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I. INTRODUCTION

On October 11, 2019, the Consumer Financial Protection Bureau (CFPB) announced its plan for a Task Force on Federal Consumer Financial Law. According to the announcement, the Task Force "will examine the existing legal and regulatory environment facing consumers and financial services providers and report recommendations on ways to improve and strengthen consumer financial laws and regulations to CFPB Director Kathy Kraninger." The announcement continued:

The Task Force will produce new research and legal analysis of consumer financial laws in the United States, focusing specifically on harmonizing, modernizing, and updating the enumerated consumer credit laws – and their implementing regulations – and identifying gaps in knowledge that should be addressed through research, ways to improve consumer understanding of markets and products, and potential conflicts or inconsistencies in existing regulations and guidance.

The Task Force is in part inspired by an earlier commission established by the Consumer Credit Protection Act (Act) in 1968. In addition to various changes to consumer law generally, the Act established a national commission to conduct original research and provide Congress with recommendations relating to the regulation of consumer credit. The commission's report contains original empirical data, information and analyses – all of which undergird the report's final recommendations. The data, findings, and recommendations from the commission were all made public and the report led to significant legislative and regulatory developments in consumer finance.

This announcement raises the immediate questions what was the earlier commission the announcement cited and what did it recommend?

The National Commission on Consumer Finance

The earlier commission was the National Commission on Consumer Finance (NCCF), established by Title IV of the Consumer Credit

Protection Act of 1968. This was the same act that established Truth in Lending as Title I. After time spent in holding hearings, gathering data, analyzing data, and undertaking legal reviews, the NCCF issued its final Report on December 31, 1972 (*Consumer Credit in the United States: The Report of the National Commission on Consumer Finance*). Well known in its time and widely available in print from the Government Printing Office, the Report is less well known now after almost five decades, but it remains a landmark in the development of consumer credit research and regulation.

The National Commission undertook its review of consumer credit about fifty years after the beginnings of modern consumer credit in the United States. Credit use by individuals is known from antiquity, but newer forms of consumer credit began to develop after the Civil War. The years 1870 to 1920 can be thought of as the "premodern" period of domestic consumer-credit development.

This premodern period witnessed large-scale movement of individuals from rural areas and family farms to growing urban areas. Improved transportation through railroads was encouraging wider markets and industrialization at the time. Industrialization and accompanying urbanization led to all sorts of new jobs, both blue collar and white. This also meant that for the first time in history large numbers of new industrial employees like day laborers, machinists, plumbers, steam fitters, bookkeepers, office workers, retail clerks, and others with their small immediate families were now living apart from extended families. This meant they sometimes had to face various needs and emergencies alone without wider family support and encouragement. Waves of immigrants during these years found themselves even farther from families still in the old country.

These economic changes also encouraged further development of a growing money economy, now based more upon urban wage-earning than on rural agriculture. Steadier sources of income for many families sometimes allowed some income to be pledged for debt repayments. In effect individuals discovered the possibility of converting their main asset, their income, in ways that better met their needs. Credit use could help manage some emergencies among industrial workers but it also encouraged slow development of a more middle-class lifestyle among upwardly-mobile population segments. Sewing machines, coal stokers, parlor organs for home entertainment, and factory-built furniture became popular purchases "on time." Credit use was frowned upon by many during these Victorian years, but its use increased nonetheless.

Interest-rate ceilings in all the states at the time made it difficult for potential lenders to provide credit to individuals profitably, so credit sources were limited. Rate ceilings dated to the British legal traditions imported into America in colonial times, although they had been repealed in England by this time. Lenders working outside the law were the common source of cash loans for necessities and emergencies during these years. Some of these lenders

were what we might otherwise think of as legitimate businesses but operating outside the rate ceilings. The need to operate outside any law does not encourage widespread entry by legitimate businesses though, and so the prevailing market conditions also encouraged entry by less-reputable lenders who sometimes engaged in all sorts of sharp practices.¹

The other common sort of consumer credit during these years involved sale of specific goods with payment undertaken over time. Court decisions determined that sellers could charge one price for payment now and a different price for payment later without transaction being considered a loan. Rather, the price difference was a "time-price differential," and since it was not interest it was not subject to interest-rate ceilings. Again, although there were many legitimate credit sellers, this situation also often produced failures of transparency and unsavory practices.

Beginning about 1910, reformers began to take aim at the need for changes in provision of consumer credit. Credit use by individuals was still regarded as somewhat disreputable, but better understanding of its benefits had also begun. Reform efforts, especially on the cash-lending side, centered in the reform-oriented Russel Sage Foundation. The Foundation argued for legal and transparent, regulated markets for cash loans rather than illegal lending. Besides introducing systematic study of the consumer-credit phenomenon, it drafted a model reform law for the states and by 1916 began lobbying effectively for its passage until almost all states had instituted its recommended reforms in some manner.

Commercial enterprises also saw the advantages of reforms in the credit area. Potential cash lenders looked for a way to enter markets legally and supported the Sage Foundation's reform efforts to eliminate illegal lenders. By 1920, new industries like automobile manufacturers also saw the clear advantage of eliminating abuses in financing so they could sell more output profitably.²

These actions among reformers, lenders, manufacturers, and legislators, along with changing societal attitudes toward their actions in the credit area, all supported the beginnings of what we

¹This premodern period is sometimes called the "Loan Shark" period of domestic consumer credit. For extended historical review of lenders and lending during these times, see Calder, Fleming, Gelpi, Michelman, and Robinson and Nugent.

²As indicated, under the laws of most states, purchases of specific goods and services with payment over time legally were not loans but were "installment sales" and were regulated differently from loans of money. Consequently, strictly speaking, not all consumer credit historically consisted of consumer loans and the terms *consumer loan* and *consumer credit* were not interchangeable. For most purposes today, this old legal distinction between "loan" and the wider term "credit" is no longer relevant and so this report adopts the common convention of using the terms *consumer loan* or *consumer lending* or *loans* interchangeably with *consumer credit*. The Federal Reserve has always included both kinds of credit in its comprehensive statistical series on consumer credit that began in 1943.

can call the "modern period" of consumer credit. Growth of credit for durable goods like automobiles, refrigerators, radios, and others began to be important in the 1920s and 1930s. At the same time, states began systematic revision of rate-ceiling regulations to permit better credit access, although not necessarily consistently across states or even within them.

Consumer credit growth became much more rapid after World War II, with growing prosperity after the war and extensive movement of population to the new suburbs. In addition to substantial economic and consumer credit growth after the war, the period also witnessed further changes in credit regulation at the state level. The first half of the modern period for consumer credit ended with implementation of the first consumer-credit protection law at the Federal level (*Truth in Lending*, effective July 1, 1969) and review of both credit growth and regulation by the National Commission on Consumer Finance in 1971-2.

In many ways, the Commission and its *Report* provide both a landmark and a good starting point for the work of the current Task Force. The NCCF undertook its work just a little over halfway between start of the modern period and the present, about fifty years after early attempts by the Russell Sage Foundation and state legislatures to establish systematic regulation of the new phenomenon of institutional consumer credit. The Commission's work came at the beginning of what we might characterize as the "mature phase" of consumer credit when markets became national rather than local, sometimes technological rather than personal, and regulation became increasingly Federal. The following chapters will quote liberally from the National Commission's *Report* from time to time. This is due to the Commission's key position near this key halfway point of modern consumer credit to date, and to articulate the consistencies in important legal and economic thinking on credit topics over time. The overarching goals of both the Commission and this Task Force have been to reexamine how change and the pace of change are impacted by the regulatory structure that has grown up around them.

The Commission's charge from Congress in 1968 was broad, its review and background work was extensive, its establishment of the central questions was thoughtful, and its coverage of the charge and questions was comprehensive at the time. The *Report*, its footnotes, and the accompanying studies provide a good review of the state of knowledge of consumer credit markets and institutions in the early 1970s. Despite occasional discussion over the years about the possibility of reestablishing a commission or something similar in the financial area, nothing similar has been undertaken until now.³

³For instance, in 1992, the Federal Financial Examination Council (FFIEC) recommended a narrowly-focused commission in its *Study on Regulatory Burden* (p. IV-2): "An independent, nonpolitical group or commission charged with exploring possibilities for easing regulatory burden through broad political consensus could also be helpful. Such a commission could have limited life, be free of political partisanship, and be

The NCCF developed its analysis and recommendations over 294 pages of the *Report* and six published volumes of technical studies, but its overarching themes for consumer credit markets are easily visible:

- Allow the benefits of credit access to reach all consumers.
- Eliminate any archaic laws or industry practices that interfere with provision of modern credit services for consumers.
- Enhance competition in the marketplace.
- Promote consumer sovereignty through information.

Appendix A to this Introduction provides further review of the NCCF's *Report* and lists its recommendations. Appendix B includes Commission members, its Foreword, staff, and its list of technical studies.

Now the current Task Force has received a similar charge to look at credit conditions and law after the second half of the current modern period, following fifty more years of changes. A lot has happened since the NCCF Report, including widespread new technologies in the credit-granting area, substantial increases in the amounts of credit in use, and notable increases in Federal regulatory efforts. At the time of the NCCF, there was only one Federal law directly aimed at consumer credit. Now there are eighteen major regulatory laws and a Federal Consumer Financial Protection Bureau established by the Dodd-Frank Act in 2010. So as this Task Force looks at the NCCF's findings with a new eye in a new era with new regulations, it acknowledges the NCCF's importance and again throughout this report broadly urges ongoing efforts in the areas the NCCF identified:

- Continuing focus on inclusion by encouraging access to financial services through competitive markets;
- Consumer protection that eliminates archaic legal and illegal practices;
- Enhancing competition with new technologies; and
- Improving consumer information and education.

Providing for these needs and appropriate regulation in an economy as large, dynamic, and diverse as in the United States will always be a challenge. Further, providing recommendations will always involve tradeoffs: For instance, empowering consumers to make their own choices can sometimes result in difficult outcomes for some of them. Banning products to protect some can reduce the welfare of others. Restricting new sorts of products may restrict or minimize development of many cost and time-saving advantages, and so on.

charged with making a comprehensive examination of all aspects of regulatory burden, especially that burden imposed through legislative mandates."

As this Task Force and its report focuses on these themes and others, it looks again at many specific questions raised by the NCCF in 1972, especially at areas that have remained controversial in the new era: reasons for credit use in the first place, usefulness and importance of access to credit, inclusion, competition, rate ceilings and their relation to credit availability and competition, small-dollar credit, unfair discrimination, disclosures, education, and interactions among supervisory agencies. While these perennial concerns remain central here, this Task Force report does not overlook some others that are newer, the latter including regulation of technological change and privacy. These issues are perennial and probably will again be the subject matter for review by some future Commission or Task Force more decades into the future.

Scope of the Task Force Report

At the outset, it is appropriate to define consumer credit that is the subject of most (although not all) of this Task Force's report and to say something about its importance. With this clearly in mind, it is useful then to summarize here in a bit more detail the scope and structure of the report that follows.

We adopt the Federal Reserve Board's widely used definition of consumer credit in its monthly statistical release G19 as "credit extended to individuals, excluding loans secured by real estate." As outlined further in this monthly statistical release, this includes credit provided by depository institutions with banking charters, finance companies (including "payday" and other nonbank loan companies), credit unions, Federal government (student loans), nonprofit and educational institutions, nonfinancial businesses (primarily retail stores and dealers), and holders of securitized assets. Consumer credit holdings of these institutions consist of both revolving credit and nonrevolving credit. Student loans, motor-vehicle loans, and credit cards fall within this definition, but not the huge mortgage-lending sector. Real-estate lending is certainly worth study and many academic and government agency studies have done so, but this area of modern finance is mostly not the subject here.

By itself, the consumer-credit sector of finance is huge too. From a base of about \$6.8 billion at the end of 1945 and its wartime restrictions for anti-inflationary purposes (Regulation W), domestic consumer credit outstanding grew to more than \$100 billion at the time of the NCCF and to more than \$4 trillion at the end of 2019. Big numbers are not necessarily indicative of big problems, but there can be no question that the amount of outstanding domestic consumer credit today is massive in dollar terms. Overall expansion and distribution of consumer credit is discussed further in the following chapter. This is more than enough subject matter for a report to be constructed within one year, and so mortgage credit that also involves many questions about underlying housing assets remains outside the focus area.

Chapter 2 begins the core of the Task Force's examination of consumer credit with a brief historical review of credit use by consumers and its regulation. This chapter then turns to examination of the subject of corresponding chapter in the NCCF's *Report*, growth and distribution of consumer credit within the population. This section of Chapter 2 examines long-term growth of consumer credit use to shed some light on the question often asked whether consumer credit simply has grown too much for too long. It then reviews survey evidence concerning who uses consumer credit.

Chapter 3 looks at a key question, why consumers would use credit in the first place, called credit demand in economics. Necessarily, this discussion examines the reasoning of neoclassical economics in this area as well as newer theories associated with the term "behavioral economics." As part of this review, this chapter continues discussion of empirical findings from the previous chapter about how consumers use consumer credit. This leads to examination of rationales for regulation found later in Chapter 6. It turns out that government policies often can be helpful, but they should also be responsive to both important policy tradeoffs and risks of unintended consequences. Excess regulation can be overly costly or unnecessarily restrictive.

Chapter 4 then reviews production costs for credit, which underlies credit supply. Production costs are an important part of consumer lending and require a close look. Costs that are too high for regulated prices also receive examination here but in Chapter 5. This possibility produces the phenomenon of credit rationing.

Chapter 5 examines small dollar credit in more detail, the province where credit rationing is most likely to take place and controversy most likely to arise. How to provide small amounts of credit at low prices has been problematic through recorded history, and the present is no exception. Modern institutions that provide small-dollar credit are examined at some length here, as are the challenges of regulating in this area.

This chapter also discusses what the Task Force report characterizes as "The Big Question." This is the issue whether any advisory commission or task force can successfully make recommendations concerning access to small-dollar credit by those who use it. The difficulties and policy tradeoffs in this area suggest that no study or advisory group can answer all questions in this area in a way that is satisfactory to everyone. For instance, it cannot repeal how generating such credit is costly relative to the loan size or how many observers are unhappy with resulting higher interest rates. Any recommendations in this area ultimately go beyond the realms of law or economics and reach to philosophical questions of the role of government in a free society and how to reduce the problems of poverty after millennia of trying. The Task Force is not sanguine about this discussion, as the NCCF was not. The Task Force again discusses the economics and issues of small-dollar lending but leaves

the philosophical concerns surrounding the role of government in society or how to eradicate poverty to other contexts.

Chapter 6 focuses upon the conceptual underpinnings for undertaking economic regulation. After briefly examining underlying potential reasons for regulating and the intellectual history of economic regulation, this chapter looks at aspects of historical experience with consumer protection in the financial area. Regulatory areas and tools for consumer credit are discussed and specific regulatory areas are enumerated. Necessarily, this chapter must circle back to the begged question, whether the whole of the current overlapping regulatory edifice is really needed, now a century into its construction. As with consumers' demand for credit where there can be overextensions, there also can be overextensions of regulation that produce unintended consequences. This is discussed here and later in Chapter 13.

Chapter 7 looks at disclosure as a consumer protection and how it might enhance or make simpler other sorts of protection. At a minimum, questions of consumer choice and the accompanying need for information involve disclosures. Certainly disclosure of relevant information also is important for making consumer-credit markets more competitive, which the NCCF discussed at considerable length in 1972. Need for information produced a whole new branch of economics in the 1960s (the Economics of Information) and it became an intellectual underpinning of the first federal foray into federal consumer protection regulation in the credit area.⁴ This was the Truth in Lending Act of 1968, intended as a disclosure law when passed. This chapter also looks at what can go wrong with a disclosure regime.

Chapter 8 then focuses on competition more generally, the main underlying theme of the NCCF in 1972. This chapter examines in more detail the economic theories of competition, what competition can do for consumers as they use consumer credit and other financial services, and how competition interacts with regulation in markets today.

Chapter 9 examines innovation. Not only does innovation generate new products and new ways of doing things, it also generates new divisions. Some observers embrace modernism and change as the hallmark of progress and advancement. Others emphasize the inability or slowness of some market participants to adapt to change, requiring control of the pace of change. Some fear that change will make things worse, or perhaps less regulated. Pretty quickly this leads to debate over the need for, or needed change in, regulatory regimes, and this chapter reviews new manifestations of this phenomenon for consumer

⁴Federal controls on consumer credit during World War II, the late 1940s, and during the Korean War (Regulation W) were for economic stabilization and inflation-prevention purposes and not for consumer protection. For evaluation of the impact of Regulation W, see Board of Governors of the Federal Reserve System, *Consumer Instalment Credit* (six volumes, 1957).

financial services. The chapter looks in some detail at regulatory concerns over fintechs, open banking, alternative data, regulatory sandboxes, and other current issues.

Chapter 10 discusses inclusion. Inclusion as a regulatory matter extends at least to the efforts of the Russell Sage Foundation in the 1910s but also importantly to hearings on discrimination that the NCCF held in 1970-72. These hearings led directly to the Equal Credit Opportunity Act (1974 and 1976). More recently, regulation also impacts market incentives for using technology to advance inclusion. Such incentives have led to development of statistical credit scoring and automated credit-reporting agencies (CRAs, popularly known as "credit bureaus"). Both were designed to improve inclusion by reducing production costs. Questions now involve potential impact of using new kinds of nontraditional data for improving inclusion and how regulation might impact this area.

Chapter 11 focuses on another new area of concern as technology has unfolded: implications for system failure and privacy. Privacy concerns arise not only from data breaches but also from uses of personal data found by some observers to be inappropriate. Recently, the beginnings of large-scale regulation in this area begun at the state level raise questions of a new set of regulatory inconsistencies across jurisdictions.

Before turning to further discussion of jurisdictional issues with financial regulation in Chapter 13, Chapter 12 looks first at financial literacy and education. These were areas of concern to the National Commission on Consumer Finance in 1972, and remain important matters today.

Finally, as indicated, Chapter 13 reviews issues of the regulatory structure today and whether there are jurisdictional challenges that can reasonably be mitigated. Excess regulation or inefficient regulation due to overlaps runs a risk of being wasteful of society's expectations from its government. This chapter discusses such issues and how appropriate Memoranda of Understanding (MOUs) carefully outlining joint operations and territories in some cases might well benefit everyone.

Overall, these chapters renew and vitalize the work begun by the NCCF in examining the progress of domestic consumer credit and its institutions. The NCCF examined the first fifty years of modern consumer credit, from the reforms of the Russel Sage Foundation to the dawn of its Federal regulation. The next fifty years have witnessed growth in access to financial services, public acceptance of consumer credit, advances in technology, and ongoing regulation. It is worth stepping back and looking at the underpinnings and current development of these important and widespread phenomena again.

Appendix A to Chapter 1: Review of the Report and Recommendations of the National Commission on Consumer Finance in 1972

The NCCF's Congressional charge is in paragraph 404 of Title IV of the Consumer Credit Protection Act (Public Law 90-321, May 29, 1968):

- (a) The Commission shall study and appraise the functioning and structure of the consumer finance industry, as well as consumer credit transactions generally. The Commission, in its report and recommendations to the Congress, shall include treatment of the following topics:
 - (1) The adequacy of existing arrangements to provide consumer credit at reasonable rates.
 - (2) The adequacy of existing supervisory and regulatory mechanisms to protect the public from unfair practices, and inspire the informed use of consumer credit.
 - (3) The desirability of Federal chartering of finance companies, or other Federal regulatory measures.
- (b) The Commission may make interim reports and shall make a final report of its findings, recommendations, and conclusions to the President and to the Congress by January 1, 1971. [Note: Due to delays in appointing members of the Commission and for other reasons, Congress subsequently changed the date to December 31, 1972.]

Title IV specified that Commission members were to be three designees from the House of Representatives, three members of the Senate, and three public members appointed by the President, one of whom was to be chairman. This made the Commission bipartisan but not nonpartisan. The longest section of Title IV was paragraph 405 concerning subpoena powers and other aspects of the Commission's operations that are not relevant today.

The *Report* consisted of twelve chapters and measured 294 pages. There were forward and appendix sections containing summary of recommendations, separate statements of Commission members (in part apparently reflective of differing political views), summary of hearings, a list of studies, and footnotes. After publication of its *Report*, the NCCF also published six volumes of its technical studies. The recommendations themselves were embedded within the relevant chapters of the *Report* where the reasoning supporting each of them individually resided, as well as listed together in a forward section. The chapters were:

1. An Overview of the Study and Some Conclusions
2. Development and Structure of Consumer Credit
3. Creditors' Remedies and Contract Provisions
4. Supervisory Mechanisms
5. Credit Insurance

6. Rate Ceilings
7. Rates and Availability of Credit
8. Special Problems of Availability
9. Federal Chartering
10. Disclosure
11. Education
12. The Future of Consumer Credit

Overall, a careful reading of the NCCF *Report* reveals six main themes that run through its entirety and its recommendations (a complete listing of the NCCF's specific recommendations is at the end of this appendix and its membership, staff, and studies are in Appendix B to this chapter):

1. Emphasizing the importance of institutional competition as a main bulwark of consumer protection, focusing on the need to remove and/or prevent any existing and future barriers to entry to support this goal.
2. Rethinking the role of legislated or regulatory interest rate ceilings. In the view of the Commission they were a barrier to entry that not only interfered with competition but made many situations of credit availability worse, sometimes even leading to credit unavailability.
3. Including everyone in fair consumer credit markets.
4. Eliminating excesses in consumer credit markets associated with archaic collection methods and practices.
5. Continuing improvement in the flows of information to consumers about their financial transactions.
6. Ensuring adequate supervision and enforcement where currently insufficient.

These themes are quite visible early in the *Report*, even forming the bulk of the transmittal letter from the NCCF Chairman to the President and the Congress (p. iii):

As to the Report itself, I believe the Commission was unanimous in concluding that a truly competitive consumer credit market, with adequate disclosure of relevant facts to an informed consuming public, together with legislation and regulation to eliminate excesses, will foster economic growth and serve to optimize benefits to the consumer.

As to excesses in the marketplace, our Report recommends significant additions to the protection of consumers in the fields of creditors' remedies and collection practices. We have urged restrictions on remedies such as garnishment, repossession, and wage assignment. We have recommended abolition of the holder

in due course doctrine, confessions of judgment, and harassing tactics in debt collections.

As to adequate disclosure of relevant facts, our Report urges enhanced supervision and enforcement of the Federal Truth in Lending Act. We have also specified actions to make the disclosure features of Truth in Lending more effective and have suggested expanding the coverage of that Act to include disclosure of charges for credit life and accident and health insurance as an annual percentage rate.

We also favored making federally chartered financial institutions subject to state as well as Federal examination for compliance with state laws governing the terms and conditions of consumer credit extensions. In addition, we recommended expanded administrative authority over all classes of creditors.

As to our conclusion that free and fair competition is the ultimate and most effective protector of consumers, we have recommended the elimination of restrictive barriers to entry in consumer credit markets by permitting all creditors open access to all areas of consumer credit. We have urged the entry of savings and loan associations and mutual savings banks into the consumer credit market. We have recommended prohibitions on acquisitions that would eliminate potential competition or that would substantially increase concentration in state or local credit markets. We have also urged that rate ceilings which constrain the development of workably competitive markets be reviewed by those states seeking to increase credit availability at reasonable rates.

Some of these areas, notably including some of the most controversial at the time, seem settled or even a bit archaic today, almost fifty years later. For instance, allowable creditors' remedies, a controversial area then and discussed in one of the longest chapters in the NCCF's *Report* (Chapter 3), have changed considerably since the NCCF's time. In the intervening years, federal and state actions have eliminated many private actions like confessions of judgement that were permissible in the past. Many of the specific creditors' remedies discussed by the NCCF are more of historical interest today than current concerns.

Further, one of the central themes through the Commission's *Report* in 1972 seems agreed upon today: the need for promoting competition in consumer credit markets by preventing barriers to entry. There is ongoing need for government to encourage competition among service providers, but many of the Commission's recommendations for removal of legislative and regulatory barriers to entry like licensing requirements designed to restrict entry have been implemented in the intervening years.

The NCCF also argued for maintaining large numbers of individually competing firms by antitrust action to prevent mergers that would increase market concentration in a smaller number of firms. This specific need today is a matter of debate in antitrust law concerning financial services, but many other intervening institutional changes have meanwhile contributed importantly to increased competition. They include many of the technological advances in data processing, storage, and analysis that have taken place since the NCCF's time.

Technological change has permitted wider geographic spheres for competing institutions. For instance, today world-wide credit-card operations of distant banking entities and instant acceptance of financial products like credit cards globally have pushed credit competition far beyond localized markets prevalent in the past. Today many financial institutions compete at least nationally. Technology has also permitted availability of comprehensive credit-bureau histories and credit-bureau risk scores to any potential lender at low cost, eliminating barriers to entry in the information area.

Another somewhat archaic area involves Credit Insurance where the main question for the NCCF was competitiveness of markets for the product (Chapter 5 of the NCCF Report). This product is still around today, but it can be considered to a degree a niche product now and it is subject to price ceilings and regulated by insurance or financial institutions regulatory departments in all of the states.

An area that has not settled down is Supervisory Mechanisms (Chapter 4 of the NCCF Report), despite many changes. States generally had departments of banking or financial institutions and sometimes consumer affairs in the NCCF era, but structures, responsibilities, authority, and resources of the state agencies varied widely at the time, both across states and often across the relevant supervisory bodies within a state (see Chapter 4 of the NCCF Report). Consumer credit regulation was mostly not a domain of federal activity then, with Truth in Lending and bankruptcy law, the latter specifically enumerated as a federal responsibility in the 1789 Constitution, the exceptions. Now there are professional agencies or departments responsible for consumer affairs within the financial regulatory structures of all the states and in the federal government as well.

At the time of the NCCF, the focus of the federal financial regulatory agencies was almost solely on institutional safety and soundness of those under their charge. Today, these agencies also have departments of consumer affairs and relevant examination and enforcement staff in this area. Further, the Federal Trade Commission retains its long-standing Bureau of Consumer Protection and in 2010 Congress instituted the Consumer Financial Protection Bureau. This agency has responsibility today over eighteen major pieces of federal legislation, only one of which was in effect at the time when the NCCF prepared its Report (Truth in Lending). And so, further federal

supervision that was still a question at the time of the NCCF is now well evident.

All of these agencies and departments operating in essentially the same area today raise substantial questions beginning with federalism and coordination of responsibilities across levels of government, however. Issues involve interaction between federal legislation and agencies with similar responsibilities at the state level but also coordination among federal agencies themselves. Today there are questions of jurisdiction, overlap, and efficiency of the entire system built over the decades since the *NCCF Report*.

Concerns like federal chartering of finance companies (Chapter 9 of the *NCCF Report*) has gone and returned over the decades. As indicated, until 1968 the federal government had relatively little presence in consumer financial regulation, but this has changed considerably without instituting new federal chartering. The question of federal chartering has come back again recently, with discussion whether there should be federal chartering and regulation of companies that might want to provide credit and other consumer financial services using new technologies, known typically today as "fintechs."

Among the most controversial sections of the *NCCF Report* in 1972, and the parts containing a substantial part of the NCCF's unfinished business today, are the chapters right in the middle of the *Report*: "Rate Ceilings" (Chapter 6), "Rates and Availability of Credit" (Chapter 7), and "Special Problems of Availability" (Chapter 8). All involved interest-rate ceilings and their impact; Chapter 8 also reviewed some other interrelated questions concerning credit availability.

Rate ceilings on credit use have been controversial for centuries, and the NCCF paid them central attention. The regime of state rate ceilings prevalent at the time changed soon afterward, clearly not due solely to the NCCF. Rapid changes in rate-ceiling laws at the time undoubtedly owed some intellectual debt to the *NCCF Report*, but the driving forces were the extremely high interest-rate periods of the late 1970s and early 1980s that caused many economic disruptions at the time. They included upheavals in housing markets where ceilings interfered with both home sales and housing construction.

By the early 1980s, federal legislation that was part of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA), had removed commercial credit and housing credit from state rate regulation. At the same time or shortly afterward, many states also altered their rate regulations on consumer credit, often raising or eliminating ceilings on various kinds of credit within their jurisdictions. Court decisions around the same time enabled national banks located in states with less restrictive rate ceilings to charge their home-state rates on credit extended to borrowers located in other, more restrictive states.

After the extreme interest rates world-wide subsided a bit by the middle and later 1980s, alterations of legislated ceilings continued. Since then, many states have further changed their rate regulations, raising ceilings in some cases, reducing ceilings elsewhere, or adapting them to new institutions. More-recent changes have mostly involved small-dollar lenders such as so called "payday lenders" where some states have specifically allowed them and others specifically prohibited them. At the federal level, Congress adopted the Military Lending Act in 2006 establishing federal rate ceilings on some kinds of consumer credit for military families. Since then, there has been discussion of extending the federal rate ceilings in the Military Lending Act to civilian consumer credit.

Chapter 6 of the NCCF *Report* provided general background on rates and rate ceilings and Chapter 7 looked more closely at new empirical evidence about them, based upon the NCCF's data gathering-efforts. Besides continuing this discussion, Chapter 8 also looked at other special questions involving credit availability, notably including credit discrimination considered unfair.

Credit discrimination was not part of federal regulatory activity at the time the NCCF delivered its *Report* in December, 1972. Congress passed the Equal Credit Opportunity Act later in 1974 and extensively revised it afterward in 1976. Nonetheless, the Commission held a set of public hearings on this issue and considered this area at considerable length in Chapter 8 of its *Report*. Eliminating unfair credit discrimination itself has not generally been controversial since passage of the Equal Credit Opportunity Act in 1974 and its extensive amendment in 1976, but the precise definition of illegal discrimination has been subject of concerns and remains so.

One other important area studied by the NCCF has also remained controversial: Disclosures (Chapter 10 of the NCCF *Report*). Most observers favor relevant disclosures on financial transactions, but the questions always have been the proper extent of relevant specific disclosures for what purposes and when.

At the time of the NCCF, Truth in Lending was still the only significant area of federal government presence in consumer credit regulation (other than bankruptcy) and, not surprisingly, the NCCF discussed disclosures at some length. The NCCF sponsored original research projects in this area, which it reviewed in its *Report*.

Since that time, additional disclosures have been an element of every further federal legislative effort in the consumer credit area including fair credit reporting, equal credit opportunity, bankruptcy reform, privacy, and others. Further, TIL has been amended many times over its five decades, and it has seemed like its implementing rules (Regulation Z and its Official Commentary) have been in almost constant flux. Continued reliance on disclosures as consumer

protections means that concern whether disclosures are "effective" or not has never disappeared.

In many ways consumer education is closely related to disclosures and the NCCF addressed it in Chapter 11. Since new consumers develop every year with population growth and the passage of time, this issue never gets old and the Task Force addresses it as well before its conclusory observations about the future of consumer credit in Chapter 12.

The following is a full listing of the recommendations of the NCCF in its 1972 Report:

A Full Listing of the Recommendations of the National Commission on Consumer Finance enumerated in its *Report to the President and Congress* in December 1972

Contract Provisions and Creditors' Remedies (Chapter 3)

Contract Provisions

Acceleration Clauses - Default - Cure of Default

Acceleration of the maturity of all or any part of the amount owing in a consumer credit transaction should not be permitted unless a default as specified in the contract or agreement has occurred.

A creditor should not be able to accelerate the maturity of a consumer credit obligation, commence any action, or demand or take possession of any collateral, unless the debtor is in default, and then only after he has given 14 days prior written notice to the debtor of the alleged default of the amount of the delinquency (including late charges), of any performance in addition to payment required to cure the default and of the debtor's right to cure the default.

Under such circumstances, for 14 days after notice has been mailed, a debtor should have the right to cure a default arising under a consumer credit obligation by:

1. Tendering the amount of all unpaid instalments due at the time of tender, without acceleration, plus any unpaid delinquency charges; and by
2. Tendering any performance necessary to cure a default other than nonpayment of accounts due.

However, a debtor should be able to cure no more than three defaults during the term of the contract. After curing default, the

debtor should be restored to all his rights under the consumer credit obligation as though no default had occurred.

Attorney's Fees

Consumer credit contracts or agreements should be able to provide for payment of reasonable attorney's fees by the debtor in the event of default if such fees result from referral to an attorney who is not a salaried employee of the creditor; in no event should such fees exceed 15 percent of the outstanding balance. However, this agreement should further stipulate that in the event suit is initiated by the creditor and a court finds in favor of the consumer, the creditor should be liable for the payment of the debtor's attorney's fees as determined by the court, measured by the amount of time reasonably expended by the consumer's attorney and not by the amount of the recovery.

Confessions of Judgment - Cognovit Notes

No consumer credit transaction contract should be permitted to contain a provision whereby the debtor authorizes any person, by warrant of attorney or otherwise, to confess judgment on a claim arising out of the consumer credit transaction without adequate prior notice to the debtor and without an opportunity for the debtor to enter a defense.

Cross-Collateral

In a consumer credit sale, the creditor should not be allowed to take a security interest in goods or property of the debtor other than the goods or property which are the subject of the sale. In the case of "add-on" sales, where the agreement provides for the amount financed and finance charges resulting from additional sales to be added to an existing outstanding balance, the creditor should be able to retain his security interest in goods previously sold to the debtor until he has received payments equal to the sales price of the goods (including finance charges). For items purchased on different dates, the first purchased should be deemed the first paid for; and for items purchased on the same date, the lowest priced items should be deemed the first paid for.

Household Goods

A creditor should not be allowed to take other than a purchase money security interest in household goods.

Security Interest - Repossession - Deficiency Judgments

A seller-creditor should have the right to repossess goods in which a security interest exists upon default of contract obligations by the purchaser-debtor. At the time the creditor sends notice of the cure period (14 days), and prior to actual repossession (whether by

replevin with the aid of state officers or by self-help), the creditor may simultaneously send notice of the underlying claim against the debtor and the debtor should be afforded an opportunity to be heard in court on the merits of such claim. The time period for an opportunity to be heard may run concurrently with the cure period.

Where default occurs on a secured credit sale in which the original sales price was \$1,765 or less, or on a loan in which the original amount financed was \$1,765 or less and the creditor took a security interest in goods purchased with the proceeds of such loan or in other collateral to secure the loan, the creditor should be required to elect remedies: either to repossess collateral in full satisfaction of the debt without the right to seek a deficiency judgment, or to sue for a personal judgment on the obligation without recourse to the collateral, but not both.

Wage Assignments

In consumer credit transactions involving an amount financed exceeding \$300, a creditor should not be permitted to take from the debtor any assignment, order for payment, or deduction of any salary, wages, commissions, or other compensation for services or any part thereof earned or to be earned. In consumer credit transactions involving an amount financed of \$300 or less, where the creditor does not take a security interest in any property of the debtor, the creditor should be permitted to take a wage assignment but in an amount not to exceed the lesser of 25 percent of the debtor's disposable earnings for any workweek or the amount by which his disposable earnings for the workweek exceeds 40 times the Federal minimum hourly wage prescribed by section 6(a) (I) of the Fair Labor Standards Act of 1938 in effect at the time.

Creditors' Remedies

Body Attachment

No creditor should be permitted to cause or permit a warrant to issue against the person of the debtor with respect to a claim arising from a consumer credit transaction. In addition, no court should be able to hold a debtor in contempt for failure to pay a debt arising from a consumer credit transaction until the debtor has had an actual hearing to determine his ability to pay the debt.

Garnishment

Prejudgment garnishment, even of nonresident debtors, should be abolished. After entry of judgment against the debtor on a claim arising out of a consumer credit transaction, the maximum disposable earnings of a debtor subject to garnishment should not exceed the lesser of:

1. 25 percent of his disposable earnings for the workweek, or

2. The amount by which his disposable earnings for the workweek exceeds 40 times the Federal minimum hourly wage prescribed by section 6(a) (!) of the Fair Labor Standards Act of 1938, in effect at the time the earnings are payable. (In the event of earnings payable for a period greater than a week, an appropriate multiple of the Federal minimum hourly wage would be applicable.)

A debtor should be afforded an opportunity to be heard and to introduce evidence that the amount of salary authorized to be garnished would cause undue hardship to him and/or his family. In the event undue hardship is proved to the satisfaction of the court, the amount of the garnishment should be reduced or the garnishment removed.

No employer should be permitted to discharge or suspend an employee solely because of any number of garnishments or attempted garnishments by the employee's creditors.

Holder in Due Course Doctrine-Waiver of Defense Clauses-Connected Loans

Notes executed in connection with consumer credit transactions should not be "negotiable instruments;" that is, any holder of such a note should be subject to all the claims and defenses of the maker (the consumer-debtor). However, the holder's liability should not exceed the original amount financed. Each such note should be required to have the legend "Consumer Note - Not Negotiable" clearly and conspicuously printed on its face.

Holders of contracts and other evidences of debts which are executed in connection with consumer credit transactions other than notes should similarly be subject to all claims and defenses of the consumer-debtor arising out of the transaction, notwithstanding any agreement to the contrary. However, the holder's liability should not exceed the original amount financed.

A creditor in a consumer loan transaction should be subject to all of the claims and defenses of the borrower arising from the purchase of goods or services purchased with the proceeds of the loan, if the borrower was referred or otherwise directed to the lender by the vendor of those goods or services and the lender extended the credit pursuant to a continuing business relationship with the vendor. In such cases, the lender's liability should not exceed the lesser of the amount financed or the sales price of the goods or services purchased with the proceeds of the loan.

Levy on Personal Property

Prior to entry of judgment against a debtor arising out of a consumer credit transaction, while a court may create a lien on the personal property of the debtor, that lien should not operate to take or divest the debtor of possession of the property until final

judgment is entered. However, if the court should find that the creditor will probably recover in the action, and that the debtor is acting or is about to act in a manner which will impair the creditor's right to satisfy the judgment out of goods upon which a lien has been established, the court should have authority to issue an order restraining the debtor from so acting. The following property of a consumer debtor should be exempt from levy, execution, sale, and other similar process to satisfy judgment arising from a consumer credit transaction (except to satisfy a purchase money security interest created in connection with the acquisition of such property).

1. A homestead to the fair market value of \$5,000 including a house, mobile home, or like dwelling, and the land it occupies if regularly occupied by the debtor and/or his family as a dwelling place or residence and intended as such.

2. Clothing and other wearing apparel of the debtor, spouse, and dependents to the extent of \$350 each.

3. Furniture, furnishings, and fixtures ordinarily and generally used for family purposes in the residence of the debtor to the extent of the fair market value of \$2,500.

4. Books, pictures, toys for children and other such kinds of personal property to the extent of \$500.

5. All medical health equipment being used for health purposes by the debtor, spouse, and dependents.

6. Tools of trade, including any income-producing property used in the principal occupation of the debtor, not to exceed the fair market value of \$1,000.

7. Any policy of life or endowment insurance which is payable to the spouse or children of the insured, or to a trustee for the benefit of the spouse or children of the insured, except the cash value or any accrued dividends thereof.

8. Burial plots belonging to the debtor and/or spouse or purchased for the benefit of minor children to the total value of \$1,000.

9. Other property which the court may deem necessary for the maintenance of a moderate standard of living for the debtor, spouse, and dependents.

Contacting Third Parties

No creditor or agent or attorney of a creditor before judgment should be permitted to communicate the existence of an alleged debt to a person other than the alleged debtor, the attorney of the debtor, or the spouse of the debtor without the debtor's written consent.

Miscellaneous Recommendations

Balloon Payment

With respect to a consumer credit transaction, other than one primarily for an agricultural purpose or one pursuant to open end credit, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the consumer should have the

right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing should be no less favorable to the consumer than the terms of the original transaction. These provisions do not apply to a payment schedule which, by agreement, is adjusted to the seasonal or irregular income of the consumer.

Cosigner Agreements

No person other than the spouse of the principal obligor on a consumer credit obligation should be liable as surety, cosigner, comaker, endorser, guarantor, or otherwise assume personal liability for its payment unless that person, in addition to signing the note, contract, or other evidence of debt also signs and receives a copy of a separate cosigner agreement which explains the obligations of a cosigner.

Rebates for Prepayment

A consumer should always be allowed to prepay in full the unpaid balance of any consumer credit obligation any time without penalty. In such instances, the consumer should receive a rebate of the unearned portion of the finance charge computed in accordance with the "balance of the digits" (otherwise known as "sum of the digits" or "rule of 78's" method) or the actuarial method. For purpose of determining the instalment date nearest the date of prepayment, any prepayment of an obligation payable in monthly instalments made on or before the 15th day following an instalment due date should be deemed to have been made as of the instalment due date, and if prepayment occurs on or after the 16th it should be deemed to have been made on the succeeding instalment due date. If the total of all rebates due to the consumer is less than \$1 no rebate should be required.

In the event of prepayment, the creditor should not be precluded from collecting or retaining delinquency charges on payments due prior to prepayment.

In the case of credit for defective goods, the consumer should be entitled to the same rebate as if payment in full had been made on the date the defect was reported to the creditor or merchant.

If the maturity of a consumer credit obligation is accelerated as a result of default, and judgment is obtained or a sale of secured property occurs, the consumer should be entitled to the same rebate that would have been payable if payment in full had been made on the date judgment was entered or the sale occurred.

Upon prepayment in full of a consumer credit obligation by the proceeds of credit insurance, the consumer or his estate should be entitled to receive the same rebate that would have been payable if the consumer had prepaid the obligation computed as of the date satisfactory proof of loss is furnished to the company.

Unfair Collection Practices

Harassment

No creditor, agent or attorney of the creditor, or independent collector should be permitted to harass any person in connection with the collection or attempted collection of any debt alleged to be owing by that person or any other person.

Sewer Service

If a debtor has not received proper notice of the claim against him and does not appear to defend against the claim, any judgment entered shall be voided and the claim reopened upon the debtor's motion.

Inconvenient Venue

No creditor or holder of a consumer credit note or other evidence of debt should be permitted to commence any legal action in a location other than (1) where the contract or note was signed, (2) where the debtor resides at the commencement of the action, (3) where the debtor resided at the time the note or contract was made, or (4) if there are fixtures, where the goods are affixed to real property.

Consumer Credit and Consumer Insolvency

Chapter XIII of the Bankruptcy Act should be expanded as endorsed by the House of Delegates of the American Bar Association in July 1971 to permit Chapter XIII courts, under certain circumstances, to alter or modify the rights of secured creditors when they find that the plan adequately protects the value of the collateral of the secured creditor.

In petitions for relief in bankruptcy, the bankruptcy court should disallow claims of creditors stemming from "unconscionable" transactions.

Bankruptcy courts should provide additional staff to serve as counselors to debtors regarding their relations with creditors, and their personal, credit, and domestic problems.

Door-to-Door Sales

In any contract for the sale of goods entered into outside the creditor's place of business and payable in more than four installments, the debtor should be able to cancel the transaction at any time prior to midnight of the third business day following the sale.

Assessment of Damages

If a creditor in a consumer credit transaction obtains a judgment by default, before a specific sum is assessed the court should hold a hearing to establish the amount of the debt the creditor-plaintiff is lawfully entitled to recover.

Supervisory Mechanisms (Chapter 4)

The Commission recommends that:

Legislatures and administrators in states with less than 2-1/2 man-days available per year per small loan office reassess their staffing capabilities with the goal of improving their ability to fulfill the examination responsibility prescribed by law.

All Federal regulatory agencies adopt and enforce uniform standards of Truth in Lending examination.

Congress create within the proposed Consumer Protection Agency a unit to be known as the Bureau of Consumer Credit (BCC) with full statutory authority to issue rules and regulations and supervise all examination and enforcement functions under the Consumer Credit Protection Act, including Truth in Lending; an independent Consumer Credit Agency be created in the event that the proposed Consumer Protection Agency is not established by Congress; the independent agency would have the same functions and authorities recommended for the Bureau of Consumer Credit.

Agencies supervising federally chartered institutions undertake systematic enforcement of Federal credit protection laws like Truth in Lending.

Federal law be expressly changed to authorize state officials to examine federally chartered institutions for the limited purpose of enforcing state consumer laws, but such authorization should in no way empower state officials to examine federally chartered institutions for soundness, fraudulent practices, or the like; the limited state examinations should be required by law to be performed in a manner that would not disrupt or harass the federally chartered institutions.

State consumer credit laws be amended to bring second mortgage lenders and any other consumer lenders under the same degree of administrative control imposed on licensed lenders.

Congress consider whether to empower state officials to enforce Truth in Lending and garnishment restrictions of the Consumer Credit Protection Act and any similar laws that may be enacted.

State laws covering retailers and their assignees be amended, where necessary, to give authority to a state administrative agency to enforce consumer credit laws against all sellers who extend consumer

credit; but administrative regulation need not and should not entail either licensing or limitations on market access.

States which do not subject sales finance companies to enforcement of consumer credit laws amend their laws to bring such companies under enforcement; such authority need not and should not entail licensing or limitations on market access.

State laws be amended to give a state administrative agency authority to enforce consumer credit laws against all credit grantors - deposit holding institutions, nondeposit holding lenders, and retailers and their assignees. This authority should include the right to enter places of business, to examine books and records, to subpoena witnesses and records, to issue cease and desist orders to halt violations, and to enjoin unconscionable conduct in making or enforcing unconscionable contracts. The agency should be able to enforce the right of consumers, as individuals or groups, to refunds or credits owing to them under appropriate statutes.

Legal services programs - legal aid, neighborhood legal services, rural legal assistance, public defender - continue to receive Federal, state, and local government support.

Consumer protection laws be amended, where necessary, to assure payment of legal fees incurred by aggrieved private consumers and provide them with remedies they can enforce against creditors who violate these laws.

The proposed BCC be authorized to establish a National Institute of Consumer Credit to function as the BCC's research arm.

The BCC, acting through the National Institute of Consumer Credit, be empowered to cooperate with and offer technical assistance to states in matters relating to consumer credit protection-examinations, enforcement, and supervision of consumer credit protection laws.

The BCC be authorized:

(1) to require state and Federal agencies engaged in supervising institutions which grant consumer credit to submit such written reports as the Bureau may prescribe;

(2) to administer oaths;

(3) to subpoena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) to intervene in corporate mergers and acquisitions where the effect would be to lessen competition in consumer credit markets, to

include but not be limited to applications for new charters, offices, and branches;

(5) to invoke the aid of any district court of the United States in requiring compliance in the case of disobedience to a subpoena or order issued;

(6) to order testimony to be taken by deposition before any person designated by the Bureau with the power to administer oaths, and in such instances to compel testimony and the production of evidence in the same manner as authorized under subparagraphs (3) and (5) above.

Credit Insurance (Chapter 5)

The Commission recommends that:

The finance charge earned by credit grantors should be sufficient to support the provision of the credit service. The finance charge should not subsidize the credit insurance service. Nor should the charge for credit insurance subsidize the credit operation.

The proposed Bureau of Consumer Credit in the Consumer Protection Agency make a study to determine acceptable forms of credit insurance and reasonable levels of charge and prepare recommendations.

The states should immediately review charges for credit insurance in their jurisdictions and lower rates where they are excessive.

Creditors offering credit life and accident and health insurance be required to disclose the charges for the insurance both in dollars and cents and as an annual percentage rate in the same manner as finance charges and annual percentage rates of finance charges are required to be disclosed under the Truth in Lending Act and regulation Z.

Rates and Availability of Credit (Chapter 7)

Although the Commission makes no generally applicable recommendation concerning branch banking because conditions can vary among the states, it does recommend that where statewide branching is allowed, specific steps be taken to assure easy new entry and low concentration. Such steps would:

1. Give preferential treatment wherever possible to charter applications of newly forming banks as opposed to branch applications of dominant established banks.

2. Favor branching, especially de novo branching, whether directly or through the holding company device when such branching

promotes competition. Banking regulators should exercise a high degree of caution in permitting statewide branching whether directly or through the holding company device when such branching decreases competition or increases economic concentration.

3. Encourage established banks and regulatory agencies to see that correspondent bank services be made available (for a reasonable fee) to assist newly entering independent banks, including the provision of loan participation agreements when needed.

4. Disallow regional expansion by means of merger and holding company acquisitions when such acquisitions impair competition, recognizing that statewide measures of competition are relevant.

The Commission recommends, as did the President's Commission on Financial Structure and Regulation, that under prescribed conditions savings and loan associations and mutual savings banks be allowed to make secured and unsecured consumer loans up to amounts not to aggregate in excess of 10 percent of total assets.

The Commission recommends that the only criterion for entry (license) in the finance company segment of the consumer credit market be good character, and that the right to market entry not be based on any minimum capital requirements or convenience and advantage regulations. The Commission recommends that direct bank entry in the relatively high risk segment of the personal loan market be made feasible by:

(1) Permitting banks to make small loans under the rate structure permitted for finance companies;

(2) Encouraging banks to establish de novo small loan offices as subsidiary or affiliated separate corporate entities. Regardless of corporate structure these small loan offices, whether corporate or within other bank offices, should be subject to the same examination and supervisory procedures that are applied to other licensed finance companies;

(3) Exempting consumer loans from the current requirement that bank loan production offices obtain approval for each loan from the bank's main office; and

(4) Prohibiting the acquisition of finance companies by banks when banks are permitted to establish de novo small loan offices. The Commission recommends that existing regulatory agencies disallow mergers or stock acquisitions among any financial institutions whenever the result is a substantial increase in concentration on state or local markets.

The Commission recommends that inter-institutional acquisitions be generally discouraged even though there is no effect on intra-institutional concentration.

The Commission recommends that state regulatory agencies and legislatures review the market organization of their respective financial industries after a 10-year trial period of earnest implementation of the recommendations on market entry and concentration. If, despite these procompetitive efforts, such a review discloses an inadequacy of competition-as indicated, say, by a continuing market dominance by a few commercial banks and finance companies or the absence of more frequent entry - then a restructuring of the industry by dissolution and divestiture would probably be appropriate and beneficial.

The Commission recommends that antitrust policy, both Federal and state, be alert to restrictive arrangements in the credit industry. Any hint of agreement among lenders as to rates, discounts, territorial allocations and the like must be vigorously pursued and eliminated.

The Commission recommends that each state evaluate the competitiveness of its markets before considering raising or lowering rate ceilings from present levels. Policies designed to promote competition should be given the first priority, with adjustment of rate ceilings used as a complement to expand the availability of credit. As the development of workably competitive markets decreases the need for rate ceilings to combat market power in concentrated markets, such ceilings may be raised or removed.

Discrimination (Chapter 8)

The Commission recommends that:

States undertake an immediate and thorough review of the degree to which their laws inhibit the granting of credit to creditworthy women and amend them, where necessary, to assure that credit is not restricted because of a person's sex.

Congress establish a pilot consumer loan fund and an experimental loan agency to determine whether families whose incomes are at or below the Federal Guideline for Poverty Income Levels issued annually by OEO have the ability to repay small amounts of money which they may need to borrow.

\$1.5 million be appropriated for an experimental low income loan program to be allocated among operating expenses, loss write-offs, and loan extensions according to guidelines developed by an advisory committee to the Bureau of Consumer Credit.

There be continued experimentation by private industry in cooperation with Federal, state, and local governments to provide credit to the poor.

Legislation permitting "small small" loans should be encouraged as a suitable means of providing loans to the poor from regulated, licensed lenders.

Federal Chartering (Chapter 9)

The Commission recommends that Federal chartering of finance companies be held in abeyance for 4 years while two complimentary courses of action are pursued: (1) efforts should be undertaken to persuade the states to remove from existing laws and regulations anticompetitive (and by extension, anticonsumer) restrictions on entry and innovation and, (2) Congress should sustain the research initiated by the Commission.

If the substantive portions of the Commission's recommendations regarding workably competitive markets are not enacted within 4 years and states have not eliminated barriers to entry, the Commission recommends that Congress permit Federal chartering of finance companies with powers to supersede state laws in three basic areas which sometimes severely limit competition in availability of credit: limitations on entry, unrealistic rate ceilings, and restraints on amounts and forms of financial services offered consumers.

Disclosure (Chapter 10)

The Commission recommends that:

The Board of Governors of the Federal Reserve System regularly publish a statistical series showing an average (and possibly a distribution) of annual percentage rates for at least three major types of closed end consumer instalment credit: new automobiles, mobile homes, and personal loans.

The Truth in Lending Act should be further amended to require creditors who do not separately identify the finance charge on credit transactions involving more than four instalments to state clearly and conspicuously in any advertisement offering credit: "THE COST OF CREDIT IS INCLUDED IN THE PRICE QUOTED FOR THE GOODS AND SERVICES."

The Truth in Lending Act be amended to make clear the presumption that all discounts or points, even when paid by the seller, are passed on to the buyer and hence must be included in the finance charge.

Section 106(e) of the Truth in Lending Act be amended to delete as excludable from the finance charge the following items numbered in accordance with that paragraph:

- (5) Appraisal fees
- (6) Credit reports

A full statement of all closing costs to be incurred be presented to a consumer prior to his making any downpayment. In any case, a full statement of closing costs should be provided at the time the lender offers a commitment on a consumer credit real property transaction or not later than a reasonable time prior to final closing.

Section 104(4) of the Truth in Lending Act which exempts public utility transactions from disclosure requirements be repealed. Creditors be required to disclose the charge for credit insurance both in dollars and as an annual percentage rate in the same manner as the finance charge is required to be disclosed. Additionally, where credit insurance is advertised, that the premium be required to be expressed as an annual percentage rate.

Exempted transactions (Section 104) of the Truth in Lending Act should include credit transactions primarily for agricultural purposes in which the total amount to be financed exceeds \$25,000, irrespective of any security interest in real property.

Creditors offering open end credit be permitted to advertise only the periodic rate and the annual percentage rate;

Where terms other than rates are advertised, only the following terms be stated in the advertisement:

Closed end credit

The cash price or the amount of the loan as applicable.

The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended.

The annual percentage rate, or the dollar finance charge when the APR is not required on small **transactions**.

Open end credit

The minimum periodic payment required and the method of determining any larger required periodic payment.

The method of determining the balance upon which a finance charge may be imposed.

The periodic rate(s).

The annual percentage rate(s).

Sections 143 and 144 of the Truth in Lending Act be amended to make clear that there may be no expression of a rate in an advertisement of closed end credit other than the annual percentage rate as defined in the Truth in Lending Act and regulation Z.

Legislation be adopted to permit private suits seeking injunctive relief to false or misleading advertising.

The Truth in Lending Act be amended to provide that the Act and regulation Z apply to oral disclosures.

State laws which are inconsistent with the Federal Truth in Lending Act or which require disclosures which might tend to confuse the consumer or contradict, obscure, or detract attention from the disclosures required by the Truth in Lending Act and regulation Z be preempted by the Federal law.

The Truth in Lending Act be amended as necessary to assure that subsequent assignees are held equally liable with the original creditor when violations of the Truth in Lending Act are evident on the face of the agreement or disclosure statement; and that there be equal enforcement by all appropriate agencies of this provision concerning assignees and all other Truth in Lending Act provisions in order to assure equal protection to all consumers.

Both suggestions of the Board of Governors of the Federal Reserve System pertaining to class action suits and the clarification of the definition of "transactions" be adopted.

The Commission supports the recommendation of the Board of Governors of the Federal Reserve System that Congress amend the Truth in Lending Act specifically to include under Section 125 security interests that arise by operation of law.

The Commission supports the recommendation of the Board of Governors of the Federal Reserve System that Congress amend the Truth in Lending Act to limit the time the right of rescission may run where the creditor has failed to give proper disclosures.

Education (Chapter 11)

The Commission recommends that:

Congress support the development of improved curricula to prepare consumers for participation in the marketplace, with adequate attention to consumer credit as one aspect of family budgeting.

Appropriate Federal and state agencies should continue their emphasis on adult education for low income consumers, try to reach more of them, and develop useful programs for the elderly,

Federal resources be used to encourage expanded research and carefully monitored pilot projects to generate and test new ideas in adult consumer education.

Business organizations support and encourage nonprofit credit counseling, provided it is conducted for the benefit of the consumer and does not serve solely or primarily as a collection agency.

If private debt adjusting services are allowed to continue, their activities be strictly regulated and supervised, including their fees and advertising.

Counseling be made a mandatory requirement for obtaining a discharge in both Chapter XIII and straight bankruptcy, unless the counselor in a particular case should determine that counseling would be unnecessary or futile.

The Future of Consumer Credit (Chapter 12)

The Commission recommends that legislation be enacted to achieve the following goals:

(1) Each consumer's complaint should be promptly acknowledged by the creditor.

(2) Within a reasonable period of time· a creditor should either explain to the consumer why he believes the account was accurately shown in the billing statement or correct the account.

(3) During the interval between acknowledgment of the complaint and action to resolve the problem, the consumer should be free of harassment to pay the disputed amount.

(4) The penalties on creditors for failure to comply should be sufficiently severe to prompt compliance.

The Commission recommends additional Federal and state legislation specifically prohibiting any regulatory agencies from establishing minimum merchant discounts.

The Commission also recommends that studies be undertaken now to consider the eventual Federal chartering and regulation of credit reporting agencies, both to assure the accuracy and confidentiality of their credit information and to achieve open and economical access to their data.

Appendix B to Chapter 1: Listing of the Membership, Foreword, Staff,
and Published Technical Studies of the National Commission on Consumer
Finance

1. Members of the Commission

Appointed by the President:

Ira M. Millstein, *Chairman*
Attorney
New York, New York

Appointed Chairman January 20, 1971
to succeed Robert Braucher

Dr. Robert W. Johnson
Professor, Purdue University
Lafayette, Indiana

Hon. Douglas M. Head
Attorney
Minneapolis, Minnesota
Appointed February 16, 1971

Appointed by the President of the Senate:

Hon. John Sparkman
Senator from Alabama

Hon. William Proxmire
Senator from Wisconsin

Hon. William E. Brock
Senator from Tennessee

Appointed April 5, 1971 to succeed
Hon. John G. Tower
Senator from Texas

Appointed by the Speaker of the House of Representatives:

Hon. Leonor K. Sullivan
Representative from Missouri

Hon. Henry B. Gonzalez

Representative from Texas

Appointed March 10, 1971 to succeed
Hon. Wright Patman
Representative from Texas

Hon. Lawrence G. Williams
Representative from Pennsylvania

Appointed March 10, 1971 to succeed
Hon. Seymour Halpern
Representative from New York

2. The Commission's Foreword

The National Commission on Consumer Finance, established by Title IV of the Consumer Credit Protection Act of 1968 (Public Law 90-321), attained its full membership on November 7, 1969 when the President named three public members and designated one of them Chairman.

As originally constituted, Commission members included Robert Braucher, professor of law at Harvard University, who was named Chairman; Robert W. Johnson, professor of finance at Purdue University; and Ira M. Millstein, member of the New York Bar, Presidential appointees; Senator John J. Sparkman, Senator William Proxmire, and Senator John G. Tower, Senate appointees; and Representative Wright Patman, Representative Leonor K. Sullivan, and Representative Seymour Halpern, House of Representatives appointees. When Chairman Braucher subsequently became an Associate Justice of the Supreme Judicial Court of Massachusetts, the President designated Mr. Millstein as Commission Chairman and named Douglas M. Head, former Attorney General for the State of Minnesota, to fill the vacancy. Later, when Senator Tower found it necessary to resign, he was replaced by Senator William E. Brock, and when Representatives Patman and Halpern also found it necessary to relinquish membership, they were replaced by Representative Henry B. Gonzalez and Representative Lawrence G. Williams. Despite these membership changes, however, a majority of the members and the Commission's executive director, Robert L. Meade, have served during the Commission's entire existence. Continuity was further achieved through monthly meetings and frequent written communications.

In a consumer message to Congress on October 30, 1969 President Nixon noted that total consumer credit outstanding had grown during the last 25 years from \$5.7 billion to \$100 billion and that Government supervision and regulation of consumer credit had become increasingly complex and difficult. The Commission, he said, "should begin its important work immediately."

Because of the wide area such a comprehensive subject could encompass, the Commission had to narrow the scope of its work to fit its funding and time limitations. Even so, the Commission twice had to ask Congress for additional time and once for additional funds. Certainly due in no small part to the interest, understanding, and generosity of the Congress, the Commission now offers this final Report to fulfill its Congressional mandate.

The Commission is confident that it has pioneered in collecting and presenting heretofore unobtainable data and ground-breaking studies and analyses. In and of themselves, the collection and dissemination of these data, the studies, and the analyses will provide a fresh and empirical basis for legislators, the industry, and scholars to consider.

Many of the supporting studies are being published as supplements to the final report for the use of legislators, the industry, scholars, and others interested in the basic data. Unpublished data and studies as well as computer tapes can be read at the records center of the National Archives and Records Service, Washington, D.C.

As to the findings, conclusions, and recommendations contained in the report, these were prepared by the Commission staff based upon the data, studies, and analyses collected by the Commission and, more importantly, based upon the numerous meetings of the Commission throughout its life at which all the Commissioners had the opportunity to present their respective views as the work progressed. As in any report of this nature, not all of the Commissioners agreed with all of the findings, conclusions, and recommendations, as evidenced by the separate views expressed by the individual members, which separate views follow the body of the report.

During the course of its study, the Commission held three public hearings in Washington, D.C. to obtain facts and views from individuals, consumer organizations, industry, and Government on the subjects of debt collection practices, responsibility for enforcement of consumer credit protection laws, and the availability of consumer credit to women. The Commission publicly acknowledges its gratitude to witnesses who appeared at the hearings to provide invaluable information related to ever increasing complexities in the consumer credit field. The Commission also notes its gratitude to thousands of credit industry officials who spent hours of time and effort in completing Commission questionnaires which provided priceless data. Obviously, their assistance in providing data does not necessarily indicate their concurrence with the report and its recommendations.

Although this report is directed to the President and to the Congress, the Commission hopes that consumers, the consumer credit industry, state legislative bodies, and professional and academic communities will also find that it adds substantially to their understanding of a growing industry and a complex subject.

3. Staff of the National Commission on Consumer Finance

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¹Until February 5, 1972

²Until September 4, 1971

³Until November 3, 1971

4. Technical Studies of the National Commission on Consumer Finance

The studies listed below are being published by the Commission and copies may be ordered from the Government Printing Office, Washington, D.C. 20401. Publication by the Commission does not imply its approval, but in many instances Commission findings, conclusions, and recommendations are, in part, based on the studies.

VOLUME I

1. Robert P. Shay and Milton W. Schober. Consumer Awareness of Annual Percentage Rates of Charge in Consumer Instalment Credit: Before and After Truth in Lending Became Effective.

2. George S. Day William K. Brandt. A Study of Consumer Credit Decisions: Implications for Present and Prospective Legislation.

3. Terry Deutscher. Credit Legislation Two Years Out: Awareness Changes and Behavioral Effects of Differential Awareness Levels.

VOLUME II

1. George J. Benston. The Costs of Extending Consumer Credit at Consumer Finance Companies and Commercial Banks.

2. George J. Benston. Continuous High Interest Rate Borrowing and Consumer Welfare: An Analysis of Maine's "36 Months Limitation" on Finance Company Small Loans.

3. Thomas A. Durkin. A High-Rate Market for Consumer Loans: The Small Small Loan Industry in Texas.

4. Thomas F. Cargill. Performance of Limited-Income Credit Unions: 1969-1970.

VOLUME III

Robert P. Shay and Milton W. Schober. A Statistical Compilation of Credit Rates, Extensions, and Outstandings in Consumer Credit Markets in the United States in 1971.

VOLUME IV

Edited by Douglas F. Greer and Robert P. Shay. An Econometric Analysis of the Consumer Credit Market in the United States in 1971

Part I:

1. Douglas F. Greer. A Theory of Credit Rationing.
2. Douglas F. Greer and Robert P. Shay. Preliminary Model Specifications for the Personal Loan Market.
3. Preliminary Model Specifications for the New Automobile Credit Market.
4. Douglas F. Greer and Robert P. Shay. Preliminary Model Specifications for Other Consumer Goods Credit Market.
5. Ernest A. Nagata and Douglas F. Greer. Preliminary Model Specifications for Mobile Home Credit Market.

Part II:

1. Douglas F. Greer. An Empirical Analysis of the Personal Loan Market.
2. Douglas F. Greer and Ernest A. Nagata. An Empirical Analysis of the New Automobile Credit Market.
3. Ernest A. Nagata and Douglas F. Greer. An Empirical Analysis of Other Consumer Goods Credit.
4. Ernest A. Nagata and Douglas F. Greer. An Empirical Analysis of the Mobile Home Credit Market.
5. Robert P. Shay. The Impact of State Legal Rate Ceilings upon the Availability and Price of Consumer Instalment Credit.
6. Richard K. Slater and Douglas F. Greer. The Role of Finance Income in Gross Profit Margins of Automobile Dealers.

VOLUME V

Alan R. Feldman and Douglas F. Greer Creditors' Remedies and Contractual Provisions: A Legal and Economic Analysis of Consumer Credit Collections

1. Introduction
2. The Collections Problem and Prelegal Procedures
3. Legal Sanctions: Definitions and Use
4. An Appraisal of the Importance of Legal Sanctions
5. Value Judgments and Public Policy Considerations

6. Conclusions and Recommendations

Appendix I Questionnaires

Appendix II Legal Status of Sanctions Included in the Regression Analyses

VOLUME VI

1. William C. Dunkelberg. An Analysis of the Impact of Rate Regulation in the Consumer Credit Industry.

2. Paul F. Smith. The Status of Competition in Consumer Credit Markets.

The studies listed below and prepared for the Commission may be perused at the Records Center of the National Archives and Records Service, Washington, D.C.:

1. Gary G. Chandler. An Analysis of the Debt Positions of Poverty Area Families

2. Ronda F. Paul. A Study of Credit Granting Systems for Low-Income Consumers.

3. Darrell A. McNabb. An Inquiry into the Response of Durable Goods Retailers to a Reduction in the Statutory Ceiling on Consumer Credit Charges.

4. Stephen M. Crane. A Study of Deficiency Suits for Automobile Credit Transactions in the District of Columbia.

5. Milton W. Schober. A Study of the Costs of Extending Retail Sales Credit.

6. Sylvia Lane. An Analysis of Credit Counseling Programs.