

BEFORE THE ADMINISTRATOR, UNIFORM CONSUMER CREDIT
CODE STATE OF COLORADO

ASSURANCE OF DISCONTINUANCE

IN THE MATTER OF THE INVESTIGATION OF CREDIT UNION OF
DENVER

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") (the "Administrator") and Respondent Credit Union of Denver ("Respondent"), arising out of the Administrator's investigation of Respondent's compliance with the UCCC and its rules, including 4 CCR 902-1:8 ("Rule 8"), and the Colorado Consumer Protection Act, C.R.S. § 6-1-101, *et seq.* ("CCPA"), the Respondent agreeing pursuant to C.R.S. § 5-6-110 that it will not engage in the conduct described in paragraphs 10 and 11 hereof 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 a Colorado state-chartered credit union with a principal office located at 9305 West Alameda Avenue, Lakewood, Colorado 80226.
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 all consumer credit transactions entered into with consumers in Colorado as defined in C.R.S. § 5-1-201 (hereinafter "Colorado Consumer" or "Colorado Consumers") for the Applicable Period as defined below which involve Guaranteed Automobile Protection ("GAP").
4. GAP as used herein 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 or theft. *See* 4 CCR 902-1, Rule 8(a).

5. "GAP Refund" or "GAP Refunds" hereinafter means refunding unearned fees paid by consumers for GAP protection on retail installment sales contracts in Colorado because the contracts were prepaid prior to maturity or the consumer's automobile was no longer in the consumer's possession due to the creditor's lawful repossession and disposition of the collateral (the automobile), and if no GAP claim has been made.

6. 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 from auto dealers.

7. Prior to being approached by the Administrator, Respondent asserts that it had commenced: (a) implementing internal processes to pay GAP Refunds automatically and without the need for a request from the consumer; and (b) identifying individuals in Colorado who were owed GAP Refunds for the purpose of making GAP Refunds. Without admitting or denying liability, Respondent represents that, as of February 2018, Respondent altered its business procedures regarding GAP Refunds to assure that, from that date forward, it would automatically make GAP Refunds to Colorado Consumers without the need for a request from the consumer. 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 to the best of its knowledge and belief. 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 unrelated to the terms of this Agreement. If Respondent becomes a defendant in a lawsuit by a consumer or consumers regarding GAP Refunds, Respondent expressly reserves the right to contest whether the payments referred to in this AOD are GAP Refunds.

8. Respondent has represented to the Administrator that it performed a self-audit of all transactions with Colorado Consumers who had GAP coverage which originated during the Applicable Period.¹ Respondent represents that to the best of its knowledge, it identified all transactions with Colorado Consumers owed a refund under 4 CCR 902-1, Rule 8(h) and that such refunds have been made within the Applicable Period.

9. For each consumer identified, Respondent provided the Administrator a list identifying (i) the current name and address of the consumer, (ii) the total amount of the refund, and (iii) the basis for the

¹ The Applicable Period means transactions for which the due date of the last scheduled payment was within four years of the Effective Date, or will occur after the Effective Date. For purposes of this AOD the "last scheduled payment" is the date upon which a GAP Refund is due and owing to a Colorado Consumer.

refund (early payoff or repossession.) In the event the Administrator inspects Respondent's GAP refund books and records pursuant to paragraph 13 hereof, Respondent agrees to provide to the Administrator the consumer's address listed on the retail installment sales contract if requested if it is different from the consumer's current address. Respondent provided the list to the Administrator in a native Microsoft Excel format and represents that the list is true and correct to the best of its knowledge. The Administrator agrees to maintain the confidentiality of the list and its contents pursuant to C.R.S. 5-6-106(4).

10. Respondent claims that a majority of GAP Refunds regarding this Agreement were paid to Colorado Consumers in the regular course of business, and that the remaining Colorado Consumers received a GAP Refund pursuant to Respondent's self-audit. The Administrator claims Respondent failed to provide certain GAP Refunds to Respondent's members who are Colorado consumers as required by 4 CCR 902-1, Rule 8(h) during the Applicable Period. 4 CCR 902-1, 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.

11. The Administrator concludes that by failing to pay GAP Refunds to certain Colorado Consumers, Respondent violated the Colorado Consumer Protection Act ("CCPA") by engaging in unfair and deceptive trade practices, C.R.S. § 6-1-105 et seq. Respondent disputes that it violated the Colorado Consumer Protection Act ("CCPA") or engaged in unfair and deceptive trade practices, C.R.S. § 6-1-105 et seq.

12. Respondent:

a. agrees together with its officers, directors, managers, successors, and assigns, together with all other persons, corporations, associations, or other entities acting under the Respondent's direction and control, or in active concert or participation with Respondent, or by whom Respondent may be employed or contracted with, Respondent shall cease and desist from engaging in any conduct that violates 4 CCR 902-1, Rule 8(h), which 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. Respondent agrees to comply with 4 CCR 902-1, Rule 8(h) in the future.

b. verifies as true and accurate that it has paid \$122,022 in GAP Refunds to 744 consumers as a result of its self-audit which began on or about December 7, 2020. Additionally, Respondent will subject itself voluntarily to an audit by the Administrator as described in paragraph 13.

13. Respondent shall permit the Administrator to inspect its GAP refund books and records once, at any time within normal business hours, and to conduct a follow-up inspection upon reasonable notice to Respondent's counsel. The inspection must occur within one year of the Effective Date, and shall be conducted solely to enable the Administrator to determine and verify the accuracy and thoroughness of Respondent's self-audit and its compliance with this AOD.

14. Within 60 days of the Effective Date, Respondent shall send each consumer who received a GAP Refund as a result of Respondent's self-audit a confirmation letter, the form and contents of which has been preapproved by the Administrator. The letter shall inform the consumer that the Administrator has been in discussions with Respondent about Colorado law that requires creditors to refund unearned GAP premiums if consumers pay off their loans early or their car is repossessed, and Respondent failed to make these refunds. The Administrator, who works on behalf of the Attorney General, has entered into an agreement with Respondent concerning refunds it failed to pay. The letter will identify the amount of the refund and the date it was provided. A template of the transmittal letter is attached as Exhibit A.

15. This AOD fully resolves the issues between the Administrator and Respondent arising out of the particular issues, allegations, or charges raised by the Administrator against Respondent as set forth herein concerning the GAP Refund issue under the UCCC and the CCPA and only those issues. This release does not apply to any GAP practices other than the specific refund issue described in paragraph 10, and does not apply to other claims arising under the UCCC, CCPA, or Rule 8, including but not limited to, claims for conduct concerning the failure to properly calculate GAP benefits in accordance with Rule 8. The Administrator releases, acquits and forever discharges, and covenants not to sue Respondent, including any subsidiaries, officers, or employees, from any and all further investigation, claims, actions, violations, allegations, fines, fees and penalties for the specific GAP Refund issue set forth herein and only that issue, as a result of any consumer credit sale transaction entered into by Respondent on or before the execution date of this Agreement.

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 pursuant to this AOD shall be terminated but it shall not have any right to disclaim its obligation for refunds or payments owed prior to the Change in Law and pursuant to this AOD. 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 GAP Refunds to Colorado Consumers 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.

17. This AOD shall not be construed or used as a waiver or limitation of any defenses, including jurisdictional defenses, otherwise available to Respondent in any pending or future actions of any nature, including but not limited to actions of a private, administrative, criminal, individual, class, or any other nature and including claims or suits related to the existence, subject matter or terms of this AOD.

18. Respondent shall pay to the Office of the Attorney General \$30,000 to reimburse the Administrator for her costs in investigating this matter and in lieu of the Administrator's pursuit of penalties, disgorgement and other appropriate injunctive relief against Respondent. 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.

19. This AOD is binding upon: the Administrator and her successors; and all the officers, directors, managers, agents, and successors of the Respondent; and the parties stipulate to its terms as indicated by their authorized designees' signatures below.

20. 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.

21. 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.

22. 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.

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

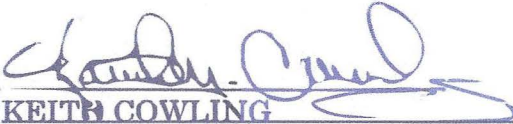
24. This AOD may be executed in counterparts, and may be executed by facsimile or by electronic transmission of signature pages, and as executed shall constitute one agreement.

25. 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.

[SIGNATURE PAGE TO FOLLOW]


AGREED AND STIPULATED TO BY:

CREDIT UNION OF DENVER

By: 
KEITH COWLING
Chief Executive Officer
9305 West Alameda Avenue,
Lakewood, Colorado 80226
(303)-239-1119
Keith.Cowling@cudenver.com

DATE: 12-15-2021

COLORADO ATTORNEY GENERAL
ADMINISTRATOR, UCCC

By: 
KEVIN BURNS
Department of Law
Consumer Protection Section
Consumer Credit Unit
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
(720) 508-6110
kevin.burns@coag.gov

DATE: 12-16-21

APPROVED AS TO FORM:

CREDIT UNION OF DENVER

s/ Lawrence D. Stone

By: _____
LAWRENCE D. STONE
Nixon, Shefrin, Ogburn Drew, P.C.
5619 DTC Parkway, Suite 1200
Greenwood Village, CO 80111
(303) 874-3408
LStone@nixonshefrin.com

DATE: 12/15/2021

Exhibit A

Dear Member:

Thank you for being a valued member of Credit Union of Denver ("CUD"). Our records indicate you previously purchased a vehicle financed through CUD and your loan contained a Guaranteed Automobile Protection (GAP) addendum purchased from the dealership.

Colorado law requires creditors to refund unearned GAP premiums if consumers pay off their loans early or their car is repossessed. CUD determined you were eligible for a refund of the unearned portion of the premium paid on your GAP addendum. CUD has confirmed these refunds were made to you following discussions with the Administrator, who works on behalf of the Colorado Attorney General. This letter confirms the refund was either paid to you via check or through direct deposit to your savings account at CUD as noted below.

On _____, a check in the amount of \$ _____ was mailed to you for the pro-rated refund followed by an interest payment to you at a later date, where applicable. Those checks should have been cashed within ninety (90) days of that date, otherwise the money will be reported and delivered to the Colorado State Treasurer pursuant to Colorado's Unclaimed Property Act, C.R.S. §§ 38-13-101 – 38-13-134. For more information contact the State Treasurer's Office at (303) 866-6070 or <https://colorado.findyourunclaimedproperty.com/app/reporting-guidelines>.

OR

For those who received direct deposit: On _____, a pro-rated GAP refund in the amount of \$ _____ was deposited in your account followed by an interest payment deposited in your account later where applicable.

If you have any questions about the process explained in this letter, or about the GAP product you purchased at the dealership, you can contact Beau at 303-239-1172 or Kari at 303-239-1127 who are Credit Union of Denver GAP Representatives.

We appreciate your membership and look forward to serving you in the future.

Sincerely,

Credit Union of Denver