, in fact, reminiscent of federal legislation where change may be equally deliberate. The presence of an issue on the national stage occasions so much attention and stimulates so much comment that, in

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125. This impelled the New York legislature to add, when making a piecemeal amendment to New York's UCC § 1-209: "This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it."

the search for a meeting ground among diverse interests, results are often nigh impossible to achieve. This may well be appropriate for federal legislation, since it necessarily affects 50 states and 200 million people. The built-in friction protects us all. When the same safeguard is imposed upon the states, albeit as a result of voluntary state action, it does create something of a variation from the typical fluidity of individual state action.

A noteworthy current example of this on the federal level in the field of consumer credit is the continuing assault upon Chapter XIII of the Bankruptcy Act dealing with Wage Earner's Plans. No one likes Chapter XIII, but respected experts simply cannot reach sufficient agreement to serve as a basis for remedial legislation.\textsuperscript{127} If this were state rather than federal law, an experiment here and there might teach us much. Meanwhile, the conflicting theories concerning Chapter XIII continue in conflict, but in abstraction, and little gets accomplished.\textsuperscript{128} Even more to the point is consumer credit disclosure itself. While Senator Douglas and now Senator Proxmire have labored for years to achieve the simplest form of disclosure on the national level, Senator Douglas having introduced the first truth in lending bill in 1960, Connecticut, Kentucky, Massachusetts, New York, Maryland, Pennsylvania, Vermont, Virginia and Washington achieved comparable results for their states with infinitely greater ease.

The UCCC, despite all the learning that it represents, does represent something of a social experiment. Accumulated learning about consumer credit has afforded ample support for its concepts, but gaps in our understanding of the consumer's credit problems still exist. It seems to some that the consumer's true purchasing problems are only tangentially those of credit.\textsuperscript{129} Arguments have been made against stabilizing the UCCC with a "uniform" label and perhaps merely designating it a "model"


\textsuperscript{128} For the American Bar Association position on Chapter XIII, see Corporation Section, ABA, Approves New Proposals to Encourage Use of Chapter XIII, 22 Pers. Fin. L.Q. Rep. 135 (1968).

\textsuperscript{129} Credit in the ghetto areas is discussed in the Report of the National Advisory Commission on Civil Disorders at 139-41 (1968). It is perfectly clear from this summary report that the most fundamental problems of credit are not the sort that are affected by laws of the type of the CCPA or the UCCC.
statute. The traditional state processes, that is separate, individually conceived state legislation, and experimentation with consumer credit statutes, clearly would have added to our knowledge about consumer credit. Perhaps, some years from now, the results of a period of trial and error may produce a better statute than the UCCC.

In the final analysis, that kind of argument could in varying degrees be made against any legislation at any time. The Commissioners, their Consultants, Advisors and the scores who cooperated in the preparation of the UCCC were no strangers to consumer credit. There was no shortage of information and experience available to guide the draftsmen, and the need for new and coherent legislation is obvious. Moreover, no major legislative innovation is likely to be entirely free of disadvantages. It is submitted that disadvantages in the UCCC or in the overall concept of uniformity are relatively insignificant when compared to the benefits. The remainder of this article will be primarily devoted to a consideration of those benefits.

V. PRINCIPLES OF THE CCPA AND THE UCCC

Certain basic principles form the foundation upon which the UCCC is constructed. Some of these are also reflected in the CCPA. To the extent that the two acts overlap, they are consistent in approach and largely duplicate the work of the other. The only substantive portion of the CCPA that does not have a counterpart in the UCCC is Title II, Extortionate Credit Transactions, and in no real sense can Title II be considered an outgrowth of any essential policy toward consumer credit. It is rather a specialized application of accepted criminal law concepts to the extension of credit, which is quite probably unnecessary in most areas in view of existing criminal laws dealing with crimes of violence. In any case, it is not a fundamental part of the CCPA, has no reflection in the UCCC, and will not be treated here.

Obviously, the CCPA and particularly the UCCC contain numerous detailed provisions that could profitably receive our attention. Undoubtedly, many which we shall ignore are deemed by some to represent basic "policy." In terms of the entirety of the two acts, however, and why they were written much as they are, there seem to be four basic propositions that guide the whole: (1) the unity of all types of consumer credit, (2) the diminished need for rate control, (3) freedom of entry into the consumer credit market, and (4) disclosure. Actually, the UCCC

\[130. \text{A "model" statute may be proposed where "in the judgment of the National Conference of Commissioners on Uniform State Laws it is not a subject upon which uniformity between the states is necessary or desirable, but where it would be helpful to have legislation which would tend toward uniformity where enacted . . ." 1 U.L.A. at VI (1950).}\]
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deals with all of these, while the CCPA is based only upon (1) and (4). We shall consider them in order.

1. Consumer Credit Unity. As we have already seen, a sale on time has traditionally been deemed a different sort of legal beast from a direct loan of money. Different statutes have been designed for the two forms of credit transaction; where no statute existed (particularly for time sales), different controlling legal theories were devised. The reasons for this are understandable only in a historic context. While both forms of transaction have their roots in religious dogma, sales on time, free of usury restrictions, became accepted as part of a general freeing of trade in the course of the "rise of capitalism." Loans were much more strictly bound to precise canon law and the sin of usury. It was, of course, availability of the "time price doctrine" that permitted credit to become available on a mass basis as "sale" rather than "loan" transactions, and, therefore, not subject to usury limitations and sanctions. As laws become appropriate to control, or more clearly permit, these "time sales," those laws also were framed so as to cover sales, not loans.

Similarly, as the usury laws became more obviously insufficient for modern consumer "loan" credit, they too were revised. They stayed, however, as loan laws and flowed down a different, although parallel, stream from the sales laws. If we may summarize the movement of both, it was to enable credit to be extended for both sales and loans at rates high enough, but subject to sufficient control, to reach but not victimize a mass consumer market.

It should be fairly evident that one who borrows $3,000 to buy a car is not significantly different from one who buys a $3,000 car on time. While cash loans are not regularly made in the low balances of typical small consumer purchases (i.e., $3.98), an accumulation of these time sale bills is one of the strongest reasons for borrowing money. Again, the borrower does not significantly vary from the buyer. While some statutes do recognize this fact and treat loans and sales much alike for many purposes, this is not typical.

The draftsmen of both the UCCC and the CCPA had no trouble perceiving the essential identity of the two transactional forms and appreciating the historical, rather than logical, reasons for their separation.

Actually, a number of the UCCC draftsmen (not so those closest to preparation of the CCPA) had written substantial portions of the secured transactions article of the Uniform Commercial Code. They had already seen that the conditional sale contract, the historic device to evidence a secured time sale, and the chattel mortgage, the traditional loan security device, were legal anachronisms and had replaced them with the “security interest.” It originally seemed fairly obvious that consumer credit needed an analogous simplification and the creation of, perhaps, a “consumer credit transaction.” This turned out to be impracticable for two reasons.

First, the substantial creditor body, both retail merchants and those who financed their paper, were still in large measure reliant upon the time price doctrine. This was so not only in the areas that continued unregulated by specific retail instalment sale legislation, but under that legislation too. Since the regulatory laws were generally drafted to cover “sales,” it was deemed by many a matter of some moment that the retail time sales continue, clearly and indisputably, to be found to be sales and not the type of forebearance of withholding that might find them subject to a usury statute. The argument ran that if they were considered the equivalent of loans under the UCCC (which in itself might be all right), they might, by analogy, be held the equivalent of loans in states without the UCCC (which was definitely not all right). While the logic of this concern does not bear overly close scrutiny (since the retail instalment statutes were designed specifically to keep time sales from being deemed loans), the economic power of those disturbed by it was easily sufficient to prevent a simple combination of all consumer credit.

Second, and of fully equal persuasiveness, was the demand of the retail merchant group that they be held separate from the lenders for reasons of licensing and administration. It is traditional, again for historic reasons, that lenders of money be licensed and highly regulated. The lending community fully expected the UCCC to continue this tradition, although it looked for a while as if it might not. Credit sellers (which include almost all merchants) are generally not licensed or regul-

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136. Of the ten Commissioners who formed the Special Committee to draft the UCCC, three (Messrs. Braucher, Malcolm, and Richter) had actively participated in drafting the UCC. In addition, one Consultant to the Special Committee (Prof. Kripke) had also been part of the UCC group.

137. UCC 9-102(2).


139. Jordan & Warren, supra note 5, at 430.
lated, circumstances the merchants obviously did not want to change. Thus, they did not wish to be lumped with the lenders.

Forced by the demand to keep lenders and sellers separate, the draftsmen of the UCCC struggled with the appropriate degree of division. A number of approaches were discussed, including the possibility of two separate uniform acts, one for loans and the other for sales. Happily, this was discarded in favor of the ultimate approach: one act broad enough to cover all consumer credit transactions, thereby recognizing their essential unity, a unity which is reflected throughout the UCCC, but at the same time retaining the distinctions deemed important between sales and loans.

Thus, the UCCC devotes Article 2 to “Credit Sales” and Article 3 to “Loans.” The remaining articles deal generally with credit transactions and with creditors and debtors, thereby reducing to the necessary minimum the continuing distinction between sales and loans. An unfortunate but necessary result of this form of treatment is that, because sales and loans are deemed so alike and, at the same time kept separate, Articles 2 and 3 in large measure duplicate each other. A glance at the section headings of the two articles leaves the uninitiated in wonderment as to why they appear separately. Rates, disclosures, advertising and many other matters are practically duplicated in the two articles, with the word “sale” changed to “loan,” along with whatever other technical changes are required. Of course, some particularities do appear in one or another of the articles: issues concerning the waiver of defense clause have no application to loan transactions; licensing has no application to sales.

The CCPA is somewhat more direct in its unification of sales and loans. Most provisions of the CCPA are applicable to “consumer credit transactions,” an undefined term, but clearly through its use of the word “credit” including both sales and loans. As with the UCCC, the CCPA also makes distinctions between sales and loans. The CCPA distinctions were made, however, entirely for functional reasons and not because of special pressure group influence. Thus, the disclosure requirements of the CCPA segregate sales and loans (loans can’t have a cash price or a downpayment); Title II (“Extortionate Credit Transactions”) deals with loans rather than sales because that is the area of abuse.

140. The UCCC also deals with consumer leases, but for simplicity, that category of credit transaction is not considered in this article.
141. UCC § 2.404.
142. UCC § 3.503.
143. CCPA § 103(e).
144. CCPA §§ 128, 129.
To the extent that state law will become "uniformed" by the CCPA invitation to enact substantially similar laws and thereby displace the CCPA, it would appear that some measure of distinction between sales and loans will continue as a CCPA compulsion. Since the CCPA itself honors the distinctions in its disclosure sections, the only way states can at this time have any reasonable assurance that their legislation will be substantially similar is to retain the sale-loan distinction already in the CCPA.

2. Reduced Rate Control. As we shall soon see, policies concerning (2) reduced rate control, (3) freedom of entry and (4) disclosure, are interdependent so that without any one of them the others would largely fail of their purposes. This interdependency became increasingly apparent during the UCCC drafting process until, in the latest stages, it was almost impossible to make fundamental changes without requiring a redraft of the entire act. For this reason, the burden of persuasion upon those who desired revisions in the UCCC became increasingly heavy as the drafting progressed; significant changes towards the end were almost out of the question.

To the extent that the UCCC expresses an economic point of view on the quantity of consumer credit, it is essentially that wide-spread credit is desirable and should be made available in maximum supply by non-governmental financial sources. While any creditor control will in some degree have a restrictive effect, the UCCC expresses as one of "its underlying purposes and policies . . . to assure an adequate supply of credit to consumers."\textsuperscript{145}

The rate ceilings of the UCCC\textsuperscript{146} are, therefore, set high enough so that credit can be extended, or money loaned, to every significant economic group for every existing significant economic purpose, with a satisfactory return to the existing forms of credit institutions. In specific terms, this means that both loans and sales are permitted at finance charge rates as high as 36 percent per year for credits of $300 or less and at reducing rates that approach 18 percent as balances increase.\textsuperscript{147} Seller revolving charge accounts are subject to a 24 percent ceiling for amounts of $500 or less and 18 percent above $500.\textsuperscript{148} As we shall dis-

\begin{itemize}
  \item[145.] UCCC § 1.102(2).
  \item[146.] The CCPA requires a disclosure of rates, but it does not set ceiling rates. The House of Representatives version of the CCPA did set an interest ceiling, H. Res. 11601, 90th Cong., 1st Sess. (1967) but this was dropped in Conference. H.R. Rep. No. 1397, 90th Cong., 2d Sess. (1968).
  \item[147.] UCCC §§ 2.201, 3.508. The loan category, however, requires licensing, as shall be discussed.
  \item[148.] UCCC § 2.207.
\end{itemize}
Whether or not these rates are "high" is more an emotional and political question than a social or economic one. It is not the purpose of the UCCC that most consumer credit will actually be extended at these rates. The UCCC object is to set ceiling rates which will permit an adequate supply of credit but, at the same time, to bring other factors to bear upon those rates that will press rates actually in use well below the ceilings. We now have sufficient experience to demonstrate that, given policies concerning (3) freedom of entry and (4) disclosure, rates should resolve at levels below the maxima of the UCCC—except in specific areas of consumer credit where those maxima are economically necessary.

Indeed, even these UCCC ceiling rates are neither new nor startling to representatives of the finance industry or to representatives of the major consumer groups who have grown sophisticated in the needs of the credit marketplace. Many controversies existed, and exist today, concerning the provisions of the UCCC but there was no major controversy on the level of rate ceilings. There is no question but that mass consumer credit, with its expenses of operation and credit losses, requires a rate of charge that has no particular reference to the historic six percent. There was, in fact, an early feeling that there should be no rate ceilings whatever in the UCCC and that the actions of a free marketplace should determine actual rates; this was deemed too revolutionary to be politically palatable and was dropped. When the interest rates were pretty well agreed upon, it was felt by some that the rate

149. Johnson, Regulation of Finance Charges on Consumer Installment Credit, 66 Mich. L. Rev. 81 (1967). This excellent study of finance charge regulation indicates that in many areas of consumer credit, competition has forced rates well below statutory ceilings.

150. Conclusive figures are extremely difficult to obtain as to what precise rate is necessary for what type and dollar amount of credit. One reason for this is that the loan "mix" of different creditors varies and figures applicable to a portfolio of large loans to farmers have little application to a portfolio consisting principally of small loans to urban residents. There are many who are convinced that even the 36 percent rate of the UCCC cannot support credit in the low balance areas to which it applies without a mix of other credits in higher amounts.

151. See statements of Roger S. Barrett and David I. Fand in the Discussion, Toward a Uniform Consumer Credit Code, 23 J. Fin. 320, 322 (1968); Benfield, Money, Mortgages and Migraine—The Usury Headache, 19 Case W. Res. L. Rev. 819 (1968).

152. Actually it is not as revolutionary as it appears at first glance. Neither Canada nor England has a usury law in the American sense. Ziegel, Consumer Credit Regulation: A Canadian Consumer-Oriented Viewpoint, 68 Colum. L. Rev. 488, 495 (1968). Also, some of the New England states have no usury law above the small loan law ceilings. We should also not forget the widespread exemption of corporations from American usury laws.
should be expressed by the UCCC in a form other than simple interest, as found in most existing statutes,\(^{153}\) in order to sugar-coat the medicine and also because some other rate forms are easier to apply than simple annual interest.\(^{154}\) This was rejected as unworthy of the generally straightforward approach of the UCCC. The simple interest rate ceilings of the UCCC were finally adopted with the hope that the public and its representatives could be educated, or at least persuaded, in the realities of consumer credit.

In the last analysis, the rate ceilings of the UCCC are not ceilings in the traditional sense of the usury laws or even of the more enlightened small loan laws. The former were essentially variations of laws, both lay and canon, that forbade interest entirely and reflected a grudging, paternalistic attitude of the society toward credit. The latter were intended to broaden the scope of legal consumer credit, but were still restrictive in terms of their approach to the lending field. Lenders of money were deemed somehow analogous to public utilities, banks, airlines or securities exchanges. In such fields, the judgment of regulatory authorities is substituted for what in less regulated fields is considered the province of executive decision.\(^{155}\) In consumer lending, entry into the field and the power to set price (lending is, after all, only the sale of credit for a price) was more circumscribed than in other consumer service fields. Largely because of the limitations placed by the small loan laws on those who could enter the lending field, the legal ceiling rates tended to become the rates in actual use. The UCCC object is to replace this pattern with one resembling more closely the type of distribution system familiar to general sales of goods and services.

3. Freedom of Entry. If the rates set by the UCCC are truly to be maximum and not actual rates it must be because of competition among sources of credit supply for debtors' business. For this reason, the UCCC proposes a mode of entry into the consumer credit market of extremely liberal character. Essentially, two types of restriction in existing credit laws are eliminated by the UCCC.

First is the notorious “convenience and advantage” requirement, or C & A as it is generally known. Existing state small loans laws require that a lender be licensed before he may engage in the business of making consumer loans at rates above the state's general interest levels. Most of these laws contain an additional provision that the license will not be issued unless it “will promote the convenience and advantage of the

\(^{153}\) Cf. notes 26-39 supra.
\(^{154}\) R. Johnson, Methods of Stating Consumer Finance Charges ch. 4 (1961).
community" in which the licensed office is to be located. This provision typically requires an elaborate presentation of economic data by an applicant and affords state administrators an opportunity, one which is enthusiastically taken, to restrict the number of licensed lenders in the state.

It should be noted that this type of restrictive provision has been applied only to lenders and not to sellers on credit or to finance companies which purchase or discount their sales. The reason for this distinction is largely anachronistic: borrowers were generally regarded as necessitous, requiring special protections not applicable to buyers of goods who could refrain from making the purchases; but, the distinction is a vital part of the law of consumer credit.

The UCCC does require that lenders be licensed when they lend at rates above 18 percent per annum. The historical distinction has been observed and sellers on credit need not be licensed. To obtain a license, an applicant must prove such unobjectionable matters as "financial responsibility, character and fitness," and satisfy the Administrator that its officers and directors are "such as to warrant belief that the business will be operated honestly and fairly within the purposes of this Act." It is anticipated that honest and responsible lenders will be able to obtain licenses under these requirements and that licensing will not be used by state administrators as a method of limiting the supply of credit to the consumer market and thereby restricting competition.

The second restriction common in existing loan statutes that is eliminated by the UCCC is the traditional "dual business" requirement which, under many loan laws, requires a state official to approve any other business that may be conducted on the same premises as a loan business. This form of requirement is based upon an old and vicious practice which involved lenders requiring a borrower to purchase some commodity at a highly inflated price in order to obtain a loan. The effect of this would be to enable the lender to charge a legal rate of interest for the loan, but indirectly collect a usurious charge in the inflated price of the goods. The limited dual-business requirement is, however, an example of legislative "over-kill" since an alternate type of restriction adopted in many states and by the UCCC does the job more sensibly. This would permit the operation of another business on loan premises unless that other business is carried on "for the purpose of evasion or violation" of

156. See, e.g., N.Y. Banking Law § 343 (Supp. 1968).
157. UCCC § 3.502. This is to be distinguished from those who lend above 10 percent, the UCCC category of "Regulated Lender." UCCC § 3.501. Regulated Lenders are subject to varying forms of control, but not licensing.
158. UCCC § 3.503(2).
the controlling statute. Its adoption in the UCCC, however, is the principal reason for much of the existing opposition.

With the elimination of both C & A and dual-business restrictions, any reputable person can enter the loan field on any premises. This is precisely what the draftsmen of the UCCC intended, and the Reporters-Draftsmen reflected the views of the Commissioners' Special Committee on the UCCC when they wrote: "There is no apparent reason why competitive forces in a free market cannot be relied on to produce efficient firms which will serve the public interest." Nevertheless, many who find their abilities to expand limited due to special legislation outside the UCCC (the restrictions on branch banking being the dominant example), and those for whom C & A has already created a quasi-monopolistic position are in violent opposition to the UCCC because of its licensing position. That position is based upon the belief that the most direct and efficient way to obtain the maximum amount of credit at the lowest rates is to set the rate ceilings high enough to permit credit and open competition enough to force rates down. No one really believes, however, that the banking industry will be hurt by the UCCC; pushed, yes, but hurt, no. Its unique situation in utilizing depositors' money for loan purposes creates an enormous competitive advantage over those who can take advantage of the UCCC licensing requirements but must raise capital in much more expensive ways. It was resolved at a fairly early point in drafting the UCCC that freedom of market entry was a cornerstone of the statutory scheme. The many efforts to shake the draftsmen from this position were too clearly related to self-interest to cause a change in this policy.

4. Rate Disclosure. Another interconnected facet of the UCCC approach to rates and competition is the requirement that the consumer know, in a manner that will permit him to compare, what are his credit costs. The comparisons that the CCPA and the UCCC are designed to enable the consumer to make are of two sorts: first a comparison between the utility of using credit or cash (sometimes called the "description" function); and a comparison between different forms of credit (the "shopping" function). To assist in making these comparisons, it is generally required by both Acts that finance charges be expressed in simple annual interest, figured by the actuarial method, and in terms of the actual dollar cost to the consumer.

While the public attention has generally been directed to the annual

159. UCCC § 3.513.
161. Johnson, supra note 135. See also Jordan & Warren, supra note 69.
162. CCPA § 107; UCCC § 1.301(17).
interest percentage issue, the importance of also stating dollar cost should not be overlooked. One can budget and evaluate in terms of his own income a finance charge of $11.33 per month; this cannot be done with 9 percent. Indeed, for certain transactions, disclosure of a percentage rate can itself be misleading. For example, purchase of a $6 item with a $.50 charge for one month’s credit may be entirely reasonable in view of the low dollar amount, seller’s handling costs and buyer’s convenience. Disclosure of a 100 percent interest charge, which is what it is, may actually be a confusing and unnecessary element in the consumer’s credit evaluations. For this reason, where the finance charge does not exceed $5 when the amount financed does not exceed $75, or $7.50 when the amount financed exceeds $75, disclosure of the finance charge percentage rate is not required under the CCPA or the UCCC, although the dollar cost must be stated.¹⁶³

Similarly, the disclosure of the dollar cost, as contrasted with the percentage rate, may be misleading in other transactions. In a long-term real estate mortgage, for example, disclosure of dollars, as if they were existing dollars, that must be paid many years in the future takes no account of the discount that should be taken off those dollars to give them a realistic present value. It is much more significant to the mortgagor what his percentage rate is than what are the number of dollars he will be paying ten to twenty years hence. For this reason, purchase-money transactions in real estate are exempted from the dollar disclosure requirements of the CCPA, and, when the rate does not exceed 10 percent, the UCCC.¹⁶⁴

I am inclined to agree with Professor Kripke¹⁶⁵ that the simple interest disclosure battle is a good deal more smoke than fire. Professor Kripke has pointed out that the process of competition has already sorted out borrowers and sent those with better credit standing to the credit sources with lower rates. It is also true that disclosure will not help those in the most needy position, those who under our prevailing credit system must pay the highest rates. Disclosure of lower rates to this marginal group will not make lower rates available to them. In addition, this observer’s personal experience in Connecticut and Massachusetts, where simple interest disclosure has been a reality for some months, has indicated no variation whatever in the credit pattern.

But time may still be too short in Connecticut and Massachusetts. The opinion expressed earlier that the greatest single advantage of uni-
formity is deeper understanding, may have an ultimate effect in stimulating choice among alternate sources of credit. It seems probable, however, that the real stimulation is going to start with creditors' advertising firms. While no movement along these lines is yet evident, it is reasonable to expect that where all are required to state a percentage figure, someone is going to start publicizing that his rate is lower than his competitors'. Rate competition does exist in consumer credit, but its possibilities and effects have barely been tapped. One may reasonably expect that the simple interest disclosure requirement will accelerate this form of competition and certainly assist in achieving the ultimate effects anticipated by the UCCC and CCPA draftsmen.

VI. CONCLUSION

The CCPA and the UCCC represent a turning point. Consumer credit of the future will be broader in legal scope, free of most of the traditional restrictions associated with dated "sale" or "loan" concepts. It will be less restricted geographically and subject to either federal or uniform state laws, the ultimate effect of either being much the same. It will be driven by those laws into a competitive marketplace where competing sources of credit will become available to a better informed consumer.

The two statutes are harmonious and, while the UCCC encompasses much more than the CCPA, both reflect these objectives. There is no coherent objective in existing consumer credit statutes, and their patchwork quilt character now makes corrective legislation a matter of some moment. Both the UCCC and the CCPA were prepared with care by a diverse group both concerned and expert in the needs of the consumer and the credit industry. Taken together, which really means taking the UCCC since it will substantially supplant the CCPA, they represent by a wide margin the best regulatory approach yet taken to the field of consumer credit.

A major innovation of this sort cannot be without its disadvantages. They are, however, significantly overbalanced by the benefits to be derived. Naturally, the adverse aspects of the legislation will be emphasized by those who see personal positions of dominance, obtained under prior law, threatened by the change. It is hoped that this will not unduly impede the progress of this modern, constructive legislation.