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RE: Fees for Electronic Debits and Payments

Dear _____ :

During compliance examinations of supervised lenders, we have noted that some lenders are charging consumers fees for electronic debit, automated clearing house, and similar payments. A question has arisen as to whether these processing fees are permitted additional charges under the Colorado Uniform Consumer Credit Code ("UCCC").¹

Electronic or automatic debits and payments may take many forms. This may include regular withdrawals of the periodic payment amount from the consumer's bank account, a one-time or infrequent withdrawal by automated clearing house transaction ("ACH"), or the lender's printing of a paper check after the consumer has provided authorization and bank account information. All of these methods expedite the payment process. Lenders need not wait to receive the consumer's payment by mail and may not need to handle the consumer's payment at all because the money is removed from the consumer's account and deposited or credited to the lender's account. Consumers can avoid writing paper check and sometimes use of an electronic payment method may avoid a delinquency charge.² Some lenders, financial institutions, and third-parties offer these payments methods at no charge to the consumer while others impose a fee for the service.

Under the UCCC, a lender may not impose a fee on, or collect a fee imposed by others from, consumers for electronic or automatic payment methods. Consumers utilize these payment methods to make required payments on consumer credit transactions. A fee for use of a payment method on a consumer credit transaction is a "finance charge" under the UCCC. "Finance charge" is defined in section 5-1-301(20)(a), C.R.S. as:

¹ Although this opinion references "lenders," the conclusions apply equally to "sellers."

² We are aware of many instances, however, where a delinquency fee has been assessed and the lender calls the consumer for an immediate payment. It is the lender that suggests the electronic or automatic payment. This opinion is not dependent on who initiates the payment method and whether it is charged in lieu of or in addition to a delinquency fee.

(over)

The sum of all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the consumer, the creditor, or any other person on behalf of the consumer to the creditor or to a third party. . . .

(emphasis added). The UCCC exempts from the definition of finance charge, fees that are permitted “additional charges.” Section 5-1-301(20)(b), C.R.S. The list of permitted additional charges in the UCCC does not include fees for payment methods. Section 5-2-202, C.R.S.

Loan payment transaction fees that a lender imposes on or charges to a consumer are incident to the credit transaction, despite the fact that the lender may be collecting all or part of the fee for a third-party. If the fee is paid by the consumer and directly or indirectly imposed by the lender, it is a finance charge.

This opinion is consistent with other UCCC provisions. The UCCC prohibits credit card surcharges on payments made by credit card. Section 5-2-212, C.R.S.

I recognize that there may be a cost to lenders for accepting electronic or other automatic payments. However, there is a cost to process and handle paper check payments. The cost of processing payments and other costs of doing business may be considered by the lender in establishing interest rates and annual percentage rates, but the UCCC does not permit lenders to charge an additional fee for processing payments of paying by any particular payment method.

There are benefits to lenders to receive consumer payments electronically or automatically. This opinion does not prohibit lenders from offering other payment methods so long as they do not directly or indirectly impose a charge or collect a fee for this service. Consumers may also find expedited or automatic payment methods beneficial. If a lender will not offer this service, they may be able to make arrangements through their own bank or independent third-parties for these services and pay any applicable fee.

Please feel free to contact me if you have any questions about this matter.

Sincerely,

A handwritten signature in cursive script that reads "Laura E. Udis". The signature is written in black ink on a white background.

LAURA E. UDIS
Administrator
Uniform Consumer Credit Code
(303) 866-4494
(303) 866-5691 (FAX)