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Consumer Protection Section
Consumer Credit Unit

October 12, 2005

MEMORANDUM

TO: Interested Parties

FROM: Laura E. Udis, Administrator Uniform Consumer Credit Code, (303) 866-4494

RE: Request for Rulemaking on Debt Cancellation & Suspension Agreement

The Administrator of the Colorado Uniform Consumer Credit Code (UCCC) has received several requests asking her to adopt a rule authorizing, as a permitted additional charge, the financing of debt cancellation and suspension agreements ("debt cancellation products"). On April 12, 2005, the Administrator and the Council of Advisors on Consumer Credit held a public hearing to discuss, in general terms, debt cancellation and suspension agreements. Having reviewed the information provided and considered the matter, the Administrator declines to initiate rulemaking at this time.

As a preliminary matter, the Administrator may not adopt a rule authorizing an additional charge unless she first finds that the product is beneficial, of value to consumers, has a price that is reasonable in relation to its benefits, and that it is of a type "not for credit."¹ Section 5-2-202(1)(d), C.R.S.

The Administrator has received no requests from consumers or consumer groups requesting that debt cancellation products be authorized as permitted additional charges. All requests have been from lenders, creditors, the debt cancellation product industry, or their representatives. From a consumer's perspective, debt cancellation products are functionally similar to credit insurance. However, because the Division of Insurance does not consider debt cancellation products to be insurance², the Administrator would be required to determine a reasonable cost for such products and would likely have to consider claims, payout data, and loss ratios. would arguably have to be reviewed periodically for this purpose

¹ Credit life, accident, and health insurance is, by statute, a permitted additional charge providing certain conditions are met, and therefore no rule is needed to authorize these charges. In addition, the current and prior administrators have adopted rules permitting other insurance and similar products to be financed as additional charges in UCCC Rules 3, 4, & 8. 4 CCR 902-1 at 1-7.

² Many debt cancellation products are issued by insurance companies or their affiliates and creditors frequently insure their contracts containing debt cancellation products.

It does not appear that there is significant consumer demand for the financing of these products or that they provide substantial benefits not generally available in the form of insurance. The Administrator is likewise concerned that debt cancellation products may be used to avoid state insurance licensing and premium filing or approval requirements. It also appears clear that debt cancellation products are credit-related as they result in the suspension or cancellation of the remainder of the credit obligation upon the occurrence of certain events.

Prior to adopting rules, the Administrator is statutorily directed to advise and consult with other UCCC states. Section 5-6-104(3)(a), C.R.S. The financing of debt cancellation products as a permitted additional charge is not universally recognized by the states that have adopted and retained the model UCCC. Although there are some differences in the treatment of debt cancellation products, some of these states do not permit the cost to be added as an additional charge to indirect or direct, lending.³

The Administrator takes notice of the fact that financing of traditional credit insurance, non-credit insurance, and guaranteed automobile protection (GAP) continues to result in substantial UCCC violations and refunds. In fiscal year 2004-05, the Administrator's compliance examinations of licensed supervised lenders, including credit sales or indirect lending agreements assigned to such lenders, found violations resulting in total refunds to consumers of approximately \$30,000 for credit insurance and over \$170,000 for GAP. In addition, there have been recent allegations of automobile dealers improperly requiring consumers to buy, or misleading consumers about, credit insurance and guaranteed automobile protection. It is the Administrator's understanding that the Colorado Auto Industry Division is investigating these claims.

For these and other reasons, the Administrator elects not to pursue rulemaking on debt cancellation products at this time. Her November 9, 2004, advisory opinion to depository institutions permitting the direct financing of debt cancellation products as an additional charge remains in effect. Although non-depository lenders and creditors may not exclude the cost of debt cancellation products from the loan finance or credit service charge, they may offer and sell debt cancellation products with payment by cash or separate payment method, or they may finance the cost and add it to the finance charge or credit service charge when calculating the annual percentage rate for purposes of the maximum rate ceilings set by section 5-2-201, C.R.S.⁴

³ "Indirect lending" refers to credit sales of goods and services in which the creditor provides or arranges financing and may retain and collect the credit agreement or assign it to others. "Direct lending" refers to a loan made directly by a lender to a consumer.

⁴ For APR disclosure purposes, the cost of debt cancellation products need not be included in the finance or credit service charge if the creditor complies with Regulation Z, 12 C.F.R. section 226.4(d)(3).