

Notes

Administration of the Uniform Consumer Credit Code

I. INTRODUCTION

It is axiomatic that no regulatory legislation can be stronger than its enforcement provisions.¹

The Uniform Consumer Credit Code (UCCC)² represents the first comprehensive approach to the legal problems of consumer credit. Responsibility for enforcement of the Code is divided between consumers and an Administrator. However, the greater burden lies with the latter, since not all violations may be corrected by consumer action.³ Moreover, the consumer's remedies will rarely be used, either because the consumer is unaware of their existence, or because the amount involved is too small to make litigation a practical course.⁴ The Administrator, on the other hand, may enforce all Code provisions⁵ and has a broad range of authority to collect information necessary to effective enforcement. Thus, while the UCCC does not detract from other remedies available to individuals,⁶ the success of the Code in ac-

¹Spanogle, *The U3C—It May Look Pretty, But Is It Enforceable?*, 29 OHIO ST. L.J. 624 (1968).

²Unless otherwise indicated, citations to the Uniform Consumer Credit Code (UCCC) are to the 1969 Official Text with Comments.

³Affirmative remedies of individual consumers are found in UCCC §§ 5.202, 5.203. These include actions for the taking of a negotiable instrument in a consumer credit sale, actions to recover amounts paid to a lender who is without authority to make such a loan, actions to recover excess finance charges, actions to recover any refunds due, and actions to recover for past wages due after wrongful discharge. The court has discretion to award attorneys' fees. The individual may also recover for disclosure violations, subject to various defenses. Other remedies are by way of defense only. The individual may not sue to prevent or remedy unconscionable conduct, to prevent unlawful garnishment, or to force the Administrator to take action pursuant to his authority.

⁴*Cf. Fritz, Would the Uniform Consumer Credit Code Help the Consumer?*, 25 BUS. LAW. 511, 513-18 (1970).

⁵UCCC §§ 6.113, 6.110, 6.104(a). See also UCCC § 5.202, Comment 3.

⁶UCCC § 6.115.

completing its purposes⁷ depends on an active, vigorous Administrator.⁸

This Note seeks to ascertain whether the policy decision of the drafters of the UCCC to rely on a "strong administrator" to protect the consumer and to assume an ombudsman role⁹ is justified by the manner of enforcement in the states which have adopted the Code.¹⁰ To this end, a questionnaire was designed and presented to the Administrators; responses were received from Colorado, Idaho, Indiana, Utah and Wyoming.¹¹ The responses to this questionnaire and other information on administration have been evaluated in terms of two previously developed criteria—the orientation and the aggressiveness of the Administrator.¹² This evaluation indicates the effectiveness of the UCCC in general and discloses problems which may be of significance to states contemplating its adoption. The questionnaire itself, along with a composite response, is included as an appendix to this Note.

II. ORIENTATION

An important first step in evaluating the effectiveness or

⁷UCCC § 1.102 states the various purposes of the Code. These include simplifying, clarifying, and modernizing consumer credit, providing rate ceilings, fostering understanding of credit terms and competition among suppliers of consumer credit, protecting consumers from unfair credit practices, encouraging development of fair credit practices, complying with the Federal Consumer Credit Protection Act, and making credit law uniform.

⁸*Cf.* Spanogle, *Why Does the Proposed Uniform Consumer Credit Code Eschew Private Enforcement?*, 23 BUS. LAW. 1039 (1968).

⁹NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, REPORT OF SPECIAL COMMITTEE ON RETAIL INSTALLMENT SALES, CONSUMER CREDIT, SMALL LOANS AND USURY 37 (1965), *cited in* Spanogle, *The U3C—It May Look Pretty, But Is It Enforceable?*, 29 OHIO ST. L.J. 624, 659 n.149 (1968).

¹⁰To date, the Code has been adopted by Colorado (1971), Idaho (1971), Indiana (1971), Iowa (1974), Kansas (1974), Maine (1975), Oklahoma (1969), Utah (1969), and Wyoming (1971) (effective dates).

¹¹The questionnaire was given to the Administrators and deputies at an informal meeting held in Indianapolis, Indiana, on September 18, 1974. Responses were not received from Kansas, Maine or Oklahoma. Iowa did not send a representative. Information on the administration of the Oklahoma UCCC is available in Miller, *Enforcement of the Uniform Consumer Credit Code: Observations from the Oklahoma and Federal Experiences*, 51 N.C.L. REV. 1229 (1973). Due to the newness of the Code in the remaining states, it is believed that the absence of their responses does not significantly detract from the conclusions reached.

¹²Professor Spanogle has indicated that there are three criteria to be used: adequacy of financing, consumer orientation, and aggressiveness. *See* Spanogle, *The U3C—It May Look Pretty, But Is It Enforceable?*, 29 OHIO ST. L.J. 624, 625 (1968). *Cf.* Fritz, *Would the Uniform Consumer Credit Code Help the Consumer?*, 25 BUS. LAW. 511, 513-14 (1970). Professor Miller

probable effectiveness of the UCCC as a regulator of consumer credit is to learn who or what agency is in charge of enforcement and interpretation of the Act.¹³ In general, the Administrators of the Code fall into two categories, being either a banking¹⁴ or legal¹⁵ officer of the state, or a commission headed by one of these two.¹⁶ Most of the states with longer experience under the UCCC have a bank agency administrator. The selection of one type of administrator or the other suggests the types of administrative enforcement mechanisms preferred in the administration of the Act.

While selecting an elected legal official has immediate political implications, it has been noted that selecting the state's banking officer may also have serious consequences.¹⁷ In the first place, administration of the Code is likely to be but one of several responsibilities of the agency.¹⁸ These other responsibilities may take priority over administration of the Code. Moreover, the qualifications to sit on the administrative commissions generally include experience as a bank executive or bank examiner.¹⁹ Many

discussed these criteria in his article and found that the second, consumer orientation, was inappropriate, preferring a neutral Administrator. Funding was dismissed as relative. See also Miller, *Enforcement of the Uniform Consumer Credit Code: Observations from the Oklahoma and Federal Experiences*, 51 N.C.L. REV. 1229, 1255-57 (1973). The questionnaire revealed no problems with funding. The authors feel that aggressiveness is so closely linked to orientation that the latter is a factor whether or not it is dealt with separately. That is, an Administrator is not likely to vigorously pursue remedies enforcing rights which he believes the consumer does not or should not have. Therefore, orientation has been retained as one indicium of effectiveness.

¹³In the Comment to UCCC § 6.103, the drafters have left complete discretion to the adopting states to select an Administrator.

¹⁴*E.g.*, Idaho, Indiana, and Wyoming.

¹⁵*E.g.*, Iowa.

¹⁶*E.g.*, Colorado, Oklahoma, and Utah.

¹⁷See Fritz, *Would the Uniform Consumer Credit Code Help the Consumer?*, 25 BUS. LAW. 511, 514 (1970).

¹⁸*E.g.*, the Utah Commissioner of Financial Institutions has jurisdiction over all banks, loan and trust corporations, all building and loan associations, all industrial loan companies, all credit unions, all licensed small loan businesses, and bank service corporations. UTAH CODE ANN. § 7-1-7 (1971 repl.). The problems caused by placing administration of the Code in such an agency were noted in *Symposium—The Uniform Consumer Credit Code and Its Effect on Present Minnesota Law*, 55 MINN. L. REV. 523, 586 (1971). However, no conflicts within the administrative agencies were reported in the questionnaire. *But see* Note, *Utah's UCCC: Boon, Boondoggle, or Just Plain Doggle*, 1972 UTAH L. REV. 133, 152.

¹⁹IND. CODE § 28-1-2-2 (Burns Supp. 1974) (two out of seven members must represent consumer, agricultural, industrial and commercial interests); KAN. STAT. ANN. § 16-403 (Supp. 1973) (experience with a consumer loan company required); UTAH CODE ANN. § 7-1-1(3) (1971 repl.); WYO. STAT.

of the offices which administer the UCCC were not created by a state's Code or contemporaneously with it but had been in existence²⁰ and thus approached administration of the Code with conceptions gained from prior experience. Even when the Administrator is a legal official, creditors are given greater opportunity than consumers to influence his action.²¹

Even assuming the utmost integrity on the part of the Administrator, he cannot, in these circumstances, be presumed to be primarily concerned with consumer credit, or to have any orientation thereto which does not comport with his prior duties and loyalties. Because of this, the Administrators chosen to date are not by their experience likely to enforce the Code as the consumer would desire. These persons, who have developed ongoing, working relationships within financial circles, seem unlikely choices to regulate the lending business in the interest of the credit consumer. While the questionnaire does not directly reveal bias on the part of any individual Administrator or of Administrators generally, some of the responses, for example, in regard to staffing, budgeting, and education, indirectly show a lack of consumer orientation as well as a lack of aggressiveness.

III. AGGRESSIVENESS

A. Use of Statutory Remedies

One indicator of the Administrator's effectiveness is his use of the various administrative tools available to him.²² The Administrator is given the power to bring civil actions.²³ He may seek injunctive relief for violations.²⁴ He may issue cease and desist orders except in cases of alleged unconscionable conduct.²⁵ He may in some cases obtain a restraining order.²⁶ He may accept voluntary assurances of discontinuance of violations.²⁷ How-

ANN. § 9-88 (1957). This fact has been cited as an argument for placing greater responsibility for enforcement in the hands of private individuals. See Spanogle, *Why Does the Proposed Consumer Credit Code Eschew Private Enforcement?*, 23 BUS. LAW. 1039 (1968).

²⁰See Appendix, Question No. 4.

²¹*E.g.*, in Colorado, the only interests which are required to be given representation are those of the business and insurance industries. See COLO. REV. STAT. ANN. § 73-6-401 (Supp. 1971).

²²In fact, Professor Miller seems to equate the use of various remedies with aggressiveness. See Miller, *Enforcement of the Uniform Consumer Credit Code: Observations from the Oklahoma and Federal Experiences*, 51 N.C.L. REV. 1229, 1256-57 (1973).

²³UCCC § 6.113.

²⁴UCCC §§ 6.110, 6.111 (unconscionable conduct).

²⁵UCCC § 6.108.

²⁶UCCC § 6.112.

²⁷UCCC § 6.109.

ever, all of these procedures are discretionary,²⁸ and the Administrator cannot be forced to employ any of them.²⁹ And, in fact, most of these remedies have not been utilized.

Only two states surveyed have used the civil action as an enforcing mechanism.³⁰ No Administrator has used the power to issue a cease and desist order.³¹ Only three state Administrators surveyed have used administrative hearings and investigations.³² All but one have used assurances of voluntary compliance.³³

Perhaps this should be viewed as encouraging data, indicating that there are few problems, and that all creditors are being "good guys" and are complying with the Code. Alternatively, the data may indicate unaggressive Administrators who are not seeking out conduct abusive to consumers' rights.

With almost sole enforcement of the Code in a public agency, an aggressive Administrator should bring test cases when the statute is less than clear or silent and should maintain a close watch for areas where violations may be affecting a number of consumers.³⁴ The failure of several states even to categorize complaints³⁵ reveals that at least one method of surveillance on behalf of consumers is being ignored.

An overall picture of administration is provided by the staffing of the administrative offices. Few, if any, attorneys are employed by the Administrators to handle legal problems in the office, to interpret the law, or to take action against violators.³⁶ Often there is no attorney at all. It is difficult to imagine the

²⁸Under the Wisconsin Consumer Act, the Administrator may investigate if he has reason to believe that violations are occurring, and he must investigate upon the filing of five verified complaints of violations of the Act. WIS. STAT. ANN. § 426.106 (1974). See Mildenburg, *Powers and Duties of the Administrator Under the Wisconsin Consumer Act*, 49 WIS. BUS. BULL. 53, 54 (1973).

²⁹*Cf.* Saucke v. FTC, 333 F. Supp. 1197 (N.D. Ga. 1971) (Consumer Credit Protection Act case).

³⁰Appendix, Question No. 16. Cases have generally been settled out of court or resulted in judgments in favor of the Administrator. See Miller, *Enforcement of the Uniform Consumer Credit Code: Observations from the Oklahoma and Federal Experiences*, 51 N.C.L. REV. 1229, 1243 n.74, 1258 n.152 (1973).

³¹Appendix, Question No. 16.

³²*Id.*

³³*Id.* The seeming readiness to use this procedure is another indication of the direction that administration of the Code has taken.

³⁴*Cf.* Spanogle, *Why Does the Proposed Uniform Consumer Credit Code Eschew Private Enforcement?*, 23 BUS. LAW. 1039, 1040 (1968).

³⁵Appendix, Question No. 20.

³⁶Appendix, Question No. 6. Among the states responding, no full-time attorneys are employed, and no more than one part-time attorney is employed in any state.

Code being effective without a legal staff to implement it. Moreover, there is a serious question in a few states as to whether the Administrator can sue anyone on his own initiative.³⁷ Although the Code gives the Administrator the authority to hire any necessary attorneys,³⁸ and to implement the various remedies,³⁹ these provisions conflict with earlier statutes in at least three states giving the Attorney General the sole right to represent the state⁴⁰ or to appoint assistant attorney generals to represent agencies.⁴¹ Though it would seem that the later-adopted Code would control, none of the Administrators involved has yet seen fit to have this matter resolved. Whether or not this causes problems in the day-to-day administration of the Code, it does subject the Code and its Administrators to uncertainty. The influence of the Attorney General is not necessary, nor does it facilitate efficient, aggressive administrative enforcement. The policy considerations of the Attorney General's office are not likely to be the same as those of the Administrator, and the Attorney General's influence may be harmful. In Indiana, at least, the conflict in enforcement runs counter to the expectations of those who studied the uniform draft of the UCCC before its adoption.⁴²

It should also be pointed out that since the possibility of consumer class actions is now in doubt,⁴³ and restrictions have

³⁷Appendix, Question No. 5.

³⁸UCCC § 6.104(1)(g).

³⁹UCCC § 6.110.

⁴⁰IND. CODE § 4-6-3-1 (Burns 1974); UTAH CODE ANN. § 7-1-24 (1971 repl.); WYO. STAT. ANN. § 9-113 (1959) ("Supervise"). In Kansas, the Attorney General must represent agencies in the supreme court. *See* KAN. STAT. ANN. § 75-702 (1969).

⁴¹IND. CODE § 4-6-5-1 (Burns 1974); WYO. STAT. ANN. § 9-122 (1959). An Indiana trial court case supports this view. *Teachers Credit Union v. Department of Fin. Inst.*, Civil No. F-9087 (St. Joseph County Cir. Ct., June 22, 1973).

⁴²The INDIANA LEGISLATIVE COUNCIL, REPORT OF THE UNIFORM CONSUMER CREDIT CODE STUDY COMMITTEE (1970), stated:

Part 1 of Article 6 gives the Administrator broad powers to investigate and prosecute UCCC violators through administrative proceedings and civil actions. The sections concerning powers of the administrator such as investigation, enforcement orders, assurances of discontinuance, injunctions and civil actions are permissive, allowing the Administrator to choose the method of enforcement.

The Committee approved the theory of selective prosecution which has the additional advantage of allowing the Administrator to tailor the method and amount of prosecution to the amount of funds and number of personnel available for enforcement.

Id. at 9.

⁴³*Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974). The lower court opinions are noted in 7 IND. L. REV. 361 (1973).

been imposed on legal services organizations,⁴⁴ an aggressive Administrator is all the more necessary to protect consumer rights where the extension of credit is involved.⁴⁵

Another possibility to consider in viewing the almost total lack of use of the administrative legal remedies is the restrictive drafting of these sections.⁴⁶ However, the Administrators themselves do not appear to view this as a problem since no changes were suggested in the area of remedies.⁴⁷ Of course, it is difficult to suggest that a remedy is unworkable or unduly restrictive when it has never been tested.

B. Examination

One of the administrative enforcement powers given to the Administrator by the UCCC is the authority to conduct examinations of both lenders and non-lender creditors falling under his jurisdiction.⁴⁸ These powers supplement the power some Administrators have traditionally possessed to examine lenders. However, except in Indiana,⁴⁹ examination of non-supervised financial organizations may be done only upon a showing of probable cause to suspect a violation.⁵⁰

Although the Code makes no express preference for this tool, it is apparent that it is the sum and substance of enforcement in some of the adopting states. The questionnaire reveals that examination is the most utilized power of the Administrator.⁵¹ This is largely attributable to the history and orientation of the agencies involved although it appears to also be emphasized in states in which the office of Administrator was created with the adoption of the Code.⁵²

This fixation on examination is illustrated by the time spent by UCCC states on examination of banks and other financial in-

⁴⁴Legal Services Corporation Act of 1974, 42 U.S.C.A. § 2996 (Supp., 1975).

⁴⁵These two factors have been given as underlying justifications for giving the private citizen partial responsibility for enforcing the Code. See Johnson, *Uniform Code for Consumer Credit*, 46 HARV. BUS. REV. 119, 124 (July-Aug. 1968).

⁴⁶*E.g.*, the requirement of probable cause to investigate non-lender creditors, UCCC § 6.106 (not required in Indiana; reasonable cause required in Colorado); a course of unconscionable conduct, UCCC § 6.111(1); or primarily credit transactions, UCCC § 6.111(2) (c).

⁴⁷Appendix, Question No. 22.

⁴⁸UCCC §§ 6.105, 6.106.

⁴⁹IND. CODE § 24-4.5-6-106 (Burns 1974). Colorado requires "reasonable" cause. COLO. REV. STAT. ANN. § 73-6-106 (Supp. 1971).

⁵⁰UCCC § 6.106.

⁵¹Appendix, Question No. 11.

⁵²*Id.*

stitutions under their jurisdiction. Although the National Commission on Consumer Finance (NCCF) feels that a 2.5 man-day examination is sufficient for each lending office,⁵³ the UCCC states allot 3.185 man-days to such activities.⁵⁴ The states having a banking-agency administrator allot 3.34 man-days per lending branch.⁵⁵ Indiana devoted the most time of any in this latter group, using 4.92 man-days per examination.⁵⁶

Examination to the extent outlined above obviously takes manpower and budgetary resources away from other types of enforcement. Moreover, it is questionable whether the purposes of examination are the same as those of consumer credit protection. According to the NCCF, the primary concern of examination is the solvency of the institution examined.⁵⁷ In addition, state examinations of banking institutions duplicate federal examinations to a large extent, thus making the waste of resources greater.⁵⁸

This emphasis on examination was not anticipated by the drafters of the Code. Rather, it was envisioned that little time would be devoted to such activities, and that relative simplicity of examination would allow the Administrator to implement the other Article VI provisions.⁵⁹ Moreover, it is apparent that some of the Administrators have neglected the substance of enforcement in favor of the appearance of enforcement given by examination of banks and businesses and the contribution of fees derived therefrom into the state's general fund.⁶⁰ These facts weigh heavily against placing enforcement of the Code in the hands of the state's banking commission.

C. Consumer Education

The Administrator is given power to counsel individuals and groups on their rights and duties under the Code, and to establish programs for consumer education on credit practices and

⁵³NATIONAL COMM'N ON CONSUMER FINANCE, CONSUMER CREDIT IN THE UNITED STATES 56 (1972).

⁵⁴*Id.*, Exhibit 4-9, at 78-79.

⁵⁵*Id.* No data was given for Idaho.

⁵⁶*Id.* Kansas was high for all states with 5.11 man-days per office.

⁵⁷*Id.* at 53. *Cf.* UTAH CODE ANN. § 7-1-8 (1971 repl.).

⁵⁸NATIONAL COMM'N ON CONSUMER FINANCE, CONSUMER CREDIT IN THE UNITED STATES 53-54 (1972).

⁵⁹See Curran, *Administration and Enforcement Under the Uniform Consumer Credit Code*, 33 LAW & CONTEMP. PROB. 737 (1968); Dunham, *Unconscionable Conduct and the Uniform Consumer Credit Code*, 23 J. FIN. 312, 319 (1968). See also INDIANA LEGISLATIVE COUNCIL, REPORT OF THE UNIFORM CONSUMER CREDIT CODE STUDY COMMITTEE 9 (1970).

⁶⁰UCCC § 6.203 provides for notification and filing fees which, in Indiana, go in part to the state's general fund.

problems.⁶¹ It is clear that since much of the enforcement of the Code is in the hands of the Administrator, the consumer must be made aware that an agency is there to help him with his consumer credit problems.⁶² A highly visible agency is an absolute necessity to effective public enforcement of the Code. Since the Administrator has the power to receive complaints, and to act upon them,⁶³ the individual consumer must be made aware of where and how to register his complaints.

How are the states communicating with the consumer? No state reported the use of a Wide Area Telephone Communications Service line for the registration of complaints. Only one state surveyed has used professional television spots, and two have used radio spots to reach the consumer.⁶⁴ It is discouraging that the mass media has not been more utilized since it is undoubtedly the most effective method of reaching large numbers of consumers.

Pamphlets and lectures are being used as a method of educating the consumer in some states;⁶⁵ however, at best, these will primarily reach the more well-informed citizens. In two states, limited attempts have been made to reach high school audiences.⁶⁶ There is no indication that any overall programs of consumer education are in existence or planned in any state surveyed.⁶⁷

The power to receive complaints should enable the Administrator to discover the particular areas in which consumer credit problems need attention and education. Educational programs could be partially channeled in these directions, but at least two states do not have data to categorize complaints, making an analysis along these lines mere guesswork.⁶⁸ Since all but one state reported a formal method of making complaints,⁶⁹ the information to categorize complaints is available and should be used in determining areas needed for consumer education.

The Administrator is also given power to make studies in order to effectuate the purposes and policies of the Code.⁷⁰ No

⁶¹UCCC § 6.104(1).

⁶²See Caplovitz, *Consumer Problems*, 23 LEGAL AID BRIEF CASE, 143, 147 (Feb. 1965).

⁶³UCCC § 6.104(1).

⁶⁴Appendix, Question No. 7. The Federal Trade Commission has used such spots but no assessment of effectiveness has been made. See Feldman, *FTC Enforcement of the Truth In Lending Act—One Year Later*, 26 BUS. LAW. 835, 837-38 (1971).

⁶⁵Appendix, Question No. 7.

⁶⁶*Id.*

⁶⁷*Id.*

⁶⁸Appendix, Question No. 20.

⁶⁹Appendix, Question No. 18.

⁷⁰UCCC § 6.104(1) (d).

state surveyed reported any studies undertaken.⁷¹ A study of consumer awareness of the existence of consumer credit legislation would be helpful in planning consumer education. Most creditors will at least be aware of the Code because of the notification filing requirements. On the other hand, consumer awareness depends upon effective education programs originating with the Administrator.

IV. CONCLUSION

The effectiveness of the Uniform Consumer Credit Code as a regulator of consumer credit depends largely upon the Administrator. The history and staffing of the current Administrators yield a structure which is not conducive to effective enforcement. This raises the question of whether states considering adoption of the UCCC in the future would find it more advantageous to adopt other consumer credit acts or simply to revise existing laws. At least, greater consideration should be given to the qualifications and selection of the Administrator and the structure of his office.

While no statute can insure that the agency entrusted with enforcement will adequately protect consumer interests, such purpose would be advanced by placing the administration of the Code in the hands of a separate agency, or an agency with a parallel constitutency. Certainly any such agency should have an adequate legal staff and the Administrator should possess the authority to sue suspected violators on his own initiative. Some actions should perhaps be made mandatory, as in the Wisconsin Consumer Act.⁷² Finally, someone with appropriate training should be placed in charge of developing an overall program of consumer education both for adults and children.

None of these things, either singly or collectively will insure enforcement of consumer credit protection, but each would greatly improve the administration of the Uniform Consumer Credit Code relative to the manner of enforcement to date.

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⁷¹Appendix, Question No. 7.

⁷²WIS. STAT. ANN. § 426.106 (1974). See note 28 *supra*.

Appendix*

1. *How are registration fees assessed in your state? How much revenue is raised in this manner?*

- Colorado:** Supervised lenders—\$150 per office
 Supervised Financial Organizations—\$10 per location
 All others—\$10 per \$100,000
 Revenue raised: approximately \$165,000 per year
- Idaho:** Statutorily Authorized Fee—Maximum \$50 Notification
 Fee plus \$10 for each \$100,000 of volume of consumer credit transactions over \$100,000
 Fee for Fiscal 1972—\$25 plus volume fee
 Fee for Fiscal 1973—\$15 plus volume fee if the creditor charges interest; \$10 plus volume fee if the creditor does not charge interest
 Fee for Fiscal 1974—\$15 plus volume fee if the creditor charges interest; \$10 plus volume fee if the creditor does not charge interest
 Revenue raised: Fiscal 1972—\$100,441
 Fiscal 1973—\$ 74,580
 Fiscal 1974—\$ 87,236
- Indiana:** Fee when filing Notice of Intent—\$15
 \$15 per first \$100,000 of "original unpaid balances" or part thereof
 \$10 per each \$100,000 or part thereof above the first \$100,000
 Revenue raised: approximately \$450,000 per year
- Utah:** Regulated Lenders, including non-lending sellers—basic fee of \$25 on or before January 1st of each year, plus \$10 for each \$100,000, or part thereof, in excess of \$100,000, of the original unpaid balances arising from consumer credit transactions made within the preceding year and held for more than 30 days
 Supervised Lenders—pay the above fees on the same date, but are required to pay an additional \$25 basic fee plus \$25 for each additional location on July 1st of each year
 Assignees—\$10 on the first \$100,000 of volume of assigned transactions
 Revenue raised: Regulated lenders and non-lending sellers \$81,140
 Supervised Lenders \$13,983
 Total \$95,123
 Examination fees for Supervised Lenders \$ 8,580
- Wyoming:** \$10 minimum per year plus \$15 per \$100,000 or portion thereof for each \$100,000 of volume in excess of the first \$100,000
 Revenue raised: \$50,000 annually

*The answers from the Administrators are for the most part taken verbatim from the questionnaires. Minor changes have been made by the authors for clarity.

2. *How much does your state allocate for operation of the Administrator?*
- | | | |
|-----------|--|-----------|
| Colorado: | 1974-75 | \$134,000 |
| | Requested 1975-76 | \$160,000 |
| Idaho: | 1974 | \$87,236 |
| Indiana: | Information not available at present | |
| Utah: | Estimate for fiscal year
ending June 30, 1974 | \$73,428 |
| Wyoming: | Current biennium | \$93,000 |
3. *Approximately, what percent of businesses required to be registered under the USC are, in fact, registered?*
- | | |
|-----------|-------------------|
| Colorado: | 85% |
| Idaho: | 92% |
| Indiana: | No data available |
| Utah: | 80% |
| Wyoming: | 80% |
4. *Administration. Is your agency new with the USC, or was it in existence prior to that time?*
- | | |
|-----------|---|
| Colorado: | New |
| Idaho: | In existence |
| Indiana: | Created in 1935 |
| Utah: | Department in existence, but consumer credit administration was new when act became effective |
| Wyoming: | New |
5. *Can you sue suspected violators on your own initiative, or must you obtain the consent or assistance of another person or agency?*
- | | |
|-----------|--|
| Colorado: | On own initiative |
| Idaho: | On own initiative |
| Indiana: | My understanding is we would need to do so via the Attorney General's office; we can issue certain orders, but not actually sue. |
| Utah: | Attorney General sues on behalf of the Administrator. |
| Wyoming: | No response to this question |
6. *How many attorneys are employed for USC work?*
- | | |
|-----------|--|
| Colorado: | One, but part of the Attorney General's office |
| Idaho: | None |
| Indiana: | None "officially", one "unofficially" |
| Utah: | One (part time), none at present |
| Wyoming: | One (part time) |
7. *What education, study, and publicity programs have been undertaken by you, and what percent of your overall budget is allocated to these functions?*
- | | |
|-----------|--|
| Colorado: | Pamphlets, three 30 second professional television spots, three 30 second professional radio spots, placards for buses
Percent of overall budget: Up to 10% |
| Idaho: | Lectures at schools, community service organizations, business groups and consumer groups
Percent of overall budget: 10% |
| Indiana: | Such activities have been spasmodic and meager. Such is an un-met need.
Percent of overall budget: No percentage specifically allocated |

- Utah:** Two brochures have been developed for consumer education. Appearances on television consumer programs and radio spots. Talks to many high schools in the State. Appearances on programs sponsored by minority groups and special interests such as home economic, legal and accounting conventions.
Percent of overall budget: Less than 1%
- Wyoming:** No full time program developed. Have prepared audio-visual presentations (consumer and creditor) which are presented upon request. Also disseminated pamphlet throughout State for consumer education.
Percent of overall budget: 5%
8. *Examinations. Are examinations made of all, or virtually all, consumer credit transactions of supervised financial institutions under your jurisdiction, or are random samples taken? That is, to what extent do you find discretion in examination to be advantageous?*
- Colorado:** Random samplings of approximately 20% unless past history of violations—then could be as high as 100%.
- Idaho:** Samples are taken initially. If there is a 5% of sample error factor all transactions are reviewed.
- Indiana:** Discretion in this Division is necessary. We assign our non-lender examinations by our discretionary judgments. Most "supervised financial organizations" are not fully examined for USC compliance.
- Utah:** Spot check of credit files is made initially. If numerous violations are found, a more complete examination is made.
- Wyoming:** At the outset virtually all transactions are checked, but currently, in routine re-examinations, random samples are taken. If sampling indicates repeated violations then extensive checking is pursued.
9. *At what intervals do examinations occur?*
- Colorado:** Supervised Lenders—at least once per year. If a problem, then three times.
All others—occasional basis
- Idaho:** Annually
- Indiana:** From 12 to 18 months as discretion suggests need, and staff is available.
- Utah:** Supervised Lenders—annually
Regulated Lenders and non-lender sellers—as complaints require or as the department becomes aware of irregularities, or at the discretion of the Administrator.
- Wyoming:** State chartered supervised financial organizations—semi-annually
State licensed supervised lenders and sales finance companies—annually
10. *What is the status of nationally chartered institutions under your scheme of administration?*
- Colorado:** No right to examine, but work through Regional Administrator of National Banks.
- Idaho:** Each office is licensed separately.

- Indiana:** They pay Code fees but are not examined by us for compliance.
- Utah:** Any institution chartered or holding authorization certificate under this State or the United States to make loans and to receive deposits, including savings, shares, certificate or deposit accounts, is exempt from filing notification.
- Wyoming:** Agency designed examination check lists used by examiners of federally chartered Supervised Financial Organizations.
11. *What emphasis do you place on examination, relative to the other powers granted to you by the Code?*
- Colorado:** Most emphasis on examination
- Idaho:** It is the most time consuming single function.
- Indiana:** Examination is paramount. Some consumer creditors don't know anything regarding requirements. Others are aware but poorly informed. Examinations are not only curative but preventative.
- Utah:** Examination forms are furnished National Bank Examiners for their use in examining federally chartered banks. Examination of Regulated Lenders may be made without cause at the discretion of the Administrator.
- Wyoming:** Considerable emphasis is placed on examinations. Creditors are normally appreciative of assistance rendered in gaining compliance. Unless it appears there is no other recourse only then would other powers granted be invoked.
12. *How many examiners do you employ to examine (a) financial institutions, (b) credit retailers, or (c) undifferentiated examiners?*
- Colorado:** (a) 1 chief examiner, 3 regular examiners
- Idaho:** The UCCC Bureau is allocated 1.7 examiners who examine financial institutions and retailers.
- Indiana:** This Division: 17 [Authors' note: "This division" probably means Division of Consumer Credit, which is one of four divisions of the Department of Financial Institutions.]
- Utah:** (a) 3 (b) 1 (c) 12
- Wyoming:** (a) one agency examiner, six bank examiners
(b) retailers not examined but investigated upon receipt of probable cause
(c) no undifferentiated examiners
13. *What inter-departmental problems or conflicts have arisen in the administration of the U3C in your state?*
- Colorado:** None
- Idaho:** None
- Indiana:** I must refer you to the Director since my responsibility is limited to the position of Supervisor of the Division of Consumer Credit, charged by statute with administering the law.
- Utah:** None. In fact the U3C being administered within the department helps the Administrator to enforce the statutes governing consumer credit transactions more

expeditiously than if the U3C was administered alone or in another department.

Wyoming: No response to question

14. *To whom may we write to obtain copies of your annual reports to the Governor, exam sheets for financial institutions, or other similar papers?*

Colorado: Administrator UCCC

112 East 14th Avenue

Denver, Colorado 80203

Idaho: Idaho Department of Finance

Statehouse Annex 5

Boise, Idaho 83720

Indiana: Joseph V. Riley, Supervisor

Division of Consumer Credit

1024 State Office Building

Indianapolis, Indiana 46204

Utah: Department of Financial Institutions

Ten West Broadway—Suite 331

Salt Lake City, Utah 84101

Wyoming: State Examiner, Administrator, Wyoming UCCC

Supreme Court Building

Cheyenne, Wyoming 82002

15. *What have been your major administrative problems under your version of the Code?*

Colorado: Collection of fees

Idaho: Inadequate staff

Indiana: (1) Interpreting the meaning of the law to creditors and attorneys.

(2) Resistance by consumer creditors who haven't known of the law or resent its requirements.

Utah: Registration of non-lender sellers.

FTC Rule Making Authority versus States Statutes of U3C.

Closing costs on loans secured by an interest in land in which the annual percentage rate exceeds 10%.

Arranger of credit needs definition.

To establish minimum of 12% APR on which real estate transactions would be subject to the Code as consumer loans.

Wyoming: Rounding up creditors required to file notification.

Transactions assigned to out-of-state assignees.

Gaining compliance by itinerant door-to-door credit sellers.

16. *We need to know something of the legal remedies employed by you. Therefore, we would like to know how many of the following actions have been employed, and to what extent. Second, what importance the remedy assumes relative to other methods of enforcement. Third, for what types of violations are the remedies used. Finally, what problems arise in the use of each action. Civil Actions, Criminal Actions, Administrative Hearings and Investigations, Cease and Desist Orders, Assurances of Voluntary Compliance.*

Colorado: Civil Actions: None

Criminal Actions: None

- Administrative Hearings and Investigations: Numerous
Investigations, Fourteen Hearings
Ceases and Desist Orders: None
Assurances of Voluntary Compliance: Two
- Idaho:** Civil Actions: None
Criminal Actions: None
Administrative Hearings and Investigations: 400
Cease and Desist Orders: None
Assurances of Voluntary Compliance: None
- Indiana:** Civil Actions: None have been initiated
Criminal Actions: None have been initiated. Such we believe must be via the County Prosecutor.
Administrative Hearings and Investigations: No hearings, except for Regulations. Many field investigations have been made with varying effect, mostly successful.
Cease and Desist Orders: None have been issued
Assurances of Voluntary Compliance: Hundreds via examination and special field examinations
- Utah:** Civil Actions: 7 suits brought by the Attorney General on behalf of the Administrator. All settled by stipulation. Violations consisted of fraudulent misrepresentations having the effect of coercing and inducing consumers to purchase; misleading material used, literature, sales ads and letters; full disclosure under the act was not made.
Criminal Actions: None
Administrative Hearings and Investigations: 7 hearings have been held by the Administrator. 2 hearings held for failure and refusal to file notification. Both complied and have continued to renew filing. 2 hearings on disclosure violations. Both complied with corrected forms. 1 hearing on improper advertising was settled by acceptance of consent order. 1 hearing on probable requirement of credit life insurance on contracts. Determined to be a misunderstanding on the part of the consumer. 1 hearing on referral sales was found to be without cause and no violation found.
Cease and Desist Orders: None
Assurances of Voluntary Compliance: Two accepted without hearing
- Wyoming:** Civil Actions: None
Criminal Actions: None
Administrative Hearings and Investigations: None
Cease and Desist Orders: None
Assurances of Voluntary Compliance: 25
17. *What special tactics, if any, may be used against a business about which repeated complaints have been made?*
- Colorado:** None
- Idaho:** No response to question
- Indiana:** We have very few of such. Most want to comply. We persuade, cajole, sometimes compromise, and finally imply the possibility of legal action.
- Utah:** Commence an investigation if there is probable cause to believe a violation has occurred. After notice and hear-

ing, issue cease and desist order. The Administrator may bring a civil action to restrain a person from violating the act.

Wyoming: Reference Section 40-6-106, Wyoming Statutes.

18. *Do you have a formal channel through which consumer complaints are transmitted? Is a copy of any investigative report sent to the complaining consumer?*

Colorado: Formal complaints filed in office or through Colorado State University Extension Service. Consumer receives a written reply but not a copy of the report.

Idaho: (a) yes (b) no

Indiana: (a) yes (b) Not as practice; but we advise him of results effected.

Utah: (a) No formal channel on consumer complaints is used. Some are made by telephone; others by personal contact at the department by completion of a complaint form. (b) We sometimes send a copy of an investigative report to the complainant.

Wyoming: (a) yes (b) no

19. *Have any applications for licenses been refused, or outstanding licenses revoked or suspended?*

Colorado: Three refused for insufficient capital. Twelve revoked for failing to file reports or out of business without surrender of permanent license.

Idaho: No

Indiana: Not under the U3C

Utah: No

Wyoming: One license refused

20. *What are the major types of complaints made or issues raised by consumers, businessmen, or lenders, either formally or informally?*

Colorado: Consumers—rebates
Lenders etc.—Code too severe

Idaho: Consumers—rates and rebates
Business—rates and disclosure

Indiana: Consumers are the complainants. We do not have data that would categorize complaints; they run a broad gamut.

“Small businesses” complain bitterly about the onerous burden of filing and paying a fee. (Refer to Question 22 for a remedy.) Large business endorsed the Code and generally have influences in the legislature for changes they desire.

Utah: By consumers: overcharges, homes solicitation sales, disclosure violations, rebate quotations.

By businessmen: notification filing, compliance with Federal and State laws which are not uniform.

By lenders: changes requiring printing of new forms, confusion on closing costs and some rebate transactions.

Wyoming: Unable to categorize

21. *If a violation of the U3C is found or suspected, what do you consider to be the most effective means of remedying the problem, assuming voluntary compliance is not forthcoming?*

- Colorado: Administrative hearing
- Idaho: 1. Suit for injunction 2. Administrative license revocation
- Indiana: As a first step: Administrative Hearing. Much would depend on the severity of the violation.
- Utah: Cease and desist order with civil action to restrain violations of the act.
- Wyoming: To date no problems in obtaining statement of voluntary compliance. Would assume, in the absence of previous experience, that provisions of Section 40-6-108 would be most effective.

22. *Do you consider any modifications of the Uniform Draft to have been beneficial from the standpoint of administration? What modifications would you recommend to states who enact the Code in the future?*

- Colorado: Require license fee from Supervised Lenders
Prohibit Rule of 78's after 60 months
Prohibit unilateral deferral
Possible removal of brick wall amendment
- Idaho: I would recommend that Administrators request that notification fees be paid into a dedicated fund so that the fees may actually be used to administer the Code. The common practice is for the funds to be paid into the state general fund with only a part of the funds subsequently being appropriated to the administrator.
- Indiana: (a) Elimination of Department requirement that gasoline filling stations must file.
(b) Generally, I favor: 1. Eliminate "month-for-a-day" on prepayment. Go to nearest due-date. 2. Revise formula for fees. Assess administrative costs on "creditors" who benefit most via volume and profit-participation. Save the little businessman from fees and the Division from mass details thereby. 3. Stipulate will-full failure to "file" as grounds for voiding consumer loan or consumer credit sale.
- Utah: Administrative Rules of the Administrator should supersede any provisions of the act which are inconsistent with the Federal Consumer Credit Protection Act.
- Wyoming: It is hoped that, in the interest of uniformity, no major changes will be made by States enacting the Code in the future. Already the "uniform" Code has been stretched beyond recognition and discussions among the various administrators, in which mutual problems may be discussed, is becoming increasingly difficult.