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Remarks of

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The signing last month by President Ford of the amendments to the Equal Credit Opportunity Act adds another chapter to the lengthening book on consumer credit legislation in our country. Because of the substantial depth and breadth of that Act, I think it is time to review the purposes of consumer credit legislation, to chart our progress toward those purposes, and to project the results to which our present course will likely lead.

Consumer credit legislation has grown naturally from our root stock belief in the dignity of the individual, the equality under law of every citizen, and the right of everyone to strive toward securing for oneself a better earthly existence. It has been nurtured by our commitment to an economic concept of free enterprise and by our convictions in the benefits of competitive markets. It has become politically possible in recent years because of the growth and development of a new type of organization, the specialized consumer advocate group. These groups have changed a large heterogenous but disorganized mass of concerns into a focused and powerful political force.

The first consumer credit legislation was basically a unit pricing and a packaging requirement. An identification on the label of the ingredients contained in food, drugs and clothing had led to better discretion on the part of the buyer. Many had become convinced that the price ceiling approach to credit under state and federal usury

laws was not working. Even well educated users of credit did not understand the subtle but important differences in how the rent for the use of money could be expressed. So Congress passed the Truth in Lending Act which required that credit be priced in uniform terms and that the total cost be disclosed so buyers could comparison shop among various alternatives.

As the use of credit became more widespread, the techniques for keeping accurate records on hundreds of millions of accounts became more difficult. The credit history of one customer sometimes became confused with that of another. To give protection to borrowers against this possibility of error, the Fair Credit Reporting Act was enacted.

The more widespread use of computers in businesses made it possible to keep large quantities of individual account data more accurately and less expensively. Yet, the automation of recordkeeping produced a new problem. Once an error was made, due to the dependence on mechanization it became more difficult to secure corrections and adjustments. Since errors influenced not only the amount a debtor owed and the quantity of a possible finance charge, but also the reputation of the customer for repayment, the Fair Credit Billing Act was enacted. This statute provides for a minimum standard of customer relations policy by all creditors which is similar to that already practiced by a large number of firms.

The computer's capacity to store large amounts of information, to sort it, and to compare it, had led to its use as a partial substitute for human judgment. The computer's capacity for factual analysis made it possible to more accurately predict that customers with similar characteristics would act in similar ways. Thus, we have seen development of systems which try to express human qualities in finite arithmetic terms. Credit scoring systems have been an example of these attempts.

The new capacity for analysis did something more. It put to the test many old credit analysis practices which had been developed in earlier years based on past economic and social conditions. False assumptions became exposed to new factual evidence. The rapid changes in the habits and customs of our society could be more quickly and accurately identified.

All of these changes and breakthroughs have occurred at a time when people have become more aware and concerned with the unique character of every individual. No one wants to be an impersonal number in a computer's data file, but to be recognized as a God-created special creature. The logical extension of this public attitude has taken the legislative form of the Equal Credit Opportunity Act. While the Act has not come to final fruition, I think it will be the basis of a great deal of future public debate, in ways similar to that produced by the civil rights statutes to which it is so closely related.

This Act prohibits any creditor from discriminating against any applicant in any aspect of a credit transaction due to the applicant's sex, color, marital status, age, race, religion, national origin, receipt of public assistance or use of benefits of the consumer credit protection statutes. On its face that appears to be a straightforward proposal. But let's discuss it in some detail.

What do we mean by the term "discriminate against"? The dictionary defines "discriminate" as showing any difference. "Against" is defined as meaning hostile or adverse. You might then assume that the statute prohibits the showing of any difference which is hostile or adverse to the applicant. Sounds simple doesn't it? But let's go further. Does this interpretation mean that it is permissible to treat any applicant with special favor?

Let me use some examples based on the sex of the applicant. Can a bank, wishing to accommodate an expectant mother, defer payments on her debt during the period she takes maternity leave? Or can a savings and loan association encourage a new pro football team to come to town by offering the men on the team special home mortgage loan rates and terms? Some would say this would be permitted.

Others would disagree. They would assert that the showing of favorable treatment to one results in the hostile or adverse treatment of all others, the very thing prohibited in the law. This point of view feels that

every applicant must be treated identically in every respect affected by the criteria recited in the statute. They feel that the showing of any difference is hostile by its very nature.

A third viewpoint emphasizes that the purpose of the statute was to require that creditors judge each individual applicant on his or her own merits and disregard in this judgment any experience the creditor may have had with other customers of the same age, sex, race, or other prohibited characteristic.

A fourth position in the discussion would claim that the whole statute defies implementation. The whole purpose of credit evaluation is to show a difference and to discriminate between applicants. The final discriminatory decision is a blend of conclusions based on every human trait. It is impossible to eliminate any of these human attributes from the decisional process and come to a proper conclusion.

In case you think that this type of discussion is too specialized, I want to remind you that the law applies to any and every credit transaction for which exemption is not provided. Thus, the doctor who sends you a bill at the end of the month or the lawyer who bills you at the final conclusion of a case could be covered. The law could also extend to those who receive social security benefits, veterans benefits, unemployment or welfare payments, medicare payments, or maybe a tax credit for buying a new home. The law will cover every family in a large number of events

that take place nearly every day. So a clear understanding of the purpose of the law is most vital to us all.

This is among the reasons why the Board of Governors, as the regulator under the statute, has called for a special hearing to be held on April 27 prior to the writing of any further regulations, even in proposed form. At this hearing, we will be seeking to learn from citizens in every part and circumstance in the country and from creditors in all aspects of the business and commerce of the nation. We need advice about the ways in which these discriminatory practices occur; the least costly and disruptive way they can be prohibited; the fairest way enforcement can be accomplished; and those facets of our complex credit system which should be exempt. I invite all of you to participate in these hearings either orally or by letter. The amended law goes into effect on March 23, 1977. We are most anxious not only to create an effective regulatory implementation, but to do so in time to allow for orderly implementation without disruption.

The willingness of the American consumer to express confidence in the future by borrowing and buying has led our country and indirectly the western world back to economic health. If by our efforts to protect the consumer, his or her confidence is inadvertently destroyed, the results would be tragic indeed. We cannot afford to risk the economic consequences of tactical mistakes in pursuing a goal of equal credit opportunity similar to those which have been experienced in our push for equality of civil rights.

Now let me turn to some speculation about the future fruits which our present plantings of consumer credit legislation are likely to bear. These are personal guesses and not official predictions. The wide variables of public reaction, social and political change, and economic developments make exact projections foolish. Yet, the result of projecting now may well assist in avoiding or minimizing some future mistakes.

The first result has already been mentioned. I think that a broader, deeper, and more intense public discussion of proper consumer credit policy is about to occur. The addition of sexual, ethnic, racial, age and the other prohibitions correspond to a number of organizations already in the business of pushing forward the special interests of that segment of the population whom they represent. Some of these organizations have long felt that their constituents have been uniquely disadvantaged. The new legislation will be seen as a means to right these wrongs. The result will be claims of arbitrary discrimination and counter claims of factual bases of differentiation. Through all of the discussion will run the underlying question of how a creditor determines who gets credit and who does not.

Unfortunately, this type of public discussion can result in a distorted view of the attitude of most creditors. Even now one occasionally hears claims that some creditors are engaged in a conspiracy to deny

credit to a group that should be entitled to it. As I have said publicly before, I do not think this is so. Most progressive creditors today are anxious to provide credit to the largest number of consumers whom they can profitably and safely serve, within the limits of the creditor's resources. Their business is making loans, not turning them down.

Another future development alluded to earlier may be a greater sensitivity to changes in social and economic patterns. If the law requires that a creditor's decision be based on factual evidence, then there is likely to be a growth of understanding in the types of factual evidence on which credit decisions can be based. This process does more than eliminate discrimination; it opens up new ways to market goods and services not previously perceived. For example, if an elderly widow has access to 30 year mortgage repayment terms, she becomes a viable prospect for purchase of a condominium or a home.

It is too early to know to what extent these new bits of marketing knowledge will expand total consumer credit. I believe it is more certain to expect that whatever consumer credit is extended will be done at higher future cost of operation to the creditor. Requirements for written reasons on denial, the submission of a statement of borrowers' rights, or any other new procedures imposed as a consequence of the statutes are going to cost money to administer. These increased costs will ultimately be borne

by borrowers and consumers. In some cases, this will be reflected in higher interest rates on consumer loans; in other cases, it will be reflected in higher cost of goods and services purchased.

One type of cost which we all should seek to avoid is the mountain of litigation which has grown from the Truth in Lending Act. In fiscal 1972 there were 415 cases filed under this statute. The number grew to 743 cases in 1973, to 1,682 in 1974, and last year to 2,237 cases. In 1974, a Federal district court for the northern district of Georgia stated that 28 percent of its current case load consisted of Truth in Lending cases. Most of the cases filed have been over technical non-willful violations of the Act involving very nominal remedies to the borrower. Several approaches to remedying this situation and eliminating this obvious non-productive public cost are being discussed. One is a search for a better way to secure individual enforcement through the courts. Another is the possible major simplification of the statute to eliminate many of the technical requirements over which contention can arise.

The greatest cost to the public which can be produced by consumer legislation is the possible reduction in the number of sources of credit. As the requirements of the laws and regulations become more complex, a small creditor is less and less able to afford to maintain the level of expertise necessary to comply with all the requirements. This leaves the small

creditor a choice of evils: run the risk of loss through violation of some rule; or cease extending the type of credit to which the rules apply. All too often the latter choice will be the conclusion. The result is that the consumer suffers a loss of sources of credit and must endure the results of a more concentrated market with its reduced competitition. Even among larger creditors the same principle will apply. If the risks and costs of consumer lending push the net returns from this activity below that realized from alternative uses of resources, then either the price must be raised or consumer credit cut back.

For these reasons, part of the public discussion alluded to earlier should include a determination of whether the additional benefits provided to the public at large outweigh the increased cost of assuring equality.

One possible future development causes me a good bit of personal concern. If the expansion of our anti-discriminatory features continues, is it not likely that we will ultimately reach the point where most creditors feel that they are not able to exercise personal judgment between applicants? Should this come about, then the consequences of pursuing the goal of non-discrimination could be that all extensions of credit will be based purely on a collateral basis. If a creditor is unable to exercise his personal

judgments about the qualifications of the applicant, then the creditor will likely rely only on the sufficiency of the collateral in an extension of credit. (The three C's of credit will be reduced to one.) If this comes about even partly in our economic system, it will be a sad day indeed.

The biographies of too many of our most successful people show that a dramatic turning point in their lives occurred when some creditor agreed to extend credit to that individual on a most irrational basis. None of the empirically sustainable aspects of the individual's credit worthiness would have entitled him to a loan. However, the creditor's personal intuition that the individual was worthy of faith, trust, and confidence turned that life into a new direction.

I believe that it is most important that we assure preservation of this right on the part of creditors to make affirmative decisions about the future capacity of any applicant. If we abolish this right, we will have taken away something of value to a great many people.

Sometimes we forget that the passage of a law which assures the rights of one group at the same time limits or takes away the rights of another. Thus, it is necessary that we withdraw part of the right of an individual or firm to allocate its resources among its various customers in order to assure that all of its potential customers have access to those resources without biased discrimination by the creditor. There are many in our country who feel that this pendulum of exchanging one right for

another can swing too far and thus discourage the willingness on the part of one portion of our society to save and invest if they have too little discretion over how their savings or investments may be employed.

Regardless of how many of these speculations about the future materialize, I think there are a few things that every creditor can and should do today in order to improve the environment in which creditors and debtors serve the needs of each other. The first is the ancient and continuing need to communicate effectively. In my own business experience I found that we very seldom had disagreements with customers who totally understood the problem. Every creditor needs to make sure that its borrower customers, to the extent possible, are told why some action takes place in non-technical terms which the customer can understand. This attitude on the part of creditors is not only good public relations, designed to encourage a customer to do business again, but also effective from the cost of administration point of view. Too many times a disagreement with one customer costs the creditor the profits which are realized out of twenty happy ones. A customer with whom you don't do business, or is unhappy about the way in which you have done business, is never a profitable one.

Finally and most importantly, creditors can realize now that a non-discriminatory business practice is a good and profitable business

attitude. It is not only the best public policy, but the most profitable long range policy from the stockholder's viewpoint. Discrimination not only brings down the wrath of regulators but blinds us to future opportunities for profitable expansion. It keeps us from getting the incremental sale or customer. It is the nightmare situation where everybody loses. The opposite policy -- an open door to all -- produces the realization of the dream where everybody wins.