

STATE OF COLORADO

DEPARTMENT OF LAW

Uniform Consumer Credit Code
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Laura E. Udís
Administrator
Jack L. Kinkel
Deputy Administrator

June 15, 1990

RE: Collection Agencies as Supervised Lenders

Dear

You have asked whether collection agencies are subject to the licensing requirements of the Colorado Uniform Consumer Credit Code ("UCCC"). Collection agencies licensed by the Colorado Collection Agency Board must also obtain a supervised lender's license from the UCCC if they make certain kinds of consumer loans, specifically, supervised loans.

A loan is created when a lender pays or agrees to pay money to a consumer or on the consumer's behalf to a third party, § 5-3-106(1), C.R.S. (1973). In addition, a loan includes the forbearance of debt arising from a loan. For example, if a collection agency pays off the consumer's debt to the creditor/client and subsequently keeps all payments collected from the consumer as opposed to remitting the client's share of money collected, the collection agency is a lender who has made a loan, § 5-3-107(1), C.R.S. (1973). Similarly, if a collection agency consolidates a consumer's loans, and creates a new debt owed to the collection agency itself with interest or payable in more than four (4) instalments, a loan exists for UCCC purposes.

A consumer loan is a loan made by a lender who "regularly" makes loans primarily for personal, family, or household purposes, payable in more than four (4) instalments or bearing interest, and for amounts of \$25,000 or less (if the loan is secured by real estate, there is no dollar limitation), § 5-3-104, C.R.S. (1973 & 1989 Supp.). A lender regularly makes consumer loans if he makes more than twenty-five (25) non-real estate secured loans or more than five (5) real estate secured loans in a calendar year. **1 Truth in Lending §103(f), 15 U.S.C.

1** The UCCC does not contain a definition of "regularly." How-

§ 1602(f); Regulation Z, 12 C.F.R. § 226.2(17), n. 3). Consumer loans must also comply with UCCC disclosure and other substantive requirements including maximum charges, default provisions, etc.

A supervised loan is a consumer loan which exceeds a 12% annual percentage rate, § 5-3-501, C.R.S. (1973). Supervised loans can only be made if a license is obtained, § 5-3-502, C.R.S. (1973).**2 Note that even if the collection agency does not directly make loans itself, it must be a licensed supervised lender if it takes assignments of and collects payments owed on supervised loans, § 5-3-502(2), C.R.S. (1973). If a collection agency regularly makes or collects supervised loans (consumer loans in excess of 12% A.P.R.) without a supervised lender license, it violates the law. The consumer is then not obligated to pay the interest and may obtain a refund of the interest paid, § 5-5-202(1), C.R.S. (1989 Supp.).

To obtain a supervised lender license, the lender must complete an application available from the UCCC and pay the annual \$400 license fee, §§ 5-3-503, 5-6-203(1)(a), C.R.S. (1973 & 1989 Supp.). A supervised lender's loan records are examined at least once per year, § 5-3-506, C.R.S. (1973). Collection agencies who are licensed as supervised lenders by the UCCC need not pay the \$20 annual UCCC notification fee, § 5-6-203(1)(a), C.R.S. (1989 Supp.). Supervised lender license application forms are available from this office.

In summary, if a collection agency makes more than twenty-five (25) consumer loans a year (non-real estate secured) at an

ever, the Administrator has chosen to utilize the definition appearing in Truth in Lending and Regulation Z. The Administrator is directed to consider the Federal Consumer Credit Protection Act (Truth in Lending) and the Federal Reserve Board's rules (Regulation Z) in interpreting the UCCC, § 5-6-104(2) & (3), C.R.S. (1973).

2** The only exception to the licensure and license fee requirement is for supervised financial organizations, §§ 5-3-502, 5-6-203(1)(a), C.R.S. (1973 & 1989 Supp.). A supervised financial organization is defined as a Colorado or federally chartered bank, savings and loan, or credit union, § 5-1-301(17), C.R.S. (1973). It does not include a licensed collection agency.

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interest rate exceeding 12% per annum, it must be licensed as a supervised lender. In addition, if a collection agency regularly collects a creditor's consumer loans which exceed 12% per annum, it must also be licensed as a supervised lender.

This letter is an informal opinion and should not be considered a formal administrative interpretation pursuant to § 5-6-104(4), C.R.S. (1989 Supp.).

Sincerely,



LAURA E. UDIS
Administrator
Colorado UCCC

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