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Regulation Z and the UCCC: The Bewildering Maze of Credit Disclosure Provisions

The last decade has seen dramatic changes in consumer legislation and regulation, particularly with regard to consumer credit. On the federal level, Congress enacted the Consumer Credit Protection Act (CCPA) in 1968.¹ The "Truth in Lending" portion of the CCPA is designed to protect consumers through uniform disclosure of the actual cost of credit.² These disclosure requirements are designed to permit a consumer to compare credit terms and avoid the uninformed use of credit.³ The disclosure provisions of the CCPA are implemented by Regulation Z,⁴ which was drafted by the Federal Reserve Board under authority granted by the Act.⁵

On the state level, the most significant developments have centered around the Uniform Consumer Credit Code (UCCC). Originally drafted in 1968, the UCCC is a much more comprehensive law than the CCPA and was intended to "simplify, clarify, and modernize the law" in this area.⁶ The 1968 UCCC requires disclosures that are similar to the CCPA disclosures,⁷ but also places limitations on the price of credit⁸ and prohibits certain nefarious creditor practices.⁹ The UCCC was revised in 1974, and a much more limited disclosure scheme was adopted.¹⁰

This Comment will focus on the problems a creditor faces in complying with both the federal and state disclosure requirements in states where the UCCC has been adopted. A creditor will normally be highly motivated to comply with these laws because penalties are relatively severe¹¹ and have been rather strictly enforced.¹² Moreover, most creditors will see the advan-

1. Consumer Credit Protection Act of 1968, Pub. L. No. 90-321, §§ 101-504, 82 Stat. 146 (codified at 15 U.S.C. §§ 1601-1692o (1976), *as amended* by Act of September 20, 1977, Pub. L. No. 95-109, §§ 801-818, 91 Stat. 874).

2. 15 U.S.C. § 1601 (1976).

3. *Id.*

4. Regulation Z, 12 C.F.R. § 226 (1978).

5. 15 U.S.C. § 1604 (1976).

6. UNIFORM CONSUMER CREDIT CODE § 1.102-(2)(a) (1968 version) [hereinafter cited without cross-reference as U.C.C.C.].

7. *Compare* U.C.C.C. §§ 2.301-.313, 3.301-.312 (1968 version) *with* 15 U.S.C. §§ 1621-1635 (1976).

8. U.C.C.C. §§ 2.201-.210, 3.201-.210 (1968 version).

9. *Id.* §§ 2.401-.416, 3.401-.409.

10. *Id.* §§ 3.201-.209 (1974 version).

11. 15 U.S.C. §§ 1611, 1640, 1667d (1976); U.C.C.C. §§ 5.201-.302 (1968 version).

12. *See, e.g.,* Mourning v. Family Publications Serv., Inc., 411 U.S. 356 (1973); Davis

tage in serving the public fairly, honestly, and within the bounds of the law. The complexity of the disclosure provisions, however, makes strict compliance a difficult matter. Considered separately, the technical requirements of the UCCC and the CCPA are substantial; together they become a bewildering maze that discourages compliance. Extensive changes in the law in the last few years tend to compound the confusion.

To illustrate the difficulties of compliance, this Comment will examine the CCPA with its accompanying regulations and the 1968 and 1974 drafts of the UCCC. The success of attempts to resolve the problems of statutory overlap between the federal and state disclosure schemes will then be considered. In conclusion, a few simple remedial alternatives will be examined.

I. OVERVIEW OF FEDERAL AND STATE DISCLOSURE SCHEMES

A. *The CCPA*

The truth-in-lending provisions contained in title I of the CCPA¹³ protect consumers by requiring creditors to disclose all costs in a credit transaction in a uniform and meaningful way.¹⁴ Title I of the Act is implemented by Regulation Z,¹⁵ which specifies the detailed disclosures that are outlined only generally in the Act itself, and is therefore more important to a creditor than the parent legislation.

The formalities specified by Regulation Z, such as location of disclosures, precise order and terminology specifications, and type size and style requirements, apply to all substantive disclosures.¹⁶ Timing and substance of the disclosures vary depending on whether the transaction involves open end credit,¹⁷ closed end credit,¹⁸ or a consumer lease.¹⁹ In every transaction, however, a

v. United Cos. Mort. & Inv., Inc., 551 F.2d 971 (5th Cir. 1977); Grant v. Imperial Motors, 539 F.2d 506 (5th Cir. 1976); Lauletta v. Valley Buick, Inc., 421 F. Supp. 1036 (W.D. Pa. 1976).

13. 15 U.S.C. §§ 1601-1667e (1976).

Title I also regulates advertising, credit cards, and fair credit billing procedures. Other portions of the CCPA include: title II, Extortionate Credit Transactions; title III, Restrictions on Garnishment; title IV, National Commission on Consumer Finance; title V, General Provisions; title VI, Fair Credit Reporting; title VII, Equal Credit Opportunity; and title VIII, Fair Debt Collection Practices. See note 1 *supra*.

14. See generally 15 U.S.C. §§ 1631-1639 (1976).

15. 12 C.F.R. § 226 (1978).

16. *Id.* §§ 226.6(a), .7(c), .8(a), .15(a).

17. *Id.* § 226.7. Credit cards are common forms of open end credit arrangements.

18. *Id.* § 226.8. The Regulation refers to "credit other than open end," which means normal loans for a fixed dollar amount.

19. *Id.* § 226.15.

copy of the disclosure statement must be given to the consumer.²⁰

The most important substantive disclosures are the finance charge and the annual percentage rate. In essence, the finance charge is the total of all costs that the consumer must pay for credit, either directly or indirectly. It includes interest, loan fee, finder's fee, time price differential, amount paid as a discount, service charge, points, and credit report fee.²¹ The annual percentage rate is the relative cost of credit in percentage terms.²² It is computed according to specific mathematical equations and technical instructions contained in the Regulation, and it must be disclosed with an accuracy of at least one quarter of one percent.²³

Regulation Z also requires disclosure of the repayment procedure of the credit contract. This includes the number, amounts, and due dates or periods of payments scheduled to repay the indebtedness.²⁴ The sum of payments must be separately disclosed and identified as "total of payments."²⁵ A payment schedule including a balloon payment must be explained and clearly identified.²⁶ The creditor must explain both the default or delinquency charges that may be assessed because of late payment, as well as the method of computing penalty charges that may be assessed for early payment.²⁷ He must also disclose any security interest acquired or retained in connection with the extension of consumer credit.²⁸

B. *The UCCC*

The UCCC was originally drafted in 1968 by the National Conference of Commissioners on Uniform State Laws to provide the states with a uniform and comprehensive body of consumer credit law.²⁹ The 1968 UCCC separates "consumer loans"³⁰ from "consumer credit sales"³¹ and prescribes disclosures for each; the

20. *Id.* §§ 226.7(a), .8(a), .15(a).

21. *Id.* § 226.4(a).

22. *Id.* § 226.2(g).

23. *Id.* § 226.5.

24. *Id.* § 226.8(b)(3).

25. *Id.*

26. *Id.*

27. *Id.* § 226.8(b)(4), (6).

28. *Id.* § 226.8(b)(5).

29. U.C.C.C., Prefatory Note at xvii (1974 version).

30. U.C.C.C. §§ 3.101-.605 (1968 version).

31. *Id.* §§ 2.101-.605.

federal law minimizes this distinction.³²

Other than this major organizational difference, the 1968 UCCC disclosure requirements vary little from the federal law in substance but vary significantly in phraseology. For example, while Regulation Z requires disclosure of the "finance charge,"³³ the 1968 UCCC requires disclosure of the "credit service charge" in credit sales or the "loan finance charge" in loan transactions.³⁴ These disclosures are meant to accomplish the same objective, and the charges are calculated the same way.³⁵ Like Regulation Z, the 1968 UCCC requires disclosure of the annual percentage rate, repayment procedures, balloon payments, delinquency charges, penalty charges, and security interests acquired or retained.³⁶

The state officer administering the UCCC is charged with the enforcement of the law as well as the responsibility to promulgate state regulations "not inconsistent with the Federal Consumer Credit Protection Act."³⁷ Because the UCCC definition of the CCPA includes Regulation Z,³⁸ the state regulations pursuant to the UCCC should parallel the federal regulations quite closely.³⁹

The 1968 version was enacted and prevails with varying degrees of modification in Colorado,⁴⁰ Idaho,⁴¹ Indiana,⁴² Oklahoma,⁴³ South Carolina,⁴⁴ Utah,⁴⁵ Wisconsin,⁴⁶ and Wyoming.⁴⁷ Of these states, South Carolina and Wisconsin adopted a different disclosure scheme than the others, which eliminated any overlap between state and federal disclosure requirements.⁴⁸

In 1974 the UCCC was extensively amended by the National

32. 12 C.F.R. § 226.2(p) (1978). *See id.* § 226.8(c), (d).

33. *Id.* § 226.4.

34. U.C.C.C. §§ 2.109, 3.109 (1968 version).

35. *See id.* 12 C.F.R. § 226.4 (1978).

36. U.C.C.C. §§ 2.306, 3.306 (1968 version).

37. *Id.* § 6.104(2).

38. *Id.* § 1.302.

39. *See Miller, Living with Both the UCCC and Regulation Z*, 26 OKLA. L. REV. 1, 4-5 (1973).

40. COLO. REV. STAT. §§ 5-1-101 to -12-105 (1973).

41. IDAHO CODE §§ 28-31-101 to -39-108 (Supp. 1978).

42. IND. CODE ANN. §§ 24-4.5-1-101 to -6-203 (Burns 1974).

43. OKLA. STAT. ANN. tit. 14a, §§ 1-101 to 9-103 (West 1972).

44. S.C. CODE §§ 37-1-101 to -6-510 (1976).

45. UTAH CODE ANN. §§ 70B-1-101 to -11-105 (Supp. 1977).

46. WIS. STAT. ANN. §§ 421.101-422.420 (West 1974).

47. WYO. STAT. §§ 40-14-101 to -702 (1977).

48. The disclosure scheme adopted by these states is more similar to the 1974 UCCC than to the 1968 UCCC; it has eliminated statutory overlap by leaving disclosure regulation to the federal government.

Conference of Commissioners.⁴⁹ The 1974 UCCC reorganized the text of the Code to recognize the obvious similarity between consumer loans and consumer credit sales, and largely did away with the distinction for disclosure purposes.⁵⁰ Recognizing the problems created by duplicative state and federal disclosure provisions, and the fact that state regulation had been essentially preempted by the federal government,⁵¹ the Commissioners eliminated nearly all disclosure requirements. Instead, the 1974 draft requires compliance with the CCPA⁵² and adds a few other disclosure requirements that go beyond the CCPA.⁵³ Three states—Iowa,⁵⁴ Kansas,⁵⁵ and Maine⁵⁶—have enacted versions of the 1974 UCCC.

II. ATTEMPTS TO RECONCILE OVERLAPPING DISCLOSURE REQUIREMENTS

The existence of two similar but nonidentical laws requires a reconciliation of the overlapping requirements. The 1974 UCCC eliminates interaction problems because it leaves disclosure regulation almost entirely to federal control.⁵⁷ Six states, however, still adhere to the disclosure scheme of the 1968 draft of the UCCC and are still faced with the problem of statutory overlap. Both federal and state laws have attempted to resolve this problem.

The CCPA preempts state laws only if the state provisions are inconsistent with the federal law or regulation, and then only to the extent of the inconsistency.⁵⁸ This "inconsistency" occurs when state law requires different disclosures than Regulation Z "with respect to form, content, terminology, or time of delivery," or requires disclosure of the finance charge or the annual percentage rate in any manner other than that prescribed by the federal regulation.⁵⁹ A state law is not considered inconsistent "if the

49. See U.C.C.C., Prefatory Note (1974 version).

50. *Id.*, Prefatory Note at xxxvi.

51. *Id.*, Prefatory Note at xxxiii-xxxv.

52. *Id.* § 3.201.

53. *Id.* §§ 3.202-.209.

54. IOWA CODE ANN. §§ 537.1101-.7103 (West Supp. 1978).

55. KAN. STAT. ANN. §§ 16a-1-101 to -9-102 (1974).

56. ME. REV. STAT. ANN. tit. 9A, §§ 1.101-7.127 (Supp. 1978).

57. U.C.C.C. §§ 3.201-.209 (1974 version).

58. 15 U.S.C. § 1610(a) (1976).

59. 12 C.F.R. § 226.6(b) (1978).

creditor can comply with the State law without violating" the regulation.⁶⁰

The CCPA allows creditors to supply additional information as long as it is not used to mislead or confuse the customer.⁶¹ Even inconsistent disclosures required by state law may be supplied if they are printed on a separate paper, or on the same page if printed below and conspicuously separated from the federal disclosures, and if they are clearly identified as inconsistent.⁶²

Although a creditor can handle differences in this way, the CCPA provides an alternative. Upon application to the Federal Reserve Board, a state may be granted an exemption from the federal disclosure provisions for any class of transactions subject to state requirements that are "substantially similar" to the federal requirements and that make adequate provision for enforcement.⁶³ Of course, a creditor cannot obtain this exemption on his own and therefore must rely on the state for this alternative.

On the state level, the 1968 UCCC also attempts to avoid the problem of overlapping disclosure provisions. The UCCC seeks to "conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act."⁶⁴ The drafters of the UCCC attempted to make the disclosure requirements "substantially similar" to those of the federal law and contemplated that adoption of the UCCC would qualify a state for exemption from the federal requirements.⁶⁵ The provision requiring state regulations that are similar to Regulation Z⁶⁶ empowers the state UCCC administrator to update the regulations in order to keep them parallel with the federal regulations. Periodic updating can be more easily accomplished this way than through the legislature. By updating the state regulations, an exemption, once granted, is expected to continue.⁶⁷

In addition, the UCCC disclosure provisions grant the creditor the option of complying with the UCCC or the CCPA.⁶⁸ On its face this provision appears to eliminate all possible statutory conflict. Nevertheless, as explained in the next section, this provision does not provide a reliable alternative to the creditor.

60. *Id.* § 226.6(b)(ii).

61. *Id.* § 226.6(c).

62. *Id.*

63. *Id.* § 226.12(a), (c)(2).

64. U.C.C.C. § 1.102(f) (1968 version).

65. *Id.*, Prefatory Note at xvii.

66. *Id.* § 6.104(2).

67. *Id.*, Prefatory Note at xvii-xix.

68. *Id.* §§ 2.301, 3.301.

III. UNRESOLVED CONFLICTS BETWEEN STATE AND FEDERAL DISCLOSURE REQUIREMENTS

The attempts to mesh the federal and state provisions have resolved the potential conflicts in some states, but not in others. Clearly, those states with disclosure schemes similar to the 1974 UCCC have no interaction problems. Of the six states with substantial disclosure requirements based on the 1968 UCCC scheme, only Oklahoma and Wyoming have been successful in obtaining exemptions from the federal disclosure requirements.⁶⁹ The other states found that the "substantially similar" requirement was treated as a "virtually identical" requirement by the Federal Reserve Board.⁷⁰ Thus, Colorado, Idaho, Indiana, and Utah have not been granted exemptions from the federal law, although all have disclosure provisions based on the 1968 UCCC that vary only slightly from the federal requirements. Consequently, these four states are left with just one avenue in resolving the problem of statutory overlap: the UCCC provision allowing a creditor to make either the disclosures required by the UCCC or those required by the CCPA.⁷¹ Unfortunately, this seemingly clear provision is a potential hazard. Professor Fred H. Miller, one of the coreporter-draftsmen of the UCCC, points out that a creditor cannot disregard the disclosure requirements contained in the UCCC because the UCCC requirements go beyond those of the CCPA.⁷² According to Miller, the conclusion that the UCCC provisions allowing compliance with either the UCCC or the CCPA permit a total disregard for the UCCC disclosures would be "unadulterated nonsense" since it would mean "that the drafters of the UCCC were merely expending ink and paper" in adding those provisions of the UCCC not contained in Regulation Z.⁷³ For example, the UCCC provision requiring disclosure of closing costs in a real estate transaction⁷⁴ has no comparable counterpart in Regulation Z. To allow a creditor to disregard this provision by choosing to comply only with the CCPA would violate a fundamental rule of statutory construction that requires a court to give reasonable effect to every provision of a statute and

69. See Supplement III to Regulation Z, 35 Fed. Reg. 5215 (1970), as amended by 35 Fed. Reg. 7550, 10,358, 11,992 (1970), 37 Fed. Reg. 24,105 (1972), 43 Fed. Reg. 49,973 (1978).

70. U.C.C.C., Prefatory Note at xxxiii (1974 version).

71. *Id.* §§ 2.301, 3.301 (1968 version).

72. Miller, *supra* note 39, at 7-8.

73. *Id.* at 8-9.

74. U.C.C.C. §§ 2.202(3), 2.306(2)(h), 3.202(3), 3.306(2)(e) (1968 version).

to interpret the entire statute so that "no part will be inoperative or superfluous."⁷⁵

Although it is not certain whether a court would permit a total disregard of the UCCC disclosure provisions, it is possible to construe the provision allowing election between the state and federal statutes as allowing a creditor to ignore only the UCCC requirements that duplicate those of the CCPA. This construction renders the provision operative, and also gives effect to the UCCC disclosure provisions not contained in the CCPA.

The problem of unresolved conflicts would not exist if the disclosure requirements were identical, or if one law were completely subsumed by the other. Obviously, however, this is not the case. Another example helps to point out the complexity of the problem. Regulation Z requires the creditor in a consumer credit sale to disclose the "cash price" of the property or service purchased, the amount of any "cash downpayment," the value of any "trade-in," the sum of these or "total downpayment," and several other specific disclosures.⁷⁶ The UCCC also requires these disclosures, but adds two more: (1) a brief description or identification of the goods, services, or interests in land and (2) the amount agreed to be paid, if in connection with the downpayment the seller has agreed to discharge a security interest in the property traded. This amount must also be deducted from the "trade-in."⁷⁷ Admittedly, these added disclosures are insubstantial, but it is the very insubstantiality of the variations that makes the added complexity so fruitless. This type of variation makes it necessary to comb the disclosure provisions of both the UCCC and Regulation Z, compile a list containing each of their elements, and determine which requirements must be met for a particular transaction. The technical nature of these provisions makes such a task both tedious and confusing.⁷⁸

Thus, Colorado, Idaho, Indiana, and Utah are faced with a

75. 2A C. SANDS, STATUTES AND STATUTORY CONSTRUCTION § 46.06 (4th ed. 1973). See H. BLACK, HANDBOOK ON THE CONSTRUCTION AND INTERPRETATION OF THE LAWS § 47 (2d ed. 1911).

Colorado, Idaho, Indiana, and Utah—the four states where this issue is most critical—have all adopted the rule which requires a court to give effect to every provision of a statute. *E.g.*, *Bedford v. Colorado Fuel & Iron Corp.*, 102 Colo. 538, 543, 81 P.2d 752, 754 (1938); *Wright v. Village of Wilder*, 63 Idaho 122, 125, 117 P.2d 1002, 1003 (1941); *Dowd v. Johnston*, 221 Ind. 398, 401, 47 N.E.2d 976, 977 (1943); *In re Yonk's Estate*, 115 Utah 292, 301, 204 P.2d 452, 457 (1949).

76. 12 C.F.R. § 226.8(c) (1978).

77. U.C.C.C. § 2.306(2)(a), (c) (1968 version).

78. See *Butler, Truth and Confusion in Lending*, 55 A.B.A.J. 27, 28 (1969).

situation that is needlessly confusing: overlapping but variant state and federal disclosure provisions, an unreliable option to disregard the state law, and no exemption granted from the federal law. Of these four states, only Utah has adopted a state regulation pursuant to the UCCC that is patterned after Regulation Z.⁷⁹ Because the regulation is patterned after the 1969 version of Regulation Z and has not been amended since its adoption, a Utah creditor is faced with not just two, but rather three different sets of requirements: the UCCC, the 1979 Regulation Z, and a state regulation almost identical to the 1969 Regulation Z.

Adding to the bewilderment of an already confused creditor, the variations in the technical disclosure provisions are compounded by the variations in the scope and coverage of state and federal laws. The key to understanding the scope of the consumer credit laws is to examine the various transactions to which each relates.⁸⁰ With only a few exceptions,⁸¹ the UCCC and Regulation Z disclosure requirements apply to consumer leases⁸² and consumer credit transactions.⁸³ Regulation Z applies to all consumer leases and consumer credit transactions up to \$25,000, and to consumer credit transactions over \$25,000 that are secured partly by an interest in real estate.⁸⁴ The UCCC, however, provides for automatic biannual adjustment of dollar amounts in accordance

79. 5 Utah Admin. Rules A68-01-ccc1 to -ccc11 (1969).

80. See Miller, *supra* note 39.

81. See U.C.C.C. §§ 2.601-.605, 3.601-.605 (1968 version).

82. The UCCC and Regulation Z definitions of a consumer lease include the following common characteristics:

- (1) the lessor is regularly engaged in the business of making leases;
- (2) the lessee is a natural person, not an organization;
- (3) the lease is made primarily for a personal, family, household, or agricultural purpose;
- (4) the lease is for a term of at least four months; and
- (5) the amount of the lease does not exceed a certain dollar amount.

Id. § 2.106; 12 C.F.R. § 226.2(mm) (1978).

83. The UCCC and Regulation Z definitions of consumer credit transaction include the following common characteristics:

- (1) the creditor is regularly engaged in the business of extending or arranging consumer credit;
- (2) the debtor is a natural person, not an organization;
- (3) the debt is incurred primarily for personal, family, household, or agricultural purposes;
- (4) either the debt is payable in installments or a finance charge is made; and
- (5) either the amount of credit extended does not exceed a certain dollar amount or the debt is secured by an interest in land.

U.C.C.C. §§ 2.104, 3.104 (1968 version); 12 C.F.R. §§ 226.2(p), (s), .3(c) (1978).

84. See 12 C.F.R. §§ 226.2(p), .3(c), (e) (1978).

with changes in the consumer price index,⁸⁵ so its applicable upper dollar limits are different than under the federal law and subject to biannual change. For example, in Utah and Idaho the UCCC applies to all consumer leases and credit transactions up to \$45,000 as of July 1978.⁸⁶ In Indiana, the UCCC applies to leases and transactions up to \$37,500 as of July 1978.⁸⁷

To confuse matters further, the federal and state laws exempt different types of transactions from regulation.⁸⁸ Because of variations in the exemptions, some types of transactions are subject to both the UCCC and Regulation Z, others are exempt from both, and still others are subject to only one or the other. For example, governmental credit is exempted from both laws,⁸⁹ while transactions involving licensed pawnbrokers are exempt from the UCCC but not Regulation Z.⁹⁰ Agricultural transactions over \$25,000 are exempt from Regulation Z whether or not they involve a security interest in real property,⁹¹ but are not exempt from the UCCC unless they involve more than the applicable upper dollar limits of the particular state.⁹²

The complexity of the differences in coverage is further exemplified by the situation in Utah. Currently, a creditor must comply with both the UCCC and Regulation Z in any nonexempt consumer transaction up to \$25,000.⁹³ Both laws also apply to transactions secured by land involving amounts up to \$45,000.⁹⁴ In agricultural transactions and non-real property transactions involving amounts between \$25,000 and \$45,000, only the UCCC applies,⁹⁵ and in consumer credit transactions involving more

85. U.C.C.C. § 1.106 (1968 version).

86. See 2 CONS. CRED. GUIDE (CCH) Idaho ¶ 6503 (1978); 4 CONS. CRED. GUIDE (CCH) Utah ¶ 6521 (1978).

87. 2 CONS. CRED. GUIDE (CCH) Indiana ¶ 6531 (1978).

The Colorado legislature refused to enact the biannual adjustment provision. Thus, the Colorado UCCC applies to all consumer lease and consumer credit transactions that do not exceed \$25,000. COLO. REV. STAT. §§ 5-2-104, -106, -3-104 (1973).

88. See U.C.C.C. § 1.202 (1968 version); 12 C.F.R. § 226.3 (1978); Miller, *The Basic Exclusions from the UCCC: A Roadmap for Traversing a New World with Oblique Guides*, 43 U. COLO. L. REV. 269 (1972).

89. U.C.C.C. § 1.202(1) (1968 version); 12 C.F.R. § 226.3(a) (1978).

90. U.C.C.C. § 1.202(4) (1968 version). See 12 C.F.R. § 226.3 (1978).

91. 12 C.F.R. § 226.3(e) (1978).

92. U.C.C.C. §§ 2.104, 3.104 (1968 version).

93. UTAH CODE ANN. §§ 70B-2-104, -3-104 (Supp. 1977); 12 C.F.R. §§ 226.2(p), .3 (1978).

94. See UTAH CODE ANN. §§ 70B-1-202, -2-104, -3-104 (Supp. 1977); 12 C.F.R. § 226.3 (1978); 4 CONS. CRED. GUIDE (CCH) Utah ¶ 6521 (1978).

95. See UTAH CODE ANN. §§ 70B-1-202, -2-104, -3-104 (Supp. 1977); 12 C.F.R. § 226.3 (1978); 4 CONS. CRED. GUIDE (CCH) Utah ¶ 6521 (1978).

than \$45,000 that are secured by an interest in real property, only Regulation Z applies.⁹⁶

The irony of the confusion caused by overlapping disclosure schemes is twofold. First, it is anomalous that the UCCC, which was drafted to "simplify, clarify, and modernize the law,"⁹⁷ should produce complex and obscure compliance problems.⁹⁸ Second, since both laws require disclosures to be made "clearly and conspicuously,"⁹⁹ it is unfortunate that the overlapping requirements should result in confusion that is counterproductive to producing clear disclosures.

IV. REMEDIAL ALTERNATIVES

In the four states still hampered by conflicting disclosure schemes, simple legislative surgery on the state level could easily resolve the problem. The states could, for example, rescind the entire UCCC. Although this would undeniably solve the problems of statutory overlap, it would result in an unfortunate abandonment of the worthwhile UCCC provisions unrelated to disclosure.

A repeal of only that portion of the UCCC related to disclosure would leave only the federal disclosure regulations.¹⁰⁰ This may, however, require the states to give up some important disclosures not included in Regulation Z. And although a repeal of the state disclosure requirements would promote administrative and judicial economy, it would also deprive the state of local enforcement power. States desiring to maintain local power to enforce the disclosure laws could simply repeal the present disclosure provisions and draft a single provision requiring compliance with the CCPA and regulations drafted pursuant to the Act.¹⁰¹

If the legislature decided that as a matter of state policy disclosures should be required in addition to Regulation Z, an amendment adopting the 1974 UCCC disclosure scheme would

96. See UTAH CODE ANN. §§ 70B-1-202, -2-104, -3-104 (Supp. 1977); 12 C.F.R. § 226.3 (1978); 4 CONS. CRED. GUIDE (CCH) Utah ¶ 6521 (1978).

97. U.C.C.C. § 1.102(2)(a) (1968 version).

98. "Creditors have found that any additional provisions of state law on the subject constitute nothing more than an additional nuisance in attempts to comply with the law and frequently only add confusion in these efforts to comply." Miller & Warren, *A Report on the Revision of the Uniform Consumer Credit Code*, 27 OKLA. L. REV. 1, 22 (1974).

99. U.C.C.C. § 3.302(1) (1968 version); 12 C.F.R. § 226.6(a) (1978).

100. See Harper, *The Uniform Consumer Credit Code: A Critical Analysis*, 44 N.Y.U.L. REV. 53, 60-61 (1969).

101. This was the effect of the 1974 revision of the UCCC. See Miller & Warren, *1974 Uniform Consumer Credit Code*, 23 KAN. L. REV. 619, 637-38 (1975). For an example of such a provision, see U.C.C.C. § 3.201 (1974 version).

probably include most of the significant disclosures not included in Regulation Z. This simple alternative would encourage uniformity in the various state laws.¹⁰² Even if a state should decide that the 1974 UCCC is unacceptable, the approach used by the Commissioners in drafting the 1974 version, which might be described as "Regulation Z plus specified additional disclosures," seems far more sensible than the scheme currently in force. This approach would allow creditors to refer to one comprehensive document—Regulation Z—for the main requirements, and a simple supplement—the UCCC—for minor additional disclosure requirements.

Although these alternatives would resolve the conflicts in the content of the disclosure requirements, the transactional scope of the requirements is still a problem. The states could easily step aside and let the federal regulations control by stating in the few disclosure provisions retained by the state that the provisions apply only to those transactions specified in the CCPA and its accompanying regulations. Since this question may be of major concern to local consumer and creditor groups, however, state policy may warrant a regulation with a scope broader than that of Regulation Z.¹⁰³ In this case, an approach regulating transactions covered by Regulation Z plus specified additional transactions would seem wise. For example, a state could require disclosures in non-real property transactions in which the amount financed is not in excess of \$45,000, thus extending the scope of the transactions regulated. Using this approach, the state's disclosure provisions could still apply to the same dollar amounts as at present, but much of the confusion inherent in the current laws would be eliminated.

V. CONCLUSION

Of the eleven states that have enacted the UCCC to date, at least four have encountered serious problems in meshing the state disclosure requirements with the federal regulations. These problems add confusion and uncertainty to the creditor's already difficult task of compliance. They create a potential source of litiga-

102. For a discussion of the advantage of uniform laws, see Felsenfeld, *Uniform, Uniformed, and Unitary Laws Regulating Consumer Credit*, 37 *FORDHAM L. REV.* 209, 221-31 (1968).

103. Narrower regulation would, of course, be meaningless because the federal law would always require the disclosures to be made in the transactions it applies to, no matter which transactions the state decides to regulate.

tion and undue liability for the creditor.¹⁰⁴ Since the cost of creditor compliance is presumably a component in the price a consumer pays for credit, the cost of consumer credit is likely to increase as the cost of compliance increases. Simple remedies to the perplexing problems of compliance are available and should be promptly implemented.

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104. In 1973 Senator John Tower of Texas recognized that conflicting state disclosure requirements could be a problem and proposed an amendment to the CCPA that would exempt a creditor from liability under a state law which was ambiguous in light of federal law. S. REP. No. 278, 93d Cong., 1st Sess. 45-46 (1973).