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Consumer Protection Section
Consumer Credit Unit

April 22, 2024

FROM: Administrator, Colorado Uniform Consumer Credit Code

TO: Interested Parties, Licensees, Notification Filers

RE: Administrator's Interpretive Opinion Letter: Scope of C.R.S. § 5-13-106

In 1980, Congress passed the Depository Institutions Deregulation and Monetary Control Act (DIDMCA). Section 521 of DIDMCA preempts state law and permits state-chartered depository institutions to charge the higher of "interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such State bank or such insured branch of a foreign bank is located or at the rate allowed by the laws of the State, territory, or district where the bank is located." 12 U.S.C.§ 1831d; see also 12 U.S.C. 1785 (credit unions). However, in Section 525 of DIDMCA, Congress expressly permitted states to "opt out" of this preemption for loans "made in" their state:

> The amendments made by section 521 through 523 of this title shall apply only with respect to loans made in any State during the period beginning on April 1, 1980, and ending on the date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the amendments made by such sections to apply with respect to loans made in such State, except that such amendments shall apply to a loan made on or after the date such law is adopted or such certification is made if such loan is made pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to the date on which such law is adopted or such certification is made.

Pub. L. No. 96-221, 94 Stat. 132 (1980).

In the 2023 legislative session, the Colorado General Assembly passed House Bill 23-1229. Section 3 of HB23-1229 will be codified as C.R.S. § 5-13-106 when it takes effect on July 1, 2024. It provides:

> In accordance with section 525 of the Federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub. L. 96-221, the General Assembly declares that the State of Colorado does not want the amendments to the "Federal Deposit Insurance Act", 12 U.S.C. 1811 et seq.; the Federal "National Housing Act", 12 U.S.C. sec. 1701 et seq.; and the "Federal Credit Union Act", 12 U.S.C. sec. 1757, made by sections 521 to 523 of the Federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub. L. 96-221, prescribing interest rates and preempting state interest rates to apply to consumer credit transactions in this state. The rates established in articles 1 to 9 of this title 5 control consumer credit transactions in this state.

The Administrator interprets § 5-13-106 to apply only to consumer credit transactions "made in" Colorado in accordance with Section 525 of DIDMCA. Section 5-13-106 specifically cites Section 525 and expresses an intent to be "in accordance with" that section. The Administrator understands and interprets § 5-13-106's language of "in this state" to be wholly congruent and identical with the opt out authorized by Section 525 for loans "made in" the state.

The Colorado Uniform Consumer Credit Code defines "Consumer credit transaction" as "a consumer credit sale or consumer loan, or a refinancing or consolidation thereof, or a consumer lease." C.R.S. § 5-1-301(12). The Administrator understands § 5-13-106's use of the statutory term used in the Code to address the types of transactions covered by the opt out. The Code separates credit transactions in to two types: When a creditor grants credit for the purchase of goods or services, Colorado law defines that transaction as a "consumer credit sale." C.R.S. § 5-1-301(11). When the creditor grants credit separate from a purchase, the transaction is a "loan" which in turn is part of the definition of "consumer loan." C.R.S. § 5-1-301(15) and (25). Collectively, "consumer credit sales" and "consumer loans" are part of the broader "consumer credit transactions." C.R.S. § 5-1-301(12). The Administrator interprets General Assembly's use of the statutory term to clarify the type of credit transaction included in the opt out by using the Code's defined term.

Administrator will limit her enforcement, if any, of violations of the opt out, if any, to loans "made in" Colorado, pursuant to § 5-13-106 and DIDMCA section 525, which she interprets to be identical. Pursuant to C.R.S. §§ 5-5-202(7) and 5-6-104(4), entities relying on this interpretation in good faith may be shielded from liability as well.

THE ADMINISTRATOR OF THE
UNIFORM CONSUMER CREDIT CODE

Martha Fulford