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Esther Peterson

Giant Food Inc.

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Symposium on the Uniform Consumer Credit Code

PREFACE

ESTHER PETERSON.*

The Uniform Consumer Credit Code reflects a monumental task over a period of years by the National Conference of Commissioners on Uniform State Laws in trying to achieve a balanced set of standards which would be fair both to consumers who use credit and to businessmen who extend it, and would bring some measure of order to the diversity of codes now in effect. It proposes elimination of some of the worst, most archaic abuses in the extension of credit and collection of consumer debts, insofar as consumers are concerned. At the same time, and while reducing the effectiveness of many creditor's remedies, it seeks to improve the profitability of certain types of loans or credit sales by making possible the raising of usury ceilings in most jurisdictions.

To arrive at any consensus in so huge and formidable a task involving so many diverse business interests with special concerns in the credit laws, the drafters of the Code inevitably had to make many compromises between competing types of credit. This, of course, is the essence of legislative accomplishment. The compromises represented concessions *to* some types of creditors and concessions *by* other entrepreneurs. The objective—shared by all of the major industries in the credit field—was to devise a Code which would improve substantially, from their viewpoint, the patchwork of existing credit laws in the 50 states,

* A.B., Brigham Young University; M.A. Columbia; presently serving as Consumer Advisor to the President of Giant Food Inc., and is a member of the Consumer Advisory Committee; The National Association of Food Chains; the D.C. Commission on Food, Nutrition and Health; and The Board of Directors of the National Center for Solid Waste Disposal. Formerly Ms. Peterson served as Assistant Secretary of Labor; Executive Vice Chairman of President's Commission on the Status of Women; Assistant to the President for Consumer Affairs and Chairman of the President's Committee on Consumer Interests under the Johnson Administration.

so that firms doing business across state lines would not have to make extensive and expensive changes in forms and terms in order to comply with a multitude of different laws.

The almost universal acceptance of the Code by the credit industry attests to the success of the drafters in finding an industry consensus. There has been some dissent on the part of some segments of the credit industry to some provisions of the Code, but generally, the Code does have creditor acceptance.

From the consumer's standpoint, however, the desirability of the Code rests largely upon the changes it would make in the laws of his own state. For, in most instances, he does business as a consumer only in that state and the possibly adverse consequences of occasional consumer transactions across state lines are customarily governed by creditor-remedy laws of the state in which he resides or in the state in which he works. A resident of New York, therefore, would have only casual interest in the improvement the Code might accomplish in the garnishment laws of Wisconsin, for instance; but if uniformity in state laws were to be achieved at the expense of New York wage earners, by raising from 10% to 25% the portion of their pay checks subject to garnishment, the New Yorker would become acutely interested. Similarly, the worker in Pennsylvania or Texas whose wages are currently immune from garnishment would also find this aspect of the Code less than desirable, even if concessions made to consumers in those states by other sections of the Code were to benefit the wage earner otherwise.

I raise these points because the drafters of the Code have not as yet been able to convince all of us that uniformity in state consumer credit laws is always necessary or desirable. Even though state economic differences are gradually disappearing in an industrial economy which is pervasive throughout the nation, disparities do exist; and to the extent that state laws represent efforts on the part of the people of the respective states to provide themselves with the best advantages and protections possible within the economies of those states, the variation in state laws can be extremely useful. Some states have taken the lead in consumer protection and should be encouraged to continue to experiment and to dare new approaches, both as a service to their

people and as inspiration and testing ground for the people of other states.

Where uniformity is, in fact, desirable or even necessary, then it is my feeling we should incorporate basic minimum standards into federal law, permitting any states so inclined to go beyond the minimums so established. This has been done in the area of minimum wages and also in the area of garnishment, to name two examples. Federal law sets a minimum standard of protection below which no state can go; but any state can exceed the minimum to the extent its citizens are willing.

My hope as a "consumerist" is that the Uniform Consumer Credit Code will be studied carefully and critically by the general public in each state, just as it has already been thoroughly studied by those who are in the business of extending credit, to determine if the specific changes or reforms proposed in the Code will benefit the consumer in that state as well as the creditor, and in what respects. I do not hold to the opinion that consumer credit laws should be so one-sided in favor of the consumer, and particularly of the delinquent debtor, as to discourage the extension of credit to those who need it most. It is part of our ethic—and properly so—that just debts must be paid if they can be paid without cruel hardship on the debtor and his family—with the bankruptcy courts as the court of last resort. At the same time, laws which are so restrictive on creditors that there is no profit in the extension of credit will inevitably be accompanied by a disappearance of much consumer credit or—and this is equally bad—a hidden inflation in the prices of all goods and services to overcome the limitations on fair finance charges.

The Commissioners on Uniform State Laws struggled with this problem, as I said, long and hard for a number of years. They feel they have devised a fair set of standards to meet the challenges I have cited. Now it is up to those who represent and speak for the consumer to subject this proposed Code to the kind of detailed analysis it deserves in terms of the present laws of each state. To achieve uniformity is not enough. It must be uniformity in the achievement of better overall consumer laws, not merely an industry consensus.