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June 21, 2024

FROM: Administrator, Colorado Uniform Consumer Credit Code

TO: Interested Parties, Licensees, Notification Filers

RE: Administrator's Interpretive Opinion Letter: General Purpose Credit Cards

In the 2023 legislative session, the Colorado General Assembly passed House Bill 23-1229. Section 1 takes effect July 1, 2024 and applies to consumer credit transactions made or renewed on or after July 1, 2024. Section 1 repeals Uniform Consumer Credit Code ("UCCC") section 5-2-213 and reenacts it, with amendments, as follows:

C.R.S. § 5-2-213 (2024)

(1) As used in this section:

(a) "General-purpose credit card" means any card, plate, or other single credit device that may be used from time to time to obtain consumer credit under an open-end credit plan offered by a supervised financial organization, as defined in section 5-1-301(45), that:

(I) Is accepted by any merchant that participates in a widely accepted payment card network and is accepted upon presentation at multiple, unaffiliated merchants for goods or services;

(II) Does not charge fees, including pre-account opening fees, which exceed fifteen percent of the credit line; and

(III) Does not include an overdraft line of credit that is accessed by a debit or prepaid card or an account number.

(b) "Open-end credit plan" means consumer credit extended by a creditor under a plan in which:

(I) The creditor reasonably contemplates repeated transactions;

(II) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and

(III) The amount of credit that may be extended to the consumer during the term of the plan, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

(2) Limitations in state law on finance charges and fees applicable to consumer credit transactions in sections 5-2-201, 5-2-202, and 5-2-203 shall not apply to general-purpose credit cards.

The definition of “general-purpose credit card” in C.R.S. § 5-2-213 (2024) is similar to provisions of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1601 *et seq.*, and its implementing regulation, Regulation Z, 12 C.F.R. § 1026.1, *et seq.* An underlying purpose and policy of the UCCC is to “conform the regulation of consumer credit transactions to the policies of the federal ‘Truth in Lending Act’....” C.R.S. § 5-1-102(2)(f).

The Administrator of the Uniform Consumer Credit Code is the state official responsible for regulating consumer credit in Colorado. C.R.S. § 5-6-104. When applying the definition of general-purpose credit card in C.R.S. § 5-2-213 (2024), the Administrator’s policy will be to seek to conform to the following provisions of TILA and Regulation Z to the extent that they are consistent with C.R.S. § 5-2-213 (2024) and all other provisions of the UCCC.¹ The UCCC provides protections for acts done or omitted in conformity with the Administrator’s interpretation. C.R.S. §§ 5-5-202(7), 5-6-104(4).

Applicable time period for measuring fees

The UCCC definition of general-purpose credit card provides that the card must “not charge fees, including pre-account opening fees, which exceed fifteen percent of the credit line....” in C.R.S. § 5-2-213(1)(a) (2024). The Administrator received a question asking for clarity regarding the applicable time period for measuring the fifteen percent fee, including when the account may be considered open and when the credit limit should be measured.

TILA and Regulation Z limit fees for open end consumer credit plans. 15 U.S.C. § 1637(n)(1); 12 C.F.R. § 1026.52(a).² TILA provides that the fee limitation is calculated by measuring qualifying fees charged “in the first year during which the account is opened....” *Id.* Regulation Z similarly provides that the fee limitation is calculated by measuring qualifying fees charged “during the first year after account

¹ By referencing specific provisions of TILA and Regulation Z in this interpretive opinion letter, the Administrator does not implicitly express an interpretation or policy regarding other provisions that are not referenced.

² Instead of the 15 percent limit in C.R.S. § 5-2-213(1)(a) (2024), TILA and Regulation Z contain a limit of 25 percent of the total amount of credit authorized when the account is opened. 15 U.S.C. § 1637(n)(1); 12 C.F.R. § 1026.52(a).

opening.” 12 C.F.R. § 1026.52(a)(1). For purposes of calculating the one-year period, “an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions.” *Id.*

Unlike TILA and Regulation Z, the UCCC does not state that the fee limitation applies only in the first year during which the account is opened. When evaluating whether the UCCC fee limitation applies in subsequent years, the Administrator will view this distinction between the UCCC and the analogous federal statutes as relevant to determining the intent of the General Assembly. *See Mook v. Bd. of Cnty. Commissioners of Summit Cnty.*, 2020 CO 12, ¶ 35 (construing General Assembly’s decision to omit language as intentional because “just as important as what the statute says is what the statute does not say”) (cleaned up).

The credit limit that is used to calculate the fee limit under Regulation Z is the credit limit that is in effect when the account is opened. 12 C.F.R. § 1026.52(a)(1). However, if the credit limit is increased during the first year after account opening, a card issuer cannot charge “additional fees that would otherwise be prohibited (such as a fee for increasing the credit limit).” 12 C.F.R. § 1026.52(a)(1) Official Comment 52(a)(1)-3.i. If the credit limit is decreased during the first year after account opening, the card issuer must “waive or remove any fees charged to the account that exceed 25 percent of the reduced credit limit or to credit the account for an amount equal to any fees the consumer was required to pay with respect to the account that exceed 25 percent of the reduced credit limit within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the credit limit was reduced.” 12 C.F.R. § 1026.52(a)(1) Official Comment 52(a)(1)-3.ii.

Treatment of late payment fees, over-the-limit fees, returned-payment fees, and fees the consumer is not required to pay

The Administrator received a question asking for clarity regarding any fees that may be excluded from the 15 percent fee calculation used in C.R.S. § 5-2-213(1)(a) (2024).

Regulation Z provides that the following fees are not subject to the fee limitation set forth in 12 C.F.R. § 1026.52(a)(1):³ “(i) Late payment fees, over-the-limit fees, and returned-payment fees; or (ii) Fees that the consumer is not required to pay with respect to the account.” 12 C.F.R. § 1026.52(a)(2)(i) and (ii).

³ Unlike Regulation Z, C.R.S. § 5-2-213(1)(a) (2024) additionally provides that pre-account opening fees are included in the UCCC fee limit calculation.

Time for calculating whether credit issuer has exceeded the fee limit

The Administrator received a question asking for clarity regarding the time for calculating whether a credit issuer has exceeded the fee limitation set forth in 12 C.F.R. § 1026.52(a)(1).

An Official Comment to Regulation Z addresses the time for calculating whether a credit issuer has exceeded the applicable fee limit in 12 C.F.R. § 1026.52(a)(1):

A card issuer that charges a fee to a credit card account that exceeds the 25 percent limit complies with § 1026.52(a)(1) if the card issuer waives or removes the fee and any associated interest charges or credits the account for an amount equal to the fee and any associated interest charges within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the fee was charged.

12 C.F.R. § 1026.52(a)(1) Official Comment 52(a)(1)-2.

THE ADMINISTRATOR OF THE
UNIFORM CONSUMER CREDIT CODE

Martha Fulford