

BEFORE THE ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE,  
STATE OF COLORADO

---

**ASSURANCE OF DISCONTINUANCE**

---

IN THE MATTER OF THE INVESTIGATION OF BBVA USA F/K/A  
COMPASS BANK.

Respondent.

---

THIS ASSURANCE OF DISCONTINUANCE (“AOD”) is made between the Administrator of the Uniform Consumer Credit Code, C.R.S. §§ 5-1-101, *et seq.* (“UCCC”), and Respondent BBVA USA f/k/a Compass Bank (“Respondent”), arising out of the Administrator’s investigation into Respondent’s compliance with the UCCC and its rules, including 4 CCR 902-1:8 (“Rule 8”). Pursuant to C.R.S. § 5-6-110, Respondent has agreed that it will not engage in the conduct described herein in the future.

ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED, by and between the Administrator and the Respondent, as follows:

1. The Administrator is the Administrator of the UCCC. *See* C.R.S. § 5-6-103. Among other things, she is authorized to enforce compliance with the UCCC and its rules, and conduct investigations of possible violations of them. *See* C.R.S. §§ 5-6-101, *et seq.*

2. Respondent is an Alabama-chartered bank with its principal office located at 15 South 20th Street, Birmingham, Alabama 35233.

3. The Administrator has jurisdiction over Respondent and the subject matter of this AOD under C.R.S. § 5-6-110. The AOD applies to the consumer credit transactions described in paragraph 5, below that were entered into with consumers in Colorado in accordance with C.R.S. § 5-1-201 (“Colorado consumers”).

4. Guaranteed Automobile Protection (“GAP”) means “an agreement structured as either an insurance policy or a contractual term ... that relieves the consumer of liability for the deficiency balance remaining after the payment of all insurance proceeds for property damage upon the total loss of the consumer’s automobile that was collateral securing the consumer loan, whether the loss occurred from the total destruction of the vehicle, the theft of the vehicle, or both.” (“GAP waiver”). *See* Rule 8(a).

5. Among other things, Respondent acts as a creditor under C.R.S. § 5-1-301(17) by purchasing from auto dealers retail installment sales contracts that

include GAP protection purchased by Colorado consumers.

6. Prior to being approached by the Administrator, Respondent asserts that it had commenced: (a) implementing internal processes to pay unearned GAP premiums for retail installment sales contracts in Colorado that will be prepaid prior to maturity; and (b) identifying individuals in Colorado who had previously prepaid retail installment sales contracts prior to maturity for purposes of making payment of unearned GAP premiums. Since being approached by the Administrator, Respondent has voluntarily provided information to the Administrator concerning GAP payments to Colorado consumers. Respondent has fully cooperated in good faith since being engaged, and has been forthcoming with information in order to bring this matter to a swift and orderly resolution. Respondent represents that all information provided to the Administrator regarding GAP is true, accurate and complete.

7. Respondent reported that it failed to provide GAP payments to Colorado consumers in accordance with Rule 8(h). Rule 8(h) provides:

If the consumer credit sale or consumer loan is prepaid prior to maturity or the vehicle is no longer in the consumer's possession due to the creditor's lawful repossession and disposition of the collateral, and if no GAP claim has been made, the creditor must refund to the consumer the unearned fee or premium paid for GAP. If GAP was provided as a contractual term, the refund shall be made using a pro-rata method.

The Administrator has informed the Respondent that Rule 8 requires creditors to automatically, and without awaiting a request from a consumer, to refund consumers unearned GAP premiums (i.e., premiums related to the remaining period of the GAP policy) if the consumer credit sale or consumer loan is prepaid prior to maturity or the vehicle is no longer in the consumer's possession due to the creditor's lawful repossession and disposition of the collateral. Without admitting or denying liability, Respondent represents that, as of January 22, 2021, Respondent altered its business practices in Colorado to ensure that, from that date forward, it will make payments or cause payments to be made to Colorado consumers as required by Rule 8(h). Except as provided in C.R.S. § 5-6-110, neither this AOD nor any action taken or proposed to be taken under the terms of this AOD shall be used as an admission of liability, or as a waiver of any claims, rights, and/or defenses available to the Administrator or Respondent in any other action or proceeding. Respondent expressly reserves the right to contest whether the payments provided for in this AOD are "refunds" as required under Rule 8.

8. Respondent has represented to the Administrator that it performed a self-audit of all transactions with Colorado consumers that had GAP coverage

originated during the Applicable Period.<sup>1</sup> Respondent represents that it identified all transactions with Colorado consumers owed a payment under Rule 8(h) within the Applicable Period.

9. For each consumer identified, Respondent provided the Administrator a list identifying (i) the name and address of the consumer, (ii) the address of the consumer on the loan documents; (iii) the total amount of the GAP refund or payment, (iv) the basis for the GAP refund or payment, and (v) whether the Respondent will provide a cash refund/payment, or account credit. Respondent provided the list to the Administrator in a native Microsoft Excel format and represents that the list is true and correct, except as to the consumers' addresses, which are based on Respondent's best knowledge and information.

10. To remediate the conduct described herein, without admitting or denying liability, Respondent agrees as follows:

a. Respondent and its subsidiary and affiliated entities, its officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise shall cease and desist from engaging in any conduct in the State of Colorado that violates Rule 8(h), and shall not engage in or commit such conduct in violation of Rule 8(h) in the future.

b. Respondent shall make a refund or payment for all amounts due and owing, including interest. The total amount due and owing is one million six hundred eighty-eight two hundred ninety-two and 14/100 dollars (\$1,688,292.14). This amount relates to 5,209 Colorado consumers. This amount is payable to the Attorney General of the State of Colorado, along with any interest thereon, in trust by the Attorney General, to be used in the Attorney General's sole discretion for reimbursement of attorneys' fees and costs, the payment of consumer restitution, if any, and for consumer or creditor educational purposes, for future consumer credit or consumer protection enforcement, or public welfare purposes. The Administrator elects, in lieu of making the payment directly to the Attorney General in the first instance, to direct Respondent to refund or pay to Colorado consumers, on behalf of the Administrator, any refunds or payments owed to Colorado consumers under Rule 8(h). To the extent that Respondent is unable to locate any Colorado consumers entitled to a refund or payment, or to otherwise make a refund or

---

<sup>1</sup> The Applicable Period means transactions that were paid off between June 27, 2011 and January 22, 2021.

payment to a Colorado consumer within 150 days, after 150 days such unpaid refunds or payments shall be paid to the Administrator in accordance with paragraph 11(d) below.

11. Respondent shall make the refunds or payments, as follows:

a. Refunds or Payments. Respondent shall attempt to make any refunds or payments due hereunder within 60 days after the Effective Date. Respondent shall use best efforts to update contact information, and use the best and most current information prior to issuing a refund or payment. All refunds or payments shall be made by check payable directly to the consumer or, if the consumer is a current customer of Respondent, then the refund or payment shall be paid by making a credit to the consumer's pre-existing checking or savings account. If any check is returned or not processed within 60 days after it is sent, then Respondent shall exercise reasonable efforts and due diligence to re-attempt the payment one time. If a credit cannot be processed for any reason, then Respondent shall issue a check for the refund or payment amount. Checks that are returned due to an invalid address shall be resent if a forwarding address is provided. If a consumer has a balance outstanding with Respondent, then Respondent may credit the outstanding balance. If the outstanding balance is less than the amount of the refund or payment, then Respondent may credit the outstanding balance and shall issue a check for the amount the refund or payment exceeds the outstanding balance.

b. Transmittal Letter. Concurrently with any refunds or payments, Respondent shall send each consumer a letter, the form and contents of which has been pre-approved by the Administrator. The letter shall inform the consumer that Colorado law requires creditors to refund or pay unearned GAP premiums if Colorado consumers pay off their loans early or their car is repossessed, and Respondent failed to make these refunds or payments. Following an investigation by the Administrator, who works on behalf of the Attorney General, Respondent has agreed to pay any refunds or payments it failed to make to Colorado Consumers. The letter will state: (1) the amount of the refund or payment, (2) whether it is made by an enclosed check, an account credit for an existing customer of Respondent, and (3) that if the consumer does not cash the check within one hundred fifty (150) days or the account credit is not completed, then the money will be paid over to the Attorney General, in trust. A template of the transmittal letter is attached as **Exhibit A**.

c. Proof of Refunds or Payments. Within 270 days after the Effective Date, Respondent shall provide the Administrator with

evidence reasonably acceptable to the Administrator, that Respondent timely sent refunds or payments to appropriate Colorado consumers, such as copies of checks or confirmations of electronically transmitted funds via an account credit. Respondent shall also update the list referenced in paragraph 9 at this time identifying which consumers received payments or account balance credits.

d. Refund or Payment Outstanding Beyond 150 Days. 150 days after the Effective Date or after a check is sent to a new address, Respondent may stop payment on outstanding refund or payment checks and cease all attempts at account credits, and pay to the Administrator, within 270 days after the Effective Date, the total amount of any and all refund or payment amounts that remain outstanding, whether because they were returned as undeliverable, unclaimed, uncashed, undeposited, or otherwise.

12. Respondent shall pay to the Office of the Attorney General seventy five thousand dollars (\$75,000) to reimburse the Administrator for her costs in investigating this matter. This amount shall be held, along with any interest thereon, by the Attorney General of the State of Colorado, in trust, to be used in the Attorney General's sole discretion for reimbursement of attorneys' fees and costs, the payment of consumer restitution, if any, and for consumer or creditor educational purposes, for future consumer credit or consumer protection enforcement, or public welfare purposes.

13. At Respondent's expense and at the Administrator's option, Respondent shall permit the Administrator to inspect its books and records once, at any time within normal business hours, for the sole purpose of enabling the Administrator to determine and verify the accuracy and thoroughness of Respondent's self-audit and its compliance with this AOD. The inspection must occur within one year of the Effective Date.

14. All payments due the Administrator or the Attorney General hereunder shall be deemed paid upon the Administrator's receipt of the payment. Respondent shall endeavor to make these payments in one check. The check shall be made payable to the "Colorado Department of Law." The check should be mailed to: "Administrator, UCCC, attn: Ruth Seminara, 1300 Broadway, 6th Floor, Denver, Colorado 80203."

15. This AOD fully resolves the issues between the Administrator and Respondent arising out of the specific issues, allegations, or charges raised by the Administrator against Respondent as set forth herein and only those issues. The Administrator releases Respondent, including any subsidiaries, shareholders, officers, or employees, from any and all further investigation, claims, violations, allegations, fines, fees and penalties for the specific refund or payment issue set forth herein and only that issue, whether they accrued or may have accrued as a result of

any consumer credit sale transaction entered into by Respondent on or before the execution date of this AOD. This release does not apply to any GAP practices other than the specific refund or payment issue described herein, and does not apply to other claims arising under Rule 8, including but not limited to, claims for conduct concerning the failure to properly calculate GAP benefits in accordance with Rule 8.

16. If there is a Change in Law, after the date of the Change in Law, the Respondent's obligations to pay future refunds or payments under paragraph 10(a) of this AOD shall be terminated but it shall not have any right to disclaim its obligation for refunds or payments owed under this AOD identified in paragraph 10(b). A "Change in Law" means a change to Respondent's obligation under a regulation finalized by the Administrator, including but not limited to Rule 8, to automatically, and without awaiting a request from a consumer, refund or pay consumers unearned GAP premiums if the consumer credit sale or consumer loan is prepaid prior to maturity.

17. This AOD is binding upon all the officers, directors, employees, shareholders, managers, agents, servants, employees, attorneys, and successors of the Respondent.

18. This AOD represents the entire agreement between the parties. No party is relying on any prior statement, representation, agreement, or understanding of any kind that is not contained in this AOD. No prior statement, representation, agreement, or understanding of any kind that is not contained in this AOD shall have any force or effect.

19. Any modification of this AOD must be in writing, signed by each of the parties or by authorized representatives of each of the parties hereto.

20. This AOD is entered into for purpose of resolving only the matter described herein. Nothing in this provision affects Respondent's right to take legal positions in litigation in which the Administrator is not a party.

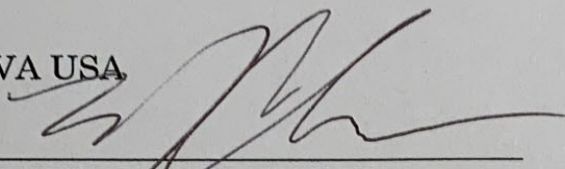
21. The date this AOD is executed by both of the parties shall be the Effective Date of this AOD for all purposes hereunder.

22. This AOD may be executed in counterparts, and may be executed by facsimile or by electronic transmission of signature pages, and as executed shall constitute one agreement.

23. For the purpose of construing or interpreting this AOD, the parties agree that it is to be deemed to have been drafted equally by all parties hereto and shall not be construed strictly for or against any party.

**AGREED AND STIPULATED TO BY:**

BBVA USA

By:   
MICHAEL CLEMMER  
SVP/Assistant General Counsel

BBVA USA  
15 South 20th Street  
Birmingham, Alabama 35233  
(p) 205.297.7925  
michael.clemmer@bbva.com

Dated: 9/23/2021

ADMINISTRATOR, UCCC

By: \_\_\_\_\_  
KEVIN J. BURNS  
Department of Law  
Consumer Protection Section  
Consumer Credit Unit  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 6<sup>th</sup> Floor  
Denver, CO 80203  
(720) 508-6110  
[kevin.burns@coag.gov](mailto:kevin.burns@coag.gov)

Dated: \_\_\_\_\_

**APPROVED AS TO FORM:**

KATTEN MUCHIN ROSEMAN, LLP

By: \_\_\_\_\_  
STUART M. RICHTER  
Katten Muchin Rosenman LLP  
2029 Century Park East  
Suite 2600  
Los Angeles, California 90067-  
3012  
(310) 788-4582  
[stuart.richter@katten.com](mailto:stuart.richter@katten.com)  
Attorneys for BBVA USA

Dated: \_\_\_\_\_



23. For the purpose of construing or interpreting this AOD, the parties agree that it is to be deemed to have been drafted equally by all parties hereto and shall not be construed strictly for or against any party.

**AGREED AND STIPULATED TO BY:**

BBVA USA

By: \_\_\_\_\_

MICHAEL CLEMMER  
SVP/Assistant General Counsel

BBVA USA  
15 South 20th Street  
Birmingham, Alabama 35233  
(p) 205.297.7925  
michael.clemmer@bbva.com

Dated: \_\_\_\_\_

ADMINISTRATOR, UCCC

By: Kevin J Burns

KEVIN J. BURNS  
Department of Law  
Consumer Protection Section  
Consumer Credit Unit  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 6<sup>th</sup> Floor  
Denver, CO 80203  
(720) 508-6110

[kevin.burns@coag.gov](mailto:kevin.burns@coag.gov)

Dated: 9-22-21

**APPROVED AS TO FORM:**

KATTEN MUCHIN ROSEMAN, LLP

By: Stuart M Richter

STUART M. RICHTER  
Katten Muchin Rosenman LLP  
2029 Century Park East  
Suite 2600  
Los Angeles, California 90067-  
3012  
(310) 788-4582  
[stuart.richter@katten.com](mailto:stuart.richter@katten.com)

Attorneys for BBVA USA

Dated: September 23, 2021



# EXHIBIT A

[Salutation] [First Name][Last Name]

[Address]

Re: Auto Loan No. [Insert]: Unearned GAP Insurance Premium Refund

Dear [Salutation][Last Name]:

We are writing regarding the above-referenced auto loan. At the time you purchased your vehicle, you also purchased Guaranteed Asset Protection (GAP). The purpose of GAP is to protect you in the event your car is totaled or stolen by paying the remaining difference between the insurance proceeds and the balance still owed on the financing. The total premiums for GAP were included in the amount financed by your loan. Because the loan was paid off early, a portion of the GAP premiums financed with the loan are unearned.

Colorado law currently requires lenders to refund unearned GAP premiums if a loan is paid off early. BBVA failed to make these payments. Following an investigation by the Administrator, who works on behalf of the Attorney General, BBVA has agreed to pay any refunds it failed to make to Colorado Consumers. Our records indicate your loan was paid off early and that you should have been paid a refund of unearned GAP premiums in the amount of [\$\_\_\_\_\_]. [We have enclosed a check for \$\_\_\_\_\_/a credit in that amount has been applied to your account No. \_\_\_\_]. [If you do not cash the enclosed check in one hundred and fifty (150) days, the amount otherwise payable to you will be paid to the Colorado Attorney General.]

We apologize for any inconvenience we may have caused. If you have any questions, please contact us at [phone number]

Very truly yours,

[signature]