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## **NOTICE OF PROPOSED RULEMAKING**

The Administrator of the Colorado Uniform Consumer Credit Code (“UCCC”) and a subcommittee consisting of the Council of Advisors on Consumer Credit and the Attorney General or his designee will hold a public rulemaking hearing at 1:30 p.m. on Tuesday, August 31, 2010 in Room 243 of the State Services Building, 1525 Sherman St., Denver, Colorado to consider amendments to the Rules of the Administrator, Uniform Consumer Credit Code (UCCC), 4 CCR 902-1.

The proposed rules are attached and are available at [www.coloradoattorneygeneral.gov/uccc](http://www.coloradoattorneygeneral.gov/uccc). In addition, copies of the rules will be provided upon request.

The rules will implement and clarify amendments to the Deferred Deposit Loan Act passed in House Bill 10-1351. The bill changes the loan terms and charges permitted on payday loans and repeals the repayment plan provisions. The rules will clarify how the new statutory amendments fit within the existing law by making conforming amendments to Rule 10 on record retention and repealing Rule 16 on repayment plans. Proposed Rule 17 adds consumer protections resolves issues raised about multiple installments, permitted charges and disclosure of those charges, how and when interest rates and monthly maintenance fees are charged, posting of charges, payment instrument amounts, application of payments, fees and disclosures on renewals, refunds on prepayment, and permitted default fees.

Written submissions on the proposed rules should be filed by August 23, 2010 in order to have sufficient time to be fully considered, reference the rules by number, and be addressed to the Administrator at the above address. Oral comments may be made at the hearing as time permits. All oral submissions and timely written submissions will be considered.

Statutory authority: § §5-6-104(1)(e), 5-6-302(2), and 24-4-103, C.R.S.

Dated: July 30, 2010.

*Laura E. Udis*  
LAURA E. UDIS  
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***This document contains proposed amendments to Rules of the Administrator, Colorado Uniform Consumer Credit Coder. Only those rules with proposed changes are reprinted below.***

*(Capital letters indicate new text to be added to existing rules or new rules. Lines through the text indicate deletions from existing rules.)*

### **Proposed Amendments**

#### **Rule 10 Records to be Maintained by Creditors**

- (a) A creditor must maintain and make available records for compliance examinations and investigations that enable the Administrator to determine that the creditor is in compliance with the Colorado Uniform Consumer Credit Code ("UCCC"). These records include, but are not limited to, the following as applicable:
1. Advertising and solicitation material.
  2. Credit applications and any other documents obtained by a creditor or required by law verifying the financial information contained in the application, approvals, and denials.
  3. Disclosures required by the UCCC, including the Deferred Deposit Loan Act, and the federal Truth in Lending and Truth in Leasing Acts, and any regulations thereunder.
  4. Promissory notes, loan agreements, lease agreements, retail installment sales contracts, invoices, purchase orders, and buyer's orders.
  5. Co-signer notices.
  6. Rescission notices.
  7. Payment and account history documents including application of each payment to principal and, if applicable, interest, ORIGINATION/ACQUISITION AND MONTHLY MAINTENANCE FEES AUTHORIZED BY THE DEFERRED DEPOSIT LOAN ACT, ACQUISITION AND MONTHLY INSTALLMENT ACCOUNT HANDLING CHARGES AUTHORIZED BY SECTION 5-2-214, C.R.S., prepayment, payment in full, delinquency fees, fees for the return or dishonor of checks or other instruments tendered as payment, credits and refunds, COURT COSTS, ATTORNEYS FEES, and ledger transaction codes.
  8. Delinquency fee and deferral notices.
  9. Change in terms notices.
  10. Right to cure, default, and repossession of collateral notices.
  11. Collection attempt documentation including records of the time, date, and substance of telephone calls.
  12. Insurance authorizations, policies, premiums, and certificates.
  13. Authorization for benefits permitted as additional charges by UCCC rule.
  14. Receipts for cash payments.

15. Release of security interests, termination of financing statements, and payment in full notices.
16. Credit reports, appraisals, title policies, and other records of closing costs on real estate secured transactions legally permitted to be excluded from the finance charge.
17. For deferred deposit/PAYDAY loans, a consumer log including the consumer's name, date of all loans made to the consumer for the prior four years, DATE OF ACTUAL FINAL PAYMENT, amount financed, DOLLAR AMOUNT OF EACH OF THE THREE CHARGES CONTRACTED FOR UNDER SECTION 5-3.1-105, C.R.S. (ORIGINATION OR ACQUISITION FEE EARNED AS OF THE DATE OF THE LOAN, INTEREST, AND MONTHLY MAINTENANCE FEES), LOAN TERM, ~~finance charge, due date, actual payment date,~~ method of payment (e.g., consumer's check deposited or cashed; payment electronically debited from consumer's bank account; consumer redeems check or debit authorization with cash; loan renewed, refinanced, extended or rolled), FOR RENEWALS THE AMOUNT OF ANY LOAN PROCEEDS GIVEN TO THE CONSUMER DIRECTLY AND/OR PAID TO OTHERS ON THE CONSUMER'S BEHALF, and if applicable, the dates the lender offered written payment plans and the dates payment plans were established.
18. For deferred deposit/PAYDAY loans, daily activity logs, check and cash disbursement registers, and bank records including bank statements and deposit slips reflecting disbursements of loan proceeds and payments on deferred deposit/PAYDAY loans.
19. For deferred deposit/PAYDAY loans, records of postings of charges, notices on assignment or sale of instruments, and compliance with renewal limitations and payment plan requirements.
20. For ~~lenders making~~ loans MADE under section 5-2-214, "Alternative charges for loans not exceeding one thousand dollars:"
  - (a) For each consumer, a consumer log including the consumer's name, date of all loans made to the consumer for the prior four years, date of actual final payment, amount financed, dollar amount of contractual acquisition charge, total dollar amount of contractual monthly installment account handling charge, loan term, method of payment (e.g., paid by consumer, refinanced, or consolidated), the dollar amount of any refunds paid to the consumer upon prepayment, and for refinances and consolidations the amount of any loan proceeds given to the consumer directly and/or paid to others on the consumer's behalf.
  - (b) Daily activity logs of all loans made, refinanced, or consolidated, including the consumer's name, whether the consumer is new, a former customer, or a current customer; check and cash disbursement registers; and bank records including bank statements and deposit slips reflecting disbursements of loan proceeds and loan payments.

#### **Rule 16 Deferred Deposit Loan Payment Plans**

THIS RULE SHALL BE REPEALED EFFECTIVE JUNE 1, 2011.

~~For deferred deposit loans subject to section 5-3.1-108(5), C.R.S. on voluntary payment plans, a lender shall also comply with this rule.~~

#### **~~(a) Notice of Written Payment Plan Offers~~**

~~(1) The written notice of the option to participate in a voluntary payment plan required in section 5-3.1-108(5)(a), C.R.S. shall state the following language in at least ten-point type:~~

~~"NOTICE OF PAYMENT PLAN OPTION~~

~~YOU HAVE THE RIGHT TO PARTICIPATE IN A VOLUNTARY PAYMENT PLAN TO REPAY THIS LOAN. IF YOU SELECT A PAYMENT PLAN, YOU MAY REPAY ANY AMOUNTS DUE IN AT LEAST 6 EQUAL INSTALLMENTS RATHER THAN 1 SINGLE PAYMENT. PAYMENTS WILL BE DUE ON YOUR PAYDAY OR DATE YOU RECEIVE BENEFITS. THERE IS NO ADDITIONAL FEE FOR A PAYMENT PLAN.~~

~~YOU MAY SELECT THE PAYMENT PLAN NOW OR AT ANY TIME BEFORE THE CLOSE OF BUSINESS ON THE DAY BEFORE THIS LOAN IS DUE. TO SELECT A PAYMENT PLAN (select either or both of the phrases below as applicable)~~

~~RETURN TO THIS LOCATION OR ANY OTHER BRANCH LOCATIONS WE OPERATE IN COLORADO. CONTACT OUR OFFICE FOR THE NAMES AND ADDRESSES OF OTHER BRANCH LOCATIONS, IF ANY, WE OPERATE IN COLORADO.~~

~~(and/or)~~

~~IF THIS LOAN WAS ORIGINATED AT A WEB SITE, BY TELEPHONE, OR AT ANOTHER REMOTE LOCATION, VISIT OR CONTACT US AT (insert applicable information).~~

~~THE DECISION TO SELECT A PAYMENT PLAN IS YOURS TO MAKE. IF YOU SELECT A PAYMENT PLAN, THE LENDER MUST PROVIDE A PLAN THAT MEETS THE REQUIREMENTS DESCRIBED ABOVE. YOU ARE ENTITLED TO RECEIVE A COPY OF THIS NOTICE.~~

~~BY SIGNING BELOW I ACKNOWLEDGE THAT I WAS OFFERED THE OPTION OF A PAYMENT PLAN.~~

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)"

~~(2) The Notice of Payment Plan Option shall prominently include the lender's business name, physical location address, and telephone number, and shall also include the consumer's signature and the date the notice was provided. It shall be contained in a document separate from the loan application, loan agreement, contract, and any other disclosures required by state or federal law, except that the notice may also contain the written payment plan. The lender shall provide the consumer with a copy of the notice of payment plan option in a form the consumer may keep.~~

~~**(b) Contents of Written Payment Plan.** The written payment plan shall contain all of the following information:~~

- ~~(1) Total amount of existing debt,~~
- ~~(2) Dates of each payment,~~
- ~~(3) Amount of each payment,~~
- ~~(4) That there is no additional fee to select a plan,~~

~~(5) That the lender is prohibited by law from collection activities while the consumer meets the terms of the plan,~~

~~(6) That the lender and its affiliates are prohibited by law from making any deferred deposit loans to the consumer before a plan is completed, and~~

~~(7) That if the consumer does not pay the full amount of each payment by the due date, the lender may collect all of the remaining debt due and charge the consumer a \$25.00 default fee.~~

~~A lender that requires a consumer to provide post-dated checks or electronic authorizations for the payments under the plan must disclose that information in the written payment plan. The payment plan must be dated and signed by both the lender and consumer.~~

~~(c) Record Retention. A lender shall maintain records relating to all of its written payment plan offers and payment plans pursuant to Rule 10 of the Uniform Consumer Credit Code Rules.~~

## **RULE 17 – DEFERRED DEPOSIT/PAYDAY LOANS**

**FOR DEFERRED DEPOSIT/PAYDAY LOANS MADE OR RENEWED ON OR AFTER AUGUST 11, 2010, THE FOLLOWING RULES APPLY. AND ALL REFERENCES TO PAYDAY LOANS ALSO MEAN DEFERRED DEPOSIT LOANS.**

### **(A) INSTALLMENTS**

1. THE LENDER AND CONSUMER MAY CONTRACT FOR PAYMENTS TO BE MADE IN A SINGLE INSTALLMENT OR MULTIPLE INSTALLMENTS OF SUBSTANTIALLY EQUAL AMOUNTS DUE AT EQUAL PERIODIC INTERVALS.
2. ALL APPLICATIONS FOR PAYDAY LOANS AND PAYDAY LOAN AGREEMENTS SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE THAT UNDER COLORADO LAW, LOANS MAY BE STRUCTURED TO BE REPAYED IN A SINGLE INSTALLMENT OR MULTIPLE INSTALLMENTS. IF A LENDER DOES NOT OFFER BOTH INSTALLMENT OPTIONS, IT SHALL ALSO CLEARLY AND CONSPICUOUSLY DISCLOSE IN ITS APPLICATIONS AND LOAN AGREEMENTS THE OPTION IT PROVIDES AND THAT THE CONSUMER MAY BE ABLE TO OBTAIN THE OPTION IT DOES NOT PROVIDE FROM OTHER PAYDAY LENDERS.

### **(B) ORIGATION/ACQUISITION CHARGE**

EXCEPT ON A RENEWAL OF A PAYDAY LOAN, THE LOAN AGREEMENT SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE THAT WHEN A CONSUMER OBTAINS A PAYDAY LOAN, THE LENDER MAY CHARGE A FINANCE CHARGE EARNED AS OF THE DATE OF THE LOAN, WHICH MAY BE DESCRIBED AS AN ORIGATION OR ACQUISITION FEE, OF UP TO \$75 DEPENDING ON THE LOAN AMOUNT, AND THAT THE FEE IS NON-REFUNDABLE UPON PREPAYMENT.

### **(C) INTEREST RATE**

THE INTEREST RATE OF UP TO 45% PER ANNUM PERMITTED BY SECTION 5-3.1-105, C.R.S. MAY BE ASSESSED ONLY ON THE AMOUNT FINANCED OF \$500 OR LESS. IT MAY NOT BE ASSESSED ON THE ORIGATION/ACQUISITION FEE OR MONTHLY MAINTENANCE FEES.

### **(D) MONTHLY MAINTENANCE FEES**

1. A MONTHLY MAINTENANCE FEE MAY BE CHARGED FOR EACH MONTH THE LOAN IS OUTSTANDING AFTER THE FIRST 30 DAYS OF THE LOAN. THE NUMBER OF MONTHLY

MAINTENANCE FEES PERMITTED IS EQUAL TO THE NUMBER OF MONTHS IN THE LOAN TERM LESS ONE MONTH. FOR EXAMPLE, ON A SIX MONTH LOAN, A MONTHLY MAINTENANCE FEE MAY BE CHARGED AT THE END OF THE SECOND THROUGH SIXTH MONTHS IF THE LOAN IS OUTSTANDING DURING THAT TIME.

2. A MONTHLY MAINTENANCE FEE MAY BE CHARGED ON EACH \$100 INCREMENT OF THE LOAN AMOUNT. NO FEE MAY BE COLLECTED ON AMOUNTS OF LESS THAN \$100. FOR EXAMPLE, ON A \$350 LOAN, THE PERMITTED MONTHLY MAINTENANCE FEE IS \$22.50 (3 INCREMENTS OF \$100 X \$7.50 = \$22.50).
3. A MONTHLY MAINTENANCE FEE IS NOT EARNED UNTIL THE END OF THE MONTH. IF A PAYDAY LOAN IS PREPAID IN FULL AT ANY TIME DURING A MONTH, NO MONTHLY MAINTENANCE FEE MAY BE COLLECTED FOR THAT MONTH.
4. THE MONTHLY MAINTENANCE FEE IS BASED ON THE ORIGINAL LOAN AMOUNT AND THE LENDER NEED NOT REDUCE THE MAINTENANCE FEE TO TAKE INTO CONSIDERATION THE DECLINING BALANCE EACH MONTH IF THE CONSUMER HAS MADE REQUIRED INSTALLMENTS OR VOLUNTARY PARTIAL PREPAYMENTS.

(E) POSTING OF CHARGES

TO COMPLY WITH SECTION 5-3.1-113, C.R.S., FOR NEW PAYDAY LOANS A LENDER SHALL POST IN ITS PLACE OF BUSINESS EXAMPLES OF THE TOTAL OF ALL CHARGES FOR A 6-MONTH LOAN IN THE AMOUNTS OF \$100, \$300 AND \$500 BASED ON THE ASSUMPTION THAT THE LOAN WILL BE PAID AS SCHEDULED. IF THE LENDER DOES NOT OFFER LOANS IN THOSE AMOUNTS, IT SHALL POST EXAMPLES FOR ITS MINIMUM AND MAXIMUM LOAN AMOUNTS. IF THE LENDER OFFERS BOTH SINGLE AND MULTIPLE INSTALLMENT LOANS, IT SHALL PROVIDE THE EXAMPLES FOR BOTH SINGLE AND MULTIPLE INSTALLMENT LOANS. A LENDER SHALL ALSO POST THE TOTAL OF ALL CHARGES FOR RENEWAL OF A 6-MONTH LOAN USING THE SAME EXAMPLES. IF A LENDER DOES NOT OFFER RENEWALS, IT SHALL POST A STATEMENT THAT ALTHOUGH STATE LAW PERMITS RENEWALS, IT DOES NOT OFFER RENEWALS AND THAT CONSUMERS MAY BE ABLE TO OBTAIN RENEWALS FROM OTHER PAYDAY LENDERS. LENDERS THAT MAKE LOANS OVER THE INTERNET SHALL POST THE CHARGES REQUIRED BY THIS RULE ON THEIR WEB SITES.

(F) PAYMENT INSTRUMENTS

IF A PAYDAY LOAN IS PAYABLE IN MULTIPLE INSTALLMENTS, THE LENDER MAY HOLD A PAYMENT INSTRUMENT FOR EACH INSTALLMENT. THE AMOUNT OF THE PAYMENT INSTRUMENT MAY INCLUDE THE LOAN PRINCIPAL AND ORIGINATION/ACQUISITION FEE. THE PAYMENT INSTRUMENT OR AUTHORIZATION MAY NOT INCLUDE INTEREST OR THE MONTHLY MAINTENANCE FEE. THE LENDER MAY COLLECT THE REMAINING AMOUNT DUE UNDER EACH INSTALLMENT BUT MAY NOT HOLD A PAYMENT INSTRUMENT OR AUTHORIZATION FOR SUCH ADDITIONAL AMOUNT.

(G) APPLICATION OF PAYMENTS

THE LENDER MAY CONTRACT FOR AND APPLY PAYMENTS ON A PAYDAY LOAN USING A PRECOMPUTED METHOD (TOTAL OF PAYMENTS) ASSUMING ALL PAYMENTS ARE MADE AS SCHEDULED OR ON AN INTEREST BEARING BASIS IN WHICH THE CONSUMER AGREES TO PAY THE PRINCIPAL PLUS APPLICABLE INTEREST AND FEES APPLIED TO THE UNPAID BALANCE WHEN PAYMENTS ARE ACTUALLY MADE.

(H) RENEWALS

1. UPON RENEWAL OF A PAYDAY LOAN, THE LENDER MAY CHARGE AN AMOUNT THAT EQUATES TO AN ANNUAL PERCENTAGE RATE OF 45%. NO OTHER FEES OR CHARGES ARE PERMITTED ON RENEWAL.
2. UPON RENEWAL OF A PAYDAY LOAN, THE LENDER MAY REFINANCE AN AMOUNT UP TO \$500. IF THE AMOUNT OWED EXCEEDS \$500, THE LENDER MAY REFINANCE UP TO \$500 AND THE CONSUMER MUST PAY ANY REMAINING AMOUNT.

(I) PREPAYMENTS AND REFUNDS

1. A CONSUMER MAY AT ANY TIME PREPAY A PAYDAY LOAN IN FULL OR IN PART WITHOUT A PENALTY PRIOR TO THE DUE DATE OR DATE THE LAST INSTALLMENT IS DUE.
2. IN ADDITION TO ANY DISCLOSURES ABOUT PREPAYMENT REQUIRED BY SECTION 5-3-101 C.R.S., THE LOAN AGREEMENT SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE THAT THE CONSUMER MAY PREPAY AT ANY TIME IN FULL OR IN PART WITHOUT A PENALTY.
3. IF A CONSUMER PREPAYS A PAYDAY LOAN IN FULL PRIOR TO THE FINAL PAYMENT DATE, THE LENDER MUST REFUND ON A PRO-RATA BASIS ANY UNEARNED PORTION OF THE INTEREST RATE AND ANY UNEARNED PORTION OF THE MONTHLY MAINTENANCE FEE. THE LENDER NEED NOT REFUND ANY PORTION OF THE ORIGINATION/ACQUISITION FEE.
4. CONSUMER REFUNDS MUST BE PAID TO THE CONSUMER BY CASH, CHECK, OR SIMILAR METHOD AND MAY NOT BE APPLIED AS A CREDIT TO AN OPEN ACCOUNT OR FOR A FUTURE LOAN WITH THAT LENDER OR ANY OTHER LENDER. IF A LENDER MAKES A CASH REFUND, IT SHALL PROVIDE THE CONSUMER WITH A CASH RECEIPT AND COMPLY WITH RULE 10(A)(14).
5. IF A CONSUMER EXERCISES THE RIGHT TO RESCIND THE LOAN BY 5 P.M. OF THE NEXT BUSINESS DAY PURSUANT TO SECTION 5-3.1-106(2), C.R.S, THE LENDER SHALL REFUND ALL CHARGES IMPOSED PURSUANT TO SECTION 5-3.1-105, C.R.S.

(J) DEFAULT

1. IF A PAYDAY LOAN IS PAYABLE IN 5 OR MORE MULTIPLE INSTALLMENTS AND THE CONSUMER IS IN DEFAULT FOR FAILURE TO MAKE A REQUIRED PAYMENT, THE LENDER MAY NOT ACCELERATE THE BALANCE OR ENFORCE A SECURITY INTEREST, INCLUDING DEPOSITING ANY REMAINING PAYMENT INSTRUMENTS, UNLESS IT COMPLIES WITH THE RIGHT TO CURE DEFAULT PROVISIONS IN UCCC SECTIONS 5-5-110 AND 5-5-111.
2. THE LENDER MAY NOT CHARGE OR COLLECT MORE THAN ONE INSUFFICIENT FUNDS FEE ON A PAYDAY LOAN, REGARDLESS OF THE NUMBER OF PAYMENT INSTRUMENTS RETURNED UNPAID OR THE NUMBER OF TIMES A PAYMENT INSTRUMENT IS PRESENTED AND RETURNED UNPAID. THE AMOUNT OF THE SINGLE INSUFFICIENT FUNDS FEE MAY NOT EXCEED \$25 AND MUST BE CONTRACTED FOR IN THE LOAN AGREEMENT.
3. THE LENDER MAY NOT CHARGE OR COLLECT MONTHLY MAINTENANCE FEES FOR ANY MONTHS THE LOAN REMAINS UNPAID AFTER THE END OF THE SCHEDULED FINAL DUE DATE.

## **STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE**

The basis and purpose of the rules are to implement and clarify amendments to the Deferred Deposit Loan Act adopted in House Bill 10-1351. The bill changes the loan terms and charges permitted on payday loans and repeals the repayment plan provisions. The bill takes effect August 11, 2010. The rules will clarify how the new statutory amendments fit within the existing law.

Conforming amendments are made to Rule 10 on record retention to account for the new three-tiered fee structure on payday loans. Because these loans become a type of small installment loan, the existing record retention requirements in Rule 10(a)(20) for small installment loans made under section 5-2-214, C.R.S., are used as a model. Rule 16 on repayment plan notices and content of written payment plans is repealed because as of August 11, 2010, the statutory section requiring lenders to offer repayment plans is repealed.

Proposed Rule 17 implements the substantive requirements of HB 10-1351. The rule adds consumer protections and resolves a number of the issues raised by the industry and others about whether multiple installments are permitted, permitted charges and disclosure of those charges, how and when interest rates and monthly maintenance fees are charged, posting fees at the lender's place of business, payment instrument amounts, application of payments, fees and disclosures on renewals, refunds on prepayment, and permitted default fees.

The statutory authority for these rules is sections 5-6-104(1)(e), 5-6-302(2), and 24-4-103, C.R.S.