

# **CREDIT AVAILABILITY TO WOMEN IN UTAH**

**A report of the Utah Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the findings and recommendations of this report should not be attributed to the Commission but only to the Utah Advisory Committee.**

**April 1975**

# CREDIT AVAILABILITY TO WOMEN IN UTAH

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--A report prepared by the Utah  
Advisory Committee to the U.S.  
Commission on Civil Rights.

## ATTRIBUTION:

The findings and recommendations contained in this report are those of the Utah Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission.

This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

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LETTER OF TRANSMITTAL

UTAH ADVISORY COMMITTEE TO THE  
U.S. COMMISSION ON CIVIL RIGHTS  
April 1975

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Sirs and Madam:

The Utah Advisory Committee, pursuant to its responsibility to advise the Commission concerning civil rights problems in this State, submits this report on credit availability to women in Utah. Through its investigation, the Advisory Committee concludes that women are being denied opportunities to obtain credit and build a credit history that are available to men.

The Advisory Committee examined three main areas where women encounter difficulties because of their sex and/or marital status: credit cards (retail department stores and interbank cards), personal loans, and mortgages.

Through interviews with a representative number of credit managers and loan personnel in the Salt Lake City, Ogden, and Provo areas, the Advisory Committee found that arbitrary decisions based on sex and marital status are being used to deny credit to women. The Advisory Committee also found policies which systematically discriminate against married women as opposed to single women.

Of particular concern to the Advisory Committee are the following:

- Creditors generally require a woman upon marriage to reapply for credit, often in her husband's name. Similar reapplication is not asked of men when they marry.
- Creditors are often unwilling to extend credit to a married woman in her own name.
- Creditors are often unwilling to count the wife's income when a married couple applies for credit.

- Women who are divorced have trouble re-establishing credit since the accounts held during marriage are primarily in the husband's name.
- Creditors arbitrarily refuse to consider alimony and child support as part of a divorced woman's income for credit purposes even when the reliability of the source is subject to verification.
- Some mortgage lenders request signed statements from married couples providing information on their birth control practices and plans for children.

The Advisory Committee urges you to continue to press the Federal financial regulatory agencies to require permanent data collection from the institutions under their supervision on the race or ethnicity, sex, and marital status of credit and loan applicants.

The majority of the Advisory Committee's recommendations are directed to the private credit-granting institutions themselves and support the urgent need for them to establish policies based upon measurable variables and not sex or marital status. We ask you to concur in these recommendations, and we hope that this report will be a useful contribution to the Commission's work in women's rights. This is the first State Advisory Committee report on this subject, and we feel confident that it strongly supports Chairman Flemming's statement:

Sex discrimination in credit is totally at odds with the reality of modern day America in which more than 33 million women work and make up more than 40 percent of the labor force.

Respectfully,

/s/

RAYMOND S. UNO  
Chairperson

### ACKNOWLEDGMENTS

The Utah Advisory Committee wishes to thank the staff of the Commission's Mountain States Regional Office, Denver, Colo., for its help in the preparation of this report.

The investigation and report were the principal staff assignment of Norma Jones, with writing and review assistance from Grace Buckley and William Levis, and support from Phyllis Brekke and Esther Johnson. The Advisory Committee is also indebted to Dean Spader, student intern, who played a major role in the research and writing of this study. The report was prepared under the overall supervision of Joseph T. Brooks, acting director, Mountain States Regional Office.

Final edit and review was conducted in the Commission's Office of Field Operations, Washington, D.C., by editor Bonnie Mathews, assisted by Rosa L. Crumlin and Mary Francis Newman, under the direction of Charles A. Ericksen, chief editor. Preparation of all State Advisory Committee reports is supervised by Isaiah T. Creswell, Jr., Assistant Staff Director for Field Operations.

## THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the Act, as amended, the Commission is charged with the following duties pertaining to denials of the equal protection of the laws based on race, color, sex, religion, or national origin: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to denials of equal protection of the law; maintenance of a national clearinghouse for information respecting denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

## THE STATE ADVISORY COMMITTEES

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

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I am the son of a woman and the brother of women. I know that this is their cause, but I feel that it is mine also. Their happiness is my happiness, their misery, my misery. The interests of the sexes are inseparably connected, and in the elevation of the one lies the salvation of the other.

Henry B. Blackwell  
Editor, Women's Journal  
Statement before a women's  
rights convention, Cleve-  
land, Ohio, 1853.

## I. BACKGROUND

The Saxon invaders of ancient Britain brought with them their own method of determining a man's trustworthiness. They tied him hand and foot and threw him into the nearest pond. If he sank, they fished him out and congratulated him on his believability. If he floated, they rated him a fraud.

Credit managers of many U.S. companies appear to follow equally medieval standards in deciding who is or is not creditworthy. With 30 million women drawing paychecks for full-time jobs, the idea that they cannot get credit for themselves is downright silly.<sup>1</sup>

The inability of many women to get credit is more than just silly; the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate has termed it objectionable, offensive, and discriminatory.<sup>2</sup>

In August 1973 the Utah Advisory Committee to the U.S. Commission on Civil Rights became concerned about many issues associated with the equal rights of women. One of these issues related to difficulties women face in obtaining credit. The Utah Advisory Committee had received several complaints from women alleging discriminatory credit practices, and the Advisory Committee decided to undertake an investigation of the availability of certain types of credit to those women who are creditworthy.<sup>3</sup>

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1. Business Week, May 6, 1972, p. 96.

2. U.S., Congress, Senate, Committee on Banking, Housing, and Urban Affairs, Truth in Lending Act Amendments, S. Rept. 278, 93d Cong., 1st sess., 1973, pp. 16-17.

3. Throughout the report the term creditworthy will be used to refer to those individuals who are gainfully employed or have some independent source of income.

## Economic Profile of Women in Utah

Many women, like many men, are not creditworthy, either because they have no income or because they have been poor credit risks in the past. The purpose of the Advisory Committee's study is not to determine if credit should be made available to women with no independent income, but rather to explore the availability of credit to women who are gainfully employed and who perhaps have a credit history. It is significant, therefore, to examine the economic status of women in Utah: the number of women who are employed, their incomes and occupations, and their marital status since a high percentage of married and divorced women in Utah are in the labor force.

According to the 1970 census, there are about 351,000 women in Utah 16 years of age and over of whom about 14,500 or 4 percent are minority.<sup>4</sup> Some 92,500 women (25 percent) are single, 235,500 (63 percent) are married, 3,200 (0.9 percent) are separated, 33,300 (9 percent) are widowed, and 13,900 (4 percent) are divorced.<sup>5</sup> More than 145,000 women (41.5 percent) are in the civilian labor force. On the national level, in comparison, 43 percent of women are in the labor force. Nearly 95 percent of Utah women in the labor force are employed. This compares with just over 95 percent of Utah men in the labor force.<sup>6</sup>

Almost 52,000 (38 percent) of the employed women are clerical and kindred workers; more than 36,000 (19 percent) are service workers, excluding private household workers; 23,000 (17 percent) are professional, technical, and kindred workers; more than 12,000 (9 percent) are operatives; almost 11,000 (8 percent) are sales workers; and the remaining 9 percent are employed in various other occupations.<sup>7</sup>

According to the Manpower Report of the President, transmitted to Congress in April 1974, 42.2 percent of all married women with husbands present worked in 1973 compared with 20.0 percent in 1947, more than a twofold increase in 26 years. Approximately 40 percent of married women in Utah are employed, and of these, 50 percent have children 17 years old and younger.

4. U.S., Department of Commerce, Bureau of the Census, General Social and Economic Characteristics, Utah, 1970 Census of Population and Housing, PC(1)-C46, table 64 (hereafter cited as General Characteristics, Utah). See also U.S. Summary, PC(1)-C1, table 90.

5. U.S., Department of Commerce, Bureau of the Census, Detailed Characteristics, Utah, 1970 Census of Population and Housing, PC(1)-D46, table 152 (hereafter cited as Detailed Characteristics, Utah).

6. General Characteristics, Utah, table 64.

7. General Characteristics, Utah, table 65.

### Legal Overview

The Utah constitution is one of 12 State constitutions which contain equal rights amendments. The Utah amendment reads:

The rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall enjoy equally all civil, political, and religious rights and privileges.<sup>8</sup> (Emphasis added)

The Utah constitution, subsequent laws, and court decisions indicate a legal tradition of equality for women. A review of various Utah statutes and court cases reveals that legislators and judges have followed the spirit of the framers of the State constitution. Two legal principles are evident: that single women have equal rights with single men to contract debts and that married women have the same obligations as married men toward family debts. A summary of the different Utah laws follows: (See Appendix A for complete analysis.)

- 1) The Married Women's Act has abrogated all common law disabilities with regard to a married woman's property, her right to contract for debts, her right to her wages, and her right to any legal action to preserve and protect her property "as if unmarried."
- 2) Under the Utah Uniform Support Act and a recent court decision, the husband and wife according to their means and income, must jointly support each other and provide for family necessities.
- 3) Under the so-called Family Expense Act, creditors may seek payment from either the husband or wife for "family expenses," regardless of which spouse made the purchase. The law does not prevent a creditor from collecting from a married woman those debts which she has undertaken as well as those family expenses which her husband has charged.
- 4) "Dower" has been repealed in Utah, but a new statute provides that the woman who survives her husband has a right to one-third of all the real property of her deceased husband unless she has relinquished that right. Relinquishment occurs if the wife joins in a mortgage loan.

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8. Utah constitution, Art. 4, Sec. 1. The national Equal Rights Amendments (ERA) reads, "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." A State ERA, of course, applies only to persons in that particular State.

- 5) The Utah Small Loan Act prohibits separate loans to husband and wife if the combined interest on the separate loans exceeds the maximum interest which the act allows a creditor to charge against any one "person." Husband and wife are considered a unit or a "person" under the act. This act is applicable to institutions charging over 18 percent interest per year.
- 6) Discrimination on the basis of sex by credit-granting institutions regulated by the Uniform Commercial Credit Code is prohibited under the new amendment to the Civil Rights Act on Commerce and Trade.

In addition, a new Federal law was enacted in August 1974 which extends coverage of the Federal Fair Housing Law (Title VIII of the Civil Rights Act of 1968) to prohibit discrimination on the basis of sex in mortgage lending. And in October 1974 another long-awaited Federal law was enacted prohibiting discrimination on the basis of both sex and marital status in the granting of consumer credit.

#### Available Studies on Women and Credit

Prior to undertaking its investigation, the Utah Advisory Committee explored the availability of national data on the creditworthiness of women and possible discrimination based on sex in the granting of credit. Unlike the areas of employment and housing which have uniform national data sources, there is no national data base in the area of credit granting. Some credit-granting institutions have done in-house studies but do not wish to release private data from their corporate research divisions. Other institutions have data on their individual customers but have not built in easy retrieval methods. The result is that there is no national or local data collection system available for local studies.

The four Federal financial regulatory agencies (the Federal Reserve System, Federal Deposit Insurance Corporation, Comptroller of the Currency, and Federal Home Loan Bank Board) have initiated an experimental program requiring the lending institutions they supervise to keep records on the race or ethnicity, age, sex, marital status, and finances of their borrowers. Institutions in 18 metropolitan areas maintained data for a trial period from June 1 through November 30, 1974. The project was conceived to monitor compliance with Section 805 of the Federal Fair Housing Law (42 U.S.C. § 3605, Title VIII, Fair Housing.) If continued, it will also provide the first concrete data in the country on mortgage loan applicants accepted and rejected by sex and marital status.

The Federal financial regulatory agencies in the past have been reluctant to demand data collection by lenders. In March 1971 the Center for National Policy Review (a legal research organization affiliated with the Catholic University School of Law, Washington, D.C.) filed a petition on behalf of 13 public interest groups requesting each agency to "develop a national data collection system for comparative analysis of lending practices in the several regions."<sup>9</sup> More recently, a bipartisan coalition of leading economists, including the last five chairpersons of the President's Council of Economic Advisors, issued a statement calling for prohibitions against obsolete practices which have discriminatory impact on women and for the collection and analysis of data to identify discrimination.<sup>10</sup>

During May 1972 the National Commission on Consumer Finance held hearings dealing specifically with the problems of women in obtaining credit. These were followed by hearings in 1973 held by the Joint Economic Committee of Congress on many economic problems of women, including credit. In June 1974 the House Banking and Currency Subcommittee on Consumer Affairs held 2 days of hearings on the proposed Equal Credit Opportunity Act. This legislation was signed by the President in October 1974, to go into effect 1 year from that date.

Several national and local organizations<sup>11</sup> have also investigated lenders' and creditors' practices toward women and have produced studies and articles which have documented discriminatory policies and practices in their areas.<sup>12</sup> A study by the U.S. Civil Rights Commission in Hartford, Conn., found:

9. Daniel Searing, "Discrimination in Home Finance," Notre Dame Lawyer, vol. 48 (1973), p. 1114.

10. U.S., Congress, House of Representatives, Civil Rights Oversight Subcommittee of the House Committee on the Judiciary, Federal Government's Role in the Achievement of Equal Opportunity in Housing, Hearings 1971-72, 92d Cong., Sec. 34, p. 866.

11. Such organizations include: The Pennsylvania Commission on the Status of Women, the Oregon Student Public Interest Research Group, the District of Columbia Commission on the Status of Women, the National Organization for Women, the Women's Equity Action League, Parents Without Partners, the American Civil Liberties Union, Advocates for Women, the Citizen's Advisory Council on the Status of Women, the Women's Legal Defense Fund, the U.S. Commission on Civil Rights, and others. See "Women and Credit, A Listing of Activities in the Public and Private Sectors Relating to Women and Credit," Center for Women Policy Studies, Washington, D.C., 1973.

12. Oregon Student Public Interest Research Group, No Credit for Women, 1973, p. 24; State of Pennsylvania, Commission on the Status of Women, Credit: Problems and Solutions, June 15, 1973, p. 3.

On the basis of interviews with brokers and lenders as well as specific complaints, we have found extensive discrimination against women both as working wives and as femme soles -- unmarried, widowed, or divorced women who are household heads.

We found that savings and loan associations (S&L's) practice the most consistent discrimination against women of any type of lending institution.

Women are being discriminated against by all types of lending institutions and retail stores because of sex and marital status.<sup>13</sup>

The studies contain numerous complaints from creditworthy women who have been denied credit cards or loans based on what the women believe are arbitrary, inconsistent, and subjective reasons. Other data available relate indirectly to the issue. A 1941 study for the National Bureau of Economic Research considered sex as a variable and concluded:

The classification of borrowers by sex and marital status indicates that women are better risks than men, and the superiority appears to be statistically significant. No significant difference, however, is evident between the risk characteristics of married and single persons.<sup>14</sup>

Another study, conducted in 1968 and released in 1970, examined marital status as one of 10 variables relating the characteristics of home mortgagors to delinquencies and foreclosures. One finding was that "marital status was not statistically significant in any of the equations."<sup>15</sup>

### Methodology

To cover both secured and unsecured credit, the Advisory Committee divided the field of credit granting into three broad types of credit:

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13. U.S., Commission On Civil Rights, Mortgage Money: Who Gets It? A Case Study in Mortgage Lending Discrimination in Hartford, Conn., Clearinghouse Publication no. 48, June 1974 (hereafter cited as Mortgage Money: Who Gets It?)

14. J. Durand, Risk Elements in Consumer Installment Financing (New York: National Bureau of Economic Research, 1941).

15. J. Herzog and J. Earley, Home Mortgage Delinquency and Foreclosure (New York: National Bureau of Economic Research, 1970).



1. Credit Cards. Credit cards are usually unsecured, open-ended type of credit. These are similar to open account, revolving credit, and option charge accounts.<sup>16</sup>
2. Installment and Personal Installment Loans. The former usually are secured by the merchandise bought on installment, and the latter is a cash sum provided directly to the borrower; the latter may or may not be secured.
3. Mortgage Loans. This type of loan was limited to home mortgage loans, secured by the house.

Because there were not available data, a separate questionnaire was developed for each type of credit.<sup>17</sup> In addition, a short questionnaire was developed for managers of credit bureaus. Advisory Committee members felt it was necessary to look not only at the ability of women to obtain credit, but also at the reporting of credit once a woman has established a credit history.

The questionnaires were administered in February, April, and May 1974 to 30 credit card department managers, 28 mortgage loan officers and vice presidents, and 26 personal installment loan officers and vice presidents representing the largest department stores, savings and loan associations, and banks in Provo, Ogden, and Salt Lake City, Utah. For a list of all institutions interviewed, see Appendix B. The results of the questionnaires and the followup questions during the interviews and from the informal public hearing are given in the following chapters. The questionnaires are on file with the Mountain States Regional office in Denver and the U.S. Commission on Civil Rights in Washington, D. C.

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16. Oil company credit cards and travel and entertainment credit cards were deliberately excluded from the sample. In most cases, the offices in Utah merely process the applications and the final decision (whether or not to grant credit) is made in a national or regional office outside the State. This is also true of some national chain stores, such as Sears, Roebuck and J.C. Penney, in which cases the interview was administered to the credit manager in the regional or national office.

17. The questionnaires were approved by Milo B. Sunderhauf, a clearance officer of the U.S. Office of Management and Budget.

## II. CREDIT CARDS

Prior to the Advisory Committee's informal public hearing, interviews were held with 30 managers of the larger credit card departments in Salt Lake City, Provo, and Ogden. These individuals represent all Master Charge, BankAmericard, and bankcard departments of local banks, and the credit departments of the largest retail department stores. (See Appendix B.)

The questionnaires cover marital status and changes in marital status, with 18 questions pertaining to men and 18 parallel questions pertaining to women, plus an additional 7 questions pertaining to women.

### Single Women and Single Men

Two questions attempted to determine if credit managers favor single women or single men in granting credit cards. The questions stated that all applicants were "individually qualified,"<sup>18</sup> and the only variable was lack of a credit history.

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18. "Individually qualified" is a phrase chosen to imply that the applicant qualifies on criteria such as character, capacity to repay, job stability, etc., except the variable stated in the question. Commission staff presumed that the credit managers knew the meaning of "individually qualified." If they asked a definition, however, the interviewer responded, "By all the credit requirements of your institution, the person is individually qualified for credit."

Interviewers asked the following questions:

A young, single working man requests a charge account. You judge that he, individually, qualifies for credit, but he has no credit history. Would you grant him credit?

Yes = 22 (73%)  
 No = 6 (20%)  
 \*NA = 2 (7%)

A young, single working woman requests a charge account. You judge that she, individually, qualifies for credit, but she has no credit history. Would you grant her credit?

Yes = 17 (57%)  
 No = 9 (30%)  
 \*NA = 4 (13%)

\*Not answered or answer qualified.

Clearly, the responses indicate a substantial degree of differential treatment toward single females based, apparently, on their sex.

The 30 credit managers interviewed represent the largest bank and retail credit departments in Utah which handle thousands of accounts each year. Therefore, small differences in percentages probably indicate differential policies toward large numbers of women and men. For example, the percentages might be translated into a hypothetical sample of 1,000 single male applicants and 1,000 single female applicants, with the following results:<sup>19</sup>

	<u>Male</u>		<u>Female</u>
Credit Granted	= 730 (73%)	Credit Granted	= 570 (57%)
Credit Denied	= 200 (20%)	Credit Denied	= 300 (30%)
*NA	= 70 (7%)	*NA	= 130 (13%)

\*Not answered or answer qualified.

Many of the credit managers interviewed are vice presidents and other high-level, policy-making officials. Often these officials are not in contact with the personnel who handle the day-to-day applications and

19. These figures are for illustration only. They would vary according to the size of individual credit departments. For competitive reasons, these departments do not wish to make public the number of accounts in their institutions.

decisions. During the interviews and at the informal hearing some officials provided written or oral policy statements concerning their institution's practice toward women.

Gaylen Larsen, vice president of Valley Bank & Trust Company in Salt Lake City, in an interview April 23, 1974, said:

It is the policy of Valley Bank and Trust Company to make no discrimination based on race, color, creed, religion, sex, or national origin, or ethnic groups with respect to any relationship that may exist between the bank and the employee, or applicant for employment or customer.

During the Advisory Committee's informal hearing, J. Earl Russell, credit manager for ZCMI department store, said:

We rely solely on the only basic four C's of credit: character, capital, capacity, and credit rating. These are the things we now look for rather than marital status, race, color, or creed, or so forth. (p. 197)<sup>20</sup>

Joseph Siciliano, vice president in charge of the installment loan department, Walker Bank, told the Advisory Committee:

I understand that recently in San Francisco at the American Bankers Association one of the main topics was the availability of credit to women. I was not there...I do know that our bank is very cognizant of this issue and we are making attempts...to improve this relationship. (p. 246)

There is evidence that their policies are not followed by the personnel who handle the day-to-day credit applications. Karol Kumpfer's case is illustrative. Ms. Kumpfer holds a Ph.D., was formerly an assistant professor and is now an academic planner at the University of Utah. Her annual salary is \$17,000. First Security Bank in Salt Lake City denied her application for a BankAmericard on the grounds that she lacked the "depth of established credit" to meet the bank's criteria. She applied for a Walker Bankard in June 1974, and again was denied. When she inquired the reason, the bank employee responded that she had

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20. Page numbers in parentheses cited here and hereafter in text refer to statements made to the Utah Advisory Committee at its open meeting June 27, 1974, as recorded in the transcript of that meeting.

not been continuously employed at her present position for more than 1 year. In fact, she had been working for the University for slightly more than a year. Ms. Kumpfer said she had a savings account with Walker Bank, had used an oil company credit card for 6 years, and had paid two automobile loans.

Asked what she thought the real reason for the denial was, Ms. Kumpfer responded:

Well, my immediate feeling was, of course, complete disbelief because according to the point system I had 23 out of 25 points. [At the time, Walker Bank's application form contained a rating system in which persons earning 16 points or more were encouraged to apply.] I certainly qualify by all standards....Then I wondered, 'Well, it is just because I'm a single woman that they're concerned I wouldn't be continuing with my employment?'  
(pp. 97-98)

David Keyser, vice president and credit manager with Walker Bankard, testified at the Advisory Committee's open meeting:

We require, at least we like to have an applicant be employed for at least 1 year....However, we don't penalize people for changing an employer just to get better income and things of this nature.

Q. Is that a rigid policy, or does it depend on the type?

A. That's a flexible policy, as a general rule.

Q. I think you were here this morning when the lady who holds a Ph.D. testified.

A. There is no reason in the world why she shouldn't have been granted credit.  
(pp. 136-137)

Later Mr. Keyser told Ms. Kumpfer that the reason for the denial was probably the incompetency of some clerk at the lower level.<sup>21</sup>

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21. Karol Kumpfer, interview in Salt Lake City, July 22, 1974.

The Utah Advisory Committee queried three BankAmericard representatives from First Security about Ms. Kumpfer's case. One stated that a card would not be granted to a single person without a credit history; the other two said they would grant a card, depending on occupation and employment stability. (p. 199)

If this incident is representative, the degree of differential treatment toward single women is probably more acute than the questionnaire results indicate. Lower-level personnel who handle the day-to-day applications seem to be evaluating applicants on the basis of assumptions, not facts. Eugene Adams, president of the American Bankers Association and president of the \$700 million deposit First National Bank of Denver, stated the problem in a speech to the Florida Banks Association:

Some of our lending criteria, especially those dealing with women, might be based not on fact but on time-honored assumptions so old that they have taken on the appearance of fact. Is it possible that outdated assumptions - if they are outdated - are blinding us to a potentially very profitable market right on our own door-steps?<sup>22</sup>

To learn whether the credit industry in Utah has conducted research to determine if "time-honored assumptions" are valid or invalid, the 30 credit managers were asked the following question:

Has your department conducted any in-house studies to determine which demographic groups contribute most to bad-debt chargeoff regarding:

- |                   |                          |
|-------------------|--------------------------|
| a. income         | d. age                   |
| b. occupation     | e. sex                   |
| c. marital status | f. race and ethnic group |

Many of these departments have made studies concerning age, race and ethnic group, and income, but none have included sex as a variable. Therefore, there is no direct evidence that single or married women are poorer credit risks than single or married men among the accounts held by the 30 credit managers interviewed.

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22. American Banker, July 13, 1973, p. 1.

Similar studies outside of Utah have encountered the same lack of data on sex. A study in Oregon, for instance, reported: "For whatever purposes, we were unable to obtain statistics from any Oregon bank, loan company, savings and loan, or retail store which would show that women do not pay their bills as well as men."<sup>23</sup>

The United Bank of Denver, Colo., in 1973 studied its Master Charge division and concluded: "We have almost the same number of single female accounts as single male accounts....Despite this, we have almost three times as many losses, percentagewise, from the single men who are approved."<sup>24</sup> In the mid-1960's a study which measured risk on installment credit found that the bad account probability for both single and married women was substantially lower than for men with the same marital status. An earlier study also concluded: "The classification of borrowers by sex and marital status indicates that women are better credit risks than men, and the superiority appears to be statistically significant."<sup>25</sup>

Some bankers in reviewing their past accounts to develop credit scoring systems have found that sex is not relevant to risk determination.<sup>26</sup>

#### The Transition From Single to Married

The purpose of the questions on marital status was to determine if marriage affects a woman's credit status differently than it does a man's. The issues are: Upon marriage can a woman continue to maintain an individual account? Is she required to open a joint account with her husband? After marriage does her salary and signature have the same credibility with credit grantors? Is the bill sent to her or is it sent to her husband? Does it cost more for credit grantors to maintain separate accounts for married women?

23. Oregon Student Public Interest Research Group, No Credit for Women (Portland, Oreg. 1973), p. 45.

24. Denver Post, May 16, 1973, p. 33 (statement of Charles Luther, vice president, United Bank of Denver).

25. National Bureau of Economic Research, "Risk Element in Consumer Installment Financing," Technical Edition No. 74 (New York, N.Y., 1941).

26. Margaret Gates, "Credit Discrimination Against Women: Causes and Solutions," Vanderbilt Law Review, vol. 27, 1974, p. 412 (interviews with James L. Smith, senior vice president, Security Pacific National Bank, Washington, D.C.; Charles F. Hayward, vice president, First National City Bank, New York, N.Y.).

### Individual Accounts

This situation does not involve an application for a new card; rather it is a continuation of the same account when the single individual marries. It is this stage of transition in which questionnaire results show the greatest differential treatment of men and women. The following questions obtained vastly different responses:

A single man marries.			A single woman marries.		
Do you require that his credit card be returned and a new application filled out?			Do you require that her credit card be returned and a new application filled out?		
Yes	=	2 ( 7%)	Yes	=	17 (57%)
No	=	28 (93%)	No	=	13 (43%)

Of the 30 credit managers interviewed, 17 (57 percent) require that a single woman who marries return her card and fill out a new application. All 17 credit managers require that the husband's name be on the reapplication, 9 require that the husband fill out and sign the wife's reapplication, and 10 investigate the husband's credit history.

Only 2 of the 30 credit managers require a single man who marries to fill out a new application, and none require the wife to fill out and sign her husband's reapplication. In no case does any company investigate the new wife's credit.

Credit managers who require a new application from the woman upon marriage generally re-issue the card in the husband's name, unless the woman specifically requests the card in her own name. Thus, the woman ceases to be the principal holder.

Lamar Bingham, credit manager for Keith O'Brien's department store in Salt Lake City, told the Advisory Committee that a newly married woman is requested to reapply in her husband's name, and thereafter the store relies primarily on the husband's credit:

We ask for an application in her husband's name and we judge by that. If he has had no credit, then we use her previous record....I'm assuming that he has no credit record. If his credit is good then we open it in his name without considering hers.  
(pp. 183-184)



The standard policy for the store, then, is to close a woman's account upon marriage and to rely upon the husband's previous credit to determine whether to open a new account, even when the woman has a good credit record. Ms. Bingham explained the reason for requiring a single woman to return her card if she marries:

Well, she's no longer Miss Mary Smith. She is now Mrs. John Jones and we don't feel there is a Mary Smith anymore. (p. 185)

If the husband's credit rating is poor, the change in marital status may result in the loss of the credit card. The following exchange occurred between Ms. Bingham and the Advisory Committee:

Q. But if she just asks for a name change and nothing else, would you require her to report her husband's income?

A. Well, we ask for all the information on him, his name and address and his his employment. I guess we ask for it. It wouldn't make any difference to whether we granted credit.

Q. If she changes her name?

A. No, unless he had very poor credit and we weren't able to open it for him.  
(p. 186)

Ms. Bingham said that Keith O'Brien will open accounts in a married woman's own name if she so requests. (p. 185) However, interviews with other credit managers at Keith O'Brien indicated a different policy. In interviews during February 1974, Keith O'Brien employee Erma Marker stated that the store "doesn't grant separate accounts;" Marjorie Miller said that it is "more convenient" to have joint accounts and the store has very few separate accounts.

In some instances, a store may have a liberal policy but still not encourage separate accounts. For example, J. Earl Russell, credit manager of ZCMI department store, said that with ZCMI's automated department the store has no cost problems with separate accounts, but maintaining separate files was too cumbersome under a manual system:

Years ago when a company had 150,000 accounts it was a big job to open up an account under a wife's name, a child's name, and a husband's name, and to try to come out with a correct balance for that customer every month.

We're in a different era....Now that automation is in effect, we couldn't care less how many accounts a person has or whose name the account is under. (pp. 199-200)

Yet, when asked if the store policy requires a woman to return her credit card when she marries, Mr. Russell responded:

We prefer that she does, of course. Here again, this is what her preference is, whatever the customer wants to do. Of course, legally, she should return the card because she is now a different type of individual by marital status and we prefer that she does return the card or destroy the card and reopen the account in her husband's name, and this is what the procedure generally is.

Q. You prefer that she reopen it in her husband's name?

A. Right. (p. 204)

Asked why the store preferred this policy, Mr. Russell stated that the store wanted to know the change in marital status and name. Yet actually, this information may be obtained through a short form, for example:

It has come to our attention that there has been a change in your marital status. Because you now have a new last name, your card is no longer valid. To facilitate updating your account, please check the appropriate spaces below:

\_\_\_\_\_ Keep account in my name only  
 \_\_\_\_\_ Add husband to my account (please  
 fill out enclosed application)  
 \_\_\_\_\_ Issue husband separate account  
 (please ask him to fill out  
 enclosed application)

Using this short form, a new application would be required only if the woman wants to add her husband to her account, or if her husband wants a separate card, in which case he fills out the application.

The fact remains that even with automation credit grantors prefer accounts under the husband's name. No credit department covered in this study has made any attempt to describe to married women the advantage of obtaining and keeping credit in their own names.

Judy Frye, credit manager of the BankAmericard Division of First Security Bank in Salt Lake City, described the bank's policy when the single person marries.

- Q. If a woman had a BankAmericard in her own name when she was single and then she married a man who also had a BankAmericard, would you keep both cards separate, or would you consolidate them into one account?
- A. Most often they would be consolidated. If they requested that they each be able to keep their own accounts, and they both qualify, then we would keep both accounts. Unless she specifies that she wants to retain it in her name, we change the account into his name. (pp. 147-148)

Many women who wish to maintain their own credit after marriage are angered and frustrated by the obstacles they encounter. They oppose the differential treatment that requires women to fill out a new application upon marriage without requiring the same of men. They believe that credit managers use the reapplication to:

- a) withdraw the woman's card and issue a card in her husband's name, even though she had a good credit history with the company prior to marriage; or
- b) withdraw the woman's card and put the account in both names, in which case the bill is sent to the husband and he is considered the principal holder of the account; or
- c) withdraw the card altogether based upon information, or the lack of it, in the new husband's credit bureau file; and/or

- d) ask the husband to sign a "responsibility note" indicating that he is responsible for his wife's debts. (pp. 106-118)

All the foregoing were illustrated in the testimony of Barbara White, an occupational therapist with the University of Utah. Prior to marriage, she had two department store charge cards, a bankcard, and an oil company credit card. When her marital status changed, one department store, ZCMI, immediately changed the card to her married name. Ms. White related her experiences with the other credit card departments:

The second department store [Auerbach's] told me I would have to resubmit my application... although I had had credit with them for 5 1/2 years...filling it in with my husband's information.

I took the form home...determined that I was going to get credit in my own name to prevent any problems in the future. I filled it out with my name. I did refer to my husband, where it asked for the spouse, I gave his name. I used all credit references which were mine, I provided them with my salary, my Social Security number, my changes of address, my employment, my signature, of course.

Approximately 2 weeks later my husband received in the mail a form asking him to take responsibility for my credit, requesting his Social Security number. Once again I put my Social Security number down and I signed it and I sent it back because my husband had no interest in having a credit card with this department store.

Approximately 2 weeks after that, we got two credit cards in the mail in my husband's name. They had absolutely no information on him.  
(pp. 107-108)

Ms. White testified to similar problems with her Zion's First National Bank Master Charge and Chevron Oil Company card. Although she gave only her own credit information, Master Charge returned

the cards under her husband's name. When she attempted to get credit in her own name on the Chevron Oil Company card, which she also had held for 5 1/2 years, her change in marital status resulted in termination of the card:

I was denied a new card...and the fact that I had had credit with this company, good credit, for 5 1/2 years did not mean anything. I did not pursue that further. I was angry enough that I - I just kind of decided they could keep their credit card.  
(pp. 108-109)

She summarized her feelings toward the whole series of events:

I resent the fact that I was not allowed to have the department store card in my own name. It made me very angry at the time; it made me very frustrated. It frustrated me in my efforts to gain my own good name in my married name, which I was proud of.  
(p. 110)

The inability of married women to obtain credit cards in their own name is not limited to particular economic classes or to the propertyless. Lucybeth Rampton, first lady of Utah, testified at the June hearing that her daughter had tried to obtain credit cards in her own name and refused the cards issued in her husband's name. (p. 11)

Linda A. Shepherd, who owned her own home and had just graduated from law school, married and asked the BankAmericard Division of First Security Bank to change her card to her married name. She had used the card for 4 years without a delinquency and also had a checking account with the bank. Her husband also had a BankAmericard prior to their marriage. After receiving two cards in her husband's name, she phoned the credit department:

[The clerk] informed me that from that time forward I was to use his card and his account, and that my account was being closed. I protested and asked why that was being done. She explained that it was the bank's policy to place accounts in a man's name whenever a female credit card user was married. I then asked the reasons behind the policy, and the most memorable things she told me were: First, that women such as I, who are

employed and then get married, also often get pregnant, quit their jobs, and thus have no means for paying their account. Second, that women of my sort, that is those who have previously been divorced, were apt to marry convicts and other disreputable kinds of people and in general were not too stable.

My credit, however, did not seem to be the issue with the bank, for I soon received a letter repeating the bank's humiliating policy of closing a woman's account upon her marriage to someone who also held an account. (pp. 119-120)

In the same letter, Ms. Shepherd was requested to return the card in her name. She returned the card, informed the bank that she would never use her husband's card, and began preparations to sue. On two subsequent occasions, she received telephone calls from bank personnel requesting that she use her husband's card.

I repeated that I would never do so. At that point, he explained that it was much more economical for the bank to maintain one account, rather than two, for one family. I answered that the bank's economy was not my concern, but my credit was. He then reluctantly told me that he would send me my very own [BankAmericard] in my very own name....

Incredibly enough, I use it with the same sense of responsibility that I had as a single woman. Investigations should be made as to whether this policy continues. I rather imagine that it does and that I was a stubborn exception. (pp. 121-122)

State Representative Rita Urie, who is also a computer programmer, attempted and failed to get credit in her own name. After passage of Utah's anti-discrimination-in-credit law, she tried again:

One of the credit managers at a department store asked, 'Are you divorced?' and I said 'No, I merely wish it in my name; my husband does not want the card.' And she said, 'Well, I'm sorry, in that case it

will have to be in your husband's name, that is our policy.' I was trying to keep my temper and said, 'The laws have changed,' She responded that she had not heard of any change in the law. I responded, 'there has been a change in the laws and I suggest you find out about it.' (p. 88)

In some instances, perhaps most, married women do not know the law and do not get credit accounts of their own even when they persist. Witness Susan Elias attempted to change her Master Charge card to her married name:

They indicated that they absolutely could not accept my credit. I did not know I had any other recourse and so I did in fact have my husband sign the application and returned it to the bank. (p. 101)

I was very furious and I felt highly insulted. I had worked for 12 years at varying salaries, had never had any bad credit rating, was able to purchase automobiles, have charge accounts, and had paid off all my bills. And then to be highly insulted that it had to be my husband's credit instead of mine. (p. 104)

Nancy McCarty, whose salary combined with her husband's provides a yearly income over \$20,000, commented:

When I was single it was easy for me to buy things on credit. Now, it's like an obstacle course. It bothers me that I've got to go through all these new requirements because I'm married.<sup>27</sup>

### Joint Accounts

The previous discussion concerned credit problems when an individual marries and wishes to maintain his or her credit card account without adding the new spouse. A very different credit problem may arise when a newly married couple wants to form a joint account. One issue that the questionnaire addressed was whether a

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27. Interview in Salt Lake City, June 12, 1974.

woman loses her credit history when she marries and asks for a joint account. The responses indicate differential treatment of women.

Interviewers asked the 30 credit managers the following parallel questions:

A single man marries. Would you investigate his new wife's credit if he wants to add her name to the account?			A single woman marries. Would you investigate her new husband's credit if she wants to add his name to the account?		
Yes	=	5 (17%)	Yes	=	20 (67%)
No	=	25 (83%)	No	=	6 (20%)
*NA	=	0	*NA	=	4 (13%)

\*Not answered or answer qualified.

In the sample, fewer than 20 percent of the credit managers investigate the wife's credit history prior to marriage. On the other hand, nearly 70 percent investigate the husband's credit prior to marriage when the wife asks to add his name to her account.

This policy potentially affects all single women who work and establish credit as well as divorced and widowed women who may remarry. In Utah, 47,691 women who work are either single, divorced, or widowed. Of this number, 33,382 are single and comprise 22.9 percent of the female workforce, 9,306 are divorced and are 6.3 percent of the workforce, 5,003 are widowed and are 6.4 percent of the workforce.<sup>28</sup> The majority of these women will probably marry. The effect of the credit managers' "no investigation" policy is that a far greater proportion of single women than single men receive no consideration for their credit history prior to marriage. If credit managers examine only the pre-marriage credit of the man, the woman more often than the man is identified with the bad credit of the spouse upon marriage, even though studies have shown single women to be better credit risks than single men.

The previous questions relate to a man or woman who have accounts at the time of marriage. A similar question was asked to determine practices toward married persons seeking new accounts. The results again indicate that many creditors are willing to extend credit to married women on the strength of their husband's credit record:

28. Detailed Characteristics, Utah, tables 164-165.



A married man comes into your firm and applies for a charge card. You judge that he, individually, qualifies for the card.

A married woman comes into your firm and applies for a charge card. You judge that she, individually, qualifies for the card.

a. Would you investigate his wife's credit before approving the card?

Yes	=	3	(10%)
No	=	24	(80%)
*NA	=	3	(10%)

a. Would you investigate her husband's credit before approving the card?

Yes	=	14	(47%)
No	=	15	(50%)
*NA	=	1	( 3%)

\*No answer or answer qualified.

Six of the 30 credit managers indicated that they require the woman to fill out the application in her husband's name, Mrs. John Jones instead of Mrs. Mary Jones. These results should be qualified, however. Many credit managers indicated that most credit bureau reports intermingle the husband's and wife's records and therefore if they ask for one they receive the other as well. But this is not always true. There are circumstances when a woman may have an independent file under her maiden name or her own married name (i.e., Mrs. Mary Jones). In an automated credit bureau, the credit manager must make additional requests, which cost more money for each request, in order to get the woman's entire credit history. (See Section V.)

Additional questions concerned other practices toward joint accounts and salaries, joint accounts and signatures, and joint accounts and bills. Each area will be discussed separately, although in practice one area may affect any of the other areas.

#### Joint Accounts and Salaries

The assumption that women cease to work when they marry is no longer valid. According to one survey in 1967, 89 percent of women who worked before marriage continued to work after marriage. By 1972 that figure had jumped to 94 percent.<sup>29</sup> The assumption that the average woman works for a short time for "luxuries" or "pin money" is also untrue. In 1974 the

<sup>29</sup> "94 percent Brides Bring Home Second Check," Merchandising Week, vol. 104, May 15, 1972, p. 35.

average worklife of the working woman was 25 years.<sup>30</sup> For most working women, the greater part of their working years is after marriage.

To determine credit manager's views toward salaries of married women, the following questions were asked:

A single man marries. If he wants to add his new wife's name to the account, whose salary is considered?	A single woman marries. If she wants to add her new husband's name to the account, whose salary is considered?
His salary only = 23 (77%)	Her salary only = 11 (37%)
Her salary only = 0 --	His salary only = 0 --
Both salaries = 7 (23%)	Both salaries = 18 (60%)
*NA = 0 --	*NA = 1 (3%)

\*Not answered or answer qualified.

The responses indicate that credit managers may, in practice, hold one of two views toward a cardholder who marries and requests that the spouse be added to the account without a request for a larger credit limit:<sup>31</sup>

1. If a cardholder's salary was sufficient to satisfactorily handle the credit limit before marriage, it is satisfactory after marriage even if a new user is added. The results show that 23 credit managers (77 percent) apply this policy when the man marries, while only 11 (37 percent) apply this policy when a woman marries.
2. The addition of the new spouse as a user of the account significantly increases the risk of the account even if a larger limit is not requested; therefore, it is best to examine both salaries. The results show that 7 credit managers (23 percent) apply this policy when a man marries, and 18 credit managers (60 percent) apply this policy when a woman marries.

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30. U.S., Department of Labor, Women's Bureau, Employment Standards Administration, "The Myth and Reality," May 1974. (hereafter cited as "Myth and Reality").

31. The questionnaire did not deal with the quite different situation that exists if a single person marries and requests that the new spouse be added to the account, with an extended credit limit.

The results further indicate that credit managers have a negative view of the reliability of a working woman's salary. They usually provide an application for the husband to fill out when a woman requests that her husband be added to her account. Donnell Francom, second vice president for the Master Charge division of Continental Bank and Trust Co., Salt Lake City, told the Advisory Committee that it is part of the bank's service to customers:

- Q. Mr. Francom, what procedures do you follow when a single woman with an account marries and requests that her new husband be added to the account?
- A. We would, upon receiving that information, ask her if she desired a card for her husband.
- Q. And so you would add the husband to the account and there would be no problem, is that correct?
- A. Most generally, and we do provide an application for him to fill out so that we have information in our records so that we can serve them. (pp. 161-162)

This practice of "providing an application for him to fill out" appears harmless. However, a different policy applies to a man. Asked the bank's procedure where a single man marries and requests that his new wife be added to the account, Mr. Francom indicated that the husband's salary alone is considered. "If the request is good on its face, we don't need further information," he said.<sup>32</sup> A man's salary, therefore, is accepted in this situation but a woman's salary needs the support of the husband.

#### Joint Accounts and Signatures

Under Utah law, husband and wife are jointly and severally (separately) liable for a joint account. In several interviews, credit managers erroneously stated that the husband is solely liable under State law for a joint account. (See Appendix A.) Thus, they require a husband's signature and thereby refuse to grant a wife an individual account. State Rep. Rita Urie testified:

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32. Interview in Salt Lake City, February 1974.

When I asked the credit managers for applications, they gave me this piece of paper and said, 'Take it home for your husband to sign.' and I said, 'Well, I really don't think you understand. I am gainfully employed and the credit card is for me.' I was used to doing the purchasing for the entire household. They said, 'If you want the credit card then your husband will have to sign that he is going to be responsible for you and it will be in his name.' So I took the paper home for my husband to sign that he was going to be responsible for me, which he thought was hilarious. (p. 87)

The following questions concerned joint accounts and signatures:

A single man marries. If he wants to add his new wife's name to the account, whose signature would be required?

A single woman marries. If she wants to add her new husband's name to the account, whose signature would be required?

His signature only = 17 (57%)  
 Her signature only = 0 --  
 Both signatures = 13 (43%)  
 \*NA = 0 --

Her signature only = 14 (47%)  
 His signature only = 0 --  
 Both signatures = 14 (47%)  
 \*NA = 2 ( 6%)

\*Not answered or answer qualified.

Almost every woman who testified at the Advisory Committee's informal hearing said that credit managers had told them that State law requires the husband's signature. (pp. 87, 88, 101, 107, 213, 219, 227) Witness Susan Elias, for example, explained that at the time of her application she did not know that the law did not require her husband's signature. She accepted the creditor's statement and obtained her husband's signature. (p. 101) During one interview, Lynnette Sharpe, assistant credit manager of Taylor's department store in Provo, said repeatedly that the husband is legally responsible. She stated that "though either signature of the married couple is binding, the husband is legally responsible for the debts of the family."

### Joint Accounts and Billing

The question of signatures may be a legal and practical matter; the issue of billing is the opportunity to continue a credit record. The following questions were asked:

A single man marries. If he wants to add his new wife's name to the account, in whose name is the bill sent?	A single woman marries. If she wants to add her new husband's name to the account, in whose name is the bill sent?
His name only = 23 (77%)	Her name only = 11 (37%)
Her name only = 0 --	His name only = 9 (30%)
Both names = 5 (17%)	Both names = 6 (20%)
*NA = 2 (6%)	*NA = 4 (13%)

\*Not answered or answer qualified.

More than three-fourths of the credit managers will continue billing the husband in his name only; fewer than half will continue billing the wife in her name only. Perhaps most significant is that nine credit managers completely eliminate the woman from the billing process although it was her account prior to marriage. Consequently, she loses all past and future credit under her own name. Even if she continues to pay the bills, the credit for the account accrues primarily to her husband as the principal holder.

In both manual and automated credit departments, information under the wife's name is transferred to the credit bureau where it is also credited to the husband. Therefore, by changing the billing to the husband's name, the credit history is also changed to his name. (See Section V on credit bureaus.) This is illustrated in testimony by Judy Frye, BankAmericard division, First Security Bank in Salt Lake City:

- Q. How are your accounts kept on a married couple's joint account?
- A. It will be under one name for the account member, so it will be reported to the credit bureau under that name. Our computer accepts one name per account number, so it would depend on how we opened the account.

Q. And is there a policy as to whose name that would be shown under, the husband's or the wife's?

A. It is generally in the husband's name.  
(pp. 149-150)

Many women continue to pay accounts under their husband's name from their individual checking accounts. They often believe that the credit grantor tabulates who is paying the account. Gloria Schick had paid all the bills on both her husband's \$1,000 and her own \$400 Master Charge with Continental Bank, but the bank refused to issue her a new card upon separation. In an interview in Salt Lake City June 10, 1974, Ms. Schick said:

I was furious and my husband was furious. I told the bank that neither of us believed the husband needed to sign, and if they looked at the checks, they would know that I paid all the accounts.

Donnell Francom of Continental Bank testified that under their automated system, the credit department does not indicate whose checks paid the bills:

We would not know unless perhaps for some reason or other the credit bureau so noted on the actual report. They do note from time to time that the report may contain items for different members of the family.  
(p. 171)

Similarly, J. Earl Russell of ZCMI said:

With five stores and 150,000 accounts, we don't know who paid the bill. The check came in; it was credited to the account. Either or both of them could have paid their bills, but we have no way of knowing.  
(p. 210)

The Advisory Committee attempted to determine whether costs are, in fact, prohibitive for separate accounts. Reaction to the following statement was sought in the Advisory Committee questionnaire:

Granting separate accounts for married women and married men greatly increases our cost of doing business without adding to profitable sales volume.

Strongly Agree	1	( 3%)
Agree	7	(23%)
Don't Know	11	(37%)
Disagree	8	(27%)
Strongly Disagree	3	(10%)

The responses indicate that nearly three-fourths of the credit managers either do not believe that separate accounts greatly increase costs or do not know, which could indicate that costs are not the major reason for requiring joint accounts.

The questionnaire did not ask whether credit departments were automated or manual. Perhaps a credit manager's response to this question might be determined by whether the department is automated or manual.

Ms. Frye, of the First Security Bank, told the Advisory Committee that it does not cost more to keep separate accounts on First Security's computerized system, and the main purpose for this policy is "the advantage to the husband and wife to have only one payment." (p. 147) However, this places the burden on the woman to request a separate account, and most women probably are unaware that they need to make such a request.

#### The Transition from Married to Single

The assumption that the husband is the principal holder of the account has no immediate effect on most women. However, a woman "loses" her credit record if she divorces, separates, or is widowed from her husband, or if she wishes to open credit in her own name. The degree of "loss" varies with automated and manual credit bureaus. A woman may regain this "loss" if she regains the account after marriage or sufficiently proves to the credit bureau and credit managers which accounts she has paid.

Separate questions were asked pertaining to divorce, separation, and widowhood. Although there are interrelations among the three (e.g., a person may be filing for divorce while separated, or a person may become widowed while separated) each area will be discussed individually.

## 1. Divorce

The credit industry has subtle ways of informing divorced women that they are considered unstable and high credit risks. Credit scoring forms give fewer points for divorcees than for married persons. Writers in the field of credit management issue warnings:

Information may be sought as to whether the person is a widow, widower, or divorcee, as this status often affects the income and obligations against the income as well as the person's attitude toward credit obligations.<sup>33</sup>

In an interview in 1973, Charles Hayward, vice president of First National City Bank in New York City, said that the attitude that divorced or widowed persons are greater credit risks is:

...probably based on experience with divorced men, since so few previously married women have credit. At least one bank has learned from studying its own experience that divorced women are good risks, but a divorced man is twice as likely to default as a married man.<sup>34</sup>

At the time of the Advisory Committee's informal hearing in June 1974, the Walker Bank in Salt Lake City on its "zip application" gave two points for married persons and one point for individuals divorced, separated, or widowed. In a letter to the Advisory Committee August 6, 1974, David Keyser of the Walker Bankcard division wrote:

I found the information discussed [at the informal hearing] most interesting and informative. Sometimes we get so close to our own situation it is difficult to spot existing inadequacies. From the information presented, it is apparent our Zip Application needs revising. The new design completely eliminates any implication to a credit scoring system...and does not require the applicant to state their marital status.

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33. R. Cole and R. Hancock, Consumer and Commercial Credit Management, Rev. Ed., 1964, p. 187.

34. Gates, Vanderbilt Law Review, vol. 27, pp. 417-418.



Interviewers asked the following questions concerning divorced persons:

A man is divorced. Do you require that his credit card be returned and a new application filled out?			A woman is divorced. Do you require that her credit card be returned and a new application filled out?		
Yes	=	5 (16%)	Yes	=	18 (60%)
No	=	23 (77%)	No	=	10 (33%)
*NA	=	2 ( 7%)	*NA	=	2 ( 7%)

\*Not answered or answer qualified.

The responses obtained from these questions, similar to those pertaining to single persons who marry, indicate that credit policies have a different effect on women than men when a change in marital status occurs. Five (16 percent) of the credit managers require the man upon divorce to reapply for a credit card, whereas 18 (60 percent) require the woman to reapply. The Advisory Committee was unable to obtain data that would justify this differential treatment of women. The presumption is that a change in marital status negatively affects personal stability and income status so that a new application is necessary. For many women this is not true; the reverse may, in fact, be the case, as witness Susan Elias testified:

- Q. Was there a change in your income status from being married to being divorced?
- A. None at all. I was working prior to my divorce and I was working after I was divorced. My ex-husband's credit was terrible, and, in fact, all the loans that we ever received had to be done through my credit.
- Q. So in a sense you were a better credit risk after your divorce than before your divorce?
- A. Yes, I was. (p. 105)

One credit grantor stated that the Truth-in-Lending Act required new applications from divorced women for disclosure purposes. The Truth-in-Lending Act and subsequent regulations (cf., 12 C.F.R. § 226.7) list specific disclosures that a credit grantor must make "on a single written statement which the consumer may retain" before the first credit transaction on a new account. The law requires, therefore, that the credit grantor disclose credit terms to the applicant, man or woman, not that the applicant make out a new application to "disclose" a change in marital status. A short form from the credit grantor to a divorced woman requesting information concerning a change of name or address (if such occurs) would be sufficient.

## 2. Separation

A separation between husband and wife has more complex effects on credit than a divorce because it may be temporary, permanent, or may culminate in a divorce. The legal status of the two spouses is uncertain in many instances. This uncertainty probably explains why there were fewer responses or qualified responses to questions pertaining to separation. A credit manager may not know about a separation unless the account holder informs the credit department or asks that his or her spouse be removed from the account.

Four questions were asked concerning the effect of separation upon the married woman's and man's credit account:

<p>A man separates from his wife. Do you require that his credit card be returned?</p>	<p>A woman separates from her husband. Do you require that her credit card be returned?</p>
<p>Yes = 8 (27%)            No = 20 (66%)            *NA = 2 (7%)</p>	<p>Yes = 14 (47%)            No = 12 (40%)            *NA = 4 (13%)</p>
<p>Would you issue a new card if he reapplies while separated?</p>	<p>Would you issue a new card if she reapplies while separated?</p>
<p>Yes = 19 (63%)            No = 6 (20%)            *NA = 5 (17%)</p>	<p>Yes = 9 (30%)            No = 14 (47%)            *NA = 7 (23%)</p>

\*Not answered or answer qualified.

Again, the results indicate treatment toward women which may have a negative affect, as the following case illustrates.

Gloria Schick and her husband have banked with Continental Bank and Trust in Salt Lake City for 20 years. She works for a fashion boutique and has a monthly income of \$1,000. Before their recent separation, she and her husband had separate credit accounts with Continental Bank. She held a Master Charge card in her own name with a \$400 limit and shared the Master Charge account in her husband's name with a \$1,000 limit. Her husband also carried the Master Charge card with a \$1,000 limit. She paid the bills from both cards on her own checking account. Upon separation, she and her husband agreed she would use the husband's card for family expenses and her own card for personal expenses. This agreement worked well for them. Subsequently, her husband had occasion to mention their separation to their banker at Continental. Shortly thereafter, H. A. Fletcher, the bank's credit supervisor, told Ms. Schick that she could not use her husband's account while separated from him. Because she wanted a \$1,000 limit, she agreed to return both cards, and Mr. Fletcher agreed that the bank would establish a new account in her name with a \$1,000 limit.

When I didn't receive the new card, I phoned him to ask why. He said, 'We can't issue you a new card because your husband won't be liable for your debts.' I told him to look at the checks and he'd see that I had paid all the bills on my checking account. He then said that they would issue the card 'if Bob would come to the bank and sign a statement that he would be liable.' I was furious, I told Bob and he thought it was an insult....This is like the Dark Ages.<sup>35</sup>

In interviews on February 7, 1974, H. A. Fletcher, credit supervisor, and Donnell Francom, second vice president, Continental Bank & Trust, both stated that if a husband and wife are separated, they must return their credit cards and no new ones are issued until the divorce is final.

This case illustrates the inequitable nature of policies based on marital status without consideration of creditworthiness.

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35. Interview in Salt Lake City, June 10, 1974. In a subsequent telephone interview July 30, 1974, Ms. Schick indicated that she still had not received the card and that the bank had "offered to issue a new card to Bob, but he turned it down because he didn't want it."

### 3. Widowhood

Credit managers evidently foresee less credit risk when a married person is widowed. The following questionnaire responses indicate their reactions to widowhood:

A man is widowed. Do you				A woman is widowed. Do you			
require that his credit				require that her credit			
card be returned and a				card be returned and a			
new application filled				new application filled			
out?				out?			
Yes	=	0	--	Yes	=	4	(13%)
No	=	29	(97%)	No	=	26	(87%)
*NA	=	1	( 3%)	*NA	=	0	--

\*Not answered or answer qualified.

Many credit departments allow a widow to keep the credit card but request that she fill out a new application, particularly if the account had been in her husband's name. Donnell Francom, second vice president of Continental Bank in Salt Lake City, explained the standard procedure of the bank's Master Charge division if it learns that a woman is widowed:

We send a letter of sympathy, after a reasonable length of time, to the widow and state that if she wishes her name changed on the account if it was in her husband's name to please let us know. If she feels there is other information that would be pertinent to her account and to our helping her, she is welcome to complete an application which we enclose. (p. 160)

Once a widow has reapplied, the possibility of retaining the credit card would depend on establishing her own creditworthiness.

Many women evidently are unaware of the importance of establishing their own credit history. Glen Robertsen of the Ogden Credit Bureau said he could recall no more than five or six instances when a woman had requested a separate file when she was married. Most accounts, he said, are under the husband's name as joint accounts. (p. 317)

### Credit Card Application Forms and Processes

In hearings in 1973 before the Joint Economic Committee of the 93d Congress, Margaret J. Gates, director of the Center for Women Policy Studies in Washington, D.C., testified:

The practices which can result in discriminatory impact are many and varied. For example, the application forms themselves can be discriminatory -- as in cases where the name of the applicant is asked for, followed by a second blank asking for name of wife, if married. The applicant obviously is expected to be male.

Credit scoring systems, which are a technique for screening out potentially bad credit risks, can also have a negative impact on women. For example, after reviewing their good and bad accounts, lenders often identify divorce as a high risk characteristic. But the overwhelming number of accounts (or loans) have always been to men. So what really seems to be evident here is the propensity of divorced men to become delinquent. Divorced women pay the penalty, however, because it is they, typically, who have no prior credit record and are seeking new accounts, while divorced men frequently continue their old accounts unaffected.

The Utah Advisory Committee reviewed the application forms of 17 banks and department stores and found the following:

1. Six of the 17 forms ask for "wife's name" immediately after name of applicant - Taylor's, ZCMI, Clark's, The Paris, Auerbach's, and Walker Bank. The form used by Bon Marche requests "wife or husband's name." Most forms request simply "spouse's name." Keith O'Brien on the last page of the application requires the husband's signature first and the wife's signature second. According to Allen Bunker, credit manager for Auerbach's, "We are in the process right now of revising both our credit applications and changing 'wife' to the word 'spouse.'" (p. 179)

2. Two require the first name on the application to be the husband's if the applicant is married. Walker Bank's application reads "Name (if married, use husband's full name)," and the Paris application form reads "Name - Husband if married." Walker Bank's application is also being changed.
3. Ten credit departments require applicants to indicate their marital status, "Married, Single, Widowed, Divorced, Separated"--Bon Marche, Taylor's, Keith O'Brien, J. C. Penney, Clark's, W. T. Grant, The Paris, Zion's First National Bank, Walker Bank, and Sears, Roebuck. The Sears form has spaces only to indicate "Married, Widowed, or Single."
4. Nine forms have spaces to indicate "Mr., Mrs., or Miss." Two have a space for "Ms." Sears and J. C. Penney use Ms. The Advisory Committee learned of at least one instance, however, in which J. C. Penney appears to have a policy of requiring the husband to be the main source of income. Marcie Mathews applied for a card in September 1973 and qualified, but was turned down for the stated reason that her "husband was unemployed and he is the breadwinner."<sup>36</sup>

In response to this allegation, J. C. Penney stated that the company no longer had a record of Ms. Mathews' application, since it does not retain records of declined customers more than 6 months. A spokesperson for J. C. Penney said, "In any event, such action as that allegedly taken with Ms. Mathews would clearly violate both the letter and the spirit of company policy concerning the granting of credit to women."<sup>37</sup>

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36. Marcie Mathews, interview in Salt Lake City, June 10, 1974.

37. Lynn J. Ellins, Midwestern Regional Counsel, J. C. Penney, to Commission staff, Sept. 18, 1974.

It is questionable whether any of these requirements are necessary for application forms, inasmuch as many credit departments do not use them. The first two requirements in particular may have detrimental impact on a woman's credit. The impact is more than just psychological because the way credit is reported ultimately determines to whom the credit history belongs.

If an application form discourages the woman from signing her own name first, it causes her to relinquish the credit advantage of being the principal holder of the account. Although she is applying for the account, it will be listed in the first name on the application. The billing will be made to the individual whose name is in the first blank, usually the husband. All reports from the credit department to the credit bureau will also be placed under that name. Donnell Francom of Continental Bank told the Advisory Committee, "The account will be listed in the person whose name appears on the first line." He described the process:

- Q. So it would be in one individual's name, not both?
- A. Yes, but our system provides for two cards to be issued. At the bottom of the application there is a place for each party to sign as they wish their cards printed.
- Q. But is the bill sent to only one individual?
- A. The bill is sent to the person whose name appears on the first line....
- Q. Is the history of the account sent under both names or only the person who is listed on the first line?
- A. Our accounts are in the name as our applicants wish them by whose name is put on the first line. I suppose that is the way it is sent to the credit bureau.  
(pp. 165, 167-168)

Although they do not include space for "Ms.," the application forms of Master Charge (First Security Bank) and BankAmericard (Valley Bank & Trust and Continental Bank) appear to have a format that is most equal in terms of sex and marital status. The application form used by Continental Bank's Master Charge department allows a woman to open an account in her name and thereby have it reported to the credit bureau under her name. However, forms requiring or implying that the husband's name must be listed first preclude the wife from having the account reported to the credit bureau in her name. Consequently, she does not establish a credit history.

### III. PERSONAL LOANS

Marital status appears to be a major factor influencing the policies of loan officers regarding a woman's creditworthiness. The Utah Advisory Committee heard few complaints from creditworthy single women concerning denial of loan applications.

In interviews with 26 loan officers in the Salt Lake City, Ogden, and Provo areas, Commission staff received a nearly unanimous response to questions concerning single women:

A young, single man (age 21) applies for an auto loan on a new car. You judge that he, individually, qualifies for the loan.

a. Would you grant him the loan?

Yes = 26 (100%)  
No = 0 --

b. Would you require a cosigner?

Yes = 2 ( 8%)  
No = 24 ( 92%)

A young, single woman (age 21) applies for an auto loan on a new car. You judge that she, individually, qualifies for the loan.

a. Would you grant her the loan?

Yes = 26 (100%)  
No = 0 --

b. Would you require a cosigner?

Yes = 5 ( 19%)  
No = 21 ( 81%)



Although all 26 loan officers would grant a qualified single woman or man an auto loan, only 2 would require a cosigner for the man, while 5 would require one for the woman.

### Married Women

The married woman, on the other hand, faces an almost constant battle to convince a loan officer, first, of her individual creditworthiness and, second, of the stability of her qualifications. Rae Ann Dunn of Salt Lake City, a married woman, told the Utah Advisory Committee:

[I felt] when they asked me for my husband's signature they were examining my capability and whether or not I was competent enough to handle my own money. I am quite competent enough to handle a profession in a hospital full of people, but I am not competent enough to spend my own money? (p. 215)

Ms. Dunn's statement was prompted by her experience in applying for an installment loan at a Salt Lake City store, Carriage House Furniture. Ms. Dunn has been continuously employed for over 5 years as a nurse and has a 7-year tenure. At the time of her application, she had been a nurses' supervisor for 6 months. Divorced twice, Ms. Dunn has paid debts accrued during both marriages, as well as a home and a mobile home in her own name. Despite the fact that her credit rating was in good standing, she was told before applying that she would have to have her husband's signature. Ms. Dunn said that she was capable of handling the payments herself and filled out an application for credit terms on a dinette set. The application was turned down. She told the Advisory Committee that she was informed, "Anywhere I went I would have to have my husband's signature." (pp. 212-213) Ms. Dunn has filed suit against the store alleging sex discrimination under Utah's recent amendment to the State Civil Rights Act on Commerce and Trade. (See Appendix A.)

Of the 26 loan officers interviewed in the three cities, about half said that they would prefer to have both spouses' signatures on a loan application from a married person, even if the applicant was gainfully employed, with a good credit history, and excellent job stability. State law does not require both signatures for personal loans.

F. W. Douglas, supervisor of consumer credit at First Security Bank of Utah, said, "If you do not have both signatures, one can take out bankruptcy without the other." D. G. Francom, vice president of Conti-

mental Bank and Trust, said he would require a spouse's signature because he considers a loan a "family situation." Fred Assay, assistant vice president of Walker Bank, said he wants both spouses to sign in case anything happened to the other.<sup>38</sup>

Loan officers were asked the following questions, with these results:

A married man applies for a \$500 personal loan. You judge that he, individually, qualifies for the loan.

a. Would you grant him the loan?

Yes = 25 (96%)

No = 0 --

\*NA = 1 ( 4%)

b. Would you require the wife's signature on the loan?

Yes = 12 (46%)

No = 14 (54%)

\*NA = 0 --

A married woman applies for a \$500 personal loan. You judge that she, individually, qualifies for the loan.

a. Would you grant her the loan?

Yes = 25 (96%)

No = 0 --

\*NA = 1 ( 4%)

b. Would you require the husband's signature on the loan?

Yes = 11 (42%)

No = 13 (50%)

\*NA = 2 ( 8%)

\*Not answered or answer qualified.

Sharon Bryan of Salt Lake City described to the Advisory Committee two examples of what she considered discriminatory practices by different loan officers. "When I was making arrangements for my wedding," she said, "I found that I was short some money....I went to my loan company, First Thrift and Loan, and explained the situation, and they said they would have to have my husband's signature." Ms. Bryan explained that she was not yet married, but the loan officer said, "Your husband will have to come in and make application for this, and then we can give you the money." Ms. Bryan was a coverage clerk for Liberty Mutual at the time of her application and had credit references and a good credit history. (pp. 226, 228-229) Ms. Bryan said that after her marriage, in another application, she was granted a loan from First Thrift in her own name.

38. Interviews with officials of Commercial Security Bank and Zions First National Bank, Salt Lake City; Citizens Bank, Ogden; and Central Bank and Trust, and Walker Bank, Provo, April 1974.

The other instance cited as discriminatory by Ms. Bryan involved Walker Bank in Salt Lake City, where she had obtained personal loans while she was single. After marriage, she said, she applied at Walker Bank for a loan of \$3,000 in her own name to purchase a motorcycle as a surprise for her husband. Ms. Bryan was told by the loan officer that the loan would have to be under her husband's name. "He told me it was State law....He said, 'When you became married, your credit was null.'" (p. 227) There is no such State law.

Darlene Bolinger, an occupational therapist, told the Advisory Committee that she and her husband sought a \$3,000 bank loan on a mobile home. Their combined yearly income was \$14,000 and they were willing to make a 40 percent downpayment. Her husband applied for the loan at Tracy Collins Bank in Salt Lake City where they had both checking and savings accounts. The loan was denied, Ms. Bolinger said, by the loan officer who told her husband that it was because his wife was the "major breadwinner," since her salary was greater than his. The loan officer suggested that her situation was unstable since she might stop working if she became pregnant. Ms. Bolinger told the Advisory Committee:

We feel responsible for our bills, regardless of the state of our health, whether I could get pregnant as a loan officer implied, or he could break a leg, which he didn't imply, was a very strong possibility. And he certainly couldn't work if he broke a leg because he's in construction.

I was furious. My husband was very depressed about that. He felt like he was being treated as inferior and not really a competent person. Before we were married we decided that since I had a career established at that point, I would pursue my career and we would live on my income, and he would be allowed to go to school or work at whatever job he wanted to. This arrangement has worked out for us and we wish that society would respect that.  
(pp. 224-225)

Later, Ms. Bolinger said, they obtained the loan from Walker Bank.

In response to a query about Ms. Bolinger's allegation, a Tracy Collins official said that he was unable to find a formal application from the Bolingers in his file. He stated, however:

If family income is a factor in determining whether or not to approve a loan, we apply the same set of standards to the wife's income as to the man.<sup>39</sup>

Ms. Bolinger contends that this was not the information given her husband at the time, and that, in fact, the loan officer at Tracy Collins made the suggestion that they try Walker Bank.<sup>40</sup>

Dr. Bonnie Spillman, an assistant professor in the department of communications at Utah State University, Logan, told the Advisory Committee that she had attempted to purchase a \$125 television set on installment credit from J. C. Penney. At the time of her application, she said, she supported herself and her husband and had a guaranteed income for 3 years of \$7,400 annually from four research fellowships and scholarships. She had one outstanding bill of \$30 a month when she applied for the loan. Dr. Spillman was told that her application could not be accepted because her husband was not earning any money. She replied that she was the sole support of her family and was told, "It's our policy that the wife's income does not count....It's Utah State law." Dr. Spillman then requested another application to fill out in her name only and was told, "No, I'm sorry, but the policy requires that the application for any credit cards or installment loans be in the husband's name." (p. 219)

The cases described by these witnesses indicate unwillingness on the part of credit grantors to approve a loan solely on the credentials of a married woman. This appears to contradict the responses of most loan officers to the Advisory Committee's questionnaire. Of 26 loan officers, 21 (81 percent) said that they would grant a \$500 personal loan to an individually qualified married woman. In response to another question, which parallels the experiences described to the Advisory Committee, all 26 loan officers again indicated recognition of a working wife's creditworthiness:

A married woman, age 28, who has two school-age children, applies for an auto loan. She has worked full time for a year as a secretary. You judge that she, individually, qualifies.

Would you grant her the loan?

Yes	=	26	(100%)
No	=	0	--

39. C. Alan Murdock, senior vice president, Tracy Collins Bank, letter to Commission staff, Sept. 17, 1974.

40. Interview, Sept. 23, 1974.

The questionnaire did not address a situation where the wife is the major breadwinner or the sole support of her family, but a related question was asked:

Do you ever add a wife's part-time salary to determine total effective income if it will probably continue during the early period of the loan risk.

Of the 26 loan officers, 17 (65 percent) responded that they would count the wife's part-time salary. Yet the loan officers described by Ms. Bolinger and Dr. Spillman, as well as many loan officers interviewed, appeared to assume that a wife's income was unstable and were concerned about pregnancy and other factors. Commission staff asked the following question:

If you need to include the wife's salary with the husband's salary in order to qualify a \$3,000 home improvement loan, what criteria do you apply when considering her:

	Yes	No
a. employment	26 (100%)	0 --
b. age	17 ( 65%)	9 (35%)
c. plans for children	16 ( 62%)	10 (38%)

Employment is an obvious consideration in evaluating creditworthiness, but a majority of loan officers also wanted information about a couple's plans for children and the age of the wife. It is noteworthy, however, that a significant number did not believe that these were important considerations, and apparently do not assume that all married working women will soon become pregnant and cease working.

A common characteristic among loan officers described by women during the Utah Advisory Committee's informal hearing was their unfamiliarity with or misinterpretation of the law. Utah law does not require the signature of both spouses on personal loan applications, nor does it require that a loan be applied for and made only in the husband's name. Similarly, there is no legal prohibition to counting a wife's income in

determining loan eligibility. In fact, under Utah law, working married women have control over their earnings and may enter into contracts without the authorization of their spouse. (See Appendix A.)

### Divorced Women

One woman, commenting upon her difficulties, said to the Utah Advisory Committee, "If this is what you have to go through to get a loan when you're married, I'd hate to try it if I were single again." (p. 229)

The fact of the matter is that many women do try it when they're single again. Many divorced women seek to acquire loans from the same banks they dealt with before and during their marriage. Their plight is somewhat different than that of the never-married or married woman. Most often, the divorced woman has relied upon her husband's credit during her marriage, and when she applies for a personal loan she is, as they say in the credit business, a "new face." If she is not fully employed and relies in part upon alimony or child support to meet the creditor's income requirements, she will probably be refused. Such payments by husbands are considered unreliable, according to responses from loan officers who were interviewed. Several questions were asked concerning alimony and child support payments, with the following results:

	Yes	No
A divorced man applies for a loan. In determining his total effective income:		
a. Do you regularly deduct court-ordered alimony payments?	23 (88%)	3 (12%)
b. Do you regularly deduct court-ordered child support payments?	23 (88%)	3 (12%)
Do you ever add court-ordered alimony to a woman's income to determine total effective income?	15 (58%)	11 (42%)
Do you ever add court-ordered child support to a woman's income to determine total effective income?	15 (58%)	11 (42%)

The vast majority of loan officers responded that they regularly deduct court-ordered alimony and child support payments from a divorced man's income, yet nearly half refuse to consider those same payments as part of a divorced woman's disposable income. For credit purposes, alimony often is not considered "income" for a divorced woman, but also, according to some loan officers, it is deducted as a liability because of its unreliability.

Creditors may deny loans to divorced women because they believe that they generally are unstable and less reliable than married or never-married persons. Such is the case of Barbara J. Stevens of St. George, Utah, who wrote to the State Department of Financial Institutions in Salt Lake City in May 1974. Ms. Stevens told investigators she had submitted a loan application for \$500 from Dixie State Bank through one of the car dealers in St. George. She wished to make a downpayment toward the purchase of a used car. Ms. Stevens said she had dealt with the bank for over 3 years without any problems; yet, the \$500 loan was rejected. When she asked why the loan had been refused, the loan officer allegedly told her that to the best of his knowledge his bank had never approved a loan for a divorced woman. She later acquired the loan through another bank.

Dixie State Bank, asked to respond to Ms. Stevens' allegation, denied that sex or marital status were the primary reasons for denying her a loan, stating:

Her application for credit was declined on the basis of a previous loan which was not handled entirely satisfactorily. Also, at the time we declined her, we had a joint checking account with her and her husband which was not being handled in an entirely satisfactory manner.<sup>41</sup>

The Advisory Committee queried an official of the bank about a hypothetical situation similar to that of Ms. Stevens, but concerning a divorced man. The bank official responded that the man would be granted a loan based on the information provided.

Still another difficulty faced by divorced women, and often by widowed women as well, is that any credit they might have established while they were married exists in their husbands' names, so they must start afresh without any previous credit history. The Utah Advisory Committee heard such comments as "When I remarried, I found that the credit bureau had lost my

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41. Brent D. Kamerath, assistant cashier, Dixie State Bank, letter to Commission staff, Sept. 13, 1974.

past credit history." (p. 216) Credit grantors agreed. One told the Advisory Committee, "most often when a divorced or widowed woman comes to you for credit the information [credit report] is usually in the husband's name." (p. 239) This issue will be discussed in detail in Section V concerning credit bureaus and the credit reporting process.

### The Application Process

The Advisory Committee reviewed a number of application forms used by Utah lenders. One woman told the Committee that she felt the application presumed the applicant to be male when in fact, a married woman might be applying for the loan. (p. 220)

Most of the personal loan applications reviewed request information on employment, marital status, salaries of both spouses, number of dependents, assets, debts, source of other income, and previous credit references. Some applications request the wife's parents' address but do not request similar information about the husband. Most applications ask for the applicant's name and "spouse's" name, although a few ask for name of applicant and applicant's "wife."

The application process is usually a short and simple procedure which is almost always followed by a personal interview. These interviews often provide opportunity for an applicant to clarify or to provide additional information which aids in determining his/her creditworthiness.<sup>42</sup>

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42. For a more thorough analysis of the "screening process" to which women applicants are subjected by loan officers, see Mortgage Money: Who Gets It?, chap. 3.



#### IV. HOME MORTGAGE LOANS

Myra Bradwell, an attorney, was denied admission to the Illinois bar in 1872 because, according to the U.S. Supreme Court:

The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator, and the rules of civil society must be adapted to the general constitution of things and cannot be based upon exceptional cases.<sup>43</sup>

Although the "general constitution of things" has since changed, the 1872 rationale is regularly used, if not articulated, in denying women equal credit opportunity, particularly in the area of mortgage lending. A recent article in the Vanderbilt Law Review states:

In the face of hard evidence to the contrary, many creditors assume that virtually all women will marry, have children, leave the work force, and therefore fail to meet their financial obligations.<sup>44</sup>

Few people can afford to pay cash for a home. An applicant's inability to get credit for housing effectively denies that person the ability to buy a home. If the applicant is a woman, whether married or unmarried, lending practices toward her are often capricious and arbitrary. The following excerpt from Yale Legislative Services Report illustrates the importance of fair mortgage lending practices:

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43. Bradwell v. Illinois, 83 U.S. 130, 141-142 (1872).

44. Gates, Vanderbilt Law Review, vol. 27, 1974, p. 429.

Discrimination against women in home mortgage financing is a serious barrier to the achievement of social and economic justice in the United States....The ability to obtain mortgage credit to purchase a home can mean much more to a family than merely the adequacy of its shelter. It can mean living in a decent neighborhood, having access to good educational, health, and recreational facilities, or even access to a decent job.<sup>45</sup>

### Policies of Conventional Mortgage Lenders Toward Women

#### Single Women

Although national trends indicate that single women--unmarried, widowed, separated, or divorced--have great difficulty in gaining access to mortgage financing, the Utah Advisory Committee uncovered few allegations from single women in Utah about discrimination in this area. A possible explanation was provided by some of the women interviewed; they said that the average woman in the Salt Lake City-Ogden-Provo area earns less than \$7,000 a year, which is not enough to qualify as sole holder for most single family homes in the area.

Of the mortgage lenders interviewed, 75 percent said they had noticed a sharp increase in applications for home loans from single women in the past several years. Asked if they would grant a home loan to a 27-year-old, single woman who qualified, all 28 officials said "yes." Three, however, said they would require a cosigner for a loan to either a single woman or man of that age.

#### Married Women

Most women who work before marriage continue to work after marriage, according to one survey. In 1968 the figure was 89 percent; in 1972, it climbed to 94 percent.<sup>46</sup> The percentage of families in which both wife and husband bring home a paycheck rose from 15 percent in 1940 to 46 percent in 1970.<sup>47</sup> Nearly 65 percent of the working women in Utah are married. As one Utah mortgage lender said, "The working wife is no longer a luxury...she's a reality in this day of high economic pressures."<sup>48</sup>

45. Dennis Kendig, "Discrimination Against Women in Home Mortgage Financing," Yale Legislative Services Report, Yale Law School, New Haven, Conn., February 1973, p. 29.

46. Merchandising Week, May 15, 1972, p. 35.

47. Elizabeth Waldman and Kathryn R. Gover, "Marital and Family Characteristics of the U.S. Labor Force," Monthly Labor Review, May 1970, p. 20.

48. Ida Young, mortgage loan officer, Commercial Security Bank, interview in Salt Lake City, February 1974.

Because of the growing recognition that married women are a substantial part of the labor force and because of pressure from various public interest groups, mortgage lenders count some portion of the working wife's income in determining a couple's loan eligibility. Since August 1974 Federal law requires that mortgage lenders "shall consider without prejudice the combined income of both husband and wife for the purpose of extending mortgage credit in the form of a federally related mortgage loan."<sup>49</sup>

In the Salt Lake City, Ogden, and Provo areas, 28 mortgage lenders were interviewed. (See Appendix B for a list of participating institutions and officials.) The mortgage loan questionnaire was designed to present the relatively low-risk situation of women unlikely to have another child. The following question was asked:

A married woman, age 28, has two school children and has worked a year full-time as a secretary. The couple needs both salaries to qualify for the loan. What percentage weight would you give to her salary to determine maximum effective income if her salary will probably continue during the early period of the mortgage risk?

<u>Percentage</u>	<u>Answers</u>
a. 0%	0
b. under 50%	0
c. 50%	14 (50%)
d. 75%	1 ( 4%)
e. 100%	13 (46%)

Half of the lenders said that they would count only 50 percent of the wife's salary; 46 percent said that they would count all of it. The same loan officers in a similar question were given different variables: "The wife has worked 2 years as a nurse in the Navy, has worked a month at a local hospital, and has two school age children." In this situation, 20 (71 percent) said they would count all of the wife's salary, and 8 (29 percent) said they would count 50 percent.

The subjective judgment of the mortgage lender plays a significant role in the decision to grant credit for home ownership. The responses to these two questions, for example, indicate that mortgage lenders do not adhere to a uniform policy in considering the working wife's income.

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49. 12 U.S.C. § 1735f-5.

Not only are there inconsistencies among the 14 lending institutions studied, but also within the same institution. Four institutions responded to questions about their policies with regard to counting the wife's income as follows:

<u>Institution</u>	<u>Official Interviewed</u>	
Bank of Utah Ogden	Loan Officer A:	"We take into consideration if the job is stable. We may count it 100 percent."
	Loan Officer B:	"It depends on the probability of continued employment."
Prudential Federal Savings & Loan Provo	Loan Officer A:	"We'll count her income 100 percent as long as she's been on the job 2 years and is past the child bearing age."
	Loan Officer B:	"If she's between 30 to 38 I count 50 percent of her income."
Ogden Federal Savings & Loan Ogden	President:	"If she's over 45 years old we would count 100 percent... otherwise, 50 percent."
	Loan Officer:	"If she established a working career, we consider it 100 percent."
First Federal Savings & Loan Salt Lake City	Loan Officer:	"Our policy is the same as FHA's...we count it 100 percent."
	Vice President:	"The income of the wife is considered provided she has a 3 year history."

Another series of questions addressed the consideration of part-time salary in determining loan eligibility. Interestingly, although 79 percent of the lenders responded that they would count a wife's part-time salary, 36 percent also stated that counting her part-time salary increases the risk on the home loan.

	Yes	No	*NA
Do you ever add a husband's part-time salary to determine total effective income if it will probably continue during the early period of the mortgage risk?	28(100%)	0	0
Do you ever add a wife's part-time salary to determine total effective income if it will probably continue during the early period of the mortgage risk?	22( 79%)	6(21%)	0
In your opinion, does counting a working wife's income increase the risk on mortgage loans that you make?	10( 36%)	17(61%)	1(3%)

\*Not answered or answer qualified.

A 1973 report of the Center for National Policy Review stated, "The most serious manifestation of sexism in mortgage lending is the widespread practice whereby many lenders routinely discount part or totally ignore a working wife's income in computing family income." The arbitrary practice of discounting a working wife's income is viewed by the Center for National Policy Review as having a sharp discriminatory impact where the wife's income represents a significant contribution to the family's income and standard of living.<sup>50</sup> This is certainly applicable in Utah, where 40 percent of the married women work and 50 percent of those have children under the age of 17.

The Utah Advisory Committee's field investigations revealed that a major reason many mortgage lenders refuse to give full credit to the working wife's income is that they assume the wife may have a child and cease working, which would increase the risk of default and subsequent foreclosure. The Advisory Committee found no studies to date which

50. Center for National Policy Review, Catholic University School of Law, Washington, D.C., "Equal Opportunity in Mortgage Lending: Status and Recommendations," June 1973, p. 17.

would support the assumption of increased risk. In one study of mortgage delinquency which deals with the issue of two wage-earners in a family, there were indications that, if anything, loans to families where the husband's income accounted for 100 percent of family income had a slightly higher likelihood of delinquency than loans where the husband's income was only a portion of family income.<sup>51</sup>

The assumption also ignores changing social conditions, the sharp increase in the number of working wives, and the increased availability of liberal maternity leave. Such a rationale assumes, as the Center for National Policy Review report points out, "that people are devoid of common sense and cannot rationally plan their lives; that they will deliberately quit work even if this would mean a loss of their house due to foreclosure."<sup>52</sup> It is important to note that when a man applies for a home mortgage loan the number of dependents he has may increase substantially during the life of the mortgage. Yet, there is no discounting of his income based on the possibility of an increased number of dependents.

Field investigations uncovered no uniform policy among mortgage lenders in the Salt Lake City area in determining whether to count some, most, or all of the working wife's income. Arbitrary decisions were found in other mortgage practices concerning the age of the applicant, plans for children, and the applicant's occupation.

### Age and Children

In mortgage loan underwriting, the age of the female wage earner is requested on all loan applications reviewed by Commission staff. The prime reason, most mortgage lenders pointed out, is to correlate the age of the woman with the probability of childbearing. For example, a married woman in her twenties in a nonprofessional occupation will not have more than 50 percent of her income counted because of the likelihood that she will bear children and, it is assumed, leave the labor force. In contrast, 75 to 100 percent of the income of a nonprofessional, married woman in her late thirties will qualify.

Some mortgage lenders discount the working wife's income in accordance with the number and age of her children. A young married woman with no children, on the other hand, may have her income counted if she can document that she will not have children. This documentation is usually a physician's statement attesting to a woman's or a man's sterility, their use of approved birth control methods or their willingness to terminate pregnancies.

51. Anatomy of Residential Mortgage, United States Savings and Loan League (Washington, D.C., 1964 p. 66. See also Home Mortgage Delinquency and Foreclosure, John Earley, New York National Bureau of Economic Research, 1970.

52. "Equal Opportunity in Mortgage Spending," p. 8.

Freida McCoy, a married woman in her early thirties, was asked to produce such documentation at the time of her application for a mortgage loan. Ms. McCoy had been employed at the University of Utah for more than 3 years and had established good credit. She told the Advisory Committee that she was asked by Prudential Federal Savings and Loan in Salt Lake City to sign a statement that she would not have children for 5 years. (p. 23) Ms. McCoy refused to sign and later applied for and received a loan from First Federal Savings, Salt Lake City, which did not require a "baby letter." Asked to respond to Ms. McCoy's allegation, a Prudential official denied that such a policy existed:

While we, of course, cannot be certain of the conversation that transpired between our loan counsellor and Mr. and Mrs. McCoy, we can assure you that it is not our policy to require such a statement from our home loan borrowers.<sup>53</sup>

A similar situation was described to the Advisory Committee by Joan Whitcomb of Sandy, Utah. Ms. Whitcomb is district administrator for Dictaphone Corporation in Salt Lake City. She is in her early thirties and has a good credit record. In 1973 Mr. Whitcomb was transferred from Portland, Ore., to Salt Lake City and found a home to buy prior to his family's arrival. He applied for a loan from Western Mortgage Loan Corporation in Salt Lake City and was told to have his wife write a letter stating that she had no intention of having children and describing her methods of birth control. (p. 26) Ms. Whitcomb did write such a statement and the home loan was approved.

During the Advisory Committee's informal hearing, both women testified that they objected to the request for such personal information and considered it unfair and discriminatory. Freida McCoy said:

They don't ask men to sign papers saying they will stay with their job for a certain length of time, or to guarantee their health, or anything, but because I was in my childbearing years, which to this particular bank extends until I was into my forties, then they were asking me to sign something saying I would not become a parent for at least 5 years....I felt that was unfair....(pp. 24, 26)

In the case of the Whitcombs, as pointed out by Joan Whitcomb, the baby letter was requested from a couple that did not even need the wife's salary to qualify:

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53. H. M. Calvert, executive vice president, Prudential Federal Savings and Loan, Salt Lake City, to Commission staff, Sept. 16, 1974.

In it [the baby letter] I told them I have a college degree, I planned on continuing to work, and that in this day and age it's really not necessary for them to ask that...My husband's income was such that it shouldn't have even come up. (p. 26)

Interviews with officials of several savings and loan associations in the Salt Lake City, Ogden, and Provo areas indicate that the policy of requesting a "baby letter" varies even within the same institution. In the absence of uniform institutional policies, the request for a "baby letter" depends entirely on the attitude of the individual loan officer. In the McCoy case, one asked for a "baby letter" and another did not.

### Occupation

The income of women categorized as "professional" by lenders is counted more readily than that of women whose jobs are considered "nonprofessional." This was exemplified in the responses to the question:

A couple with two school age children applies for a loan. The wife worked for 2 years as a nurse in the Navy. At the time of the loan she has worked only a month as a nurse with a hospital. What percentage of the wife's salary would you count for total effective income?

Of the 28 loan officers interviewed, 20 said that they would count 100 percent of the wife's salary as total effective income because nursing is a professional occupation. In a similar question where the woman is a secretary with 2 years experience, 14 loan officers said they would count 50 percent or less of her income because she was nonprofessional. Still, the other 14 loan officers said they would review the secretary's credit rating, her length of time on the job, and her opportunity to continue. Several loan officers said that 2 years was a good period of time with one firm, and they would count 100 percent of the salary.

### Signatures

The issue of whose name is on the mortgage is a major concern to those women who wish to have property in their own name whether they are single or married. The Utah Advisory Committee sought to determine lenders' policies, and asked 28 mortgage lenders their requirements in the following hypothetical situations:



	Yes	No	*NA
A married woman comes into the bank to apply for a mortgage loan. You judge that she, <u>individually</u> , would qualify for the loan, but her husband is unemployed.			
a. Would you grant her the loan?	24 (86%)	4 (14%)	0 --
b. Would you grant her the loan as sole holder if she requested it?	21 (75%)	7 (25%)	0 --
c. Would you require the signature of the husband?	15 (54%)	13 (46%)	0 --

A married man with two school age children applies for a mortgage loan. He has just left the Army, where he was employed as a mechanic for 2 years, to accept a similar job with a company. You judge that he, individually, qualifies for the loan, but he has worked only a month with the company.

a. Would you grant him the loan?	25 (89%)	1 ( 4%)	2 (7%)
b. Would you require the signature of the wife?	27 (96%)	1 ( 4%)	0 --

\*Not answered or answer qualified.

Because of the Utah statute relating to dower, it is common for mortgage lenders to require a wife's signature as well as her husband's for a home loan, as indicated by the fact that 27 of the 28 lenders have this requirement. The statute does not require the husband's signature, however, for a creditworthy wife to obtain a home loan. (See Appendix A.) Yet, more than 50 percent of the 28 lenders seek the husband's signature on the loan, even though 75 percent said they would grant the wife the loan as the sole holder if she requested it.

Divorced Women

The circumstances surrounding the income of divorced women are often complex. The divorced woman with a substantial employment history and an independent source of income may be treated as any other single woman in applying for a home loan, but differential treatment occurs if alimony or child support payments are partial or fundamental sources of income. The following questions were asked of mortgage lenders:

	Yes	No	
Do you ever count court-ordered alimony to determine total effective income?	9 (32%)	19 (68%)	
Do you ever count court-ordered child support to determine total effective income?	11 (39%)	17 (61%)	
A divorced man applies for a mortgage loan. In determining his total income do you:			
a. regularly deduct alimony payments?	26 (93%)	2 ( 7%)	0
b. regularly deduct child support payments?	26 (93%)	2 ( 7%)	

The majority of lenders said they would never count alimony or child support payments to determine the woman's eligibility. They contended that both alimony, especially court-ordered, and child support payments are highly unreliable. Some mortgage officers said that child support payments are meant to be used for children only and should not be counted as effective income. Others said that child support payments continue only for a certain period (until age 18 or 21) and they count the payments as effective income only until that time. Several lenders said they would be willing to check the pattern of payments.

If the ex-husband was a professional, such as an attorney or a doctor, and if payment was regular, they would definitely consider alimony or child support as part of income. This probably accounts for the 9 to 11 lenders who said they would be willing to count this income.

Still, most divorced women interviewed about mortgage practices said their primary complaint concerned the arbitrary refusal to consider alimony and child support as effective income even when the reliability of the source could be verified.

Despite the fact that the Advisory Committee received no indication from divorced women that they had been denied a home loan simply because they were divorced, one loan officer told the Advisory Committee that he thought it very likely that the mere fact a person was divorced might ultimately affect the determination not to grant a home loan. (p. 48)

#### Widowed Women

Of the 145,638 women in the Utah civilian labor force, 6.4 percent are widowed.<sup>54</sup> The widow, with or without a salary, in applying for a home loan can often rely on life insurance proceeds, Social Security payments, or settlement from an estate to provide an adequate downpayment and assure a regular income. All 28 mortgage lenders said a widow with a sufficient downpayment and a guaranteed regular income would be granted a home loan. Three loan officers, however, said they would require a cosigner.

#### Separated Women

A primary concern of home loan officers is assurance as to who will be responsible for the loan. For this reason, the separated woman in Utah falls into a high risk category. As Gary Jorgenson of Prudential Federal Savings told the Advisory Committee, "We grade each applicant as to their net worth--their assets versus their liabilities--and if the divorce is not final yet, it's very hard to determine that." If the wife does not know what portion of the assets is hers or the amount of alimony or child support she will receive, he said, then it would be difficult for his office to grant a loan on such limited information. Her earnings, he said, would be considered, but would not represent a complete financial picture. "Most likely we would not close the loan...until the divorce was final and we did have a divorce decree." (p. 51)

Concerning a legal separation, several loan officers agreed that, even if they found the woman individually qualified, they would not grant her the loan. Other mortgage lenders simply will not deal with separated women at all, whereas separated men are not seen as unstable. One loan officer supported this reasoning by referring to the FHA Mortgage Credit Analysis Handbook, which states:

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54. Detailed Characteristics - Utah, Tables 164-165.

It has been demonstrated that inharmonious domestic relationships are an important cause of foreclosure. The determination as to this risk will be dependent upon recognition of items in the credit report and personal history of the mortgagor which give evidence of family discord, pending divorce suits, reconciliation after initiation of divorce suits, and other items which point to unstable family conditions.<sup>55</sup>

This policy underscores the stigma imposed on domestic strife and, as in the case of this particular officer, is used as a mandate to reject even those loan applications from women who continue a long and stable informal separation.

#### Policies of Federal Agencies Toward Women

Federal Financial Regulatory Agencies -- Three of the four Federal financial regulatory agencies supervise the banking community: the Comptroller of the Currency (COC), the Federal Reserve System (FRS), and the Federal Deposit Insurance Corporation (FDIC). The fourth, the Federal Home Loan Bank Board (FHLBB), regulates savings and loan associations.<sup>56</sup> Thus, all four agencies are responsible for supervision of institutions which handle mortgage loans.

Until August 1974 there was no Federal law to prohibit sex discrimination in home financing. At that time, the Federal Fair Housing Law, Title VIII of the 1968 Civil Rights Act, was amended to prohibit lending discrimination on the basis of sex as well as race, color, religion, and national origin.<sup>57</sup>

Prior to 1974, however, only the Federal Home Loan Bank Board had taken any steps to establish a policy regarding sex discrimination. In December 1973, responding to a 3-year drive by 13 public interest groups, the FHLBB issued guidelines recommending that each loan applicant's creditworthiness be evaluated on an individual basis and cautioning against practices which distinguish creditworthiness on the basis of age, sex, and/or marital status.<sup>58</sup> Then, in December 1974, pursuant to the amendment to

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55. U.S., Department of Housing and Urban Development, Federal Housing Administration, Mortgage Credit Analysis Handbook, July 1972, pars. 2-7 (hereafter cited as Mortgage Credit Handbook).

56. For a discussion of the structure and responsibilities of the four financial regulatory agencies, see U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1974, vol. II, "To Provide...For Fair Housing," (1974), pp. 134-218.

57. 42 U.S.C. § 3604 et seq.

58. 12 C.F.R. § 531.8.

Title VIII, the FHLBB promulgated regulations requiring that "no member institution shall deny a loan...because of the race, color, religion, sex, or national origin of an applicant."<sup>59</sup> The rules also refine the board's 1973 policy statement and guidelines on sex discrimination. None of the other three regulatory agencies has taken similar steps regarding the lenders under their supervision.

After several years of pressure by civil rights organizations, the financial regulatory agencies have initiated a pilot program requiring those institutions they supervise to collect data on all mortgage loan applications regarding race, ethnicity, sex, and marital status. Thus, for the first time, monitoring agencies will have access to concrete data on lending patterns with regard to minorities and women.

Federal Housing Administration (FHA) -- An arm of the U.S. Department of Housing and Urban Development, FHA is responsible for insuring and, to a lesser degree, subsidizing mortgages on new and existing single-family homes. In 1969, for example, FHA insured more than nine billion dollars worth of mortgages.<sup>60</sup>

Traditionally, FHA's policy on crediting the wife's income has differed somewhat from that of conventional lenders. The FHA policy is to count either all of the wife's income or none of it, depending on whether that "income and motivating interest may normally be expected to continue throughout the early period of the mortgage risk."

The FHA mortgage credit handbook addresses the "risk" involved in basing net effective income on two wage earners in this manner:

When the effective income is derived from dual sources of occupational income, as in a case when both husband and wife are expected to be employed during the early period of the mortgage risk, risk due to possible reductions in total occupational income frequently will be increased because of the greater probability that one or the other mortgagor may suffer a loss of income. This factor of risk is of particular importance when the dual income is represented by the salaries of young married couples.<sup>61</sup>

Concerning the relationship between the income of the working wife and pregnancy, FHA takes this position:

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59. 12 C.F.R. § 528.2.

60. Federal Reserve Bulletin, March 1970, A-53.

61. Mortgage Credit Handbook, pars. 2-21a.

The principal element of mortgage risk in allowing the income of working wives as effective income is the possibility of its interruption by maternity leave. Most employers recognize this possibility and provide for maternity leave, with job retention as an inducement of employment. With strong motives for returning to work, any failure to do so after maternity leave would probably be due to causes which would be unpredictable and would represent such a very small percentage of volume that it could be accepted as a calculated risk.<sup>62</sup>

FHA policy, while appearing liberal, is implemented at the local level according to the facts of each case, thereby permitting a wide latitude in the exercise of judgment by individual FHA officials and lenders following FHA guidelines. In the Salt Lake City area alone, for example, the following comments were made by staff of mortgage lending institutions which finance homes with FHA insurance:

"I usually just go ahead and ask for the letter [baby letter] from the woman's doctor in order to make the loan more secure."

"If the woman is a professional, I'd grant her full credit...otherwise, no."

"FHA has no policy as I know of on asking about parental plans."

"Sometimes they count the wife's income if she is over 36 years of age.<sup>63</sup>

"If the women's salary is necessary [to qualify] I ask about maternity benefits and request a letter stating what they are."

"I ask for a letter of support saying they plan to continue working."

"I make no inquiries about parental plans."

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62. Ibid., pars. 1-22b.

63. This statement refers to FHA guidelines not used since 1962.

### Veterans Administration (VA)

The Veterans Administration, like FHA, has long played a major role in the financing of single-family housing. Its Loan Guaranty Service insures home loans for veterans on favorable terms. On July 18, 1973, the VA issued a circular to its field stations establishing guidelines on treatment of a wife's income:

In consideration of present day social and economic patterns, the Veterans Administration will hereafter recognize in full both the income and expenses of the veteran and spouse in determining the ability to pay a loan....<sup>64</sup>

All VA regional offices have been instructed that they should no longer discount income on sex or marital status in making this determination. With regard to the "baby letter," the VA has stated that if such a medical statement is voluntarily submitted by the veteran to the lender, it cannot very well be refused upon receipt in VA. However, VA states that it would prefer builders and lenders to retain any such statement.<sup>65</sup>

### The Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC)

FHA and VA loans historically have had a substantial secondary market, but the same cannot be said of conventional loans.<sup>66</sup> The Emergency Home Finance Act of 1970 authorized the Federal National Mortgage Association to buy and sell conventional as well as federally subsidized mortgages. The act also created a new agency, the Federal Home Loan Mortgage Corporation, to buy and sell conventional mortgages. The two agencies perform basically parallel functions as secondary investors. FNMA does business primarily with mortgage bankers and commercial banks; FHLMC deals with savings and loan associations and is regulated by the Federal Home Loan Bank Board.

In December 1971 FNMA issued revisions to its underwriting guidelines adding to its warranties section a prohibition against discrimination by race, color, religion, sex, age, or national origin in the fixing of terms of loans and in servicing loans.<sup>67</sup>

64. U.S., Veterans Administration, Department of Veterans Benefits, Information Bulletin no. 26-73-24, July 18, 1973 (hereafter cited as Information Bulletin).

65. Information Bulletin no. 26-74-1, Feb. 2, 1974.

66. A secondary market, in which blocks of mortgages are bought and sold as investments, helps to increase capital in lending institutions and thus increase their capacity for making mortgage loans. Large insurance companies and other financial institutions also invest in mortgages.

67. U.S., Federal National Mortgage Association, "Credit and Property Underwriting," FNMA Conventional Selling Contract Supplement, pt. III, sec. 311, December 1971.

With regard to counting the wife's salary FNMA states:

The key determination to be made is whether the circumstances reasonably indicate that the income jointly or separately will continue in a manner sufficient to liquidate the debt under the terms of the note and mortgage.<sup>68</sup>

Because the language is very broad and may be interpreted in many ways, FNMA has indicated that the intent of the guidelines is essentially the same as FHLMC's more specific criteria:

If there are two borrowers, both of whom have full-time employment, a determination should be made as to whether both will probably work for several years (normally at least 20 percent of the mortgage term).<sup>69</sup>

FHLMC's criteria for conventional mortgages is more liberal than FHA's. For example, FHLMC suggests that part-time or overtime work be included if "such items of secondary income are likely to be stable income for a substantial period (normally at least the first 3 years of the mortgage term)." It also states that the possibility of temporary leave, such as maternity leave, is not a basis for discounting any portion of the borrower's income.<sup>70</sup>

The Advisory Committee's questionnaire given to mortgage loan officers in Utah included two questions concerning the influence of policies of secondary investors on the policies of private institutions:

What effect does the underwriting policy of a secondary investor have on your underwriting policy?

Very Much	7	(25%)
Some	8	(29%)
Little	4	(14%)
None	5	(18%)
*NA	4	(14%)

What effect does the underwriting policy of a secondary investor have on your policy with regard to counting a wife's salary?

Very Much	5	(18%)
Some	2	(7%)
Little	7	(25%)
None	11	(39%)
*NA	3	(11%)

\*Not answered or answer qualified.

68. Ibid., sec. 311.03(d).

69. FHLMC Sellers Guide-Conventional, pt. V, sec. 5.02, December 1971.

70. Ibid.



Interestingly, more than 50 percent of the lenders said that the policies of secondary investors have at least some influence on their own underwriting policy. Yet, with regard to counting a wife's salary, only 25 percent said they would be influenced.

#### Mortgage Loan Applications and Underwriting Guides

Mortgage bankers and savings and loan associations generally require one and possibly two applications for the initial request for a home purchase--the institution's own application and one required by a secondary investor such as FNMA or FHLMC. The information requested on FNMA and FHLMC applications generally falls into the following categories: property desired, borrower's background, income, housing cost, details of purchase, finance, borrower's primary employment, and coborrower's employment. There are also questions about additional income, credit references, bankruptcy, lawsuits, alimony, and a space for the applicant to detail his or her assets and liabilities.

Most loan applications of private institutions are not as detailed, although the same information may be requested at a later time. The Utah Advisory Committee received no complaints about the loan applications themselves. For the most part, women said, they felt that the information requested on applications was fair and impartial.

Several lending institutions have also formulated an underwriting guide to be completed by the loan officer either during or after an interview with the applicant. Gary Jorgenson, a loan officer with Prudential Federal Savings in Salt Lake City, told the Advisory Committee that he thought the institution should rate borrowers in areas relating to their income stability and the property they wish to purchase. (p. 45) The information sought on Prudential's underwriting guide includes: income, number of dependent children, net worth and indebtedness, equity, age, and also quality and location of the prospective property.

The underwriting guide is used primarily for screening loan applicants for approval or disapproval. Mr. Jorgenson said that the guide was developed from statistical analysis of 300 files pulled at random. (p. 47) Questioned about the validity of a random sampling based on experiences 7 or 8 years old, Mr. Jorgenson stated that he did not believe the borrowing habits of people had changed in 7 years. (p. 79) The Advisory Committee pointed out that before July 1965 there was no law against discrimination in employment on the basis of sex, and thus it is very possible that the underwriting guide drawn up 8 years ago reflects the fact that women were not likely to be hired for certain jobs.

Prudential's underwriting guide is fairly typical. It specifies, for example, that if either husband or wife have been previously divorced the rating should be lowered one point. More than one divorce would lower the rating two points. Mr. Jorgenson explained the justification for these two categories: "It has been my experience that...an older person is usually a more established person...that as a general rule an older person between the ages of 35 and 55 has established himself, has a history, and he has become a more stable person." (p. 83) He also said, "Two divorces definitely point to a pattern, and that's what they're looking at on histories, to establish a pattern to see what would happen for the future." (p. 53) In fact, a divorce does not necessarily mean economic instability.

Since the underwriting guide is filled out by the mortgage lender and usually not seen by the applicant, the Advisory Committee received no complaints from women about its contents and rating system. At the open meeting, however, the Advisory Committee seriously questioned whether the underwriting guide should include marital status and age of head of household to determine the creditworthiness of an individual. The Advisory Committee was also concerned about the justification for ascribing the lower rating to the divorced individual under age 35, since a divorced woman under 35 may well be the head of household and may also be gainfully employed with a good credit rating.<sup>71</sup>

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71. In Utah, 9,000 or 6.4 percent of the women in the labor force are divorced and considered the head of household. Detailed Characteristics - Utah, tables 164-165.

## V. CREDIT BUREAUS

Credit bureaus have existed for many years. There are credit bureaus in most cities, 10 or 11 in the State of Utah. The Salt Lake City Credit Bureau, the largest in the State, provides 850 retail stores, banks, and other types of businesses with information about consumer credit.

In addressing the question of women's credit, the role of the credit bureau is crucial. A man may change his marital status several times and still maintain a continuous credit history. The credit a woman establishes when she is single is filed and reported in her husband's name after marriage. Married women, in effect, cease to be individuals in the credit world and have difficulty re-establishing their individual credit history upon separation, divorce, or widowhood.

The Utah Advisory Committee explored the entire credit reporting system within the State. The following sections outline briefly specific procedures of credit bureaus and how they affect women in Salt Lake City, Ogden, and Provo.

### Functions of Credit Bureaus

A credit bureau is a business enterprise, whether profit or nonprofit, which compiles information on the manner in which consumers meet their credit obligations. In theory, a credit bureau is an impartial third party in a three-party system which involves the consumer, the credit grantor, and the credit bureau.<sup>72</sup>

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72. Information about credit bureaus may be obtained from Associated Credit Bureaus, Inc., 6567 Southwest Freeway, Houston, Tex. 77036.

A credit bureau obtains almost all its information from the credit grantor, who obtains it from the consumer. This information includes the consumer's name, spouse's name, address and former address, employer and former employer, Social Security number, and so forth. Other information from public records is also placed on credit bureau reports, such as divorce notices, deaths, marriages, bankruptcies, court judgments, disposition of lawsuits, arrests, indictments, or convictions. All credit bureaus are regulated by the Fair Credit Reporting Act<sup>73</sup> which prohibits reporting adverse information of this kind if it is more than 7 years old, except bankruptcy which can be reported for 14 years.<sup>74</sup>

Some credit reporting agencies develop "investigative consumer reports" which include information from personal interviews with associates, friends, and neighbors as to the consumer's character, general reputation, personal characteristics, or mode of living. These more indepth reports generally are used by insurance companies for underwriting purposes and are not done by the credit bureaus included in this report.

Credit history is reported by a standardized language, the "common language," recently adopted to insure that credit grantors and credit bureaus use the same terms to describe consumer paying practices. Code letters from A to Z denote the kind of business, and numbers from one to nine rate the manner of payment. The lower the number, the better the credit rating. (See Figure 1 on the following page.)

The credit grantor determines the rating the account receives; the credit bureau merely reports it. Most credit information is given by telephone, but credit bureaus also provide written reports on request. To ensure that credit reports are not given out on a random basis, each credit grantor has a code number which must be given before credit information is divulged. Any person who knowingly obtains information from a credit bureau under false pretenses can be fined \$5,000 and/or imprisoned up to 1 year.<sup>75</sup>

The Fair Credit Reporting Act, which became effective in April 1971, gives consumers certain rights which previously were unavailable:

1. The right of an individual to know the "nature and substance" of all information in his or her file at the credit bureau, even if there is no reason to suspect it is unfavorable. There usually is a nominal fee, unless the consumer has been denied credit in the last 60 days due to information contained in the file.

73. The Fair Credit Reporting Act and the Truth-in-Lending Act are included in the Consumer Credit Protection Act, 15 U.S.C. § 1681, et seq.

74. 15 U.S.C. § 1681(c).

75. 15 U.S.C. § 1681(g).

**FIGURE 1**

**YOUR GUIDE FOR USING THE  
COMMON LANGUAGE FOR CONSUMER CREDIT**

**TERMS OF SALE**

Open Account (30 days or 90 days) .....  
 Revolving or Option (Open-end a/c) .....  
 Instalment (fixed number of payments) ... ..



USUAL MANNER OF PAYMENT	TYPE ACCOUNT		
	O	R	I
Too new to rate; approved but not used	0	0	0
Pays (or paid) within 30 days of billing; pays accounts as agreed	1	1	1
Pays (or paid) in more than 30 days, but not more than 60 days, or not more than one payment past due	2	2	2
Pays (or paid) in more than 60 days, but not more than 90 days, or two payments past due	3	3	3
Pays (or paid) in more than 90 days, but not more than 120 days, or three or more payments past due	4	4	4
Account is at least 120 days overdue but is not yet rated "9"	5	5	5
Making regular payments under Wage Earner Plan or similar arrangement	7	7	7
Repossession. (Indicate if it is a voluntary return of merchandise by the consumer.)	8	8	8
Bad debt; placed for collection; skip	9	9	9

**KIND OF BUSINESS CLASSIFICATION**

Code	Kind of Business
A	Automotive
B	Banks
C	Clothing
D	Department and Variety
F	Finance
G	Groceries
H	Home Furnishings
I	Insurance
J	Jewelry and Cameras
K	Contractors
L	Lumber, Buliding Material, Hardware
M	Medical and Related Health
N	National Credit Card Companies and Air Lines
O	Oil Companies
P	Personal Services Other Than Medical
Q	Mail Order Houses
R	Real Estate and Public Accommodations
S	Sporting Goods
T	Farm and Garden Supplies
U	Utilities and Fuel
V	Government
W	Wholesale
X	Advertising
Y	Collection Services
-Z	Miscellaneous

2. The right to dispute any of the information contained in the file (specific procedures are provided) and to have that information deleted if it is inaccurate.
3. The right to file a civil suit if a credit bureau has either willfully or negligently failed to comply with the requirements of the act. Actual and punitive damages are provided.<sup>76</sup>

The act does not contain an antidiscrimination provision, presumably because a credit bureau is providing objective data and cannot overtly discriminate on the basis of race, color, religion, sex, or national origin. The act does provide that:

There is a need to insure that consumer reporting agencies exercise their responsibilities with fairness, impartiality, and respect for consumers' rights of privacy.<sup>77</sup>

Although there is no statutory provision, a credit bureau as a reporting agency may be subject to the same requirements as employers are under the "effects test" of Griggs v. Duke Power.<sup>78</sup> If a business practice, although not overtly discriminatory, has a discriminatory effect, that practice should be outlawed unless the business can demonstrate that the practice is clearly dictated by business necessity. As will be illustrated, the reporting procedures of credit bureaus and credit grantors have disparate economic effects upon women and the fair reporting of women's credit. As with many other issues, however, it will take a court decision to determine whether Griggs v. Duke applies in the credit reporting system.

#### Manual and Automated Credit Bureaus

In the traditional manual credit bureau, like those in Provo, Price, and Ogden, clerical staff files and sorts credit information. An individual file is maintained on a standardized and confidential "Factbilt report" which is filed alphabetically. (See Figure 2 on the following page.) A typical telephone request for an oral report on an individual consumer costs \$1.25.

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76. 15 U.S.C. § 1681(g), (i), (o).

77. 15 U.S.C. § 1681(a).

78. 401 U.S. 424(1971).

NAME AND ADDRESS OF CREDIT BUREAU MAKING REPORT

FIGURE 2

CREDIT BUREAU OF PROVO  
 265 West 100 North, Provo, Utah 84601  
 Telephone: 373-8900 (801)

- SINGLE REFERENCE     IN FILE REPORT     TRADE REPORT  
 FULL REPORT     EMPLOY & TRADE REPORT     PREVIOUS RESIDENCE REPORT

CONFIDENTIAL *Factbill*® REPORT

VOID

FOR

Date Received
Date Mailed
In File Since

This information is furnished in response to an inquiry for the purpose of evaluating credit risks. It has been obtained from sources deemed reliable, the accuracy of which this organization does not guarantee. The inquirer has agreed to indemnify the reporting bureau for any damage arising from misuse of this information, and this report is furnished in reliance upon that indemnity. It must be held in strict confidence, and must not be revealed to the subject reported on, except by reporting agency in accordance with the Fair Credit Reporting Act.

REPORT ON (SURNAME): MR., MRS., MISS, MS.    GIVEN NAME:    SOCIAL SECURITY NUMBER:    SPOUSE'S NAME:

ADDRESS:    CITY:    STATE:    ZIP CODE:    SINCE:

**COMPLETE TO HERE FOR TRADE REPORT AND SKIP TO CREDIT HISTORY**

PRESENT EMPLOYER    POSITION HELD:    SINCE:    DATE EMPLOY VERIFIED    EST. MONTHLY INCOME \$

**COMPLETE TO HERE FOR EMPLOYMENT AND TRADE REPORT AND SKIP TO CREDIT HISTORY**

DATE OF BIRTH    NUMBER OF DEPENDENTS INCLUDING SELF:     OWNS OR BUYING HOME     RENTS HOME     OTHER: (EXPLAIN)

FORMER ADDRESS:    CITY:    STATE:    FROM:    TO:

FORMER EMPLOYER:    POSITION HELD:    FROM:    TO:    EST. MONTHLY INCOME \$

SPOUSE'S EMPLOYER    POSITION HELD:    SINCE:    DATE EMPLOY VERIFIED    EST. MONTHLY INCOME \$

**CREDIT HISTORY (Complete this section for all reports)**

KIND OF BUSINESS	DATE REPORTED	DATE ACCOUNT OPENED	DATE OF LAST SALE	HIGHEST CREDIT	AMOUNT OWING	AMOUNT PAST DUE	TERMS OF SALE AND USUAL MANNER OF PAYMENT

MEMBER



In the manual system, a file is not automatically updated as it is in the automated system. According to Glen Robertsen, manager of the Ogden Credit Bureau, a file is updated for a fee if either the credit grantor or the consumer requests it. The credit bureau updates it if there have been a dozen or so requests within a year. (pp. 291-292)

A major problem for manual systems is getting credit grantors to report their accounts on a regular basis. William J. Welsh, Jr., manager and owner of the Provo and Price credit bureaus, described the difficulty:

The problem here is that credit grantors will call in to the credit bureau for a report. If we do not have the file, or if the file has not been updated, they will not have us do the work in updating the file. They will do direct checking on their own. The information they get from direct checking does not come back to the bureau files. (pp. 291-292)

Credit bureaus often do not have all the credit information on a consumer. This is particularly true with regard to nonlocal credit such as national credit cards. Mr. Welsh described the problem:

The consumer will sit across the desk from us and whip out a wallet full of credit cards, American Express, BankAmericard, Master Charge, you name it, Diners Club, Texaco, and you know that they have had credit, but some of that information is not available to us. American Express will not report accounts to us. (pp. 327-328)

Some companies report only negative credit, such as when an account becomes 120 days delinquent; but "the positive information which you sometimes seek to make the credit decision is not always available," according to Mr. Welsh. (p. 328) If a lending institution holding mortgages sells them to investors in other cities or States, the record of mortgage payments ceases to be updated at the credit bureau. (p. 327) Mr. Welsh summarized the problem of obtaining total credit information:

Of the credit grantors that I think appeared here today, retail stores, banks, finance companies, there are very few who give us all the information that they have....[Any credit bureau] does not have all the available information on all the people who live in this valley, nor will any three of us together have it. (pp. 326-327)



The credit bureau in Salt Lake City has been automated for approximately a year. Clyde Tooman, general manager of the Salt Lake City Credit Bureau, described his organization:

Our bureau operates as a nonprofit organization. The credit grantors own the credit bureau. There are about 850 members. They own the credit bureau and they tell us what they want in the file. Whatever they want us to have in the file we would have in the file, but they would have to pay for it. (p. 314)

In the automated system a file is initiated when an individual applies for credit and the credit grantor makes an inquiry from the credit bureau. If there is no file on the consumer, the credit bureau creates one from the information provided by the credit grantor who has obtained it from the consumer's application. (See Figure 3 on the following page.) If the application is approved, the credit grantor is required to keep the file updated by conveying to the credit bureau the information in the individual's account. (p. 293) Automated credit departments provide updated information by computer tapes directly from their data processing centers to the credit bureau's central files. Nonautomated departments update their accounts by submitting forms or cards to the bureau. The information is stored in "computer file cabinets." The Salt Lake City bureau has more than 500,000 credit records.

The 850 credit grantors who are members or "subscribers" of the bureau may make an "inquiry" by telephone or letter. All the information in a file is coded and the clerical staff reads the code to the credit grantor. Some automated departments also have direct access to computer files through their own teleprinter. Each inquiry by teleprinter costs \$1.20, an inquiry by telephone costs \$1.30, and a verbal plus written report costs \$1.75. (p. 334) The TRW Data Systems, a national computer organization which is used by the Salt Lake City bureau, has taken the "common language" and expanded the basic code. An example of a coded and updated credit report is given in Figure 4 on page 73.

Mr. Tooman described the process when a consumer disputes the information in his or her file:

If the consumer disagrees with any inconsistencies whatsoever in that file, we are obliged to reinvestigate, and then, upon our reinvestigation, correct the error if we discover an error.

**HOW CREDIT PROFILES ARE UPDATED:**

**FIGURE 3**

PROFILE	STATUS COMMENT / LOCATED BY	DATE REPORTED / INQUIRY	INDUSTRY	SUBSCRIBER	TYPE OF ACCOUNT	TERMS	AMOUNT	DATE OPEN	ACCOUNT NUMBER
A	Inquiry	08-73	RET	73-52140	CHG	10	\$300		

**INITIAL ENTRY INTO FILE. APPLICANT SOUGHT TO OPEN A REVOLVING CHARGE ACCOUNT WITH RETAIL STORE.**

PROFILE	STATUS COMMENT / LOCATED BY	DATE REPORTED / INQUIRY	INDUSTRY	SUBSCRIBER	TYPE OF ACCOUNT	TERMS	AMOUNT	DATE OPEN	ACCOUNT NUMBER
A	XXXXXX <u>OPEN ACCT.</u>	XXX <u>09-73</u>	XX RET	XXXX 73-52140	XX CHG	XX 10	XXXX \$300	08-73	<u>643210830</u>

**LATER THE RETAIL STORE NOTIFIES THE BUREAU THAT THE APPLICATION IS APPROVED AND CHANGED TO AN OPEN ACCOUNT.**

PROFILE	STATUS COMMENT / LOCATED BY	DATE REPORTED / INQUIRY	INDUSTRY	SUBSCRIBER	TYPE OF ACCOUNT	TERMS	AMOUNT	DATE OPEN	ACCOUNT NUMBER
X	XXXXXX	XXX	XX	XXXX	XX	XX	XXXX		
X	XXXXXX	XXX	XX	XXXX	XX	XX	XXXX	XXX	XXXXX
A	<u>DELINQ 90</u>	<u>12-73</u>	RET	73-52140	CHG	10	\$300	08-73	643210830

**FOUR MONTHS LATER THE ACCOUNT IS REPORTED AS 90 DAYS DELINQUENT.**

PROFILE	STATUS COMMENT / LOCATED BY	DATE REPORTED / INQUIRY	INDUSTRY	SUBSCRIBER	TYPE OF ACCOUNT	TERMS	AMOUNT	DATE OPEN	ACCOUNT NUMBER
X	XXXXXX	XXX	XX	XXXX	XX	XX	XXXX		
X	XXXXXX	XXX	XX	XXXX	XX	XX	XXXX	XXX	XXXXX
X	XXXXXX	XXX	XX	XXXX	XX	XX	XXXX	XXX	XXXXX
A	<u>CHARGE OFF</u>	<u>05-74</u>	RET	73-52140	CHG	10	<u>\$100</u>	08-73	643210830

**FIVE MONTHS LATER THE ACCOUNT IS CHARGED OFF. AMOUNT CHARGED OFF IS SHOWN IN AMOUNT COLUMN.**

FIGURE 4

HOW YOU GET THE MOST FROM OUR REPORTS:



UPDATED CREDIT PROFILE

CONFIDENTIAL

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OPERATOR NUMBER	12	DATE OF INDUSTRY	9-01-73	BILLING NUMBER	YOB	1936	TYPE	00	TERMS	36	AMOUNT	3600	
LAST NAME		FIRST NAME		MI	LN	OR LN	CURRENT ADDRESS		PREVIOUS ADDRESS		EMPLOYEE BY AND SOC. SECURITY NO.		
Barker		Ernest		B	R	J	1590 E 84110		2365-5-84110		EMP Mountain Bell SS # 762 853 941 EMP SS # 7-72		
ADDITIONAL FILE INFORMATION Ernest B Barker 1590 East Laird Ave. Salt Lake City, Utah Emp verified - C - 8-6-73 - Mountain Bell - hired 6-13-71													
NOTE: RECORD BALANCE INFORMATION BELOW TRADE LINE													
A/M	POS	PROF	NON	NEG	STATUS COMMENTS	DATE REPORTED	SUBSCRIBER NUMBER	SUBSCRIBER BANK	TYPE OF ACCOUNT	TERMS	AMOUNT	DATE OPEN	ACCOUNT NUMBER - SUMMARY OF PAID ACCOUNTS
A	11					7-72	71-00601		00	36	3600	6-72	4572341
A	11					7-73	72-79240		18	10	300	10-72	402453211496
A		80				9-73	73-85060		07	10	500	5-73	3251784962
					Balance	8-1-73					450		Past due 135
					Cur ✓	File J.R. ✓	SS#	098349074	Emp	✓			
						1-73	75-63000		20	24	2000	12-72	251678
A	01					9-73	77-78415		-	-	-		
A	11					7-72	78-28100		08	30	20,000	5-69	345 8927
PUBLIC RECORD DATA		STATUS COMMENTS		DATE REPORTED		COURT CODE		AMOUNT		DOCKET #		PUBLIC RECORD COMMENTS	
Judgment				8-15-73		7010001		1000		212840		Wilson Co.	
IMPORTANT: USE OF THIS INFORMATION IS GOVERNED BY THE TERMS AND CONDITIONS OF THE SUBSCRIBER AGREEMENT				© TRW CREDIT BUREAU OF SALT LAKE CITY				NOTE: IT IS POSSIBLE THAT ALL OF THE ABOVE INFORMATION MAY NOT PERTAIN TO THE INDIVIDUAL INQUIRED UPON UNLESS OTHERWISE NOTED. EMPLOYMENTS SHOWN ON THIS REPORT ARE AS REPORTED BY SUBSCRIBERS					



UPDATED CREDIT PROFILE

CONFIDENTIAL

BUT1												
AZS 7321453V9 BARKER ERNEST BRJ, 1590 L 84105, P-2365 5 84110, 7253 R 84110, S-762853941, E-MTNBELL, Y-1936, T-06024012.												
PAGE	DATE OF REPORT	TYPE OF REPORT										
01	09-01-73	T-PRINTER	15-36-40 A032 FILE W									
PROFILE	STATUS COMMENT/LOCATED BY	DATE REPORTED/SECURITY	INDUSTRY	SUBSCRIBER	TYPE OF ACCOUNT	TERMS	AMOUNT	DATE OPEN	ACCOUNT NUMBER			
A	ERNEST B BARKER JR.	04-72	590 EAST LAIRD AVE/SALT LAKE CITY UTAH 84105									
A	SOC SEC NO SAME/FILE ID-ENN.R JR/CUR-SAME/EMP-MTN BELL	07-72						07-72	KENNECOTT 04-71			
A	VERIFIED EMPLOYMENT C 08-06-73/MTN BELL/H/RED	06-13-71										
A	OPEN ACCT	07-72	BANK	71-00601.	AUT	36	\$3600	06-72	4572341			
A	OPEN ACCT	07-73	BCC	72-78240	CRC	10	\$300	10-Y	402453211496			
A	DELINQ 90	09-73	RET	73-85060	CHG	10	\$500	05-73	3251784962			
A	BALANCE	08-01-73					\$450		PAST DUE \$135			
A	PAID SATIS	04-72	FIN	75-48101	NTE	12	\$1000	03-71	8628531			
A	OPEN ACCT	01-73	FIN	75-63000	HHG	24	\$2000	12-72	251678			
A	OPEN ACCT	07-72	S&L	78-28100	R/E	30	\$20000	05-69	3458927			
M	JUDGMENT	06-15-73		70-10001			\$1000		212840 WILSON CO.			
A	CUR SAME/FILE ID SAME/SOC 098349074/EMP-ABC INC	09-73										
A	INQUIRY	09-73	CU	77-78415	UNK	UK	UNKN					
	END											
IMPORTANT: USE OF THIS INFORMATION IS GOVERNED BY THE TERMS AND CONDITIONS OF THE SUBSCRIBER AGREEMENT				© TRW CREDIT BUREAU OF SALT LAKE CITY				NOTE: IT IS POSSIBLE THAT ALL OF THE ABOVE INFORMATION MAY NOT PERTAIN TO THE INDIVIDUAL INQUIRED UPON UNLESS OTHERWISE NOTED. EMPLOYMENTS SHOWN ON THIS REPORT ARE AS REPORTED BY SUBSCRIBERS				

If the credit grantor says the information is correct, and the consumer still contends that the information there is wrong, the consumer is permitted to put into the file a statement, not more than 100 words, on his side of this particular transaction. The consumer may feel that the merchandise was faulty, or that he didn't get the service, or any number of reasons why he didn't pay that account the way he should have. So long as there is a dispute between the consumer and the credit grantor, then we must put the consumer's statement in the file. (pp. 324-325)

This procedure also protects the credit bureau which is liable under the Fair Credit Reporting Act for "material and willful misrepresentation."<sup>79</sup>

#### Reporting of Women's Credit By Credit Bureaus

Women who try to maintain a continuous credit record face problems resulting from the fact that they may change names and marital status, and from attitudes and practices of credit grantors and the day-to-day procedures of credit bureaus. Because the manual credit bureaus in Provo, Price, and Ogden differ considerably from the automated credit bureau in Salt Lake City in reporting women's credit, each type will be considered separately.

#### Manual Credit Bureaus

##### Single Women

A single woman's credit file is initiated, updated, and reported in the same manner as a single man's file. Thus, credit bureau procedures provide little problem while a woman is single. However, in order for her credit record to have impact, it must be requested by credit grantors. Data from the Advisory Committee's questionnaires indicate that many credit grantors give a woman's premarriage credit record little or no credence once she changes her marital status. The following question was asked of 26 personal loan officers and 28 mortgage loan officers:

A young couple, married for a year, applies for a loan [mortgage]. It is necessary to include both the wife's and husband's salaries for them to qualify. Do you ever request the wife's credit record before she was married.

---

79. 15 U.S.C. § 1681(p).

<u>Mortgage Loan Officers</u>			<u>Personal Loan Officers</u>		
Yes	13	(46%)	Yes	13	(50%)
No	15	(54%)	No	13	(50%)

The responses are significant in that the question did not ask if the loan officers "regularly" requested a woman's premarriage credit record; rather, it asked if they "ever" requested the records. A majority of the loan officers never make the request. Of those who responded "yes," many qualified their answers due to the differing methods by which automated and nonautomated credit bureaus report premarriage credit records of women.

### Married Women

The manual credit bureaus in Provo, Price, and Ogden differ considerably from the automated credit bureaus in Salt Lake City in the manner they treat a single woman's file when she marries. The manual credit bureaus will pull her file report and insert it in the jacket containing her new husband's credit history. The index card under her maiden name is discarded and replaced with a card cross-indexed to her husband's card.

For example, if Mary Smith, as a single woman, establishes a credit record and marries John Banks, her file report will be manually transposed to the file jacket containing John Banks' file report. The index card under Mary Smith will be discarded and replaced with an index card reading "Mary Banks, see John Banks." John Banks' index card will read "John Banks, wife Mary."

The file under Mary Smith will no longer receive entries. According to credit bureau managers, if the woman continues to use her maiden name after marriage to open accounts:

...we would have to make a notation...I think some people might wonder why she has two names. That would be the only comment I would have to make. (Mr. Welsh, Provo, p. 304)

If she applied under her maiden name, or in fact incurred an account under her maiden name, we would keep a file of it [under her maiden name] with the cross-index to her married name. (Mr. Robertsen, Ogden, p. 304)

It is quite likely, however, that the credit bureau would not know that Mary Smith and Mary Banks are the same person, and she would have two files with no cross-indexing to join them.

If a married woman opens a joint account with her husband (i.e., John Banks, wife Mary), or if she opens an individual account under her own married name (i.e., Mary Banks), these accounts are all put in John Bank's file at a manual credit bureau.

Under a manual system, a married woman may go to the credit bureau and "verify" what credit is hers. (p. 321) However, the only credit she can really verify are the maiden name accounts and accounts in her own married name (i.e., Mrs. Mary Banks). In a joint account under the husband's name, no record is kept by either the credit department or the credit bureau of who pays that account. Most joint credit accounts show the husband as the principal holder. The principal holder is the person whose name is listed first on the credit application. Since many application forms request the husband's name first, the husband is the principal holder in most cases. A working married woman may pay an entire loan or account with her salary from her separate checking account, but she will receive no credit nor will she be able to verify that she paid. It might be possible to verify payments if she kept the cancelled checks, but even that might not be sufficient, as indicated by Allen Bunker of Auerbach's: "In our case most payments come by a check which will say Mr. and Mrs. so and so. It's actually a joint checking account of the husband and wife. So we really don't know where the check is coming from." (p. 177) Most joint credit accrues to the husband as the principal holder. This becomes evident if the husband and wife later divorce. Jerry West, vice president and manager of the Bank of Utah in Ogden, testified regarding the subjectivity in determining who paid the joint credit after the couple is divorced:

Q. Who is presumed to have paid the account, the husband or the wife?

A. Well, it really is hard to determine. We kind of go on the character of the individual in telling us who has actually handled the account....

Q. What is your personal view of who you believe receives the most benefits - the divorced man or the divorced woman - on the joint credit history?

A. I think that since the majority of the credit information we receive from the bureau is listed in the husband's name, I would tend to believe that it would fall toward the husband. (pp. 29, 38)

As long as the reporting procedures are systematized to favor the married man, the burden is on the married woman to open accounts in her own name if she wishes to establish her own credit. However, most women are unaware of this opportunity. Mr. Welsh, owner and manager of credit bureaus in Provo and Price, testified:

Q. Are [most women] aware that they can do that?

A. No, they are not aware of it. I know my wife isn't. She puts everything in my name. (p. 318)

Perhaps the fact that credit is not a problem until it is needed explains why most women are unaware of the potential consequences of joint credit. As long as a woman can successfully obtain credit through her husband's name, she has no problem if he has good credit. However, increasing numbers of married women are seeking credit in their own names, and large numbers of divorced, widowed, and separated women need a credit history to establish new credit.

#### Divorced Women

Many divorced women do not know they may go to the credit bureau and attempt to separate their credit from their husbands'. According to Mr. Welsh:

The credit bureau policy provides that she be given every opportunity to separate the credit ratings if she wants. Earlier in my discussion I used the term 'knowledgeable women.' There really aren't too many knowledgeable people in this field. (p. 318)

Under the present reporting system, the burden is on the divorced woman, rather than the divorced man, to prove which of the combined credit is hers. In the manual system she must go to the credit bureau to make certain that in future credit requests, credit grantors will use her record (if she had one) under her maiden name or her individual married name. Ogden credit bureau manager Robertsen said:

We will divide the file, physically divide it, and set up a separate file for her upon the divorce being final. The best way is for her to visit our office and go over the file. If she has had credit under her maiden name, we will put that in her separate file, unless it's 10 or 20 years old.

- Q. What kind of standard do you use for making your choice as to what goes into a divorced woman's file if you're looking at the joint record?
- A. Here again in talking with them, this is upon their advice as to what accounts they have been paying on. (p. 306)

Yet, the credit grantor must verify that it was the woman who paid the joint account, as Mr. Tooman pointed out in his testimony. (p. 306) If a dispute arises between the husband and wife and both claim the account, the credit grantor decides who owns it. (p. 307) Most credit grantors do not record who pays the account or if it is paid by a joint checking account. It is unknown how credit grantors decide in disputed cases.

The following question was asked of 28 mortgage loan officers and 26 personal loan officers:

A woman, divorced for 6 months, applies for a home (auto) loan. You judge that she individually qualifies for the loan. Do you ever request the marriage credit record if she worked while married?

<u>Mortgage Loan Officers</u>			<u>Personal Loan Officers</u>		
Yes	=	18 (64%)	Yes	=	20 (77%)
No	=	10 (36%)	No	=	6 (23%)

A large number of loan officers never request the marriage record, even if the woman worked while married. In effect, divorced women are required to build a credit history from scratch solely because of their change in marital status. Furthermore, the figures are not as favorable as they appear. Many loan officers who said they request the marriage credit record also indicated that they do so to determine if there is any negative credit history. Several credit managers said they have never had occasion to request the marriage credit record. Rod Silver, State Savings and Loan Association, stated: "She would have to explain it if it is derogatory." Gaylen Larsen, Valley Bank and Trust, commented, "I've never had the occasion to request it." Les Abshire, the Lockhart Company, stated he would request the marriage record only "if she has a separate credit report."<sup>80</sup>

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80. Interviews in Salt Lake City, April and May 1974.



Widowed Women

The following question was asked of 28 mortgage loan officers and 26 personal loan officers:

A woman, widowed for 6 months, applies for a mortgage (medical expense) loan. You judge that she individually qualifies. Would you request the marriage credit record?

<u>Mortgage Loan Officers</u>				<u>Personal Loan Officers</u>			
Yes	=	20	(71%)	Yes	=	17	(65%)
No	=	8	(29%)	No	=	9	(35%)

Again, a significant percentage of loan officers responded that they never request the marriage credit record. A similar question was asked of 30 credit card managers:

If a divorced or widowed woman applies for credit without any credit history, do you ever request the marriage credit if she worked while married:

Credit Card Managers

Yes	=	14	(47%)
No	=	12	(40%)
*NA	=	4	(13%)

\*Not answered or answer qualified.

These results are more extreme because the question stipulates that the woman worked while she was married and therefore probably paid some of the bills from her salary. Nevertheless, 40 percent of the credit managers do not ever request the marriage credit record. Reasons for not requesting the record include: "We only look at the applicant. The husband's credit history wouldn't count for her."<sup>81</sup> "We are dealing with the applicant; typically the accounts are in the husband's name."<sup>82</sup> The responses indicate that credit managers often presume the woman, even though she worked, did not pay any of the joint credit.

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81. Eugene Johnson, district credit manager, Grant's Department Store, interview in Provo, February 1974.

82. G. M. Duehring, regional credit manager, Sears, Roebuck, and Co., interview in Salt Lake City, February 1974.

### Automated Credit Bureaus

Under the automated system of credit reporting, a woman may have several individual files, none of which is cross-indexed. She may have a file in her maiden name, a file in her own married name, and a joint file with her husband. If she is divorced and remarried, she may have a file in the new name.

#### Single Women

A single working woman who establishes credit in her maiden name will have her credit reported in that name. If she marries, the file in her maiden name will remain open unless she changes her name on all her present accounts. The record of old accounts and loans that are paid will remain in her maiden name file. Clyde Tooman, credit bureau manager in Salt Lake City, testified:

Her single record in our system will remain there and it's very costly to us for storage. But as long as that account is open under... her single name, that will remain in the computer system. The only time that would be deleted is if she went to that particular credit grantor and told him that she wanted the name in the married account and then he came to us and said, 'Delete this and insert the account under the married name.' (p. 294)

In automated credit departments, once an account is opened it will always have the same number, even if the name on the account changes. Also, only one name can be associated with each account number. Judy Frye, credit manager for BankAmericard of First Security Bank in Salt Lake City, told the Advisory Committee, "Our computer only accepts one account." (p. 149) However, a joint account may read, "John Jones, wife Mary." Thus, Mary's maiden name cannot be on the file simultaneously with her husband's name. The information within the file may state, "also known as Mary Smith," but this is very rare. Mr. Tooman said, "In 99.44 percent of the cases, we don't know what Mary's maiden name was." (p. 312) When a name on the account is changed, all credit thereafter is reported in the new name. Thus, if a credit grantor automatically changes the account of a single woman to her husband's name upon marriage, all of her credit history while single will be reported to the credit bureau in her husband's name, as will all the joint credit during marriage. In other words, even the woman's premarriage credit is reported under the husband's name.

Married Women

A married woman may have as many as three separate files at the credit bureau. For example, Mary Smith, a single working woman, establishes and maintains credit in her maiden name. She then marries John Banks and establishes credit in her own married name (i.e., Mrs. Mary Banks) and joint credit with her husband (i.e., John Banks, wife Mary.) The Advisory Committee questioned Mr. Tooman about the procedures of an automated credit bureau:

- Q. Now, if the credit grantor asks for a complete record on a woman, is it correct that it's necessary for you to report three credit records in Mrs. Banks' situation: one for when she was single, one for the joint account with her husband, and one for her account in her own name?
- A. (Mr. Tooman) Yes, we would have to search three ways.
- Q. Then do you charge the credit grantor for three reports in that case?
- A. Yes.
- Q. So that if they are cost-conscious and they have a lot of requests, they're going to try to limit the number of times they will have to ask for three reports?
- A. That's correct. Each time we access the computer there is an access charge so that they would have to pay for three reports.

The Advisory Committee also queried the managers of manual credit bureaus:

- Q. Under the manual system is there any additional charge where you would just look at three different index cards and all cross-references?
- A. (Mr. Welsh) No, there isn't.
- A. (Mr. Robertsen) No. (pp. 302-303)

If an individual woman wants to learn the contents of her file from the automated credit bureau in Salt Lake City, the charge is \$2.50 for each file which is more than the bureau subscribers pay for the same information. Witness Barbara White described her experience to the Advisory Committee:

I signed my permission for them to look at my file in my presence. I paid the \$2.50 and they asked, 'Which name do you want us to look it up under?' I said, 'I'd like you to look it up under both.' and she said, 'Well, we have to charge you an extra \$2.50 for each name.'

Q. So you had two separate files?

A. Yes, and my husband has a file of his own, I am sure. I did not wish to pay out another \$2.50 to look up his name.

Q. Do you have any joint accounts with your husband?

A. Yes, I had a bankcard in my maiden name. I assume that when the card was put into my husband's name it was eliminated from my record and put under by husband's credit listing. I was told that my department store credit card, the one which they refused to switch to my married name and put it in my husband's name, would be eliminated from my maiden name credit report. (pp. 112-113)

The rationale for three separate files is that the credit bureau merely reports an individual's credit the way the account is opened and maintained by the credit grantor.

Perhaps because of the newness and complexity of automated credit reporting systems, the three-file system is misunderstood by credit grantors. Joseph Siciliano, of Walker Bank and Trust in Salt Lake City, was asked:

Q. Do you consult the premarriage credit record of the wife when a young couple applies for a loan?

A. No

Q. Why is this?

A. Well, oftentimes you don't get that information. You may not be able to find it.

Q. Have you found that the record of when she was single is unobtainable? In other words is that a difficult piece of information to obtain?

A. Sometimes, sometimes, yes, it is difficult.  
(pp. 238-239)

To request the premarriage credit record from the automated bureau, a credit grantor must know the woman's maiden name. Of the 30 credit card managers interviewed, 19 were in Salt Lake City. Of these, only 7 stated that they request the premarriage credit record. Only one manager was aware of the necessity of making a separate request to obtain the file under the woman's maiden name.

The confusion caused by the introduction of automation was apparent in the testimony of these credit officers in Salt Lake City firms:

I am not familiar with the tape sent or the information on it, or exactly how the accounts are updated. I have no computer background. (Donnel Francom, vice president for Master Charge, Continental Bank and Trust, p. 168)

They went computerized last September 20. I don't know if they would still retain any information or not [on a woman's premarriage credit record]. I really couldn't say. (Judy Frye, BankAmericard, First Security Bank, p. 158)

Like I say I am not exactly sure...I don't know the integral workings of how we are transmitting to the credit bureau. (David C. Keyser, Walker Bankard. p. 133)

Under the automated system, information is retrieved from the bureau in the same way it is transmitted. Thus, if credit grantors are unaware of the various ways in which a woman may have accounts and the method of

transmitting these accounts to the credit bureau, they are also unaware of the means of obtaining them. As a result, women lose their credit histories.

Women are also confused by the three-file system. Perhaps accustomed to manual credit bureaus, women expect the bureau to combine all records. As witness Barbara White said, "I requested that they transfer the information from the record of my maiden name to my married name record. They said they could not do that." (p. 113)

The confusion arises for women because of the varying policies of credit departments. A woman who wishes to have her entire credit record in one name so it will be in one file at the credit bureau may be prevented from doing so. For example, a woman may want to place all her accounts in her married name. Because some credit departments require women to open accounts only in their husband's name, she is forced to have two accounts and thus two files at the credit bureau. Ironically, the only way a woman can have all her credit accounts reported in one file is by opening all accounts in her husband's name; in other words, she will not have any accounts of her own and will, therefore, have no credit history.

As long as her accounts are open, a woman may go to the credit grantor and change her name on the account so that it will be reported in the correct file at the bureau. A problem arises, however, when an account is paid off or closed. For example, a woman buys a television set on a loan under her maiden name and pays it in full before she changes her name. She will not be able to request that the credit grantor change the name on the account because the account is closed. The file will remain permanently under her maiden name. The testimony of Barbara White illustrates the problem:

When I got to the credit bureau, they looked under my maiden name and my married name. The only reference to any credit under my maiden name was the fact that I had bought my TV on time. The only reference in my married name was the department store credit card which read, 'changed to married name' (p. 102)

When she requested that they change the credit record of the television set to her married name, the credit bureau responded that it could not do that but could only print on her marriage file that she was "also known as Barbara Jack," her maiden name. Therefore, even if a woman changes all her current accounts when she changes her name, she still will need to urge future creditors to request information on closed accounts under her previous name.

### Divorced Women

When a woman is divorced, the reporting procedure is not changed at the credit bureau. In the automated system, all changes must originate with the credit grantor. If a woman wants to change the name on the files at the credit bureau, she must change the name at the store or institution where she holds the account. It is not too difficult for a woman to change the name on individual accounts in her married or maiden name. For joint accounts, however, the divorced woman must convince the credit grantor that it was her account. As in the manual system, the woman has the burden of going to the credit grantor and proving what is hers. Credit bureau manager Tooman stated:

We leave it up to the credit grantor...to report to us what name the account is in. If the woman claims that she is paying on that account, and the credit grantor's file shows that it was in the husband's name or a joint account, then we will let that credit grantor decide how he's going to change the account. We won't, in any way, change a credit grantor's file to the will of the consumer, man or wife, simply on their say so, because the credit grantor is the one that has to tell us who has the account. (pp. 307-308)

With automation a divorced woman may be unaware that she has to place all her accounts in the same name in order to have them all reported in one file, and she may leave the account open in the original names. If she is aware of the multiple files and applies for new credit, she must instruct the creditor to request each account under each name at the credit bureau. The credit grantor, however, may or may not wish to pay the additional cost of each inquiry.

### Widowed Women

The same process applies to widowed women as to divorced women. If a widowed woman reassumes her maiden name, she will have to change all her accounts accordingly to have the accounts reported in the same file at the credit bureau. If she continues to use joint accounts under the deceased husband's name and accounts under her married name, she will have to urge credit grantors to request both files to obtain her complete credit history.

## VI. FINDINGS AND RECOMMENDATIONS

### PRIVATE INSTITUTIONS: BANKS, RETAIL STORES, MORTGAGE LENDERS

#### Findings: General

In the investigation of credit practices, the Utah Advisory Committee found that loan officers and credit managers espouse a public policy of equal treatment of men and women. Yet questionnaire data and witness testimony reveal extensive discriminatory practices toward creditworthy women in the following areas: 1) application forms, 2) credit reporting, 3) credit investigation, 4) assessment of married women's salaries, 5) distrust of women's signatures upon marriage, 6) disregard of women's past credit history upon marriage, 7) denial of credit or loans to married women based upon their husband's credit history rather than their own, 8) misrepresentation of Utah law, 9) use of legal misrepresentations to force joint credit upon women, and 10) lack of programs to educate women to the ramifications of credit decisions.

Although the term "individually qualified" was used for both men and women applicants, questionnaire results show extensive disparate treatment. Testimony of the complainants indicates that credit managers and loan officers interpret "individually qualified" more strictly for women than men. The failure to request credit records, the assumption that newly married women will not continue to work, arbitrary and inflexible requirements for length of time on the job are factors which prevent a woman from becoming "individually qualified" where a man easily qualifies.



Recommendation 1

The Utah Advisory Committee recommends that policymaking personnel of banks, mortgage lending institutions, and retail stores in the Salt Lake City-Ogden-Provo areas undertake a thorough, indepth study of: 1) the internal procedures of their credit and/or loan departments, 2) the internal practices of their clerical and middle-management staff, and 3) the attitudes of all personnel toward credit for women. The study should determine which procedures, practices, and attitudes are clearly based on business necessity and which are outmoded in the light of contemporary social and economic facts and may be illegal under Utah or Federal law. After the study has determined which procedures, practices, and attitudes are based on business necessity, they should be applied equally to men and women on the basis of creditworthiness, not sex or marital status.

All banks, mortgage lending institutions, and major retail stores in Utah should design and implement programs to inform women of their rights, opportunities, and responsibilities when obtaining and using credit. Each institution should staff a women's unit responsible for: 1) counseling individual women and women's groups about their rights and duties under the State antidiscrimination act, 2) establishing programs for the education of women with respect to credit practices and problems, and 3) assisting creditworthy women who have not been able to obtain credit.

Findings: Research on Sex and Marital Status

No loan or credit card department in the Utah Advisory Committee's study has conducted a study on credit risk incorporating sex and marital status as independent variables. Thus, there is no factual basis for disparate practices based on these factors. Indeed, studies made in other States which have incorporated sex and marital status as variables have concluded that neither has a detrimental effect on creditworthiness and that women are better credit risks than men. There is no evidence to show that women are worse credit risks.

Recommendation 2

Credit managers, loan officials, and mortgage lenders should review past records and accounts, or initiate objective research on present and future records, to obtain facts upon which to make sound financial judgments. This research should include the variables of sex and marital status. Until such objective data is obtained, "personal experience" judgments should be considered suspect and carefully scrutinized for inherent sex bias.

### Findings: Credit Cards - Individual and Joint Accounts

The majority of credit grantors included in this study automatically recall a single woman's credit card upon her marriage and place the account under her new husband's name. Some credit card grantors state that they will grant the woman an individual account under her married name if she requests it. However, the word "request" appears to be a major understatement.

Despite statements that women may obtain individual accounts, they have to overcome many obstacles, including offensive attitudes of lower level staff who try to discourage individual credit. When requests are made for separate accounts, cards are often sent only in the husband's name. Women have had to make numerous demands and even threaten legal action before separate credit was granted. Husbands who wish their wives to hold separate credit are equally offended by the rigid practices of credit grantors who assume that the couple wants one payment and one account.

Most credit card grantors require the single woman to fill out a new application upon marriage despite her credit history with the company. Very few credit grantors require the single male to fill out a new application when he marries. Some credit grantors require the husband to fill out the wife's application and require his signature on the application even though she held the account individually prior to marriage. No credit grantors require the same when a single man marries.

The purpose of requiring new applications only from a woman at the time of marriage becomes obvious: credit grantors wish to transfer all liability, all billing, and all credit to the husband. Some credit grantors, rather than issuing both cards under the husband's name, "personalize" their cards and issue one card in the wife's name and one in the husband's name. However, this personalization is mere tokenism. While the woman may think that she still has the account which she had prior to marriage, the fact is that the account number, especially under automated systems, must be listed under one name, usually the husband's. Women believe that when they pay the bills from their salaries under this "personalized" system, they are receiving credit for the accounts. Credit grantors generally do not record who pays the bills, nor do many request the marriage credit record when a divorced, widowed, or separated woman applies for credit.

The Advisory Committee finds the billing practices of many credit grantors particularly disturbing. Even though the woman held the account prior to marriage, after marriage her account may be billed to her husband only. In addition, upon her request that her husband be added to the account, fewer than half of the credit managers

interviewed will continue to bill her for the account. On the other hand, if the original account was the husband's, more than three fourths of the credit managers will continue to bill him. Thus, the wife loses her position as principal holder of the account if credit is reported only under her husband's name. It is of some importance whose checks pay the account, but it is more important in whose name the account is established, maintained, billed, and reported to the credit bureau.

Finally, some credit grantors may close a single woman's account altogether when she marries if they find the new husband has bad credit.

### Recommendation 3

If a woman has an account prior to marriage, the credit institution should operate on the assumption that she wishes to maintain the account separately and individually after marriage. Rather than automatically requiring that the account be changed to the husband's name, credit grantors should use a "short form" application upon a woman's marriage. The short form should offer a number of choices, including: 1) continuation of the account in her own married name, or 2) addition of her husband to the account, in which case she continues to be the principal holder and the husband fills out an application, or 3) issuance of a separate account to the husband upon his application. Credit grantors should include a brochure with the "short form" to inform women of the advantages and disadvantages of each choice. Since surveys indicate that a large majority of women who work prior to marriage continue to work after marriage, the assumption that the husband takes over the support of the wife and her previous accounts should be discarded.

Credit grantors should adopt policies and practices to insure that creditworthy women are evaluated individually, and not on the basis of their sex or marital status. If credit grantors can profitably maintain separate files for single women and single men, they can also maintain separate files for married women and married men. Thereby, women will be able to maintain a continuous credit record and credit history. Credit grantors will also gain because separation of credit files and histories will present a more accurate picture of individual creditworthiness. A married woman should not be denied an account in her own name on the basis of her husband's past record. Credit grantors would also begin to get more accurate facts about the credit status of divorced men.

Credit grantors should review their billing procedures to insure that a woman who opens an account while single will continue as principal holder of that account after marriage if she is creditworthy. They should innovate procedures to insure that accounts will be established, maintained, billed, and reported under the woman's name if she is the principal holder of the account.

### Findings: Credit Investigation

Credit and loan personnel usually investigate the husband's credit record when a single woman marries and requests that his name be added to her account, or when she applies for a mortgage or personal loan in her own name. However, they do not investigate the wife's credit when a single man marries and requests that her name be added to his account, or when he applies for a loan. Investigation procedures are applied inconsistently, so that a woman's credit is investigated far less than a man's credit.

The result is that women "lose" their credit history simply because loan officers and credit card managers do not request it. In this case, the inaction rather than actions of credit grantors has a discriminatory effect on women. It again becomes apparent that women are treated disparately solely because of marriage. It is difficult to estimate how many thousands of single women have established credit and lost it solely because credit grantors did not investigate their premarriage record.

### Recommendation 4

Credit managers and mortgage and loan officials should review their policies to determine if antiquated procedures or assumptions have discriminatory effects upon women. Credit grantors should also determine whether their inaction may in fact be as detrimental as their action, particularly if many procedures implemented for men are not also implemented for women in similar circumstances.

### Findings: The Wife's Income

One of the most common complaints received by the Advisory Committee came from creditworthy married women whose salaries were considered insufficient to maintain an individual credit account or to qualify for a personal or mortgage loan. The responses of credit personnel to the questionnaire indicate that they apply different policies toward the salaries of husband and wife. The wife's salary is more often considered insufficient to maintain the account, and thereby requires consideration of her husband's salary -- even when her salary was sufficient for the account prior to marriage. Testimony at the Advisory Committee's informal hearing revealed that loan and credit personnel in several major department stores and banks in Salt Lake City apply stricter standards in the case of married applicants where the wife, rather than the husband, is the primary wage earner.

In some cases, the Advisory Committee learned that credit grantors upon receiving an application from a working married woman send out a "responsibility note" containing the statement that the husband will be liable for the wife's debts. The husband must sign the note before the wife receives credit. "Responsibility notes" are also required when a woman separates from her husband, even if she maintained separate accounts using her own salary. If the husband refuses to sign, the wife loses her credit card or is refused the loan. This practice violates the married woman's legal right to incur debts as if she were single.

The Advisory Committee found that mortgage loan officers in the Salt Lake City, Ogden, and Provo areas also make arbitrary decisions in counting the income of a working wife. Such practices are based on the dubious rationale that the working wife will become pregnant, quit working permanently, and cause default in mortgage payments. The Advisory Committee found that mortgage lenders are even more prone to use this rationale when the working woman is a nonprofessional of childbearing age. Hearing testimony showed that in evaluating applicants, several mortgage lenders request information from women about birth control practices and plans for children. The request for such personal information is objectionable and reflects disparate treatment since health information is not requested of the husband, nor is information requested about his plans in the event of additional dependents.

In fact, the Advisory Committee found no statistical data to support such practices by lenders. Most of the loan officers interviewed said that 90 percent of the delinquencies by borrowers are caused by marital difficulties and not pregnancies.

#### Recommendation 5

Managers of credit card departments and loan personnel should scrutinize their assumptions, policies, and procedures to determine why a woman's salary loses credence simply because of a change in her marital status. Their policies should be aligned with modern economic and social facts, not with traditional, outmoded experiences. The salary of a married woman, whether she applies for credit or a loan individually or jointly with her husband or if she applies as the major breadwinner, should be given the same consideration and held to the same standards as that of her spouse.

Requesting the husband to sign a "responsibility note" is blatantly discriminatory and illegal for individual accounts which the wife has maintained herself in the past or qualifies for in the present. If "responsibility notes" are sent to husbands whose wives have no source of income, they also should be sent to wives whose husbands have no income.

Mortgage lending institutions should discontinue the practice of requiring "baby letters" from couples applying for mortgage loans in light of changing economic patterns and the fact that Federal agencies such as the Federal Housing Administration, Veterans Administration, and the Federal National Mortgage Association do not feel it necessary to obtain such a guarantee.

#### Findings: Signatures

Nearly every married woman who testified on credit card and loan procedures during the Advisory Committee's informal hearing stated that she had been told by credit grantors that Utah law required her husband's signature on an application. Credit and loan personnel misrepresent the law and force joint credit upon women. In addition, responses of these personnel to questionnaires indicate that the husband's signature alone is sufficient more often than the wife's signature in parallel circumstances, for no specific reason. Finally, even when credit grantors recognize that either signature is binding, they believe that the husband is legally responsible for the debts of his wife.

#### Recommendation 6

Under Utah law, credit and loan personnel may require either or both signatures of husband and wife. Therefore, credit grantors should adopt a uniform policy to ensure that women are treated the same as men in similar circumstances. Credit and loan personnel should take caution that they do not misrepresent the law to women. They should also monitor the actions of their clerical staffs to prevent the use of legal misrepresentations to force women to open credit under their husbands' names.

#### Findings: Divorce, Separation, Widowhood

Responses to the questionnaire and complaints of witnesses indicate extensive disparate treatment of divorced, separated, and widowed women. Even where institutions have consistent policies toward women and men who divorce or separate, testimony indicates that these policies are not applied equally. Credit and personal loan officers in Salt Lake City, Ogden, and Provo show inconsistencies in counting alimony and/or child support payments as effective income for a divorced woman, although they always deduct it when considering a divorced man's assets. The National Commission on Consumer Finance cites such practices as discriminatory.

The mere change in marital status has a far more severe effect on women than on men in the field of credit. In no case did credit and loan personnel provide objective data to justify present discriminatory practices as "business necessity."

#### Recommendation 7

Credit grantors should conduct studies on creditworthiness of divorced, separated, and widowed women and implement procedures so that women and men are treated equitably in similar circumstances. Credit and loan personnel should be required to justify any inconsistent practices relating to divorced, separated, or widowed women.

#### Findings: Application Forms

Some institutions use application forms that require the woman applicant to open the account in her husband's name. Others include credit scoring systems that penalize single, widowed, divorced, or separated men and women. Only a small minority of companies allow a woman to check "Ms." as a valid title on the application form.

#### Recommendation 8

Credit and loan institutions of all kinds should revise their forms to eliminate the requirements that married women open accounts or apply for loans in their husband's names. In addition, credit grantors should not penalize single, divorced, separated, or widowed women on credit scoring forms. Further, they should eliminate the requirement that the applicant state his or her marital status, unless an institution can show by objective and scientific data that creditworthiness is related to marital status. Any study should include the variable of sex to differentiate between credit patterns of men and women.

### CREDIT BUREAUS

#### Findings: Overview

The initiation of the "common language" for credit bureau reporting and passage of the Fair Credit Reporting Act have aided significantly in the development of objective credit reporting procedures. The automation of credit bureaus promises to expedite and expand credit reporting and ultimately benefit the consumer who works to build a good credit history. Local credit bureaus and their trade organization, Associated Credit Bureaus, Inc., have made some efforts to inform the public of new laws and innovations.

The new laws and recent innovations, however, have not adequately confronted the problems involved in the reporting of women's credit. Whereas a man may pass through several stages of marital status and maintain a continuous credit record, a woman constantly faces the burden of verifying her credit and separating it from her husband's. The procedures in credit and loan departments, the assumptions of their personnel, and the intricacies of credit reporting have created a system in which all credit a woman has before marriage must be "changed to," "filed under," "cross-indexed to," and "reported in" her husband's name after marriage. In the credit world, most women cease to be individuals after marriage.

This loss of credit individuality during marriage becomes pronounced when a woman separates, divorces, or is widowed from her husband. In the jargon of credit grantors, she must "re-establish" herself as a credit-worthy person. New applications and new information are required from her which are not required from the man. To establish these new accounts or apply for a loan she is forced to salvage whatever joint credit is arguably hers. This is difficult because neither the credit or loan grantor nor the credit bureau has recorded whether the joint account was paid by the husband or the wife. The credit bureau defers the final decision to the credit or loan department which determines an individual's credit rating. Since a record is not kept of whose checks paid the account, a credit grantor makes a judgment based upon the woman's "character." The credit reporting system, supposedly an objective, fact-reporting system, may be ultimately reduced to the credit grantor's judgment on the "character" of the divorced, separated, or widowed woman.

The man, on the other hand, has fewer difficulties because his credit is reported continuously despite changes in marital status. In fact, if his wife has worked and paid joint accounts from her salary during marriage, his credit has been embellished by her financial support. Divorced, separated, or widowed men may receive more credit than is rightfully theirs. It may be this distortion element, rather than "instability," which explains why divorced, widowed, or separated men are greater credit risks than married men. They have received the credit history of their wives, but they no longer have their wives' salaries to support the credit.

#### Recommendation 9

Credit and loan departments which report credit information and credit bureaus which collect, collate, and report the credit history of individuals, should review their entire system and every reporting procedure to determine: 1) if women who work during marriage are, in fact, receiving their share of credit, 2) if men who have working wives are receiving too much of the joint credit after the marital relationship ceases, and 3) whether reporting procedures are operationally "unfair" toward working, creditworthy women.



The stated purpose of the credit reporting system is to provide the most accurate and objective information on an applicant. Credit and loan personnel and credit bureaus should reconsider the validity of a reporting system that allows most joint credit to accrue to the husband. They should re-evaluate the procedures that allow "character" judgments to determine who receives the history on an account. They should also adopt affirmative programs that encourage creditworthy women to establish and maintain individual credit during marriage.

#### Findings: Automated Credit Bureaus

The automation of credit bureaus offers the potential for credit individuality for the creditworthy woman. However, under its present procedures the automated credit bureau has created a complex system of reporting a woman's credit and has instituted a grossly unfair system which requires a woman or a creditor to pay more to see her entire file than to see a man's file. In the present system, a woman may have as many as three separate files in the credit bureau (under her maiden name, her married name, and her husband's name). If a credit grantor or the woman, herself, wants to view her entire file, a fee is charged for each entity.

A woman who may want to combine all three files may not be able to do so because of the complicated procedures of credit and loan departments and credit bureaus. Presently, there is no cross-indexing of these files. Each file must be accessed separately and each access costs an additional fee. Further, testimony and interviews indicated that very few credit or loan personnel or women understand the three-file system. The manager of the Salt Lake City Credit Bureau has indicated, however, that the company may initiate a cross-indexing program into the system.

#### Recommendation 10

The automated credit bureau in Salt Lake City should begin work immediately to establish a cross-indexing system for its reporting procedures. The cross-indexing program should permit credit grantors and women to obtain all three files for one fee.

The credit bureau should also encourage its member organizations, particularly those with automated credit departments, to give married women the opportunity to open credit accounts or obtain loans in their own names. Indeed, they should encourage individual credit reporting for both men and women because it provides more accuracy for credit evaluations.

### Findings: Credit and Loan Departments as Reporting Agencies

Interviews, questionnaire results, and testimony by credit and loan personnel indicate a systemwide lack of knowledge about the reporting of women's credit. Managers of automated credit and loan departments plead ignorance when asked how their accounts are reported to credit bureaus. Responses to interview questions indicate little understanding by credit managers of the credit bureau's three-file system. In addition, many credit and loan officers do not request premarriage files of married women or marriage files if a woman is divorced, widowed, or separated, even if she has worked during these periods. A credit history is of no value unless it is requested, reviewed, and updated.

### Recommendation 11

Managers of credit bureaus in Salt Lake City, Ogden, and Provo should initiate a series of meetings with their member organizations. The purpose of these meetings should be: 1) to educate all members concerning the problems and procedures in the reporting of women's credit, 2) to outline the advantages and disadvantages of individual credit for women at every marital stage, 3) to eliminate inadequacies in the reporting system and inaction by both credit bureaus and their members in the reporting of women's credit, and 4) to develop new understandings, new procedures, and possible new systems to insure fair credit reporting for both sexes.

### Findings: Manual Credit Bureaus

The manual credit bureaus contain the same procedural inadequacies as automated bureaus when separating joint credit. Neither credit bureaus nor their member organizations record which spouse paid the bills. If bills are paid from a joint bank account, often the couple cannot specifically indicate who paid how much on joint accounts. Since all records are filed under the husband's name, most joint credit accrues to the husband.

The woman's premarriage credit and individual marriage credit is manually filed under the husband's name. Unlike the automated system, all the woman's credit at least is kept in one file. Upon divorce or separation the bureau will "physically divide" whatever individual credit a woman has and whatever joint credit she can "verify."

Although the manual credit bureaus in Provo and Ogden cross-index and consolidate a woman's credit files when she changes her marital status, they perpetuate the unfounded assumption that, once she is married, a woman's credit belongs to her husband.

Recommendation 12

Manual credit bureaus should revise their filing procedures so that joint files of married persons are labeled as belonging to both "Mary Banks, husband John" and "John Banks, wife Mary." If, upon divorce, the manual credit bureau is unable to determine to whom the credit record belongs, the bureau should note that the credit was that of both (either) "Mary Banks, husband John" and "John Banks, wife Mary" while married.

STATE OF UTAHFindings: Utah Law

Questionnaire data, testimony of witnesses and complaints from individuals indicate discriminatory practices toward creditworthy women of every marital status. However, these practices have the greatest impact on married, divorced, and separated women and women with recently changed marital status. The 1973 Utah law against sex discrimination has had limited effectiveness in preventing discrimination in the extension of credit. Policies of lenders and credit grantors reflect disparate treatment; yet few suits have been filed under the present law.

Unlike most of the 22 other States which have laws prohibiting discrimination by sex and marital status in the extension of credit, Utah prohibits only sex discrimination and fails to include discrimination on the basis of marital status. Further, the Utah law does not specify which institutions are covered. Presently, the Utah law applies vaguely to institutions regulated by the State under the Utah Uniform Commercial Code. Remedies under the law are limited to filing a civil action and/or filing a complaint with the State attorney general. The law offers no administrative recourse.

Recommendation 13

The Advisory Committee recommends that the Utah Legislature amend the State Civil Rights Act on Commerce and Trade to prohibit discrimination based upon marital status as well as sex. The amended law also should specify which institutions fall under its jurisdiction.

The legislature also should amend the law to provide an administrative remedy in addition to private right of action, or action by the State Attorney General, thereby allowing the complainant to choose which remedy to pursue. The administrative authority should be vested in the Utah Industrial Commission, Anti-Discrimination Division, which already has jurisdiction in the area of employment discrimination. The legislature should provide staff and funding to this agency for adequate enforcement of the amended law.

The State Commissioner of Financial Institutions should undertake responsibility to make every institution under its jurisdiction aware of the State law prohibiting discrimination in the granting of credit. The Department of Financial Institutions should develop a brochure describing the law and outlining specific practices and policies which are discriminatory under the law, and should disseminate this brochure to all the institutions it regulates.

#### FEDERAL GOVERNMENT

##### Findings: Federal Law

In August 1974 Congress passed and the President signed a measure extending coverage of Title VIII of the 1968 Civil Rights Act, the Fair Housing Law, to prohibit discrimination on the basis of sex in home financing. (Pub. L. 93-383) There is an even more recently passed Federal law, signed by the President in October 1974, banning discrimination based on sex or marital status in the granting of credit generally. (Pub. L. 93-495) This Federal legislation will allow a woman facing discrimination in any area of credit an alternative remedy to that under Utah law, as it would place enforcement authority at the Federal level. However, the law does not go into effect for a year, and there have been no provisions for its enforcement promulgated by the Federal agencies vested with that responsibility.

##### Recommendation 14

The Utah Advisory Committee recommends that Congress amend recently passed legislation on sex discrimination in mortgage lending to prohibit marital status discrimination as well. Enforcement of the new law prohibiting sex and marital status discrimination in the extension of credit is the responsibility of a number of Federal agencies, including the four financial regulatory agencies: the Comptroller of the Currency (COC), the Federal Reserve System (FRS), the Federal Deposit Insurance Corporation (FDIC), and the Federal Home Loan Bank Board (FHLBB); the Federal Trade Commission, which regulates retail, department stores, and consumer finance companies, among others; and the Bureau of Federal Credit Unions. The new legislation does not become effective until October 28, 1975, In the meantime, all agencies with enforcement authority should promulgate regulations outlining mechanisms for enforcement of the law and sanctions for violation by institutions and companies under their supervision. The Department of Housing and Urban Development should develop regulations to enforce nondiscrimination based on sex in mortgage lending.

Findings: Data Collection

None of the institutions included in the Advisory Committee's study has conducted studies incorporating sex and marital status as exclusive variables in determining whether to grant credit or a loan to an individual. Nor do these institutions have retrievable data on the sex and marital status of applicants for credit loans, either approved or rejected. For this reason, it is difficult either for an institution to justify restrictive policies and practices in credit granting to women, or for anyone to document a pattern of arbitrary or discriminatory practices in the area of credit.

The Federal financial regulatory agencies -- the FHLBB, FDIC, FRS, and COC -- have initiated a short term pilot program requiring banks and mortgage lending institutions under their supervision to collect data on the race, ethnicity, sex, and marital status of all applicants for mortgage loans. However, there is no Federal requirement, even on an experimental basis, for data collection concerning bankcard or other types of loan applications by these institutions.

Recommendation 15

The four Federal financial regulatory agencies should establish on a permanent basis a requirement for data collection on race, ethnicity, sex, and marital status of mortgage loan applicants by the banks and mortgage lending institutions under their supervision. Monitoring of the data collection and analysis of the data should be the responsibility of the agencies' bank examiners, who should be given special training in analyzing the data. Since Federal law now prohibits such institutions from discrimination in mortgage lending on the basis of sex, it is particularly important that institutions be aware of the legality or illegality of actions of their loan personnel, and collection of this type of data would enable them to develop this awareness.

Under Federal legislation prohibiting discrimination by sex and marital status in the extension of credit generally, the four financial regulatory agencies should promulgate regulations requiring similar data collection concerning applications for all types of small loans and for bankcards.

APPENDIX A

UTAH LAW PERTAINING TO RIGHTS OF WOMEN

TO CONTRACT DEBTS

UTAH LAW PERTAINING TO RIGHTS OF WOMEN TO CONTRACT DEBTS

I. Introduction

We have in this convention been working hard to give women equal rights with men and we have done so up to the present time and I propose giving them the same rights in this.

-Utah Constitutional Convention, 1895<sup>1</sup>

Utah law governing women's rights to hold property and incur debts has passed through a series of stages. Under common law,<sup>2</sup> a woman upon marriage encountered a number of legal disabilities. The Utah constitution, the Utah Legislature, and several court cases have removed these legal disabilities. In the present state of the law in Utah, a single or married woman possesses the same legal rights as a single or married man if proper legal stipulations are observed.

The central legal question is to what extent is a married woman free to contract debts and thereby be liable for her purchases? Or, alternatively stated, to what extent is a husband liable for debts and purchases of his wife? The following areas will be discussed in explanation of the present status of the law:

Common Law  
Utah Married Women's Act  
Utah Uniform Support Act  
Utah Family Expense Act  
Dower  
Utah Small Loan Act  
Utah Amendment to Prevent Sex Discrimination.

II. Common Law

Under the old English system of common law which was brought to this country, upon marriage women were placed under a number of legal restrictions. A single woman could contract with others, sue and be

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1. Proceedings of the Constitutional Convention (1895) Utah, vol. II p. 1782.

2. According to Black's Law Dictionary, West Publishing Co., 4th Rev. Ed., p. 346, "as concerns its force and authority in the United States, the phrase 'Common Law' designates that portion of the common law of England (including such acts of Parliament as were applicable) which had been adopted and was in force here at the time of the Revolution." It is recognized, unless it has been expressly abrogated, as an organic part of the law of most of the United States. (Industrial Acceptance Corporation v. Webb, Mo. App., 287 S.W.657,600).

sued, manage and control her lands and personal property, reduce her "choses in action," to possession, retain the proceeds for her own use, and keep other earnings that might come her way. When she married, however, she lost all these rights and gained instead the obligation of her husband to support her.<sup>3</sup> This legal disability resulted from a condition of marriage known as "coverture."

By marriage the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband under whose wing, protection and cover she performs everything;...and her condition during her marriage is called her coverture.<sup>4</sup>

At common law the wife was incapable of making any contract by which she was personally bound. If goods were furnished to her for which the husband was not liable, neither party was liable. In Gafford v. Dunham<sup>5</sup> the issue concerned goods purchased on the individual credit of the wife. The court held the wife not liable since she had the defense of coverture. Nor was the husband liable because he had not given his consent in writing to the contract.

Thus, at common law creditors had to be cautious in extending credit to a married woman for her purchases. Social changes have outdated common law, however, and as early as 1839 in Mississippi, these disabilities were revoked by the enactment of a Married Women's Act, which since has been passed in every State.

### III. Utah Married Women's Act

The Utah Constitution was passed in 1895 during the latter days of the movement to remove common law disabilities of married women. The authors included the following provision with regard to married women's property:

Real and personal property of every female acquired before marriage and all property to which she may afterwards become entitled by purchase, gift, grant, inheritance, bequest,

3. Karowitz, Women and the Law, (1969), p. 35.

4. Blackstone, Commentaria, (1884), p. 433.

5. 111 Ala. 551, 20 So. 346 (1895).



or devise shall be and remain the estate and property of such female, and shall not be liable for the debts, obligations, or engagements of her husband, and may be conveyed or bequeathed by her as if she were unmarried.<sup>6</sup>

This provision in the Utah Constitution allowed a woman to maintain control over all "separate property"<sup>7</sup> as well as that property accumulated by "purchase"<sup>8</sup> during the marriage. Therefore, unlike in some community property States, Utah's married women have control over their earnings and can add to the assets of their separate property by "purchases" made from their earnings.

Complementing the constitutional provisions of the Utah Married Women's Act are other statutes added later to clarify legal rights:

A wife may receive the wages for her personal labor, maintain an action therefore in her own name, and hold the same in her own right, and may prosecute and defend all actions for the preservation and protection of her rights and property as if unmarried.<sup>9</sup>

6. Utah Constitution, Art. XXII, § 2. See also, Utah Code 1953, 30-2-1.

7. Separate property consists of assets acquired before marriage or after marriage by gift, bequest, devise, or descent.

8. The inclusion of the word "purchase" broadens the provision considerably and was the subject of debate. The addition of "purchase" made Utah more than a community property State. Under the community property system, the property of a husband and wife is divided into two classes: community property which is owned in common by husband and wife, and separate property which is defined in the footnote above. Generally, property purchased wholly or partially on credit during coverture (marriage) is community property. In some community property States (Louisiana, Nevada, New Mexico) a married woman has no control over community property, including her own earnings, so that unless she has "separate property," she may not be able to borrow money or obtain credit. A recent Supreme Court decision, *Reed v. Reed*, 404 U.S. 71 (1971), may invalidate the strict community property laws of these States. In five other community property States (Arizona, California, Idaho, Texas, and Washington) working wives have been given some measure of control over their earnings so as not to violate the due process and equal protection clauses of the 14th amendment.

9. Utah Code 1953, 30-2-4.

Contracts may be made by a wife, and liabilities incurred and enforced by or against her, to the same extent and in the same manner as if she were unmarried.<sup>10</sup>

Thus, the Utah Supreme Court has declared unequivocally:

In this State by constitutional provisions and statutory enactments the common law disabilities of married women have been abrogated, and married women are in all respects, with reference to their separate property and power to contract, on the same footing as other persons.<sup>11</sup>

The Married Women's Act and the Utah Supreme Court decisions provide the legal means whereby a married woman can maintain and augment her separate property and liabilities. They also allow her to "defend all actions for the preservation and protection of her rights and property as if unmarried."<sup>12</sup> (Emphasis added) In defending herself she may sue or be sued as if she were unmarried.<sup>13</sup> If both the husband and the wife are sued, the wife may defend for herself or both.<sup>14</sup>

#### IV. Utah Uniform Support Act

Many wives do not have separate properties or have commingled their assets with the assets of their husbands. In addition, state legislatures and the courts have recognized the fact that many wives work in the home rather than at income jobs. In every State husbands are required by law to support their wives. Generally, the Married Women's Act, while removing the wife's common law disabilities, does not remove the duty of the husband to support the wife. The wife still has the right to support from the husband according to his means, station in life, and ability.<sup>15</sup> These principles of support, though largely

10. Utah Code 1953, 30-2-2.

11. Williams v. Peterson, 86 Utah 526, 46 P.2d 674 (1935) Cf. also Black v. U.S. 263 F. Supp. 470, and Cheney v. Rucker, 381 P. 2d 86.

12. Utah Code 1953, 30-2-4.

13. Utah Code 1953, 78-11-1.

14. Utah Code 1953, 78-11-2.

15. Chevalliers v. Connors, 33 N.M. 93, 262 P. 173 (1927).

judge-made, have been codified in the Utah Uniform Liability for Support Act. The act not only states that the husband shall support his wife,<sup>16</sup> but also provides that the wife "shall support her husband when he is in need."<sup>17</sup> The act recognizes the woman as a wage earner and possibly the principal family source of income.

In a recent and very significant case, the Utah Supreme Court emphasized the responsibility of the wife to support the husband and family, as well as vice versa. The husband and wife are jointly and severally responsible for "necessities."

One of the primary reasons why it has been thought that the father is the proper party to bring such an action [action by mother of 16-year-old son for personal injuries to son] is that historically it has been the father's responsibility to provide necessities for the family including their medical expenses.... Under our law it is not true that this responsibility for support rests only upon the father. It is also upon the mother.<sup>18</sup> (Emphasis added)

Traditionally, the Family Expense Statute has been cited by the Utah court to imply that the father, even after divorce, is responsible for the support of his children.<sup>19</sup> The court now has cited Utah law to make the wife also responsible for family support and "necessities." The term "necessities" is more restrictive than the term "family expense." For example, a piano may be a family expense but it is not a necessity.

#### V. Utah Family Expense Statute

In 1907 Utah enacted the "Family Expense Statute," which provides that:

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16. Utah Code 1953, 78-45-3.

17. Utah Code 1953, 78-45-4.

18. Skollingsberg v. Brookover, 26 Utah 2d 45, 484 P. 2d 1177, 1178 (1971).

19. Rees v. Archibald, 6 Utah 2d 264, 311 P. 2d 788 (1957); Riding v. Riding 8 Utah 2d 136, 329 P. 2d 878 (1958); Ottley v. Hill, 21 Utah 2d 396, 446 P. 2d 301 (1968).

The expenses of the family and the education of the children are chargeable upon the property of both husband and wife or of either of them, and in relation thereto they may be sued jointly or separately.<sup>20</sup> (Emphasis added)

Substantially similar laws are in force in Illinois, Colorado, Washington, Oregon, Iowa, and a number of other States.

The central legal questions under the Family Expense Statute are: 1) who is liable when the item purchased is not separate but is bought in common or used in common? and 2) may purchases which are used commonly by the family be charged against the separate property of the wife or husband?

Under the statute, either the husband or the wife may incur an indebtedness for family expenses, and they are jointly or severally liable. The statute is a significant departure from the common law and is intended for the protection of the creditor as well as the husband and wife.<sup>21</sup> The major question is what constitutes a "family expense?"

The statute does not define family expense, nor is the term very clearly defined by case law. The Illinois court has defined the term "family expenses" as follows:

The term 'expenses of the family' is not synonymous with 'necessaries,' which may be personal and individual, as well as for the family. ...it (expenses of the family) does include expenses for many articles used by individual members of the family, if they mutually affect the members generally. It is apparent that even though an article is purchased for and used by only one member of the family, yet it is a family expense if it conduces, in any substantial manner, to the welfare of the family generally. Books, pictures, and articles of ornament used to adorn and beautify the home, though owned by individual members of the family, are beneficial to the family generally, and tend to maintain its integrity. Articles of clothing, though purchased for and used exclusively by individual members, are family

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20. Utah Code 1953, 30-2-9.

21. Berow v. Shields, 48 Utah 270, 159 P. 538 (1916);

expenses, as they contribute, in a substantial manner, by preserving health and otherwise, to the general well-being of all the members.<sup>22</sup> (Emphasis added)

Thus an item is a family expense if it contributes "in any substantial manner" to the welfare of the family.

Several examples of family expenses are as follows: a buggy purchased by the husband for the family and used by the husband and other family members was held to be a family expense;<sup>23</sup> however, a vehicle used primarily for a business, trade, occupation, or profession was not held to be a family expense.<sup>24</sup> And a husband and wife are both liable for the medical and funeral expenses of the other as well as for such expenses incurred by them on behalf of a minor child.<sup>25</sup> The rent for property occupied by husband and wife is a family expense.<sup>26</sup>

The word "necessary" does not appear in the Utah Family Expense statute and therefore is not relevant in determining whether an item is a family expense:

...whether the articles purchased by Mrs. Shields were 'necessaries,' under the statute is wholly immaterial....All that is required is that the things purchased are legitimate or proper family expenses.<sup>27</sup>

The Colorado court in Gilman v. Mathews said:

If the legislature of Colorado had intended to limit the liability of a wife to 'necessaries,' it would have so enacted; having failed to do so, we must conclude that such was not the intention...<sup>28</sup>

22. Hyman v. Harding, 162 Ill. 357, 44 N.E. 754, 755 (1896).

23. Houck v. La Junta Hardware Co., 750 Colo. 228, 114 P. 645 (1911).

24. 41 C.J.S. Husband and Wife § 64 (1944).

25. Graul v. Adrian, 49 Ill. App. 2d 101, 199 N.E. 2d 631 (1964); Hansen v. Hayes, 175 Ore. 358, 154 P. 2d 202 (1944).

26. 41 C.J.S. Husband and Wife § 64 (1944).

27. Berow v. Shields.

28. 77 P. 366, 20 Colo. App. 170, 178 (1904).

And in an action to recover the balance due on a mink coat sold to the defendant's wife, an Illinois court said that whether the wife had four other fur coats was not material since the liability under the Illinois statute was not limited to necessities.<sup>29</sup>

Although the Utah statute is very broad, it should not be assumed that every article of personal property purchased by one spouse and used in connection with the family is a family expense. To do so would nullify the provisions of the Utah Code 1953, 30-2-2, which permits a woman to contract debts in her own name and upon her own credit, and the provision of the Utah constitution, article XXII, section 2, which exempts a woman's separate property from liability for her husband's debt. In Bush & Lane Piano Co. v. Woodard,<sup>30</sup> the husband was not liable for a piano purchased over his objection and on the wife's separate credit. It would appear then that a family expense is not only determined by whose signature was on the contract of purchase, but also, more importantly, by whether the other spouse agreed with the purchase and in fact enjoyed the benefits of the purchase.

The courts have varied on the requirement that a family must exist. Does a family exist when a husband and wife are temporarily or permanently separated? The Utah court has generally stated that "the facts and circumstances of each case, to a large extent, determine...under what circumstances the family relation might still be deemed to exist."<sup>31</sup> To prove that two persons are husband and wife does not prove that they constitute a family.<sup>32</sup>

The greatest difficulties of interpretation occur when a husband and wife are separated, which explains the reluctance of creditors to give credit to a separated couple. In Utah the statute would apply if the husband and wife were merely temporarily living apart and if the family relation had not in fact been severed.<sup>33</sup> A recent case in Illinois<sup>34</sup> dealt with a husband and wife who had been separated for

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29. Louis Berman & Co. v. Dahlberg, 336 Ill. App. 308, 83 N.E. 2d 380 (1948).

30. 103 Wash. 612, 175 P. 329 (1918).

31. Berow v. Shields, p. 540.

32. Gilman v. Mathews.

33. Berow v. Shields; Morrison v. Federico, 120 Utah 75, 232 P. 2d 374 (1951).

34. Abraham Lincoln Memorial Hospital Corp. v. Gorden, 111 Ill. App. 2d 179, 249 N.E. 2d 311 (1969).

13 years. The husband was held liable for medical services furnished his wife even though they were separated. The court held that a creditor who furnishes necessities for a wife has a right of recovery against the husband under common law, provided the separation is because of his fault or wrong, or with his consent. It should be noted that the court ruled the wife's medical expenses to be necessities, not family expenses.

#### VI. Dower

The term "dower," both technically and in popular language, refers to a specified amount of real estate of the husband to which the wife is entitled upon her husband's death.

While dower has been repealed in Utah, it has been reinstated, in effect, by the following Utah statute:

One-third value of all the legal or equitable estate in real property possessed by the husband at the time during marriage, to which the wife has made no relinquishments of her rights, shall be set aside as her property in fee simple, if she survives him....<sup>35</sup>

In general, this statute provides that one-third of all real property legally possessed by the husband will pass to the wife upon his death, free of any debts of the husband. The sole exception occurs when the wife "relinquishes" her rights to this property. Utah case law has held that if a wife joins her husband in executing a mortgage, she relinquishes that part of her one-third interest against the mortgage holder until both the husband and wife have paid at least one-third of the mortgage.<sup>36</sup> She maintains her statutory interest, however, as against all other persons.

If a husband purchases real property without the signature of the wife, he has legal possession of the home (even though he does not yet have complete legal title or ownership to the home). Since the statute provides that the wife has one-third interest in all property "possessed" by the husband, the wife receives one-third of

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35. Utah Code 1953, 74-4-3.

36. In re Reynolds Estate, 90 Utah 415, 62 P.2d 270. Utah statute also prohibits a married man from falsely representing himself as unmarried and conveying, or mortgaging, without the consent of his wife, any real estate. He is guilty of a felony for such misrepresentation (Utah Code 1953, 76-20-10).

the value of the home, even if the husband has paid only 10 percent of the mortgage. In order to avoid this loss, mortgage lenders require the wife to "join in" the mortgage (i.e., sign the loan).

#### VII. Uniform Small Loan Act

The Utah Uniform Small Loan Act<sup>37</sup> is contained in the Utah Uniform Consumer Credit Code (UCCC). In the code a small loan is called a "supervised loan," which includes all loans made at over 18 percent interest per year. The Utah Small Loan Act creates maximum interest rate limits for small loans that are characteristically high risk loans. The purpose of the act is to encourage creditors to make these high risk loans and also to protect consumers from interest rates that are exorbitant.

All States have enacted a Uniform Small Loan Act. The Utah act contains a "multiple agreements" provision<sup>38</sup> which prevents a lender from making more than one high interest loan to the same person or to husband and wife separately. The purpose is to prevent lenders from unscrupulously exacting more interest from a husband and wife, each having a separate high interest loan rather than a joint loan with a lower interest rate.<sup>39</sup>

#### VIII. Utah Amendment to Prevent Sex Discrimination

On May 8, 1973, Utah amended its Civil Rights Act on Commerce and Trade,<sup>40</sup> extending it to cover all enterprises regulated by the State and to prevent discrimination on the basis of sex:

It is hereby declared that the practice of discrimination on the basis of race, color, sex, religion, ancestry, or national origin in business establishments or places of public accommodation or in enterprises regulated by the State and its inhabitants...violates the public policy of this State....This act shall be liberally construed....<sup>41</sup>

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37. Utah Code 1953, 70B-3-501 to 505, 508-510.

38. Utah Code 1953, 70B-3-509.

39. Most of the credit granting institutions studied in this report are not subject to the multiple agreements prohibition because their loans are 18 percent interest rate or below.

40. Utah Code 1953, 13-7-1 et seq.

41. Utah Code 1953, 13-7-1.



Under the act, "enterprises regulated by the State" includes all institutions subject to regulation by the Utah Commercial Credit Code, Title 70B, Utah Code 1953.

Remedies for any person aggrieved under the act are to file a complaint with the attorney general who, upon cause, may bring an action in the name of the State, and/or to bring a civil action for damages and any other remedy in law or equity. No enforcement agency is established under the act, although the anti-discrimination division of the State Industrial Commission has jurisdiction in some areas such as employment.<sup>42</sup>

The Utah law does not prohibit discrimination based upon marital status, as do most of the 22 States that have laws prohibiting sex discrimination in the extension of credit.<sup>43</sup> The Utah law, in comparison to other State laws, is very general and fails to provide specific measures. It can, perhaps, be inferred that laws of other States, which are more specific, can provide the interstitial cement for the Utah provision.<sup>44</sup>

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42. "Anti-Discriminatory Act," Utah Code 1953, 34-34-3.

43. Gates, Vanderbilt Law Review, vol. 27, 1974.

44. American Banker, July 13, 1973. The American Banker sent a two-question inquiry to banking commissions in the 50 States. The two questions concerned laws against inquiries into a mortgage applicant's intention or capacity to have children and any other laws or proposals pertaining to discrimination against women in lending. The article summarizes the answers of 37 States that responded.

APPENDIX B

LIST OF OFFICIALS OF  
UTAH COMMERCIAL BANKS, DEPARTMENT STORES, AND  
MORTGAGE LENDING INSTITUTIONS INTERVIEWED BY STAFF OF  
U.S. COMMISSION ON CIVIL RIGHTS,  
MOUNTAIN STATES REGIONAL OFFICE  
FEBRUARY, APRIL, MAY 1974

List of Officials of  
Utah Commercial Banks, Department Stores, and Mortgage Lending  
Institutions Interviewed by Staff of U.S. Commission on  
Civil Rights, Mountain States Regional Office

CompanyAmerican Savings & Loan (Provo)Auerbach Company (Salt Lake)  
Credit DepartmentBank of Utah (Ogden)  
Mortgage DepartmentBettilyon Mortgage Company  
(Salt Lake)The Bon Marche (Ogden)  
Credit DepartmentCentral Bank & Trust Company  
(Provo) Personal Loan DepartmentCitizens National Bank (Ogden)  
Loan DepartmentClark's Department Store (Provo)  
Credit DepartmentCommercial Security Bank  
(Salt Lake) Loan Department

Mortgage Department

Continental Bank (Salt Lake)  
Consumer Loans

Personal Loan Department

Master Charge Department

Credit Bureau of Ogden (Ogden)Credit Bureau of Provo (Provo)Personnel

D. S. Thatcher (Branch Manager)

Allan Bunker (Credit Officer)  
Frankie Bush (Credit Manager)Gerald West (Asst. Vice Pres.)  
V. Ray Kennedy (Vice President)Hoyt S. Wilmer (Vice President)  
Horace Hayes (Admin. Asst.)Peggy Johnson (Credit Officer)  
Arnold Kapp (Credit Manager)Bowman O. Barlow (Sr. Vice Pres.)  
John E. Beal (Asst. Vice Pres.)Scott C. Russell (Asst. Vice Pres.)  
Theron Simpsen (Sr. Vice Pres.)

Jodie Summerhays (Credit Manager)

H. Leroy Honey (Asst. Vice Pres.)  
Lawrence Coop, Jr. (Loan Officer)Gordon Belnap (Vice President)  
Ida Young (Mortgage Loan Officer)

Richard Fleisch (Vice President)

Donnell Francom (Second Vice Pres.)

Herbert Al Fletcher (Credit Supvr.)

Glenn Robertsen (General Manager)

William Welsh (President)

Credit Bureau of Salt Lake City  
(Salt Lake)

Clyde Tooman (General Manager)

Deseret Federal Savings & Loan  
(Provo)

Howard Swapp (Vice President)  
Oran Powell (Vice President)

Federal Building & Loan (Ogden)

Val Weathers (Asst. Vice Pres.)

First Federal Savings & Loan  
(Salt Lake)

Klela Parkin (Mortgage Officer)  
Ralph Neilson (Vice President)

First Security Bank of Utah (Ogden)  
Personal Loan Department

Dean Daily (Asst. Vice Pres.)

Mortgage Loan Department

Jim Boswell (Loan Officer)

First Security Bank of Utah (Provo)

Glen M. Carlson (Asst. Vice Pres.)

Mortgage Loan Department

Donna Wilde (Mortgage Loan Officer)

First Security Bank of Utah (Salt Lake)  
Mortgage Loan Department

Norval Lambert (Vice Pres.)  
Earl B. Jones (Mortgage Loan Officer)

Personal Loan Department

F. W. Douglas (Supvr. - Consumer  
Credit)

Clark Harding (Asst. Vice Pres.)

BankAmericard Department

Pat Rouse (Credit Manager)  
Judy Frye (Credit Officer)  
Dorothy Giroux (Credit Officer)

J. C. Penney (Denver Regional Office)  
Credit Department

Lester Bosch (Credit Manager)

Keith O'Brien Department Store  
(Salt Lake) Credit Department

Lamar Bingham (Officer Manager)  
Marjorie Miller (Credit Clerk)  
Erma Marker (Billing & Credit Clerk)

The Lockhart Company (Ogden)  
Loan Department

Les Abshire (Loan Officer)

The Lockhart Company (Provo)  
Loan Department

Gary Lyons (Manager)  
Dennis Gurn (Loan Officer)  
Rex Nielsen (Asst. Manager)

The Lockhart Company (Salt Lake)  
Loan Department

W. Harold Dobson (Exec. Vice Pres.)  
Thomas G. Pike (Vice Pres.-Manager)

Ogden Federal Savings & Loan (Ogden)

Richard M. Mercer (President)  
Vincent Carney (Loan Officer)

The Paris Company (Salt Lake)  
Credit Department

Glenda Butler (Credit Manager)  
Casandria Emery (Asst. Cr. Manager)

Provo Savings & Loan Assoc. (Provo)

Rex Reynolds (Secretary)  
Elden McKell (Director)

Prudential Federal Savings & Loan (Provo)

Brian Butters (Loan Officer)  
Mike King (Loan Officer)

Prudential Federal Savings & Loan  
(Salt Lake)

Alta Earl (Loan Officer)  
Gary Jorgenson (Loan Officer)

Sears, Roebuck & Company (Murray)

G. M. Duehring (Reg. Cr. Supvr.)

State Savings & Loan (Salt Lake)

Rod Silver (Loan Officer)

Taylor's Department Store (Provo)  
Credit Department

Frances Christopherson (Cr. Manager)  
Lynnette Sharpe (Asst. Cr. Manager)

Tracy Collins Bank (Salt Lake)  
Master Charge Department

Bart Folger (Asst. Vice Pres.)

Mortgage Department

Ted May (Sr. Vice President)  
Gordon M. Oettli (Sr. Vice Pres.)

Utah Mortgage Loan Corp. (Salt Lake)  
Residential Loan Department

Lois Mills (Loan Officer)

Valley Bank & Trust Company (Salt Lake)  
Master Charge Department

Bob Clemenson (Credit Manager)  
Vaughn G. Morrow (Vice Pres.)

Personal Loan Department

Gaylen Larsen (Vice Pres.)  
Paul Campbell (Branch Manager)

Walker Bank & Trust Company (Salt Lake)  
Walker Bankard Department

David Keyser (Vice Pres.)  
Donald Sieb (loan Officer)

Personal Loan Department

Joseph V. Siciliano (Vice Pres.)  
Robert R. Roberts (Asst. Vice Pres.)

Walker Bank & Trust Company (Provo)

Walker Bankard Department

Personal Loan Department

H. C. Steed (Vice Pres.-Man.)  
 Gerald Gilner (Asst. Vice Pres.)  
 Marlene McLain (Loan Officer)

Gerald Gilner (Asst. Vice Pres.)  
 Fred Assay (Asst. Vice Pres.)

W. T. Grant's (Provo)

Credit Department

Eugene Johnson (District Cr. Man.)

ZCMI Department Store (Salt Lake)

Credit Department

J. Earl Russell, Jr. (Cr. Man.)

Zions First National Bank (Salt Lake)

Gold Account Division

Ralph Hibler (Credit Manager)

Installment Loan Division

Kim Weber (Loan Officer)  
 Norvall Bennett (Loan Officer)

Zions First National Bank (Provo)

Personal Loan Division

Clint Williams (Operations Officer)  
 Doug Christensen (Branch Manager)

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