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Symposium on the Uniform Consumer Credit Code: Introduction

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Introduction

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Credit markets have been developing rapidly, with the relatively rapid development of western economies. The post-World War II period has seen a massive expansion of the consumer credit markets, as an incident to a rapidly growing mass production—mass consumption economy with a large surplus above necessities.

Credit markets have been regulated in some ways for centuries. At any given time, regulation creates a combination of freedoms and restraints. The short run, more easily perceived interests of buyer and seller can lead each to wish that combination of constraints and freedoms most advantageous to him. But, over the longer run, both buyers and sellers have a common and primary interest in a system which is efficient, realizes the economic potentials of credit arrangements, and facilitates a high level of economic activity and citizen welfare. In prosaic language, a banker is generally better off with a rich community than with a poor one. And consumers need a good set of credit services. More precisely, consumers need a structure of credit services sufficiently developed, diverse, and efficient to facilitate consumer acquisition and use of the wealth the productive system potentially can provide.

The American economy has had, since its inception, a fundamental commitment to the free, competitive market. We look to relatively unconstrained enterprise under competitive conditions to generate, with the knowledge, labor, capital, and technique available, that selection of goods and services most useful to and desired by an informed, competent citizenry. This fundamental commitment extends into the credit field. But, in the credit field, as in others, the commitment to a free market is far from unqualified. The regulations and controls which have always existed in the credit field arise, in substantial measure,

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from an appreciation of the realities of imperfections in competitive conditions, incomplete buyer knowledge, inaccurate calculations of market participants, and the political-economic structure which surrounds the market. These conditions change over time. And, as they change, the legal controls on credit markets may also need to change.

The Uniform Consumer Credit Code is an attempt to revise the regulatory system for consumer credit in such a way as to increase the scope for competitive market forces in the provision of consumer credit, while retaining those constraints on and supplements to the market needed to prevent exploitation of consumers, and to prevent large numbers of credit transactions of a sort with little net benefit to society.

Obviously, there is much of value in the current uniform bill. As obviously, some portions of it have been subjected to substantial question.

The readers of the articles in this volume, and of other materials, will make their own judgments on the issues involved. If we look at the issue from the perspective of consumer protection, I suggest that the following considerations need to be taken into account in making judgments on specific issues.

First, the degree of present and potential competition among lenders must be commensurate with the enhanced freedom given them. This observation, the reader will note, counsels against those who criticise the UCCC for allowing additional freedom to enter the market. Rather, I suggest, such freedom is in the consumer's interest. And assuming greater competitiveness, freedom for diverse and flexible interest rates is also in the consumer interest.

If this approach is followed, the reader of this introduction and subsequent articles might address the arguments over the propriety of higher interest rate ceilings in terms of specific segments of the consumer market, rather than the market as a whole. Competition may be at relatively high levels for upper-income persons; at much lower levels for ghetto dwellers or farm workers; relatively high for urban residents; relatively low for much of the rural population.

Different levels of competitiveness in markets might be reflected in different controls and limits. But in no event should

great freedom for sellers be combined with the ability to exclude rivals or limit their effectiveness, either through private or governmental mechanisms. Market freedom should be accompanied by good buyer information. An indication of a large gap in the amount of information available to suppliers and users of credit services is a trouble sign.

There is at present, and seems likely to be for the foreseeable future, a persistent gap between the degree of prevailing organization and knowledge concerning credit as between suppliers and consumers. This gap is advantageous to suppliers of credit: they realize a monetary return on superior information. This imbalance can and should be addressed both within the context of the UCCC and outside it. Those who consider UCCC legislation may well insist that there be sufficient clear, practical assurance that mechanisms for buyer education and information will be made sufficiently sizeable and effective to meet a free market's requirements for adequate consumer information.

Special controls for special situations are sometimes needed. We have generally thought that there is considerable utility in protecting that minimum level of functioning needed to keep a wage earner productive, and a family a unit. Some portions of the population may be so poorly prepared for credit transactions, as compared to most persons, as to present high risks of exploitation. Economic exploitation is more than simply a question of fairness—it can prevent those who are temporarily down in the economic struggle from bouncing up again. As a result, these persons remain impoverished, the community loses their potential for greater levels of productivity: the society as a whole suffers.

Thus, controls on garnishment, repossession practices, and similar matters stand on a firm footing. The arguments of many consumer groups that additional controls should be imposed should be given careful attention, taking into account, in addition, such possibilities for federal action as may exist. However, it is also in the consumer interest that controls on credit transactions be clearly and directly related to identified problems in the market place, and scaled to the dimensions of the trouble. For example, attempting to hold interest charges below competitive levels where there is a good market structure, highly competitive market practices, and good buyer knowledge, is likely to do little

except constrict the available supply of useful credit. (The careful reader will note the conditions assumed in this statement.) If there are problems of monopoly gain in credit rates, abusive collection practices, and the like, they obviously must be identified with some precision, as to time, place, and causes, and dealt with in a fashion tailored to the conditions involved.

Very likely, we will see additional significant state and federal action in the consumer credit field in coming years. This issue of the Kentucky Law Journal is intended to help make that action as discriminate, sound, and constructive as is possible. Whether the discussions in this issue have that result depends in significant measure on the care with which the readers of these articles attend to the issues, and form their opinions.